



From conception to operationalization: implementing the Philippine Reproductive Health Act in line with international human rights law

Amnesty International welcomed the promulgation in December 2012 of the Philippines' Act Providing for a National Policy on Responsible Parenthood and Reproductive Health (Republic Act no. 10354; referred to in this document as RH Law), and affirmed it as the first step towards establishing long-awaited protection for women's rights to reproductive health. Amnesty International deems that the RH Law falls short on protecting the human rights of adolescents (in line with their age and evolving capacities) in regard of access to comprehensive sexuality education and contraception – shortcomings that the Implementing Rules and Regulations should address. But the organisation acknowledges that the RH Law has the potential to strike down some longstanding barriers for women's access to sexual and reproductive health care, including access to natural and modern contraception and reproductive health information for adults.

In this briefing, Amnesty International revisits concerns previously raised by United Nations treaty monitoring bodies on reproductive health in the Philippines. It outlines the relationship between international human rights law and the RH Law, and recommends a set of principles to the Secretary of Health and the technical working group as a basis for finalizing the policy which outlines the implementing rules and regulations of the RH Law.

Past recommendations in relation to State obligations

As a State party to international treaties such as the International Convention on the Elimination of Discrimination against Women (CEDAW), the International Convention on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), the Philippines has an obligation to implement the provisions of these treaties. Where the treaty monitoring bodies have indicated concern about shortcomings in treaty implementation, the Philippines should address these concerns.

In 2006, the UN treaty monitoring body for the CEDAW – the CEDAW Committee – raised serious concerns about “the inadequate recognition and protection of the reproductive health and rights of women in the Philippines”.¹ The treaty monitoring body also had serious concerns about “high maternal mortality rates, particularly the number of deaths resulting from induced abortions, high fertility rates, inadequate family planning services, the low rates of contraceptive use and the difficulties of obtaining contraceptives, 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”.²

The CEDAW Committee recommended that Philippine Government should take concrete measures to enhance women's access to health care, particularly sexual and reproductive health

services, and to further strengthen the measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives more widely available, without any restriction, and by increasing knowledge and awareness about family planning. It recommended that the government provide access to quality services for the management of complications arising from unsafe abortions and to reduce maternal mortality rates. The monitoring body further urged Philippines to give priority attention to the situation of adolescents and that it provide sex education, targeted at girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases.

In 2008, the UN treaty monitoring body of the ICESCR – the Committee on Economic, Social and Cultural Rights – raised serious concerns about “the inadequate reproductive health services and information, the low rates of contraceptive use and the difficulties in obtaining access to artificial methods of contraception, which contribute to the high rates of teenage pregnancies and maternal deaths”.³ Further, the Committee observed that “complications from unsafe, clandestine abortions are among the principal causes of maternal deaths”.⁴

The Committee recommended that the Philippines address, as a matter of priority, the problem of maternal deaths as a result of clandestine abortions. It also made recommendations to adopt all appropriate measures to protect the sexual and reproductive rights of women and girls, inter alia, through measures to reduce maternal and infant mortality and to facilitate access to sexual and reproductive health services, including the access to family planning, and information.

In 2009, the UN Committee on the Rights of the Child expressed its concern at “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 methods of contraception, which contribute to the high rates of teenage pregnancies and maternal deaths”.⁵ The treaty monitoring body also raised concerns about “the lack of effective measures to promote the reproductive rights of women and girls and that particular beliefs and religious values are preventing their fulfilment”.⁶

The Committee on the Rights of the Child made recommendations for the Philippines to ensure access to reproductive health counselling 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; strengthen formal and informal sex education, for girls and boys, focusing on the prevention of early pregnancies, sexually transmitted infections and family planning; and strengthen its HIV/AIDS awareness campaigns and ensure access to age-appropriate HIV/AIDS education and information which target children, inside and outside schools, to equip them with the life skills to deal with and reduce their vulnerability to HIV and sexually transmitted infections.

While not addressing the treaty monitoring bodies’ recommendations on reforming the criminal law on abortion, the RH Law addresses most of the treaty monitoring bodies’ concerns and recommendations. Provided it is supported by strong Implementing Rules and Regulations, Amnesty International believes that the RH Law has the potential to make a contribution to the realisation of human rights – in particular sexual and reproductive health rights – in the Philippines.

Reproductive health rights are human rights

Reproductive health is central to the advancement and protection of women’s human rights. Amnesty International welcomes the RH Law’s emphasis on the prevention of ill-health and women’s ability to make decisions regarding their reproductive lives.

1. Right to health

Women need reproductive health care before and after they become pregnant, and crucially while giving birth - and men and women need reproductive health care independently of parenthood.

The RH Law takes a comprehensive approach to reproductive health care throughout an individual's life, addressing not only fertility-related concerns but also, for instance, HIV and AIDS, breast and reproductive tract cancers, and menopausal and post-menopausal-related conditions. The RH Law establishes reproductive health care as an integral component of basic health care, including through specific provisions to ensure the availability of health care facilities and skilled health professionals.

Amnesty International appreciates that the RH Law is supportive of parenthood and reproductive health—that is, of both individuals who desire to have children and those who desire to plan or limit childbearing. It enables individuals to exercise their right to make free and informed decisions, including by access to family planning information, supplies, facilities and services that respect individuals' preferences and choice of family planning methods.

The RH Law makes it obligatory for accredited public health facilities to provide a full range of modern family planning methods, including referral arrangements when necessary, thereby giving individuals options for contraception and contributing to the prevention of unwanted pregnancies. This in turn could contribute to addressing the high rate of teenage pregnancies, particularly if the requirement for adolescents to secure written parental consent in purchasing modern contraception is removed or at least qualified for adolescents with the capacity to make their own decisions regarding contraceptive use.

While the RH Law is consistent with the current law on abortion, it requires the government to ensure that all women needing care for post-abortion complications and all other complications arising from pregnancy, labour and delivery and related issues are treated and counselled in a humane, nonjudgmental and compassionate manner in accordance with law and medical ethics. This could reduce the risk of the criminal law on abortion standing in the way of women's access to life-saving, health preserving medical treatment.

The RH Law obliges conscientious objectors to immediately refer individuals seeking services to which they object to another health care service provider in an effective manner. While accommodating health professionals' exercise of their right to freedom of thought, conscience and religion, the RH Law also ensures that exercise of this right does not come at the expense of an individual's full enjoyment of their fundamental rights, including access to the full range of reproductive health care services.

The RH Law mandates annual Maternal Death Reviews and Fetal and Infant Death Reviews by local government units, national and local government hospitals, and other public health units. These reviews will enable an evidence-based programming and budgeting process that would contribute to the development of more responsive reproductive health services to promote women's health and safe pregnancy.

2. Right to life

The RH Law permits – and mandates – government to realise its constitutional obligation to protect prenatal life. It outlines many ways in which government can – and according to the RH Law must – do so, consistently with the protection of women's rights, gender equality and women's empowerment and dignity. However, its provisions also make clear that it would be inappropriate for health care givers and other actors to prioritise protection of prenatal life over protection of women's rights. Specifically, the RH Law requires government to ensure that all women needing care for complications arising from pregnancy, labour and delivery and related issues are treated and counselled in a humane, nonjudgmental and compassionate manner in accordance with law and medical ethics.

3. Right to be free from discrimination

The RH Law's implementation would benefit all Filipinos but its emphasis on those experiencing discrimination (women and girls, persons with disabilities) and marginalisation (the poor, people living in geographically isolated or highly populated and depressed areas) has the potential to

lead to specific action on behalf of those particularly excluded from health care and information access.

The RH Law includes a broad mandate for the State to eradicate discriminatory practices, laws and policies that infringe on a person's exercise of reproductive health rights. This action imperative is consonant with international human rights law obligations on non-discrimination and equality and will require further legislative review and action beyond the RH Law itself.

Finally, Amnesty International welcomes the RH Law's emphasis on active participation by nongovernment organizations (NGOs), women's and people's organizations, civil society, faith-based organizations, the religious sector and communities, particularly in terms of its potential to "ensure that reproductive health and population and development policies, plans, and programs will address the priority needs of women, the poor, and the marginalized." The RH Law also calls on the State to defend the right of families or family associations to participate in the planning and implementation of policies and programs – a potential opening for individuals to influence state decisions that impact on their own lives.

4. Right to hold opinions without interference and the freedom to seek, receive and impart information

The RH Law seeks to increase knowledge and awareness about family planning through a "nationwide multimedia campaign to raise the level of public awareness on the protection and promotion of reproductive health and rights". It also mandates "age and development-appropriate reproductive health education" as a remedy to the lack of sex education for adolescents as noted by UN treaty monitoring bodies.

Recommendations towards R.A. No. 10354's Implementing Rules and Regulations (IRR)

Women's human rights and protection of prenatal life (Section 2, Declaration of Policy)

The IRR should provide guidance to health professionals concerning their professional responsibilities towards women and towards the foetus respectively. In many situations, the rights to reproductive and maternal health and the protection of prenatal life are consistent rather than conflicting.⁷ But maternal and foetal health interests do not always coincide. If health professionals' concern is predominantly for foetal health, this can result in substandard care for the health of the pregnant woman, contrary to her entitlements. In the spirit of the RH Law's emphasis on women's human rights, dignity and agency, the IRR should clarify that pregnant women are entitled to access to health care even if this has a potential unintended impact on the health of the foetus and that health professionals must ensure access to quality treatment required by a pregnant woman on account of its potential effect on the foetus.⁸

Equal benefits for all families (Section 2 Declaration of Policy)

Individuals form families within as well as outside the institution of marriage. Human rights law recognises that families are entitled to protection in all their diversity.⁹ The IRR should ensure that no one experiences any disadvantage because of being part of a family not based on marriage.

Access for all (Section 3(e), Section 11)

The IRR should make sure to comprehensively address *all* factors that could result in individuals (or particular groups of individuals) being excluded from access to reproductive health information and services, with a goal for equal access for all, even while prioritising access for the poor and others identified as marginalised. This is in line with human rights obligations on non-discrimination and equality.¹⁰

Participation of individuals and civil society in policy and programming processes (Section 2, Section 3(i))

Individual and organizational participation in policy and programming processes should extend to monitoring and evaluation and review and revision of policies and programmes.¹¹

Emergency contraception (Section 9)

Emergency contraceptive pills are a means to prevent – not to interrupt – pregnancy.¹² The IRR should clarify that emergency contraception does not fall within the ambit of “abortifacients” and that it should be provided through the Philippine National Drug Formulary System.

Post-abortion care (Section 3(j))

The IRR should provide guidance to health professionals on their ethical, professional and legal obligations to ensure women and girls in need are provided with access to appropriate treatment and counselling in a humane, non-judgmental and compassionate manner.¹³

Referral (Section 7)

In order to ensure individuals’ access to the information and services as set out in the Act, the IRR should specify that non-maternity specialty hospitals and hospitals operated by a religious group must ensure referral for services in non-emergency situations and are not entitled to refrain from providing such referrals.¹⁴

Access to contraception for minors (Section 7)

The RH Law gives minors access to family planning without having to provide parental or guardian consent in cases where they are already parents or have had a miscarriage. Recognising the entitlement of minors in these situations to access family planning independently implies recognising that some minors have the capacity to make informed decisions on family planning for themselves. It is unclear, however, why acknowledgment of this capacity should be limited only to these circumstances. Minors not in these circumstances may nevertheless have the capacity to make informed decisions concerning family planning. In fact, it could be argued that minors with the capacity to decide on family planning independently should be entitled to make such decisions precisely because this would permit them to avoid unwanted pregnancy and early parenthood.

From the perspective of human rights, the IRR should recognise the evolving capacity of minors to make informed decisions of their own concerning contraception.¹⁵ The IRR should provide for further exceptions to the rule of parental / guardian consent for minors who have the capacity to make their own decisions and ensure that health professionals are provided with guidance on how to assess adolescents’ capacity to make informed decisions and their own role and responsibilities in enabling decision-making on family planning by minors.

Conscientious objection (Section 23)

In order to ensure that individuals are not denied access to the information and services they are entitled to under the RH Law, the IRR should specify that health professionals are not entitled to object on grounds of conscience to the provision of comprehensive, scientifically accurate and evidence-based information, to referral for services they object to, or to provision of such services in emergency situations where timely referral is not possible. Health care providers should not be able to cite conscientious objection as a justification for refusing health care they are otherwise willing to provide to individuals with a specific profile (marital status, gender, age, religious convictions, personal circumstances, or nature of work) as doing so is discriminatory.

Reproductive health education (Section 14)

The IRR should ensure that adolescents in private education are not denied and do not lack access to age- and development appropriate reproductive health education.¹⁶

Misinformation (Section 23)

There is a need for detailed and binding guidance on what constitutes “knowingly withholding information or restricting the dissemination thereof, and/or intentionally providing incorrect information” as those engaging in such action will likely argue that their action cannot be so characterised.¹⁷ Given the punitive consequences of committing this act, it is essential for the purposes of legal clarity that the IRR provide detailed guidance on what constitutes commission of this act.

Access to effective complaints mechanisms and remedies for denial of access

In addition to prohibiting specific acts as contraventions of the Act, the IRR should provide for effective and timely complaints mechanisms accessible to individuals who have been denied access to the health service and information provided by the Act, or who have been subjected to other kinds of wrongful treatment in contravention of the Act. Such mechanisms should be independent of the health institutions tasked with implementing the Act’s provisions and have the authority to investigate and resolve complaints in such a manner as to ensure that individuals can avail themselves of all the benefits to which they are entitled under the Act and access remedies if found to have been the victims of wrongful denial of access.¹⁸

Reform of discriminatory practices, laws and policies (Section 2 Declaration of Policy)

This action imperative is consonant with the state’s obligation under international human rights law regarding non-discrimination and equality. This may require legislative review and action beyond the law and the IRR.

¹ See CEDAW (26/10/2006, UN Doc CEDAW/C/PHI/CO/6)

² Ibid.

³ See CESCR (02/12/2008, UN Doc E/C.12/PHL/CO/4)

⁴ Ibid.

⁵ See CRC (22/10/2009, UN Doc CRC/C/PHL/CO/3-4)

⁶ Ibid.

⁷ International human rights treaties obligate states to take measures to realise women’s human rights which are clearly also protective of prenatal life. See, for instance, Convention on the Elimination of Discrimination against Women Article 12.2: “[...]States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.” The UN Convention on the Rights of the Child calls on States parties to take measures to “ensure appropriate pre-natal and post-natal health care for mothers” (Article 24(2)(d))

⁸ In February 2010, the Inter-American Commission on Human Rights granted precautionary measures for a pregnant Nicaraguan woman denied cancer therapy due to the risk to the foetus and doctors’ fear of prosecution under the criminal law provisions on abortion. The Commission asked Nicaragua to ensure the woman had access to the medical treatment she needed. (See website of the Inter-American Commission on Human Rights at: <http://www.oas.org/en/iachr/women/protection/precautionary.asp>)

⁹ In this regard, the UN Committee on the Elimination of Discrimination against Women has stated: “The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as article 2 of the Convention requires.” (General Recommendation 21, Equality in marriage and family relations, 1994, paragraph 13). The United Nations Human Rights Committee has made the following request of States parties to the International Covenant on Civil and Political Rights: “In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice.” (General Comment 19, Protection of the family, the right to marriage and equality of the spouses, 1990, paragraph 2)

¹⁰ See Committee on Economic, Social and Cultural Rights, General Comment 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), 2009)

¹¹ Providing guidance on the implementation of the right to the highest attainable standard of health, the UN Committee on Economic, Social and Cultural Rights has noted: “[...] the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or

strategy developed to discharge governmental obligations under article 12. Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people's participation is secured by States." (General Comment 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2000, paragraph 54)

¹² See World Health Organisation, Emergency Contraception - Fact sheet N°244, July 2012. At: <http://www.who.int/mediacentre/factsheets/fs244/en/index.html>. The UN Committee on Economic, Social and Cultural Rights has stated: "States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health" (General Comment 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2000, paragraph 34)

¹³ In regard of confidentiality – one element of such treatment – for instance, the UN Committee on the Elimination of Discrimination against Women has noted: "States parties should report on their understanding of how policies and measures on health care address the health rights of women from the perspective of women's needs and interests and how it addresses distinctive features and factors that differ for women in comparison to men [...] While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence. (General Recommendation 24, Women and Health (Article 12), 1999, paragraph 12) The UN Special Rapporteur on the Right to the Highest Attainable Standard of Health has called on states to "Establish policies and programmes to ensure the accessibility and availability of safe, reliable and good quality services for abortion-related complications and post-abortion care, in line with WHO protocols, particularly in jurisdictions where abortion is criminalized" (Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. New York, United Nations General Assembly, 2009. (UN Doc A/64/272))

¹⁴ The CEDAW Committee has noted that "the State is directly responsible or the action of private institutions when it outsources its medical services [...] the State always maintains the duty to regulate and monitor private health-care institutions. In line with article 2 (e) of the Convention, the State party has a due diligence obligation to take measures to ensure that the activities of private actors in regard to health policies and practices are appropriate." (Views on Communication No. 17/2008: Alyne da Silva Pimentel Teixeira v. Brazil. Geneva, United Nations Committee on the Elimination of Discrimination against Women, 10 August 2011. (UN Doc. CEDAW/C/49/D/17/2008))

¹⁵ The Committee on the Rights of the Child has stated: "In light of articles 3, 17 and 24 of the Convention, States 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 (STDs). In addition, States parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent. It is essential to find proper means and methods of providing information that is adequate and sensitive to the particularities and specific rights of adolescent girls and boys. To this end, States parties are encouraged to ensure that adolescents are actively involved in the design and dissemination of information through a variety of channels beyond the school, including youth organizations, religious, community and other groups and the media. [...] With regard to privacy and confidentiality, and the related issue of informed consent to treatment, States parties should (a) enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacity of the child; and (b) provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment and to give their informed consent to treatment." (General Comment 4, Adolescent Health, 2003, paragraphs 28 and 33) In regard of access to information, the UN Committee on Economic, Social and Cultural Rights has noted: « States should also ensure that third parties do not limit people's access to health-related information and services." (General Comment 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2000, paragraph 35)

¹⁶ Detailing specific guidance provided by the United Nations human rights treaty monitoring bodies, the UN Special Rapporteur on education has found: "In general, treaty monitoring bodies have expressly recommended that sexual and reproductive health education should be a mandatory component of learning." The Special Rapporteur has recommended that States "ensure that all students throughout the country receive comprehensive sexual education with equal quality standards." (Report of the United Nations Special Rapporteur on the right to education, 2011, UN Doc. A/66/254)

¹⁷ The UN Committee on Economic, Social and Cultural Rights has stated: "States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as from preventing people's participation in health-related matters." (General Comment 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2000, paragraph 34)

¹⁸ The UN Committee on Economic, Social and Cultural Rights has stated: "Any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, consumer forums, patients' rights associations or similar institutions should address violations of the right to health." (General Comment 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2000, paragraph 59)