

1. WHAT HAPPENED

Why is This Case Important? The EO constitutes a violation of a number of women’s human rights. The Philippines is party to several international treaties, including CEDAW, ICESCR and ICCPR, which protect women’s rights to life, health and non-discrimination. These treaties and several other international policy documents support the right to contraception and to information on family planning. By allowing the EO - a *de facto* contraception ban - to continue, the Government of the Philippines is failing to uphold its international treaty obligations and is violating Philippines’ constitutional law. This case is being followed by activists around the world, as it has implications for the recognition of women’s right to control their fertility and the application of international human rights norms in the face of religious-based laws and policies.

In February 2000, the mayor of Manila issued Executive Order 003 (EO 003) to “promote” natural family planning and “discourage” so-called “artificial methods of contraception.” Since then, EO 003 has operated as a *de facto* ban on modern contraceptives in public health centers in Manila city.

In addition to preventing women in Manila City from being able to obtain modern contraceptives from public health facilities, EO 003 has had a “chilling effect” on private and non-city health service providers who, as a result of the order, are afraid of reprisals for giving information to women about modern methods of family planning.

The harmful effects of the ban were documented by the Center for Reproductive Rights in its 2007 report *Imposing Misery: The Impact of Manila’s Contraception Ban on Women and Families*. According to the report:

- o Already poor families are driven deeper into poverty
- o Women’s life and physical and mental health are jeopardized by too-frequent deliveries
- o More women resort to unsafe abortions, causing injuries, disabilities and numerous deaths

In January 2008 in the Philippines, a group of men and women filed a lawsuit against the Office of the Mayor of Manila. Their lawsuit, filed in the Court of Appeals, asked that the court declare EO 003 unconstitutional and also demanded its revocation. The petitioners, using the findings of *Imposing Misery*, claimed that EO 003 has severely and irreparably damaged their lives and health and that it has affected many more low-income women and families in Manila City. The case was dismissed in May 2008. The petitioners filed an appeal with the Supreme Court in September 2008, which was dismissed the following month. They have now filed a Motion for Reconsideration with the Supreme Court.

2. CONTEXT

Facts about the Philippines

- With a population of almost 90 million people; the Philippines is the world's 12th most populous country.¹
- 11.5 million people live in Metro Manila and in this area, 167,316 families live below the official poverty threshold.²
- 81% of Philippine citizens are Catholic.³
- Nearly half of all Filipino women have an unmet need for contraception.
- Approximately 48.8% of women in the Philippines use contraception, but only 35.1% use modern methods. Notably, the Metro Manila region has experienced a decline in modern contraceptive use in recent years, while in other regions, use of modern methods is on the increase.⁴
- In 2000, it was estimated that more than 473,000 unsafe abortions took place in the Philippines.⁵ An estimated 100,000 women are hospitalized and treated each year for complications due to induced abortion.⁶
- USAID, which used to be the major donor of contraceptives in the Philippines, scheduled a phase-out by 2008 as part of its "Contraceptive Self-Reliance Initiative."⁷ With Executive Order 003 (EO 003) in place, this is expected to have a severe impact on women who will not have access to contraceptives.

Who is suffering under the ban?

Poor women

- Some of the poorest women in Manila City have been unable to avoid unwanted pregnancies. This burden drives already-struggling families deeper into poverty.
- Women's health and life are endangered when they have no ability to control their reproductive lives and are exposed to unwanted pregnancies

Providers

- Private clinics that provided family planning products have been shut down on specious or nonexistent grounds, even though they are not technically subject to EO 003.
- Health-care workers have been harassed and called "abortionists."
- Drugstores cannot be legally prohibited from selling contraceptives, but former Mayor Atienza would personally call drugstores and urge them not to carry contraceptives.

Non governmental organizations

- NGOs providing family planning services have lost their permits to operate within the city.

¹ The Philippines' total population was 88.57 million in 2007. National Statistics Office, Press Release, April 16, 2008, at <http://www.census.gov.ph/data/pressrelease/2008/pr0830tx.html>.

² National Statistical Coordination Board, Philippine Poverty Statistics, Table 1: Annual Per Capita Poverty Thresholds, at http://www.nscb.gov.ph/poverty/2006_05mar08/table_1.asp

³ The Pew Forum on Religion & Public Life, Religious Demographic Profile: Philippines, at <http://pewforum.org/world-affairs/countries/?CountryID=163>

⁴ 48.8% any method (nationally); 35.1% modern method (nationally). National Statistics Office, Press Release, May 8, 2003, *Use of Modern Methods Up in Most Regions*, at <http://www.census.gov.ph/data/pressrelease/2003/pr0345tx.html>. While use of modern methods increased in most of the Philippines from 2001 to 2002, "the National Capital Region had a significant decline in modern contraceptive use."

⁵ Fatima Juarez et al., *The Incidence of Induced Abortion in the Philippines: Current Level and Recent Trends*, 31 INT'L FAM. PLANNING PERSPECTIVES 3 (Sept. 2005), summary available at <http://www.guttmacher.org/pubs/journals/3114005.html>

⁶ Singh S et al., *Estimating the level of abortion in the Philippines and Bangladesh*, INTERNATIONAL FAMILY PLANNING PERSPECTIVES 23 (1997)

⁷ USAID/Philippines, Working Paper June 30, 2003, available at http://philippines.usaid.gov/documents/ophn/csr_initiative.pdf

3. HUMAN RIGHTS FRAMEWORK

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Right to health and right to gender equality in access to health

Article 12 — States must eliminate discrimination against women in the field of health care in order to ensure, “on a basis of equality of men and women, access to health care services, including those related to family planning.”

Right to family planning

Article 16(1)(e) — Women have the right “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”

CEDAW General Recommendation No. 21 — “[W]omen must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services.”

CEDAW General Recommendation No. 24 — States should “ensure timely access to the range of services that are related to family planning...”

International Covenant on Civil and Political Rights (ICCPR)

Right to family planning

Article 23(2) — Men and women have the equal right “to found a family.” This article has been interpreted by the Human Rights Committee to mean that “women should be given access to family planning methods.”

Convention on the Rights of the Child

Right to family planning

Article 24(2)(f) — States shall “develop preventative health care, guidance for parents and family planning education and services.”

International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Right to health

Article 12 — Provides for the right to “the highest attainable standard of health.” The Committee on Economic, Social and Cultural Rights has noted that the right to health includes “access to health-related...information, including on sexual and reproductive health.” [General Comment 14]

Universal Declaration of Human Rights

Right to privacy

Article 12—“No one shall be subjected to arbitrary interference with his privacy, family...”

Right to freedom of religion

Article 18 — “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Right to health

Article 25 — “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.”

4. ALLEGATIONS

In their lawsuit against the Office of the Mayor of Manila, 20 women and men argue that Executive Order 003 (EO 003) has violated their:

- **Right to family planning**

- The Constitution of the Philippines, article 15, protects the “right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood.” Petitioners argue that article 15 guarantees that spouses’ right to use whatever form of contraception they choose must be ensured by the state. The Philippines’ National Population Act, Act No. 6365, states that “family planning will be made part of a broad educational program; safe and effective means will be provided to couples desiring to space or limit family size.”
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), article 16, protects the right to family planning. (See “Human Rights Framework”). The International Covenant on Civil and Political Rights (ICCPR), article 23(2) ensures that men and women equally enjoy “the right to found a family.” This article has been interpreted by the Human Rights Committee to mean “women should be given access to family planning methods.”

- **Right to health**

- The Constitution of the Philippines, article 2, protects the right to health, and further specifies that the state must “make essential goods, health and other social services available to all the people at an affordable cost. There should be priority for the needs of the underprivileged ...women, and children. The State shall endeavor to provide free medical care to paupers.”
- CEDAW, article 12, protects the right to health of women. The International Covenant on Economic, Social and Cultural Rights (ICESCR), article 12, provides for the right to the highest attainable standard of health.

- **Right to privacy**

- The Constitution of the Philippines, article 3, protects the right to privacy. Petitioners argue that EO 003 has, in effect, forcibly required them to use natural family planning to the exclusion of any other method. Through deprivation of access to contraception, the City of Manila has dictated petitioners’ reproductive choices for them.

- **Right to gender equality**

- The Constitution of the Philippines, article 2, protects the right to gender equality before the law. Petitioners make two arguments relating to this constitutional protection:

- **Equality in access to health. Petitioners argue that EO 003 leads to unequal health outcomes for women and men, given the health risks and burdens that fall exclusively upon women during pregnancy and childbearing. Petitioners also cite CEDAW’s article 12.**
- **Equality in autonomy and decision-making. Petitioners argue that use of natural family planning requires the compliance and cooperation of a male partner; therefore, women cannot exercise autonomy in their reproductive choices within natural family planning-only regimes.**

A woman in her eighth pregnancy, with only seven months since her last delivery, who wanted her fifth child to be her last:

“My life was put at risk when I gave birth to my fifth child...I passed out from strenuous labor and was rushed to [the Manila city hospital]. The doctor said that this should be my last pregnancy or else my children would suffer if I die.”

A woman living in one of Manila’s poorest areas:

“I want to use family planning to limit the number of my children. The mother is the one to search for food, school allowance and everything, on top of doing the household chores. All these are brain-racking. I feel sorry for my kids. I’m full of pity and can’t help crying when one of my children is sick and I can’t buy medicine. I got depressed when the mayor banned family planning. It was a big loss for many mothers...”

A woman who was denied access to tubal ligation:

“We used to fight, shout at each other when I refused to have sex. My husband would get mad when I refused and grab me...”

Stories from petitioners:

- **L.P. is 32 years old.** Prior to EO 003, she had two children and received free contraception from a city health center. Since EO 003, she and her husband, Jessie Osil, also a petitioner, have not been able to afford contraceptives, and have had five more children.
- **M.L. is 30 years old.** Her husband, co-petitioner Alexander Pesimo, makes between P150 and P300 (\$3 to \$6 USD) per day in his job at a billiard hall. Since EO 003, affordable contraceptive pills have become unavailable. Maria has had six children, and her health has declined.
- **Y.M. is 35 years old.** She earns between P150 and P300 (\$3 to \$6 USD) per day. Since EO 003 was implemented, she has had eight children. She asked for contraceptive pills at the Manila Hospital (Ospital ng Maynila), but the hospital denied her request. She sought sterilization at another hospital, but could not afford the P2000 (\$42 USD) fee because of her financial responsibilities for her large family.
- **R.B. is 37 years old,** and works as a laundrywoman twice a week. Her husband, Ronald Mabato, is a tricycle driver. Together, they make approximately P150 (\$3 USD) per day. Ruby has had three children, one of whom died. After EO 003, she had to start buying contraceptives from private dispensaries instead of being able to receive them for free, and this has brought serious financial strain upon her family.

6. RECENT DEVELOPMENTS

January 2008: Case filed with the Court of Appeals

The petitioners requested the Court of Appeals (CoA) to immediately issue a Temporary Restraining Order or Writ of Preliminary Injunction, directing respondents to cease and desist implementing Executive Order 003 (EO 003) until this petition is resolved. They also asked the CoA to declare EO 003 void, and prohibit any continued actions on its implementation, for having been issued and enforced in violation of the Philippines Constitution, the international human rights treaties ratified by the Philippines, and presidential orders and issuances on family planning.

May 2008: Court of Appeals dismisses case

In May of 2008, the case was dismissed by the CoA. Grounds for dismissal were given as follows:

1. The CoA alleged that the litigants had not proved that they were pauper litigants as the Petition did not annex the tax declarations of the 20 petitioners. However, the litigants never claimed to be paupers. Their lawyers paid the necessary filing fees to the CoA as the petitioners could not afford to pay the fee themselves. The CoA should have construed them as regular (paying) litigants.
2. The CoA alleged that the case should have been filed before the Regional Trial Court of Manila. There are a number of precedents in which both the CoA and Supreme Court have ruled directly on petitions in which there are no questions of fact, but simply questions of law. Analogously, this Petition involved no questions of fact but only questions of constitutional law

May 2008: Motion for Reconsideration filed before Court of Appeals

August 2008: Court of Appeals dismisses Motion for Reconsideration

September 2008: Petitioners appeal before the Supreme Court

October 2008: Supreme Court dismisses the appeal

The appeal was dismissed on the ground that one of the petitioners failed to sign the petition, although the practice of the Supreme Court in other cases has been to drop the name of the non-signing petitioner and decide on the merits of the case.

November 2008: Motion for reconsideration filed before Supreme Court

February 2009: Motion for reconsideration dismissed by the Supreme Court

7. MEDIA COVERAGE

Glimpses of national and international media coverage of Executive Order 003 (EO 003) and access to contraception issues in the Philippines:

“The uncompromising stand of the Church is that only natural family planning, through Rhythm and Billings methods, is the only “godly way” of limiting the size of a family. The use of birth control devices such as pills and condoms is a sin, as far as the Church is concerned.”

[Christine Herrera, *Church adopts tough stance on birth control*, MANILA STANDARD TODAY, Feb. 20, 2006, available at http://www.manilastandardtoday.com/?page=news05_feb20_2006]

“Last Saturday, a group of women’s rights advocates launched a publication entitled “Imposing Misery: The Impact of Manila’s Contraceptive Ban on Women and Families”. Linangan ng Kababaihan (Likhaan) ... [t]he Reproductive Health, Rights and Ethics Center for Studies and Training (ReproCen)...and [t]he Center for Reproductive Rights collaborated ... to produce a remarkable document that hopefully will convince people that the atrocities committed by the Manila city administration from 1998 to 2007 should never again be repeated. The publication confirms the fact that whenever extremist religious beliefs are allowed to dominate public policy, the burden of suffering falls mainly on the poor who are in fact already disadvantaged in so many other ways.”

[A.G. Romualdez Jr. M.D., *Rescuing Morality*, MALAYA – THE NATIONAL NEWSPAPER, Oct 2, 2007, available at <http://www.malaya.com.ph/oct02/edromuald.htm>]

“One woman who was interviewed for the Imposing Misery study said she could barely afford to fork out 35 pesos (77 cents) for her monthly pack of contraceptive pills. “I try to save whenever I have extra money. Sometimes when I don’t have extra money, I would go around and borrow 10 pesos from each neighbor until I come up with the amount needed to buy the pills,” she said.”

[Stella Gonzales, *Population-Philippines: Manila Women to Fight Ban on Contraceptives*, Oct. 2, 2007, www.ipsnews.net, at <http://www.ipsnews.net/news.asp?idnews=39484>]

“Birth and poverty rates [in the Philippines] are among the highest in Asia. And the Philippines, where four out of five of the country’s 91 million people are Roman Catholic, also stands out in Asia for its government’s rejection of modern contraception as part of family planning.”

[Blaine Harden, *Birthrates Help Keep Filipinos in Poverty*, WASHINGTON POST, Apr. 21, 2008]

In 2008, the Committee on Economic, Social and Cultural Rights stated its concern “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.”

8. CALL FOR ACTION

In 2006, the CEDAW Committee expressed concern about “inadequate family planning services, the low rates of contraceptive use and the difficulties of obtaining contraceptives” and recommended that the State make available a full range of contraceptive methods and family planning services.

Manila City government: Revoke Executive Order No. 003 (EO 003) and, in accordance with its constitutional and other national and international legal obligations, provide a full range of safe, acceptable, and affordable family planning services and information in city health centers and hospitals.

Human rights activists: Write to the Mayor of Manila and to the President of the Philippines requesting that they repeal EO 003 and restore provision of contraceptives and family planning services in Manila.

International donors: International assistance and cooperation aimed at poverty alleviation and health should fund efforts to improve reproductive health, particularly access to contraceptives and family planning services.

International and national human rights mechanisms: Monitor the lack of access to contraceptives in the Philippines and urge the Philippine government to guarantee access to a wide range of modern contraceptives in accordance with national and international human rights law.