
**EO NO. 003: DISCRIMINATORY OR RIGHTS BASED?
CHR ADVISORY ON THE LOCAL ORDINANCE BY THE
CITY OF MANILA**

CHR (IV) A2010-005

On 09 September 2010, a group of women from the City of Manila,¹ who are also Petitioners in the case *Lourdes Osil v. Mayor of Manila*, sought a dialogue with the Commission on Human Rights of the Philippines to discuss their concern over local ordinance Executive Order No. 003 with the appellation “**Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declaration in Pursuit Thereof**”.

It is averred by the group that since the issuance of EO 003, there has been 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 the fiat. This action of the local government and its results are contested as discriminatory by the Osil Group under the normative standards of the UN Convention on the Elimination of All Forms of Discrimination Against Women,² and in violation of various provisions found in the 1987 Constitution, and the Magna Carta of Women of 2009.

Executive Order 003 was issued by then City Mayor Lito Atienza on February 29, 2000. The Order stipulates the following, viz.:

“the City shall establish programs and activities in City Health Department and its health centers, Ospital ng Maynila Medical Center, Gat Andres Bonifacio Memorial Center, Ospital ng Tondo, Ospital ng Sampaloc, as well as the Department of Social Welfare which promote and offer as integral part of their functions, counseling facilities for natural family planning and responsible parenthood.”³

It should also be noted that in the seventh and final 'whereas' clause of the Order, the following is stated:

¹ Osil group, hereafter.

² CEDAW or the women's convention, hereafter.

³ See Executive Order No. 003 (City of Manila, 2009)para.2, Policy Declaration

“the city promotes responsible parenthood and upholds natural family planning not just a method but as a way of self-awareness in promoting the culture of life while discouraging the use of artificial methods of contraception, like condom, pills, intrauterine devices, surgical sterilization, and others.”

In examining the EO, the focal issue within the jurisdiction of the Commission to determine, is its conformity with national laws and/or with international legal standards on non-discrimination, particularly the CEDAW.

Philippine Law on Non-discrimination of Women

Whilst the Philippines is state party to the Women’s Convention, the discourse on the right to equality and non-discrimination has been limited to the ‘equality clause’ under the Constitution. This colloquy hinges on two notable points. First, the Magna Carta of Women which is the anti-discrimination law in the country is a recent initiative, such that previously, entitlements for example, equal number of women and men as hired personnel in the police force, could not have been a valid cause of action. Second, the dualist view⁴ of courts on the relation of international law with municipal law has placed treaties as the CEDAW in a subordinate status to national legislations, such that, using the former example, preference over a male applicant for membership in the police may not result to a successful claim for damages under an ordinary civil action inasmuch as, there was no positive obligation to achieve the arrangement explicit in the new Magna Carta of Women.

Further, it is important to articulate that the reference to the ‘equality clause’ is a futile and superficial effort to answer to issues of discrimination in that it is restrictive on two points. First, this provision is non-self executing,⁵ and by its nature it is imperative to have an enabling law for it to be a source of exercisable rights. Second, as has been explained by the Supreme Court, this particular provision refers to legal equality, commonly referred to as equality before the law. The import of this is that regardless of status, the law shall make no distinction in application in terms of rights and obligations.⁶ Its gaping weakness lies in the lacuna of a principle that excludes equality in terms of for example, strict mandate to provide for participation in policy formulation or programme development by state institution as local governments to enable them to integrate a gender

⁴ I. Brownlie, ‘The Relation of Municipal Law and International Law’, in *Principles of Public International Law* (Oxford University Press Inc., United States, 2008) p.31.

⁵ Non-self executing rights are not judicially enforceable constitutional rights, and can only provide guidelines for legislation. *See Tondo Medical centers Employees Association v. Court of Appeals*, July 17, 2007.

⁶ *People of the Philippines v. Majino* [1999, G.R. No. 129112]

perspective in their specific targets.

The normative standard on non-discrimination which proscribes the making of distinctions that hinder access to or exercise of rights by women, and sets down directives to place Filipino women in a common platform with Filipino men, can be found in the Magna Carta of Women.

Under the Magna Carta, the state commits to refrain from the commission of acts that are discriminatory to women,⁷ and the corollary duty to ascertain that this particular group of claim holders is protected from discriminatory practices by individuals and private institutions.⁸ This anti-discrimination law enumerates *inter alia*, rights of women to health,⁹ which includes access to comprehensive health services,¹⁰ 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 ratified by the Philippines, in consonance with Philippine law, shall be rights of women under this Act to be enjoyed without discrimination.”¹¹ 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 health¹² and the right to a decent standard of living under the Covenant of Economic, Social, Cultural Rights,¹³ full implementation of the CEDAW by the Philippine government as party to the Hanoi Plan of Action¹⁴ of the Association of Southeast Asian Nations, including sexual and reproductive health rights under the Beijing Declaration and Platform for Action,¹⁵ can be exercised 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 the Philippine's treaty commitment under the CEDAW,

⁷ Magna Carta of Women 2009 (Philippines) s 5.

⁸ To ensure the effective implementation of this rule, the law stipulates for time-bound policy change, as well as programme development, designed to facilitate access to opportunities by women. The Magna Carta also established an important legal mechanism to guarantee 'effective legal remedy' to address violations and nonfeasance. This procedure which mandates investigation of complaints and issuance of recommendations for appropriate remedial measures is exercised by the Commission on Human Rights as Gender and Development Ombud.

⁹ *Above* note 7, s 17.

¹⁰ *Ibid.*, para. b.

¹¹ *Above* note 7, s 8.

¹² *See* UN Convention on Economic Social and Cultural Rights (Economic Rights) (ratified by the Republic of the Philippines on June 7, 1974, and entered into force on Jan. 3, 1976) s 12.

¹³ *Ibid.*, s 11.

¹⁴ *See* Hanoi Plan of Action (ASEAN).

¹⁵ *See* Beijing Declaration and Platform for Action, para. 30.

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 on 05 August 1981.¹⁶ As such, it bound itself to create legal measures to protect women's rights, punish discrimination, and itself refrain from discriminating.¹⁷

By the issuance of EO 003, the City of Manila, an instrumentality and essential element of the state, committed a 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,¹⁸ to provide health care and enable women to access services related to family planning,¹⁹ and to allow women to decide freely and responsibly on the number and spacing of children.²⁰

Recommendations

I. The City Council of Manila should immediately revoke EO 003, and ensure that artificial birth control devices, including birth control pills and injectibles 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, and intrauterine device.

¹⁶ The Magna Carta of Women took effect on September 15, 2009.

¹⁷ 1. Adopt through legislation the principle of equality and non-discrimination; 2. Prohibit and punish acts of discrimination; 3. Ensure through competent national tribunal and other public institutions the effective protection of women against discrimination; 4. Refrain from engaging any act or practice discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; 5. Take all appropriate measures to eliminate discrimination against women by any person, organisation, or enterprise.

¹⁸ See UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (ratified by the Republic of the Philippines on Aug. 5, 1981, and entered into force on Sept. 4, 1981) Art. 11 para. 1 subpara. f.

¹⁹ *Ibid.*, Art. 12 para. 1.

²⁰ *Ibid.*, Art 16 para. 1 subpara. e.

II. The City of Manila should issue an Apology to the Osil group, to all women and men alike who have been 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 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, 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 Petition 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.

Issued this 7th day of October, Quezon City, the Philippines.

LORETTA ANN P. ROSALES
Chairperson

CECILIA RACHEL V. QUISUMBING
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