Ensuring Adolescent Right To Reproductive Health Through an RH Law

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Asserting Women's Rights

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I. Introduction

Adolescents have a right to reproductive health including access to modern contraceptives and sexuality education. The rights of adolescents to adolescent reproductive health (ARH) are gravely affected by the delayed enactment of a Reproductive Health Care Law ("RH law"). Any restriction on adolescent access to contraceptive information and services will prove to be detrimental to the physical, mental, and psychological well-being of adolescents.

Increased access ARH education and information and services on modern contraceptive methods will reduce the number of unwanted pregnancies, eliminate the need for abortion, and prevent maternal deaths.

The rights of adolescents to contraceptive information and services must be upheld. Adolescents must be empowered and capacitated according to their evolving capacities as recognized by the Convention of the Rights of the Child (CRC) of which the Philippines is a state party and is duty-bound to fulfill.

II. Arguments/Discussion

A. Adolescent Reproductive Health and Public Health

A.1. Realities of State of Reproductive Health

Due to neglect and in some instances outright discrimination, adolescents continue to be exposed to unnecessary health risks stemming from lack of ARH programs, early pregnancy and lack of access to the full range of contraceptive choices and reproductive health services.

Many adolescents are sexually active and are not practicing any contraceptive method. Eighty percent of young girls engaging in early sex engage in unprotected sex.[1] In 2008, 54 out of every 1000 women aged 15-19 began childbearing.[2] According to the Young Adult Fertility and Sexuality Study 3 (YAFS 3), by age 18, ten percent (or one out of ten) of young women would have been pregnant and by age 20, 25% (or one out of four) would have already been pregnant.

Adolescents are often not physiologically mature enough for childbearing, hence, early childbearing is associated with high levels of maternal mortality and morbidity.[3] With little contraceptive experience, adolescents have a high risk of having unintended

[1] Young Adult Fertility and Sexuality Study 3 (YAFS 3), 2002.

[2] National Demographic and Health Survey (NDHS), 2008; In 2010, 45 women out of every 1000 women aged 15-19 have began child-bearing. (UNFPA 2010 State of the World Population).

[3] Center for Reproductive Rights, Implementing Adolescent Reproductive Rights Through the Convention on the Rights of the Child, 1999, Sept, available at: http://www.reproductiverights.org/pub_art_adolrights.html.

pregnancies.[4] Pregnancies of adolescent girls aged 18 years and below are considered high risk pregnancies. Complications due to high blood and maternal mortality are high for adolescent girls giving birth. They also tend to disregard basic pre-natal and post-natal care thereby putting them at risk and adding to occurrence of infant mortality.[5]

They are at high risk for undergoing unsafe abortion and for giving birth without the assistance of skilled birth attendants.

More than half of all pregnancies are unintended.[6] According to the UNFPA 2010 State of the World Population, 230 women die out of every 100,000 live births, only 36% of married women between the ages of 15-49 use modern contraceptive methods, and only 60% of births are performed by skilled birth attendants.[7]

Daily, there are 11 women dying while giving birth in the Philippines. Not a single death should happen due to pregnancy and childbirth. These preventable deaths could have been avoided if more Filipino women have had access to reproductive health information and health care including access to sexuality education, contraceptives, skilled birth attendants and emergency obstetric care.

In the Philippines, with more than half of all pregnancies being unintended, there are statistics ranging from 17% to one-third of these unintended pregnancies ending in abortion, There are 560,000 women who induced abortions, 90,000 women hospitalized and 1,000 women who died from complications from unsafe abortion in 2008 alone.[8] The Philippine statistics on abortion also show the following profile of women who induce abortion: nine in ten women are married or in a consensual union; more than half have at least three children; two-thirds are poor; nearly 90% are Catholic.[9] The 2006 statistics estimate 27 out of every 1,000 women inducing abortion and 18 women inducing abortions per 100 pregnancies and about 12% of maternal deaths due to unsafe abortion.[10] In the 2004 National Survey of Women, the results show that 46% of abortion attempts occur among young women: some 30% among women aged 20–24, and 16% among teenagers.[11]

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[4] International Consortium on Emergency Contraception (ICEC), Expanding Global Access to Emergency Contraception, A Collaborative Approach to Meeting Women's Needs, 2000, at 32. [5] Skilled birth attendants are health professionals who have been educated and trained to proficiency in skills needed to manage normal labor and delivery, recognize the onset of complications, perform essential interventions, start treatment and supervise the referral of mother and baby for interventions that are beyond their competence or are not possible in the particular setting. Depending on the setting, health care providers such as auxiliary nurse-midwives, community midwives, village midwives and health visitors may also have acquired appropriate skills, if they have been specially trained (WHO Recommendations for the Prevention of Postpartum Haemorrhage, 2007.)

[6] Alan Guttmacher Institute (AGI), Meeting Women's Contraceptive Needs in the Philippines, 1 In Brief 2 (2009), http://www.guttmacher.org/pubs/2009/04/15/IB_MWCNP.pdf.

[7] Skilled birth attendants are health professionals who have been educated and trained to proficiency in skills needed to manage normal labor and delivery, recognize the onset of complications, perform essential interventions, start treatment and supervise the referral of mother and baby for interventions that are beyond their competence or are not possible in the particular setting. Depending on the setting, health care providers such as auxiliary nurse-midwives, community midwives, village midwives and health visitors may also have acquired appropriate skills, if they have been specially trained (WHO Recommendations for the Prevention of Postpartum Haemorrhage, 2007.)

[8] AGI Meeting Women's Contraceptive Needs in the Philippines.

[9] Singh S et al., Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences, New York: Guttmacher Institute, 2006.

[10] Id.

[11] Juarez F, Cabigon J and Singh S, Unwanted pregnancies in the Philippines: the route to induced abortion and health consequences, paper presented at the 25th International Union for the Scientific Study of Population General Conference, Tours, France, July18–23, 2005.

The knowledge of many adolescents on reproductive tract infections (RTIs), sexually transmitted infections (STIs), and HIV/AIDS is at a superficial level. STI prevalence is quite high among young females and males compared to the general population, being highest among youth in the 18-24 age groups.[12] Risks of transmission during intimate sexual contact include infections to the Human Papilloma Virus (HPV) which causes most cervical cancers.[13] At their young age, adolescents are prone to HIV infections to HPV.

The annual newly-reported HIV cases rose from 200 in 2004 to 528 in 2008 and the number nearly tripled in 15-24 year-olds from 41 in 2007 to 110 in 2008.[14]

According to the National AIDS Registry, there are 7,031 HIV and AIDS cases from January 1984 to June 2011 with almost half (49%) of all infections reported in the last two years alone. In 2010, the monthly average of reported HIV cases was 133 cases a month totaling to 1,591 new cases for that year, the largest annual reported cases since 1984. The first half of 2011 also shows a continued increase with average monthly reported cases of 169. Presently, there is an average of six new HIV cases per day reported in the Philippines from one new case per day in 2007. Based on the 2010 UNAIDS Report on the Global AIDS Epidemic, the Philippines is one of seven countries globally with more than 25 percent increase in HIV incidence in the last ten years.

A.2. Impact of lack of access to Adolescent Reproductive Health Including Contraceptive Information and Supplies

Sexual and reproductive ill-health is a major burden of disease among adolescents and young people. Ensuring the sexual and reproductive health will address HIV infection, other STIs, unintended pregnancy and unsafe abortion which place substantial burdens on families and communities and upon scarce government resources, yet such burdens are preventable.[15]

Adolescents are the ones who are bound to suffer irreparable damage due to lack of access to contraceptive information and services including sexuality education that would make them knowledgeable about various matters including: (a) risks of early sex including early pregnancies, vulnerability to STIs, RTIs, and HIV; (b) risks of early pregnancies including maternal mortality and morbidity, dropping out of school because of the demands of pregnancy and childbearing; (c) risks of early marriage; (d) the benefits of reproductive health education and responsible parenthood including preventing unwanted and unintended pregnancies and reducing the need for abortion; (e) treatment of STIs and RTIs; (f) gender-based violence; (g) empowerment of women and girls; (h) the right to sexual orientation and gender identity, among others.

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[12] DEPARTMENT OF HEALTH AND FAMILY HEALTH INTERNATIONAL (FHI), 2002 RTI/STI PREVALENCE SURVEY IN SELECTED SITES IN THE COUNTRY, 50 (2002).

[13] Cervical cancer is the second leading cause of cancer deaths to women. 2005 Philippine Cancer Facts and Estimate, p. 12.

[14] Aug. 2009 HIV/AIDS Registry.

[15] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009) (hereafter International Technical Guidance on Sexuality Education)

Teaching ARH is one sure way of keeping adolescents in school and ensuring their graduation and giving them the opportunity to have careers, better employment and increased financial capability.[16] According to the WHO, when girls have children, their health can be adversely affected and their education is impeded; their economic autonomy is restricted[17] affecting the women personally but also limiting the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.[18]

Promoting adolescents' and young people's sexual and reproductive health, including the provision of sexuality education in schools, is key towards achieving the Millennium Development Goal (MDG) 3 (achieving gender equality and empowerment of women), MDG 5 (reducing maternal mortality by three-quarters by 2015 and achieving universal access to reproductive health) and MDG 6 (combating HIV/AIDS)." [19]

The transmission of cultural values from one generation to the next includes values related to gender and sexuality. Adolescents and young people are exposed to sources of information and values such as from parents, teachers, media and peers presenting them with conflicting values about gender, gender equality and sexuality. There is also the problem of parents who are reluctant to engage in discussion of sexual matters with adolescents and young people because of cultural norms and their lack of knowledge or discomfort." [20]

In some instances puberty for adolescent girls may signal an end to schooling and mobility, and the beginning of adult life, with marriage and childbearing as possibilities[21] Adolescents and young people may choose to be sexually active or not. With sexuality education, adolescents and young people are able to acquire and/or reinforce values such as reciprocity, equality, responsibility and respect, which are prerequisites for healthy and safer sexual and social relationships. Unfortunately, not all sexual relations are consensual, some are forced including rape." [22]

Young children and adolescents especially girl children and adolescent girls are often vulnerable to rape and incest by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy.[23] They need to be taught about not allowing others to touch their private parts and about how incest can progress from mere touching to rape. They also need to know about where and how to get help in case they or any of their young friends are victims of

[16] See Cedaw General Recommendation No. 21 Equality in marriage and family relations, i.e., Comment No. 36 and 37 on Art. 16 (2) of the Cedaw Convention
[17] CEDAW General Recommendation No. 21 Equality in marriage and family relations on Article 16 (2), Comment No. 36, Art. 16 (2).
[18] CEDAW General Recommendation No. 21 Equality in marriage and family relations on Article 16 (2), Comment No. 37, Art. 16 (2)
[19] International Technical Guidance on Sexuality Education.
[20] International Technical Guidance on Sexuality Education.
[21] International Technical Guidance on Sexuality Education.
[22] International Technical Guidance on Sexuality Education.
[23] CEDAW General Recommendation 24, paragraph 12 (b)

rape and incest. These are life-saving/life-lessons that they need to know to prevent them from being victims or re-victimized by rape and incest. Incest can actually happen for a prolonged period of time even lasting for years without the proper legal and psychological intervention.

In the Focus Group Discussions that EnGendeRights conducted with People Living with HIV (PLHIV) in 2010 in Cebu, Davao and Metro Manila, many of the 19-24 year olds who were HIV positive said that they did not learn about HIV prevention, symptoms, treatment and the rights of PLHIVs in their schools. They only became knowledgeable about HIV when they joined PLHIV support groups upon finding out that they were HIV positive. The increase in newly-reported cases only means that the government has not been effectively conducting educational campaigns on the HIV. This lag in educational campaigns can be addressed by the conduct of sexuality education programs. Any delay or snag in the implementation of sexuality education programs for adolescents significantly impacts the health and lives of our children and adolescents.

A.3. The Need for Contraception Information and Services; Providing Adolescent Reproduction Health Education Does Not Increase Sexual Activity

According to a study in the British Medical Journal, educating teenagers about emergency contraceptive pills (ECPs), a form of contraceptive, does not increase use of ECPs, nor does it increase sexual activity.[24] In Finland, abortion rates among adolescents dropped following the increased access to information on emergency contraception.[25]

Comprehensive sexuality education including information about contraceptive methods can delay the onset of sexual activity, increase the use of contraceptives, and lead to fewer sexual partners contributing to the overall well-being of adolescents. Accurate and objective sexuality education help reduce maternal mortality, abortion rates, adolescent[26] pregnancies, and HIV/AIDS prevalence.[27]

Adolescents must be provided with information and services necessary to enable them to protect themselves from unwanted/coerced sex, unplanned pregnancy, early childbearing, unsafe abortion, HIV/AIDS, and STIs. This requires full government support in the form of policies, services, programs, and activities that are youth-friendly, rights and evidence-based, confidential, and participatory.

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[24] ASEC & ICEC, The Emergency Contraception Newsletter, Winter 2001/2002; In March 2002, California Governor Gray Davis announced that all HMO's must cover EC for women. ASEC & ICEC, The Emergency Contraception Newsletter, Spring 2002.

[25] ICEC Expanding Global Access to Emergency Contraception, at 30.

[26] See International Planned Parenthood Federation, From Evidence to Action: Advocating for comprehensive sexuality education 8–9 (2009), available at http://www.gfmer.ch/SRH-Course-2010/adolescent-sexual-reproductivehealth/pdf/IPPF-SexEdAdvocacy-2009.pdf.

[27] See, e.g., CEDAW Committee, Concluding Observations:Belize, paras. 56-57, U.N. Doc. A/54/38 (1999); Burundi, para. 62, U.N. Doc. A/56/38 (2001); Chile, paras. 226–27, U.N. Doc. A/54/38 (1999); Dominican Republic, para. 349, U.N. Doc. A/53/38 (1998);Lithuania, para. 25, U.N. Doc. CEDAW/C/LTU/CO/4(2008); Nigeria, para. 33, U.N. Doc. CEDAW/C/NGA/CO/6 (2008); Committee on the Rights of the Child, Concluding Observations: Cambodia, para. 52, U.N. Doc. CRC/C/15/Add.128 (2000); Colombia, para. 48, U.N. Doc. CRC/C/15/Add.137 (2000); Dominican Republic, para. 37, U.N. Doc. CRC/C/15/Add.150 (2001); Ethiopia, para. 61, U.N. Doc. CRC/C/15/Add.144 (2001); ESCR Committee, Concluding Observations: Bolivia, para. 43, U.N. Doc. E/C.12/1/Add.60 (2001); Honduras, para. 27, U.N. Doc. E/C.12/1/Add.57 (2001); Libyan Arab Jamahiriya, para. 36, U.N. Doc. E/C.12/LYB/CO/2 (2006); Senegal, para. 47, U.N. Doc. E/C.12/1/Add.62 (2001); Ukraine, para. 31, U.N. Doc. E/C.12/1/Add.65 (2001).

A.4. Eligibility of Adolescents to Contraceptives

The World Health Organization (WHO) Medical Eligibility Criteria for Contraceptive Use cites the eligibility of adolescents to use[28] contraceptives, as follows:

> **In general, adolescents are eligible to use any method of contraception and must have access to a variety of contraceptive choices. Age alone does not constitute a medical reason for denying any method to adolescents. While some concerns have been expressed regarding the use of certain contraceptive methods in adolescents** (e.g. the use of progestogenonly injectables by those below 18 years), these concerns must be balanced against the advantages of avoiding pregnancy. I**t is clear that many of the same eligibility criteria that apply to older clients apply to young people. However, some conditions (e.g. cardiovascular disorders) that may limit the use of some methods in older women do not generally affect young people, since these conditions are rare in this age group. Social and behavioural issues should be important considerations in the choice of contraceptive methods by adolescents. For example, in some settings, adolescents are also at increased risk for STIs, including HIV.** While adolescents may choose to use any one of the contraceptive methods available in their communities, in some cases, using methods that do not require a daily regimen may be more appropriate. Adolescents, married or unmarried, have also been shown to be less tolerant of side-effects and therefore have high discontinuation rates. Method choice may also be influenced by factors such as sporadic patterns of intercourse and the need to conceal sexual activity and contraceptive use. For instance, sexually active adolescents who are unmarried have very different needs from those who are married and want to postpone, space or limit pregnancy. **Expanding the number of method choices offered can lead to improved satisfaction, increased acceptance and increased prevalence of contraceptive use. Proper education and counseling both before and at the time of method selection can help adolescents address their specific problems and make informed and voluntary decisions. Every effort should be made to prevent service and method costs from limiting the options available.**[29]

B. Protected Rights

B.1. Right to Privacy

In the 1977 case of *Carey v. Population Services International*,[30] the Supreme Court declared unconstitutional a New York statute prohibiting sale or distribution of contraceptives to a minor under 16; for anyone other than a licensed pharmacist

[28] WHO, Medical Eligibility Criteria for Contraceptive Use, 4th Edition (2009)
[29] WHO, Medical Eligibility Criteria for Contraceptive Use, 4th Edition (2009)
[30] Carey v. Population Services International, 431 U.S. 678 (1977).

to distribute contraceptives to persons 16 or over; and for anyone, including licensed pharmacists, to advertise or display contraceptives. The Supreme Court held:

> The District Court also held unconstitutional, as applied to nonprescription contraceptives, the provision of 6811 (8) prohibiting the distribution of contraceptives to those under [431 U.S. 678, 692] 16 years of age. 13 Appellants contend that this provision of the statute is constitutionally permissible as a regulation of the morality of minors, in furtherance of the State's policy against promiscuous sexual intercourse among the young.
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> The question of the extent of state power to regulate conduct of minors not constitutionally regulable when committed by adults is a vexing one, perhaps not susceptible of precise answer. We have been reluctant to attempt to define "the totality of the relationship of the juvenile and the state." **In re Gault,387 U.S. 1, 13 (1967). Certain principles, however, have been recognized. "Minors, as well as adults, are protected by the Constitution and possess constitutional rights." Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 74 . "[W]hatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." In re Gault, supra, at 13. 14 On the other hand, we have held in a variety of contexts that "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults." Prince v. Massachusetts, 321 U.S. 158, 170 (1944). See Ginsberg v. New York, 390 U.S. 629 (1968). See also McKeiver v. Pennsylvania, 403 U.S. 528 (1971).[431 U.S. 678, 693]**
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> **Of particular significance to the decision of this case, the right to privacy in connection with decisions affecting procreation extends to minors as well as to adults. Planned Parenthood of Central Missouri v. Danforth, supra, held that a State "may not impose a blanket provision . . . requiring the consent of a parent or person in loco parentis as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy." 428 U.S., at 74 . As in the case of the spousal-consent requirement struck down in the same case, id., at 67-72, "the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto," id., at 74, "`which the state itself is absolutely and totally prohibited from exercising.'" Id., at 69. State restrictions inhibiting privacy rights of minors are valid only if they serve "any significant state interest . . . that is not present in the case of an adult." Id., at 75. 15 Planned Parenthood found that no such interest justified a state requirement of parental consent. 16 [431 U.S. 678, 694]**
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> **Since the State may not impose a blanket prohibition, or even a blanket requirement of parental consent, on the choice of a minor to terminate her pregnancy, the constitutionality of a blanket prohibition of the distribution of contraceptives to minors is a fortiori foreclosed. The State's interests in protection of the mental and physical health of the pregnant minor, and**

in protection of potential life are clearly more implicated by the abortion decision than by the decision to use a nonhazardous contraceptive.

Appellants argue, however, that significant state interests are served by restricting minors' access to contraceptives, because free availability to minors of contraceptives would lead to increased sexual activity among the young, in violation of the policy of New York to discourage such behavior. 17 **The argument is that minors' sexual activity may be deterred by increasing the hazards attendant on it.** The same argument, however, would support a ban on abortions for minors, or indeed support a prohibition on abortions, or access to contraceptives, for the unmarried, whose sexual activity is also against the public policy of many States. **Yet, in each of these areas, the Court has rejected the argument, noting in Roe v. Wade, that "no court or commentator has taken the argument seriously." 410 [431 U.S. 678, 695] U.S., at 148. The reason for this unanimous rejection was stated in Eisenstadt v. Baird: "It would be plainly unreasonable to assume that [the State] has prescribed pregnancy and the birth of an unwanted child x x x as punishment for fornication." 405 U.S., at 448 . We remain reluctant to attribute any such "scheme of values" to the State. 18**

Moreover, there is substantial reason for doubt whether limiting access to contraceptives will in fact substantially discourage early sexual behavior. Appellants themselves conceded in the District Court that "there is no evidence that teenage extramarital sexual activity increases in proportion to the availability of contraceptives," 398 F. Supp., at 332, and n. 10, and accordingly offered none, in the District Court or here. **Appellees, on the other hand, cite a considerable body of evidence and opinion indicating that there is no such deterrent effect. 19 Although we take judicial notice, as did the [431 U.S. 678, 696] District Court, id., at 331-333, that with or without access to contraceptives, the incidence of sexual activity among minors is high, 20 and the consequences of such activity are frequently devastating, 21** the studies cited by appellees play no part in our decision. It is enough that we again confirm the principle that when a State, as here, burdens the exercise of a fundamental right, its attempt to justify that burden as a rational means for the accomplishment of some significant state policy requires more than a bare assertion, based on a conceded complete absence of supporting evidence, that the burden is connected to such a policy. 22 [431 U.S. 678, 697]

B

Appellants argue that New York does not totally prohibit distribution of contraceptives to minors under 16, and that accordingly 6811 (8) cannot be held unconstitutional. Although 6811 (8) on its face is a flat unqualified prohibition, Educ. Law 6807 (b) (McKinney, Supp. 1976-1977), see nn. 1, 7, and 13, supra, provides that nothing in Education Law 6800-6826 shall be construed to prevent "[a]ny physician . . . from supplying his patients with such drugs as

[he] . . . deems proper in connection with his practice." This narrow exception, however, does not save the statute. As we have held above as to limitations upon distribution to adults, less than total restrictions on access to contraceptives that significantly burden the right to decide whether to bear children must also pass constitutional scrutiny. **Appellants assert no medical necessity for imposing a medical limitation on the distribution of nonprescription contraceptives to minors.** Rather, they argue that such a restriction serves to emphasize to young people the seriousness with which the State views the decision to engage in sexual intercourse at an early age. 23 But this is only another form of the [431 U.S. 678, 698] argument that juvenile sexual conduct will be deterred by making contraceptives more difficult to obtain. Moreover, that argument is particularly poorly suited to the restriction [431 U.S. 678, 699] appellants are attempting to justify, which on **appellants' construction delegates the State's authority to disapprove of minors' sexual behavior to physicians, who may exercise it arbitrarily, 24 either to deny contraceptives to young people, or to undermine the State's policy of discouraging illicit early sexual behavior. This the State may not do.** Cf. Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 69 , 74. 25 [431 U.S. 678, 700] [Emphasis supplied]

In the case of R. *(on the application of Axon) v. Secretary of State for Health & Another* [2006] E.W.H.C. 37, the High Court of Justice of England and Wales held that health professionals are obligated to protect the confidentiality of patients under the age of 16 regarding advice and/or treatment on contraception, sexually transmitted infections and abortion. Based on international human rights law and public health objectives, there is a high duty of confidentiality imposed on health professionals regarding young persons seeking advice and care in sexual health matters which should not be overridden without exceptional reasons.[31]

In the case of the South African case of Christian Lawyers Association of South Africa and Others v. Minister of Health and Others, [2005] (1) SA 509 (T), the High Court of South Africa held that laws allowing adolescent pregnant women to give their informed consent to terminate pregnancy are constitutional.[32]

In the case Canadian case of C. (J.S.) v. Wren, [1986] A.J. No. 1166, the Alberta Court of Appeal held that an adolescent can consent to terminate her pregnancy against the wishes of her parents where she has a sufficient intelligence to understand fully both obligations to parents and the medical procedure.[33]

[31] R. (on the application of Axon) v. Secretary of State for Health & Another [2006] E.W.H.C. 37 available at http://www.bailii.org/ew/cases/EWHC/Admin/2006/37.html.

[32] Christian Lawyers Association of South Africa and Others v. Minister of Health and Others, [2005] (1) SA 509 (T), (High Court of South Africa, Transvaal Provincial Division)

[33] C. (J.S.) v. Wren, [1986] A.J. No. 1166.

B.2. Equal Protection of the Law

In the 1972 US Supreme Court case of *Eisenstadt v. Baird*, the appellee William Baird attacked his conviction for violating a Massachusetts law for giving a woman a contraceptive foam at the close of his lecture to students on contraception. The law made it a felony for anyone to give away a drug, medicine, instrument, or article for the prevention of conception except in the case of (1) a registered physician administering or prescribing it for a married person or (2) an active registered pharmacist furnishing it to a married person presenting a registered physician's prescription. The Supreme Court invalidated the law prohibiting the distribution of contraceptives to unmarried persons under the Equal Protection Clause, holding that "whatever the rights of the individual to access to contraceptives may be, the rights must be the same for the unmarried and the married alike." The Supreme Court held:

> X x x Mr. Justice Jackson, concurring in Railway Express Agency v. New York, 336 U.S. 106, 112 -113 (1949), made the point:
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> "The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, **nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation."**
>
> Although Mr. Justice Jackson's comments had reference to administrative regulations, the principle he affirmed has equal application to the legislation here. **We hold that by providing dissimilar treatment for married and unmarried persons who are similarly situated, Massachusetts** [405 U.S. 438, 455] **General Laws** Ann., c. 272, 21 and 21A, **violate the Equal Protection Clause**

B.3. Constitutional Protection on Separation of Church and State and Non-Establishment of Religion

The Philippine Congress cannot pass a law or maintain a policy prohibiting access to contraceptives to adolescents since such restriction would be an imposition of one's religious beliefs on the rest of Filipino populace and infringes on the rights of others to freedom of thought, conscience and religion and any prohibition on access to contraceptive information and services would be tantamount to establishment of religion.

B.4. Void for vagueness

The requirement of prior consultation of the parents for the conduct of sex education may be considered vague since it is subject to interpretation on what constitutes sufficient consultation.

Such provision requiring prior consultation with parents violate **due process since the provision is vague that "men [and women] of common intelligence must necessarily guess at its meaning."** [34]

B.5. A Law that Disallows Adolescent Access to Contraceptive Information and Services is Unreasonable

Allowing adolescents access to contraceptive information and service promotes the rights of adolescents and it promotes public health and public interest. Adolescent modules on sexuality education are conducted using information for adolescents that are age-appropriate catering to the different evolving capacities of adolescents.

In the case of the Department of Health (DEPED), their ARH modules were subjected to pilot testing to test the content and method of the modules, get feedback, and to improve on the modules. DEPED conducted previous consultations with the parents and teachers associations in the pilot schools and even those attending the Alternative Learning System.

B.6. Philippine Laws and Ordinances Ensuring Right to Contraceptive Information and Services and Sexuality Education

a. Magna Carta of Women on Sexuality Education

Existing laws such as the Magna Carta of Women and the AIDS Prevention Act mandate the conduct of sexuality education. Section 17 of the Magna Carta of Women provides, as follows:

> (b) Comprehensive Health Information and Education. - The State shall provide women in all sectors with appropriate, timely, complete, and accurate information and education on all the above-stated aspects of women's health in government education and training programs, with due regard to the following:
>
> (1) The natural and primary right and duty of parents in the rearing of the youth and the development of moral character and the right of children to be

[34] Connally v. General Construction Co., 269 US 385, 391 (1925).

brought up in an atmosphere of morality and rectitude for the enrichment and strengthening of character;

(2) The **formation of a person's sexuality that affirms human dignity**; and

(3) **Ethical, legal, safe, and effective family planning methods including fertility awareness**. [Emphasis supplied]

In October 2010, the Commission on Human Rights ruled on a complaint of community women from Manila City who raised concerns regarding Manila Executive Order 003 "Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declaration in Pursuit Thereof" and the non-procurement of products and services in city health centers and hospitals which are not in the category of natural family planning method stipulated in the fiat.[35] The CHR ruled, as follows:

> Under the Magna Carta, the state commits to refrain from the commission of acts that are discriminatory to women, and the corollary duty to ascertain that this particular group of claim holders is protected from discriminatory practices by individuals and private institutions. This anti-discrimination law enumerates inter alia, rights of women to health, which includes access to comprehensive health services, and health information and education. In these provisions, both health care programmes, facilities, as well as opportunities that can contribute to the formation of a woman's personality are made available to women.
>
> It is also worth noting that in Section 8 of the Magna Carta, it is stated that "[a]ll rights in the Constitution and those rights recognized under international instruments duly signed and rarified by the Philippines, in consonance with Philippine law, shall be rights of women under this Act to be enjoyed without discrimination." The plain and ordinary meaning of this section is that rights, including the number and spacing of children under the Women's convention, the right to health and the right to a decent standard of living under the Covenant of Economic, Social, Cultural Rights, full implementation of the CEDAW by the Philippine government as party to the Hanoi Plan of Action of the Association of Southeast Asian Nations, including sexual and reproductive health rights under the Beijing Declaration and Platform for Action, can be exercise or accessed by all Filipino women.
>
> In light of the fact that EO 003 predates the Magna Carta of Women, the Commission on Human Rights adopts the evaluation that the City of Manila's liability for a discriminatory act before the anti-discrimination law, issues from

[35] CHR Advisory on the Local Ordinance by the City of Manila, CHR (IV) A2010-005

the Philippine's treaty commitment under the CEDAW, and its liability under the Magna Carta of Women, commences on the entry into force of the latter.

Non-discrimination under the CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women entered into force on 03 September 1981. This treaty provides for state obligations, specific rights of women, and a supervisory committee to ascertain that contracting parties abide by their commitments. In addition to the discussions already made, the focus of this section shall be the state obligations and rights relevant to the contested EO 003.

The Philippines, by ratification became a state party to the CEDAW 05 August 1981. As such, it bound itself to create legal measures to protect women's rights, punish discrimination, and itself refrain from discriminating.

By the issuance of EO 003, the City of Manila, an instrumentality and essential element of the state, committed a [sic] clear breaches of CEDAW obligation. By adopting an ordinance that limits the choice to natural birth control methods, it reneged on the obligation to protect health including the safeguarding of the function of reproduction, to provide health care and enable women to access services related to family planning, and to allow women to decide freely and responsibly on the number and spacing of children.

Recommendations

I. The City Council of Manila should immediately revoke EO 003, and ensure that artificial birtyh control devices, including birth control pills and injectibles [sic] be made available to all adult citizens who are residents within its jurisdiction, in health centers and hospitals.

II. The City of Manila should undertake to encourage private health care providers, hospitals, and health centers, to make available for purchase, birth control pills, condoms, injectibles [sic], and intrauterine device.

II. [sic] The City of Manila should issue an Apology to the Osil group, to all women and men alike who have denied access to facilities and services as a result of the Executive Order, and to the children of the families affected.

IV. All local government units (LGUs) are encourage[sic] to develop or strengthen advocacy programmes on reproductive and sexual health rights and make available in health centers or municipal health clinics, birth control pills, condoms, injectibles [sic], and intrauterine device. LGUs are likewise advised to develop or strengthen human rights education particularly on the rights of women in the CEDAW, for all their constituents.

V. The regional trial court where the Peition of the Osil Group has been remanded, is strongly encouraged to refer and consider the obligations of the state in international treaties, and its commitments in regional cooperation particularly to the ASEAN.

b. Laws Covering Local Governments

In reference to the April 6, 2011 letter of PLCPD, PNGOC, RHAN, and The Forum to the DILG requesting the Department to conduct an investigation and to exert all its available powers to have the Protection of the Unborn Child Ordinance of 2011 of Barangay Ayala Alabang and similar ordinances enacted by other local government units (LGUs) stopped or amended to be compliant with national laws and for the Secretary of the Department to send a communication to all LGUs expressing the Department's position, the DILG issued its opinion,[36] as follows:

> Under Section 1, Article VI of the 1987 Constitution, the legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum. This legislative power was delegated by Congress to the local sanggunian by virtue of Section 48 of the Local Government Code of 1991 (RA 7160). While such power was validly delegated to local government units (LGUs), the exercise of such power by the delegated entities is not absolute.
>
> In ***Magtajas vs. Pryce Properties and PAGCOR, G.R. 111097, 20 July 1994.*** the Supreme Court enumerated the following substantive requirements of a valid ordinance:
>
> 1. It must not contravene the Constitution or any statute;
> 2. It must not be unfair or oppressive;
> 3. It must not be partial or discriminatory;
> 4. It must not prohibit but may regulate trade;
> 5. It must be general and consistent with public policy; and
> 6. It must not be unreasonable.
>
> Thus, the local legislative power delegated to an LGU is in reality not eminent but "inferior" since it must conform to the limits imposed by the delegating authority which is the Congress of the Philippines. The national legislature is still the principal of the LGUs and the latter cannot go against the statues passed by the principal.
>
> In the meantime, pursuant to the power of general supervision of the President over all local government units, which was delegated to the DILG

[36] DILG Opinion No. 11 s. 2011.

Secretary by virtue of Administrative Order No. 267 dated February 18, 1992, the Secretary of the DILG exercises general supervision over local government units. The power of supervision is defined as ***"the power of a superior office to see to it that lower officers perform their functions in accordance with law"*** (Bito-Onon vs. Fernandez, et al., G.R. No. 139813, 31 January 2001). X x x.

As general supervisor therefore of LGUs, it is incumbent for this Department to call upon all LGUs to abide by the pertinent laws.

It may be recalled that the primary basis of Barangay Ayala Alabang in their Barangay Ordinance No. 1, series of 2011 was Republic Act 5921 or the Pharmacy Law. X x x

X X X

Let it be noted that the Board of Pharmacy and the Food and Drug Administration have already made their respective positions on the matter.

The Board of Pharmacy maintained that RA 5921 or the Pharmacy Law was enacted mainly for the objective of supervision, control and regulation of the practice of pharmacy in the country and that the Board of Pharmacy is the only and exclusive body authorized to regulate and supervise pharmacists and impose penalties on them in case they were found guilty of violation of its provision. There is no provision in the Pharmacy Law that states that such power has been delegated or can be delegated to a different body or agency.

The FDA also maintained that it is the proper agency that should classify whether a drug or chemical product or device is indeed capable of provoking abortion or preventing conception.

c. AIDS Prevention Act

The 1998 Philippine AIDS Prevention Act (RA 8504) requires HIV/AIDS education on transmission and prevention to be conducted in local communities, in schools, health facilities, and workplaces as well as for overseas Filipino workers and tourists.[37]

[37] RA 8504, Sections 4-9.

d. Local Ordinances that require ARH education in schools

The ordinances in the provinces of Aurora,[38] Ifugao,[39] Mt. Province,[40] Sultan Kudarat,[41] Sulu[42] and Olongapo City[43] all require ARH education in schools. The DEPED ARH programs which are being tested in the pilot areas merely implement the reproductive health ordinances requiring ARH education.

B. 7. International Human Rights Law on the Right of Adolescents to Reproductive Health

a. International Human Rights Standards

The internationally recognized human right to decide freely and responsibly the number, spacing, and timing of one's children lies at the core of reproductive rights and is applicable to all individuals of reproductive age, including adolescents.[44]

a.1. CEDAW Convention

The Committee on the Elimination of Discrimination against Discrimination (CEDAW Committee), the committee that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention or CEDAW[45]), stated that access to health care, including reproductive health, is a basic right under CEDAW.[46] In General Recommendation 24, the CEDAW Committee emphasized the special attention to the health needs of particularly vulnerable groups, including adolescent girls.[47] On the basis of the protection against discrimination, the Committee has interpreted that it is **age-discrimination** to prohibit adolescents' access to family planning information and services.[48]

a.2. Philippine Duty to Implement Sexual Education Programs under CEDAW Convention

The CEDAW Committee has asked states parties to pay particular attention to the **health education of adolescents, including information on family planning methods**[49] and urges states parties **to make sex education compulsory and to "systematically" provide it in schools.**[50]

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[38] Aurora Ordinance 125 Series of 2005, Sec. 9
[39] Ifugao 2006-033, Sec. 9
[40] Mt. Province Ordinance 76, Sec. 9
[41] Sultan Kudarat Ordinance 07-09, Sec. 9
[42] Sulu 01-2008, Sec. 5.
[43] Olongapo City Reproductive Health Care Code of 2007.
[44] CRR, Implementing Adolescent Reproductive Rights Through the Convention on the Rights of the Child, 1999, Sept, available at: http://www.reproductiverights.org/pub_art_adolrights.html.
[45] Senator Leticia Shahani was one of the drafters of the Women's Convention and the Philippines ratified it in 1981.
[46] CEDAW, General Recommendation 24, paragraph 1.
[47] CEDAW, General Recommendation 24..
[48] Id.
[49] Id., paragraph 23.
[50] Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations, see, e.g., Turkmenistan, 02/06/2006, U.N. Doc. CEDAW/C/TKM/CO/2, ¶ 31; Republic of Moldova, 25/08/2006, U.N. Doc. CEDAW/C/MDA/CO/3, ¶ 31

Furthermore, the CEDAW Committee has often asked State Parties to implement sexual education programs[51] and linked them to the prevention of HIV/AIDS,[52] unwanted pregnancies,[53] high rates of teenage pregnancies,[54] and abortion.[55] The CEDAW Committee recommended that "States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality" and elaborated that health education for adolescents should further address, inter alia, gender quality, violence, prevention of sexually transmitted diseases and reproductive and sexual health rights.[56]

The CEDAW Committee raised concerns in its August 25, 2006 Concluding Comments on the Philippines regarding "the lack of sex education, especially in rural areas,""the high rate of teenage pregnancies, which present a significant obstacle to girls' educational opportunities and economic empowerment,"[57] The CEDAW Committee recommended for the Philippines to "provide sex education, targeted at girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases." [58]

The CEDAW Committee also urged the Philippine government to "strengthen measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives more widely available and without any restriction and by increasing knowledge and awareness about family planning." [59]

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[51] BRINGING RIGHTS TO BEAR , supra note 57, at 137. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. See e.g.,Antigua and Barbuda, 12/08//97, U .N. D oc. A/52/38/Rev.1, Part II, ¶¶ 258, 267; Belize, 01/07/99, U.N. Doc. A/54/38, ¶¶ 56–57; Burundi, 02/02/2001, U.N. Doc. A/56/38, ¶ 62; Chile, 09/07/99, U.N. Doc. A/54/38, ¶ 227; Colombia, 31/05/95, U.N. Doc. A/50/38, ¶ 608; Democratic Republic of the Congo, 01/02/2000, U.N. Doc. A/55/38, ¶ 228; Dominican Republic, 14/05/98, U.N. Doc. A/53/38, ¶ 349; Greece, 01/02/99, U.N. Doc. A/55/38, ¶¶ 207–208; Hungary, 09/05/96, U.N. Doc. A/51/38, ¶ 260; Jamaica, 02/02/2001, U.N. Doc. A/56/38, ¶ 224; Kazakhstan, 02/02/2001, U.N. Doc. A/56/38, ¶ 106; Lithuania, 16/06/2000, U.N. Doc. A/55/38, ¶ 159; Mongolia, 02/02/2001, U.N. Doc. A/56/38, ¶ 274; Nepal, 01/07/99, U.N. Doc. A/54/38, ¶ 148; Nicaragua, 31/07/2001, U.N. Doc. A/56/38, ¶ 303; Peru, 08/07/98, U.N. Doc. A/53/38, ¶ 342; Republic of Moldova, 27/06/2000, U.N. Doc. A/55/38, ¶ 110; Romania, 23/06/2000, U.N. Doc. A/55/38, ¶ 315; Saint Vincent and the Grenadines, 12/08/97, U.N. Doc. A/52/38/Rev.1, ¶ 147; Slovakia, 30/06/98, U.N. Doc. A/53/38/Re v.1, ¶ 92; Slovenia, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 119; Spain, 01/07/99, U.N. Doc. A/54/38, ¶ 266; Uganda, 31/05/95, U.N. Doc. A/50/38, ¶ 338; Unit ed Kingdom of Great Britain and Northern Ireland, 01/07/99, U.N. Doc. A/54/38, ¶¶ 309–310; Uzbekistan, 02/02/2001, U.N. Doc. A/56/38, ¶¶ 185–186; Vietnam, 31/07/2001, U.N. Doc. A/56/38, ¶¶ 266–267; Zimbabwe, 14/05/98, U.N. Doc. A/53/38, ¶¶ 160–161.

[52] BRINGING RIGHTS TO BEAR, supra note 57, at 137. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication: Dominican Re public, 14/05/98, U.N. Doc. A/53/38, ¶ 349; Uganda, 31/05/95, U.N. Doc. A/50/38, ¶ 338.

[53] BRINGING RIGHTS TO BEAR, supra note 57, at 137 . This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. e.g., Belize, 01/07/99, U.N. Doc. A/54/38, ¶ 56; Nepal, 01/07/99, U.N. Doc. A/54/38, ¶ 148.

[54] BRINGING RIGHTS TO BEAR, supra note 57, at 137. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. e.g., Belize, 01/07/99, U.N. Doc. A/54/38, ¶¶ 56–57; Chile, 09/07/99, U.N. Doc. A/54/38, ¶¶ 226–227; Greece, 01/02/99, U.N. Doc. A/55/38, ¶¶ 207–208; Saint Vincent and the Grenadines, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 147; United Kingdom of Great Britain and Northern Ireland, 01/07/99, U.N. Doc. A/54/38, ¶¶ 309–310.

[55] BRINGING RIGHTS TO BEAR, supra note 57, at 137. This is supported by the Committee's Concluding Observations to the following countries as cited in this publication. e.g., Belize, 01/07/99, U.N. Doc. A/54/38, ¶¶ 56–57; Burundi, 02/02/2001, U.N. Doc. A/56/38, ¶ 62; Greece, 01/02/99, U.N. Doc. A/55/38, ¶¶ 207–208; Slovakia, 30/06/98, U.N. Doc. A/53/38/Re v.1, ¶ 92; Slovenia, 12/08/97, U.N. Doc. A/52/38/Re v.1, ¶ 119; Spain, 01/07/99, U.N. Doc. A/54/38, ¶ 266.

[56] CEDAW General Recommendation 24, paragraph 18.

[57] August 25, 2006 Committee on the Elimination of Discrimination against Women Concluding Comments on the Philippines [2006 CEDAW Committee Concluding Comments].

[58] 2006 CEDAW Committee Concluding Comments.

It is the duty of the state to provide contraceptive information and services to give an opportunity to educate adolescents on sexually transmitted infections, HIV/AIDS[60] and prevention of unwanted pregnancy. Restricting access to contraceptives will not prevent adolescent pregnancies but may lead to unplanned pregnancies that put their lives and health at risk. Access to contraceptives help prevent adolescent maternal mortality and morbidity.

a.3. Adolescents' Right to Education and their Right against Discrimination

Article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to education. The Philippines, being a State Party to ICESCR, has the duty to fulfill its obligations under the covenant.

In General Comment No. 11 of the Committee on Economic, Social and Cultural Rights, the Committee tasked to monitor the implementation of the ICESCR, it was stated that, "[t]he right to education, recognized in articles 13 and 14 of the Covenant, as well as in a variety of other international treaties, such as the Convention on the Rights of the Child and the CEDAW Convention, is of vital importance. It has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights."

In General comment No. 13 of the Committee on Economic, Social and Cultural Rights, the committee stated, "Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence."

General comment No. 1 of the Committee on the Rights of the Child, the Committee tasked to monitor the implementation of the CRC, states in par. 2, "x x x The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote

[59] 2006 CEDAW Committee Concluding Comments.
[60] ICEC, Expanding Global Access to Emergency Contraception, at 32.

a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self esteem and self confidence. 'Education' in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society." Paragraph 10 of General Comment No. 1 states, "Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home.[61] Children with HIV/AIDS are also heavily discriminated against in both settings.[62] All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential." Paragraph 14 of General Comment No. 1 states, "[I]t reflects the vital role of appropriate educational opportunities in the promotion of all other human rights and the understanding of their indivisibility. A child's capacity to participate fully and responsibly in a free society can be impaired or undermined not only by outright denial of access to education but also by a failure to promote an understanding of the values recognized in this article."

a.4. Philippine Duty on ARH under CRC

a.4.1. Access to Contraception and Family Planning under CRC

Article 24 of CRC "recognize(s) the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health."[63] In addition, the Committee on the Rights of the Child (CRC Committee), the committee tasked to monitor the state's compliance with CRC, urged states to provide services to young women, "including family planning, contraception x x x, adequate and comprehensive obstetric care and counseling."[64] The CRC Committee added that "state

[61] See general comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights on persons with disabilities.
[62] See the recommendations adopted by the Committee on the Rights of the Child after its day of general discussion in 1998 on children living in a world with HIV/AIDS (A/55/41, para. 1536).
[63] The Convention, art. 24.
[64] Id.

parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices." [65]

Furthermore, the CRC Committee in its General Comment 3, dealing with HIV and AIDS, lists among the rights guaranteed to children and adolescents, which must be upheld to address HIV/AIDS, "sex education and family planning education and services." In addition, "free or low-cost contraceptive, methods and services" [66] are to be provided to adolescents by State parties.[67]

a.4.2. Education on Sexuality and Family Planning under CRC

The CRC Committee recommends that states parties make sex education part of the official curricula for primary and secondary school[68] and has expressed concern over programs allowing parents to opt-out on behalf of their children.[69]

The CRC Committee has encouraged "States to refrain from censoring, withholding or intentionally misrepresenting health-related information including sexual education and information," so that "children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality." [70]

In the CRC Committee's General Comment No. 3 it stated that "education plays a critical role in providing children with relevant and appropriate information on HIV/AIDS," and that "education can and should empower children to protect themselves from the risk of HIV infection." In addition, in its General Comment No. 4, the CRC Committee states that "State parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases."[71]

a.4.3. CRC Concluding Observations on the Philippines

In its 2009 Concluding Observations on the Philippines, the CRC Committee expressed serious concern on "the inadequate reproductive health services and information, the low rates of contraceptive use (36 per cent of women relied on modern family planning methods in 2006) and the difficulties in obtaining access to artificial

[65] General Comment 4, ¶ 31.
[66] Committee on the Rights of the Child, General Comment 3: HIV/AIDS and the Rights of the Child, ¶ 6, U.N. Doc. CRC/GC/2003/3 (2003) (hereinafter "General Comment 3").
[67] Id. at ¶20.
[68] Children's Rights Committee (CRC), Concluding Observations: see, e.g., Antigua and Barbuda, 03/11/2004, U.N. Doc. CRC/C/15/Add.247, ¶ 54 [hereinafter CRC Concluding Observations 2004, Antigua and Barbuda]; Trinidad and Tobago, 17/03/2006, U.N. Doc. CRC/C/TTO/CO ¶ 54.
[69] Children's Rights Committee (CRC), Concluding Observations: see, e.g., Ireland, 29/09/2006, U.N. Doc. CRC/C/IRL/CO/2, ¶ 52.
[70] General Comment 3, ¶ 16.
[71] General Comment 4, ¶ 27.

methods of contraception, which contribute to the high rates of teenage pregnancies and maternal deaths." [72] The CRC Committee expressed concern "at the lack of effective measures to promote the reproductive rights of women and girls and that particular beliefs and religious values are preventing their fulfillment." [73] The CRC Committee recommended the urgent adoption of the RH Bill, to "ensure access to reproductive health counse[ling] and provide all adolescents with accurate and objective information and culturally sensitive services in order to prevent teenage pregnancies, including by providing wide access to a broad variety of contraceptives without any restrictions and improving knowledge and conscience on family planning," and to "strengthen formal and informal sex education, for girls and boys, focusing on the prevention of early pregnancies, STIs and family planning," among other things.27

a.5. Right to Sexual and Reproductive Health Information under European Social Charter

In the case of the International Centre for the Protection of Human Rights (INTERIGHTS) v. Croatia (complaint No. 45/2007), INTERIGHTS filed a complaint with the European Committee of Social Rights, a committee of independent experts established under Article 25 of the European Social Charter (hereafter "the Committee"), alleging that Croatia did not comply with the article 11(2) of the European Social Charter on right to health and the non-discrimination clause in the Preamble because Croatian schools do not provide comprehensive or adequate sexual and reproductive health education for children and young people.

INTERIGHTS alleged that "sexual and reproductive health information in Croatia is delivered in time-limited fragments through general school subjects and through government-approved elective and extra-curricular programmes resulting in an incoherent and inadequate approach to sexual and reproductive education which fails to meet the requirements of the Charter." [74] INTERIGHTS argued that elective and extracurricular programmes, by nature are not mandatory and do not reach all students because they are usually available only in certain cities and schools.[75] INTERIGHTS added that the "content of sexual and reproductive health information provided to students falls considerably short of including the comprehensive range of topics recommended by regional and international bodies as necessary and suitable for ensuring the protection and promotion of the health of young people or alternatively the information provided to students is out of date"[76] and that "examples provided as part of the national curriculum could be considered scientifically inaccurate, gender stereotyped or outright discriminatory on the grounds of sexuality and/or family status."[77]

[72] CRC, Concluding Observations (2009), para. 61.
[73] CRC, Concluding Observations (2009), para. 61.
[74] European Social Charter; INTERIGHTS v. Croatia, par.25; INTERIGHTS estimates the maximum number of hours devoted to potentially relevant topics throughout the period of schooling (primary and secondary) amounts to no more than 42 hours.
[75] INTERIGHTS v. Croatia, par 26.
[76] INTERIGHTS v. Croatia,par. 27.
[77] INTERIGHTS v. Croatia,par. 27.

INTERIGHTS added that the "absence of comprehensive, accurate and evidence-based sexual and reproductive health information leaves girls uniquely or more vulnerable than boys to certain health risks. Consequently, the situation amount to unlawful discrimination on the grounds of sex."[78] INTERIGHTS also argued that STIs such as Chlamydia and HPV are spreading; a recent study has shown that young women under 21 have the highest prevalence of high-risk HPV in Croatia.

The assessment of the Committee is, as follows:

"The Committee recalls that under Article 11(2) States must provide education and aim to raise public awareness in respect to health-related matters. States must adopt concrete measures with a view to implementing a public education policy which is directed towards the population at large as well as particular population groups which are affected by specific health problems. The measures taken should…encourage development of a sense of individual responsibility in respect of matters as…sexual and reproductive health x x x. (Conclusions XV-2, Addendum, Slovakia)." [79]

X X X

"The Committee considers that apart from the family framework, the most appropriate structure for the provision of health education is the school, inasmuch as the general objective of education is to communicate knowledge which enables pupils to tackle life in its multi-faceted totality. In this regard, the Committee refers in particular to Recommendation No. R (88)7 of the Committee of Ministers of the Council of Europe on school health education and the role of training of teachers." [80]

X X X

"..In the context of Article 11 S2 and the instant case, **the Committee understands SRH education as a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behavior."**[81]

[78] INTERIGHTS v. Croatia,par. 32.
[79] INTERIGHTS v. Croatia,par. 43.
[80] INTERIGHTS v. Croatia, par. 44.
[81] INTERIGHTS v. Croatia, par. 46.

X X X

"The Committee acknowledged that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of SRH education. However, relying on the basic and widely accepted assumption that **school-based education can be effective in reducing sexually risky behavior, the Committee considers that States must ensure:**

- that sexual and reproductive health education forms part of the ordinary school curriculum;

-that the education provided is adequate in quantitative terms, i.e. in respect of the time and other resources devoted to it (teachers, teacher training, teaching materials, etc.)

- that **the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards to contraception and different means of maintaining sexual and reproductive health;**

- that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements." [82] [emphasis supplied]

The Committee stated that **"…sexual and reproductive health education must be provided to school children without discrimination on any ground, direct or indirect, it being understood that the prohibition of discrimination covers the entire range of the educational process, including the way the education is delivered and the content of the teaching material on which it is based. This requirement that health education be provided without any discrimination has two facets: children must not be subject to discrimination in accessing such education, which should also not be used as a tool for reinforcing demeaning stereotypes and perpetuating forms of prejudice** which contribute to the social exclusion of historically marginalized groups and others that face embedded discrimination and other forms of social disadvantage which has the effect of denying their human dignity." [83]

[82] INTERIGHTS v. Croatia, par. 47.
[83] INTERIGHTS v. Croatia,par. 48.

Referring to sexual and reproductive health education, the Committee stated, "X x x **where these courses are approved and/or wholly or partially funded by the government and/or invoked by the State party as an element in fulfilling its obligations under the Charter, the sexual and reproductive health education taught through them must remain objective and must comply with the non-discrimination principle."** [84]

The Committee emphasized that **"the obligation under Article 11(2) as defined does not in its view affect the rights of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents own religious or philosophical convictions** (see European Court of Human Rights, Case of Kjeldsen, Busk Madsen and Pedersan v. Denmark, Judgment of 7 December 1976)." [85]

The Committee held that "the discriminatory statements contained in educational material used in the ordinary curriculum constitute a violation of Article 11(2) in light of the non-discrimination clause."

a.6. Other International Standards on the Right to Sex Education

a.6.1 International Conference on Population and Development

As a signatory to the international consensus document the International Conference on Population and Development (ICPD) Programme of Action, the Philippines committed that education about population issues, including sexual and reproductive health, must begin in primary school and continue through all levels of formal and non-formal education to be effective. [86]

a.6.2. Joint United Nations Programme on HIV/AIDS

Based on a comprehensive literature review, the Joint United Nations Programme on HIV/AIDS concluded that the most effective approaches to sex education begin with educating youth before the onset of sexual activity. [87]

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[84] INTERIGHTS v. Croatia, par. 49.
[85] INTERIGHTS v. Croatia, par. 50.
[86] See Programme of Action of the International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, ¶ 11.9 U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter ICPD Programme of Action].
[87] See JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS), IMPACT OF HIV AND SEXUAL HEALTH EDUCATION ON THE SEXUAL BEHAVIOR OF YOUNG PEOPLE: A REVIEW UPDATE 27 (1997).

a.6.3. World Health Organization

According to the WHO, it is critical to start sex education early because, in developing countries in particular, girls in the first classes of secondary school face the greatest risk of the consequences of sexual activity[88] and that beginning sex education in primary school also reaches students who are unable to attend secondary school.[89]

WHO guidelines to the Council of Europe Member States specifically call for Member States to ensure that education on sexuality and reproduction is included in all secondary school curricula[90] and should be comprehensive (i.e. covering all relevant topics throughout the teaching period).[91] The WHO recommended incorporating sex education into school curricula as a "separate subject," where sex education is taught as part of a specific class on skills-based health education [92] as the best way of ensuring that states meet their obligation to promote health effectively through the provision of comprehensive, ongoing and mandatory sexual and reproductive health education. According to WHO, this approach has the advantage of ensuring that : "[t]eachers are likely to be specifically trained and focused on health, and a separate subject is most likely to have congruence between the content and teaching methods, rather than the short-cutting that may occur through infusion or 'carrier' subjects." [93]

a.6.4. International Technical Guidance on Sexuality Education Issued by UNAIDS, UNFPA, UNICEF and WHO

Adolescents and young people need to be informed for them to make responsible decisions about sexuality, relationships, HIV and other sexually transmitted infections."[94] Denying information to adolescents and young people leave them vulnerable to coercion, abuse, exploitation, unintended pregnancy and sexually transmitted infections, including HIV. Information on HIV is urgent as young people aged 15-24 account for 45% of all new HIV infections." [95]

[88] See WORLD HEALTH ORGANIZATION (WHO), ADOLESCENT PREGNANCY: ISSUES IN ADOLESCENT HEALTH AND DEVELOPMENT 63 (2004) [hereinafter WHO, ADOLESCENT PREGNANCY REPORT]; See INTERIGHTS v. Croatia Complaint No. 45/2007.

[89] See WHO Adolescent Pregnancy Report..

[90] WORLD HEALTH ORGANIZATION REGIONAL OFFICE FOR EUROPE (WHO Europe), WHO REGIONAL STRATEGY ON SEXUAL AND REPRODUCTIVE HEALTH, EUR/01/5022130 14 (2001) [hereinafter WHO REGIONAL STRATEGY REPORT].

[91] See WORLD HEALTH ORGANIZATION (WHO) REGIONAL OFFICE FOR EUROPE AND IPPF-EUROPEAN NETWORK, SEXUALITY EDUCATION IN EUROPE, SAFE PROJECT REPORT, at 8, available at http://www.ippfen.org/NR/rdonlyres/7DDD1FA1-6BE4-415D-B3C2-87694F37CD50/0/sexed.pdf.

[92] WORLD HEALTH ORGANIZATION (WHO), FAMILY LIFE, REPRODUCTIVE HEALTH AND POPULATION EDUCATION: KEY ELEMENTS OF A HEALTH PROMOTING SCHOOL, INFORMATION SERIES ON SCHOOL HEALTH, DOC. 8 39, available at http://www.who.int/school_youth_health/media/en/family_life.pdf (last visited July 31, 2007) [hereinafter WHO, FAMILY LIFE, REPRODUCTIVE HEALTH AND POPULATION EDUCATION REPORT].

[93] Id.

[94] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).

[95] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).

If comprehensive sexuality education is denied to adolescents, we leave our children to find their own way through misinformation from peers and other sources instead of receiving clear, well-informed, and scientifically-grounded sexuality education based in the universal values of respect and human rights." [96] Comprehensive sexuality education will empower adolescents and young people to demand for more and better sexuality education, services and resources to meet their prevention needs." [97] To make a strong impact on adolescent and young people before they become sexually active, comprehensive sexuality education must become part of the formal school curriculum, delivered by well- trained and supported teachers.[98] Special efforts also need to be made to reach out-of-school children who are often vulnerable to misinformation and exploitation." [99]

Definition of Sexuality Education

According to the International Technical Guidance on Sexuality Education issued by UNAIDS, UNFPA, UNICEF, and WHO "sexuality education is defined as an age-appropriate, culturally relevant approach to teaching about sex and relationships by providing scientifically accurate, realistic, non-judgmental information. Sexuality education provides opportunities to explore one's own values and attitudes and to build decision-making communication and risk reduction skills about many aspects of sexuality." [100] They cite the rationale for sexuality education[101] by citing that "studies[102] show that effective sexuality education programs can: 1. Reduce misinformation; 2. Increase correct knowledge; 3. Clarify and strengthen positive values and attitudes; 4. Increase skills to make informed decisions and act upon them; 5. Improve perceptions about peer groups and social norms; 6. Increase communication with parents or other trusted adults." [103] They cite research showing that programs sharing certain key characteristics can help to: "1. Abstain from or delay the debut of sexual relations; 2. Reduce the frequency of unprotected sexual activity; 3. Reduce the number of sexual partners; and 4. Increase the use of protection against unintended pregnancy and STIs during sexual intercourse." [104]

[96] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).
[97] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).
[98] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).
[99] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).
[100] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).
[101] International Technical Guidance on Sexuality Education An Evidence-informed approach for schools, teachers and health educators (UNAIDS, UNFPA, UNICEF , WHO) December 2009
[102] Study of UNESCO on the impact of sexuality education on sexual behavior 2008-2009
[103] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).
[104] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).

The Goals of Sexuality Education

The primary goal of sexuality education is to equip adolescents and young people with the "knowledge, skills and values to make responsible choices about their sexual and social relationships in a world affected by HIV."[105] They cite that "sexuality education programmes usually have several mutually reinforcing objectives: 1.To increase knowledge and understanding; 2. To explain and clarify feelings, values and attitudes; 3. To develop or strengthen skills; and 4. To promote and sustain risk-reducing behavior."

Governmental Responsibility

In our reality where misinformation on reproductive health can be life-threatening to adolescents, sexuality education is part of the responsibility of the government including education and health authorities and institutions. The government, both national and local, has the responsibility to act in partnership with communities to ensure the protection and well-being of adolescents and young people. [106]

The International Technical Guidance on Sexuality Education calls for political and social leadership by providing adolescents and young people access to the knowledge and skills they need in their personal, social and sexual lives.[107]

B.8. Laws of Other Countries on Adolescent Reproductive Health

a. Emergency Contraception

Countries around the world have been ensuring access to reproductive health care. Examples of such policies are the laws registering the levonorgestrel, an emergency contraceptive pill, which prevents pregnancies resulting from rape, failed contraceptives or unprotected sex. The WHO defines emergency contraception (EC) as a method of preventing pregnancy. According to WHO, EC does not interrupt pregnancy, and is therefore not considered a method of abortion.

a.1. Examples of Other Countries Allowing Access to Contraceptives such as Emergency Contraception to Adolescents

In January 2002, the French government issued a decree allowing girls under 18 to obtain EC from a pharmacy for free and without a prescription or parental approval.[108] Previously, France already allowed EC distribution by nurses in junior and senior high

[105] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).
[106] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).
[107] International Technical Guidance on Sexuality Education, An evidence-informed approach for schools, teachers and health educators, Volume I, UNAIDS, UNFPA, UNICEF, WHO (December 2009).

schools.[109] Offering EC in schools can reduce the number of unwanted pregnancies and creates an opportunity for adolescents to consult with health care professionals. In the United Kingdom, the Parliament has approved a measure allowing the sale of EC without a prescription to all women over 16[110] and two supermarkets in Somerset distribute EC for free to teenage girls as part of a publicly funded pilot program launched by the local health authority.[111] And in South London, Chestnut Grove School is making EC available to its pupils, even those under 16.[112]

Providing access to contraceptive information and services and sexuality education will prevent unwanted pregnancies, prevent the need for abortion, and decrease maternal mortalities and morbidities.

Recommendation

Adolescent girls are the ones most affected by the lack of an ARH program since they are ones who die from complications of childbirth, pregnancy and unsafe abortion.

The right of adolescents to education is very basic to their human rights. A policy discriminating against adolescents' right to access reproductive health education, information, supplies, and services discriminates against adolescents and unnecessarily puts adolescents at risk.

For the best interests of the children and adolescents, it would be best to provide adolescents access to contraceptive information and services including access to ARH programs.

It is the duty of the Philippine government to uphold adolescents' right to health, education and life. It is of paramount importance that adolescent access to contraceptive information and services be protected to ensure our adolescents' continued right to information and education.

Any proposed provision in an RH law restricting adolescent access to contraceptive information and services must be rejected. Upholding the rights of adolescents to reproductive health has far-reaching impact on the health and lives of our adolescents. It is imperative that the Philippine government uphold the Filipino adolescents' right to ARH.

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[108] Kaiser Network, Daily Reproductive Health Report, French Government Allows Minors to Receive Free Emergency Contraception Without Prescription or Parental Approval (January 11, 2002), available at http://kaisernetwork.org/Daily_reports/rep_index.cfm?DR_ID=8904; The decree requires pharmacists dispensing the drugs to "speak briefly with the young women" to ensure that the girls know how to use the medication. The decree also said that pharmacists should provide advice to young women seeking EC about other forms of birth control and recommend that they visit a physician regularly. Kaiser Network, January 11, 2002.

[109] France, Law No. 2000-1209 on Emergency Contraception, Dec. 13, 2000, J.O., Dec. 14, 2000, p. 19830.

[110] Kaiser Network, Daily Reproductive Health Report, Emergency Contraception to Become Available Without Prescription in England (Dec. 11, 2000), at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=1589.

[111] IPPF, UK Supermarkets to Provide Emergency Contraception, March 20, 2002, available at http://ippfnet.ippf.org/pub/IPPF_News/News_Details.asp?ID=1853.

[112] BBC News, School Offers Morning-After Pill, Sept. 30, 2002, available at http://news.bbc.co.uk/1/hi/england/2288221.stm.

About EnGendeRights

EnGendeRights has done groundbreaking work in raising Filipino women's concerns to the international level especially the United Nations mechanisms. EnGendeRights spearheaded the drafting of a collaborative Shadow Report that was submitted to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) during its 36th Session in August 2006, New York. This submission was done in collaboration with the Center for Reproductive Rights (CRR), Reproductive Rights Resource Group, Philippines (3RG-Phils.), and Health Development and Initiatives Institute (HDII). EnGendeRights, through its executive director Clara Rita Padilla, orally presented highlights of the Shadow Report during the CEDAW-NGO dialogue and actively lobbied with the CEDAW experts leading to the successful adoption of strong sexual and reproductive health and rights language in the CEDAW Committee's Concluding Comments on six of the areas of concern stated in their Shadow Report (i.e., access to the full range contraceptive methods including emergency contraception, access to safe and legal abortion, sexuality education for adolescents, skills and education for women in prostitution, legalization of divorce and repeal of discriminatory Muslim Code provisions). These recommendations are very useful in legislative, judicial, and executive advocacy towards eliminating discriminatory laws, policies, and practices on women.

In its continued work on sexual and reproductive rights and raising awareness on the mechanisms under CEDAW, EnGendeRights also spearheaded the submission of a collaborative Request for Inquiry under the Optional Protocol to CEDAW in 2008 requesting the CEDAW experts to visit the Philippines to investigate the grave and systematic reproductive rights violations resulting from the restricting of access to contraceptives under EO 003 implemented in Manila City since 2000. The submission and the three updates submitted to the CEDAW Committee were done in collaboration with the Task Force CEDAW Inquiry, CRR and the International Women's Rights Action Watch, Asia Pacific (IWRAW-AP). EnGendeRights also collaborated in the submission of a joint request for an urgent appeal to the UN Special Rapporteurs on Health, Education, Violence against Women, Freedom of Religion or Belief, and Human Rights Defenders and the Independent Expert on Extreme Poverty on the reproductive rights violations related to Manila EO 003. This was submitted in March 2009 and was done also in collaboration with the Task Force CEDAW Inquiry, CRR and IWRAW-AP.

EnGendeRights, Inc.
Asserting Women's Rights