COUNTRY PROFILE

ON UNIVERSAL ACCESS TO SEXUAL AND REPRODUCTIVE RIGHTS: PHILIPPINES

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1. Introduction

For purposes of this paper, sexual and reproductive rights (SRR) will be defined by two key concepts: the right to make decisions on reproduction and sexuality free from discrimination, coercion and violence; and the right to the highest standard of sexual and reproductive health (RH). The concepts are derived from paragraph 7.3 of the International Conference on Population and Development's Programme of Action (UN, 1994) and paragraph 96 of the Beijing Platform for Action (UN, 1995).

The Philippines is signatory to many human rights instruments that are the basis of sexual and reproductive rights, such as the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Discrimination Against Women; the Convention on the Rights of the Child; the International Conference on Population and Development Programme of Action; the World Conference of Women Platform for Action; and the UN General Assembly Special Session's Declaration of Commitment on HIV/AIDS (Commission on Human Rights, n.d.; Parmanand, 2014). The UN Development Programme in 2010 assessed that gender equality in the Philippines was "well advanced" with over a hundred laws on women and women's rights (Phil. Commission on Women, Online Database).

However, Philippine laws and policies have not yet fully enshrined sexual and reproductive rights.

In the 1990s, a series of laws that protect women against gender based sexual abuse and violence were passed, which included the laws on sexual harassment, rape, trafficking in persons, and violence against women and children (VAWC). A law on HIV-AIDS was passed in 1998. In 2014—after a 14-year struggle—the Responsible Parenthood and Reproductive Health Act of 2012, more commonly known as the RH Law (Republic Act [RA] 10354), was finally cleared for implementation by the Supreme Court.

Because lawmaking reflects the contending perceptions and politics around SRR at a given time, all the current laws are flawed and should be considered as "works in progress" in the evolution of SRR in the Philippines. The RH Law is an example of legislation that underwent dilutions in Congress and in the Supreme Court because of religious objections. The laws on gender-based violence (GBV) have blind spots that detract from substantive gender equality—such as the non-mandatory prosecution of violence against women (VAW) and the forgiveness clause in marital rape, which effectively extinguishes the crime of rape. Barriers to the effective implementation of laws also detract from their power, which can include financial, geographic and political barriers.

Generally, Philippine laws that uphold the right to protection against gender-based violence and the right to sexual and reproductive health (SRH) services are strong. However, laws that uphold freedom and moral agency on sexuality and reproduction—notably sexual orientation and gender identity (SOGI), abortion, adolescent sexuality and reproductive health—are either weak, absent or discriminatory. According to the International Gay and Lesbian Human Rights Commission (2012), up to now, there is no law upholding the equal rights of lesbians, gays, bisexuals and transgenders (LGBTs) in the Philippines.

The right of minors or young people less than 18 to access RH services from public facilities was denied by the Supreme Court in their decision on the RH Law (Imbong v. Ochoa, 2014). The Revised Penal Code (1930) plainly prohibits abortion with no explicit exception (Articles 256-259), although legal experts cite general rules in the penal code that extinguish criminal liability when abortion is done to save the woman's life.

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Fanatical adherence to these doctrines drives the strong and continuing opposition to SRR policies in the executive, legislative and judicial fields. Even after the RH Law cleared the Supreme Court, some Catholic leaders in the Philippines and Asia soon after lambasted what they call "amnesia of God and moral relativism" and urged others to "resist the 'culture of death'" and "protect and promote the human family and the Christian family" (Asian Conference on the Family, 2014).

2. The status of sexual and reproductive rights in the Philippines

Policies on sexual and reproductive health

Before the concept of "reproductive health" was officially adopted by the Department of Health (DOH) in 1998, there were disparate, vertical health services under different government auspices. Maternal and Child Health was part of the DOH's Primary Health Care Program since 1979 (DOH, 2012, p. 16). The Philippine Family Planning Program was being implemented under the auspices of the Commission on Population in both public and private sectors since 1972 (Comm. on Population, n.d.). And the national HIV-AIDs program was lodged in the multisectoral Philippine National AIDS Council (PNAC) since 1992 (PNAC, n.d.).

These programs were integrated as the Reproductive Health Program of the DOH in 1998 (DOH, 1998). The program had 10 "elements": family planning (FP); maternal and child health and nutrition; prevention and management of abortion complications; prevention and treatment of reproductive tract infections including STDs, HIV and AIDS; education and counseling on sexuality and sexual health; breast and reproductive tract cancers and other gynecological conditions; men's reproductive health; adolescent reproductive health; violence against women; prevention and treatment of infertility and sexual disorders. It was inspired by the UN Conference on Population and Development in 1994 and World Conference on Women in 1995, and affirmed by years of practice in RH service provision by NGOs and local government units working among different sectors and localities.

The DOH RH Program heralded a new framework and approach in health that was human rights-based, sensitive to gender inequality, and guided by scientific evidence. It served as the template for the first RH Bill, (House Bill No. 4110, 2001), which basically aimed to institutionalize the program and its budget. An expanded RH Bill became law in 2012 and was declared "not unconstitutional" by the Philippine Supreme Court, except for parts, in 2014 (Imbong v. Ochoa). As previously mentioned, the RH Law accommodated inputs from many sectors—authors, advocates, opponents, the President, Catholic groups, and the Supreme Court.

The Law has three focal concerns: maternal and newborn health care, family planning and adolescent reproductive health education (Secs. 5-9 & 14). It mandates the DOH to maintain and improve facilities and personnel for maternal and newborn health and family planning services. It mandates the Philippine Health Insurance Corporation (PhilHealth) to develop a benefit package for serious RH conditions (such as AIDS and reproductive tract cancers) and assist the financing of the poorest sectors. It also mandates the Department of Education to develop a curriculum that integrates RH in "age- and development-appropriate ways" in public, private, and alternative learning systems.

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However, due to religious objections, the RH Law contains provisions that hamper universal access to RH services. Among others, these are: the stringent criterion that contraceptive action must not involve the "prevention of the fertilized ovum to reach and be implanted in the mother's womb"; the wide latitude to providers, including religious and private hospitals, to refuse to provide and refer non-emergency RH services on grounds of "conscientious objection"; the prohibition of minors to access FP services from public facilities; the exclusion of emergency contraceptive pills from government procurement, distribution and use; and the non-punishment of providers who insist on spousal consent for RH services or parental consent in the case of children victims of parental abuse.

Given the newness of the law and the mixed entitlements and restrictions, it is important to popularize its key contents and implications, and to actively involve SRR advocates and other citizens in the monitoring and implementation of the law. As for the restrictive as aspects of the law, strategies for correcting these must be studied and undertaken. Efforts must also be undertaken to address the actions of the opposition.

Grounds under which abortion is legal

The Philippines' abortion law is among the most restrictive in the world (Center for Reproductive Rights [CRR], 2013). All forms of abortion are listed as criminal offenses under Articles 256-259 of the 1930 Revised Penal Code, which includes "intentional abortion," "unintentional abortion," "abortion practiced by the woman herself or her parents," and "abortion practiced by a physician or midwife and dispensing of abortives." The prescribed punishment ranges from a minimum of one to six months (e.g. in the case of a pharmacist dispensing an abortive) to a maximum of six years (e.g. in the case of a physician or midwife helping a woman have an abortion).

Whether the law allows abortion to save a woman's life is in dispute. Experts, like the UN Population Division and the CRR, assert that the general principles of criminal legislation justify abortion to save a woman's life on the ground of "necessity" (UN, 2013 & CRR, 2013). Noted professors of the University of the Philippines College of Law have similar views. Prof. Elizabeth Aguiling-Pangalangan avers that abortion to save the mother's life satisfies the three requirements for "Justifying Circumstances" in Article 11 of the Revised Penal Code, thereby exempting women from criminal liability. Prof. Florin Hilbay has written that the Philippine Constitution's provision that "the State shall equally protect the life of the mother and unborn from conception"—often cited as the reason why abortion is not allowed—is not the same as to "**protect equally**," i.e. that "the Constitution does not create a conceptual or material equivalence between the mother and the unborn" (Hilbay, 2011, p. 4).

A liberal interpretation of core medical ethics, especially non-maleficence, beneficence and women's autonomy (Chervenak & McCullough, n.d.) should, likewise, allow abortion, if only for therapeutic reasons.

Yet abortion is interpreted by many, including lawyers and medical professionals, as being totally banned for any reason in the Philippines. This restrictive interpretation has led to the delay or denial of therapeutic abortion in women whose lives are threatened by their own pregnancy. One doctor in a government hospital described the withholding of pregnancy termination services in a pregnant woman who was having severe hypertension on the sixth month of her fourth pregnancy (Likhaan, 2010). Though doctors referred to the mother as a "ticking time bomb," they waited for the baby to "deteriorate first" before they intervened. But the woman went into coma and died, and so did her baby.

Appraising this policy, the UN Committee on the Elimination of Discrimination against Women (CEDAW, 2006) urged the government to consider the problem of unsafe abortion as a matter of high priority and to "consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and providing them with access to quality services for the management of complications arising from unsafe abortions" (p. 6).

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To ease these restrictive laws, more studies and public discussions must be done on the harm to women and to society, in general, of the total prohibition against abortion.

Policies on HIV and AIDS

Since the first AIDS case was reported in 1984, the DOH began a program that included surveillance, health education, training of health workers, counseling, screening of blood units and strengthening of diagnostic facilities (Palaypay, 1996). The HIV and AIDS program was popular in the 1990s with no less than the exuberant health secretary then, Dr. Juan Flavier, spearheading the advocacy with his famous "ABC" approach: Abstinence, Be faithful, Use Condoms (Hardee, et al., 2008).

With the active involvement of government and CSOs, Congress passed the Philippine AIDS Prevention and Control Act in 1998 (RA 8504). The law codified the rights of people with HIV-AIDS to privacy and confidentiality, access to basic health care, and protection against compulsory testing and discrimination in different spheres of life. It provided penalty for violations and established the Philippine National AIDS Council, a multisectoral body, to make policies and monitor implementation.

Like the RH Law but to a lesser extent, the HIV-AIDS Law accommodated Catholic inputs. The law never mentions condom, only "prophylactic," and warns against the use of HIV and AIDS education "as an excuse to propagate birth control devices" and "sexually explicit education materials." It requires that education materials be developed with parents' participation and consent.

Church opposition to the HIV-AIDS program, especially condoms, intensified with the administration of President Gloria Arroyo from 2001 to 2010. A Human Rights Watch report, "Sex, Condoms and the Human Right to Health" in 2004 described "official resistance" to condoms that took the form of "ordinances prohibiting condoms from public health clinics, police interference with condom promotion, weak and unimplemented policies regarding the availability of condoms in sex establishments, and the government's refusal to supply condoms to the public sector with national funds."

The report also found that "anti-condom advocates continued to peddle misinformation about condoms and HIV prevention" to the degree that the "guarantee of comprehensive AIDS information in the Philippine AIDS Act proved no match for this misinformation" (p. 28).

Ten years after the Human Rights Watch report, the HIV infection rate—initially described as "low and slow" and "hidden and growing"—is now labeled "fast and furious" (DOH, n.d.). The Philippines' 2012 Global AIDS Progress Report pointed out some of the key challenges for the program: inadequate funding, inadequate human resource capacity, limited access to commodities, and human rights/discrimination issues (PNAC, 2012). Among the key issues identified are limited access to condoms and "ambivalence or conflicting views on condoms, needles and syringes" (p. 29).

Efforts are currently underway to amend the HIV-Law to make it more effective against the new face and pace of the epidemic. While a new comprehensive package of interventions is necessary, some old but underutilized interventions need to be reiterated: comprehensive sex education for young people and a renewed campaign for the timely and correct use of condom.

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Policies on adolescent sexual and reproductive health services

The age of majority is set at 18 years old in the Philippines (RA 6809, 1989), and minors are under the jurisdiction of both parents and, to a lesser degree, the State. The 1987 Constitution upholds the "**natural and primary right** and duty of parents" to rear their children for "civic efficiency and the development of moral character." It also recognizes the government's duty to promote and protect the youth's "physical, moral, spiritual, intellectual, and social wellbeing" as part of its duty to "protect and promote the right to health of the people." Thus, whether they are ten years old or seventeen, adolescents' ability to decide on matters relating to sexuality and reproduction rests on their parents' consent, even though government may have enabling programs.

Yet, adolescents' legal capacities actually vary. They are allowed to work 40 hours a week at age 15, and they can even legally work at a younger age under certain conditions (RA 9231, 2003). They are allowed to drive a car by themselves at 17, and even earlier at 16 if they have a student drivers' permit and are accompanied by a licensed driver (RA 4136, 1964, Sec. 22 & 30). Meanwhile, the crime of statutory rape is set to age 11 and below (RA 8353, 1997), which implies that adolescents as young as 12 can decide to have or to refuse sex like adults.

The DOH RH Program of 1998 was the first policy to include Adolescent Reproductive Health (ARH). ARH, however, disappeared in the DOH guideline of 2001, which provided for the establishment of youth-friendly health services at national, regional, and provincial levels (DOH, 2000). In 2013, after the passage of the RH Law, the DOH issued the National Policy and Strategic Framework on Adolescent Health and Development which aims to delay sexual initiation and prevent pregnancies before the age 20 by ensuring adolescents' access to "quality comprehensive health care" in an "adolescent friendly" environment (DOH, 2013a).

The Reproductive Health Law that emerged from the Supreme Court decision in 2014 has both enabling and disabling mandates for adolescents. On the one hand, it mandates "age- and development-appropriate" reproductive health education on subjects, including values; self-protection against discrimination, sexual abuse and violence, and teen pregnancy; adolescent development; women's rights; and responsible parenthood. However, it does not allow adolescents to access FP services in public facilities, unless they have their parents' consent (RA 10354).

Another law, the Magna Carta of Women (RA 9710, 2009), which protects Filipino women and girls from discrimination, includes the protection of schoolgirls who are pregnant out-of-wedlock. The law forbids school authorities from expelling these students or denying them admission because of their pregnancy (Sec. 13c). The importance of the Magna Carta was highlighted in 2012, when two schoolgirls were barred by Catholic school officials from joining their high school graduation because they had posted photos of themselves in bikinis on Facebook (Ursal, 2012). The girls' parents sued the school and the judge ruled to allow the students to graduate.

Policymakers need to understand adolescent development needs and evolving capacities, including their need for SRH services. These needs and capacities differ across the sub-stages of early, middle and late adolescence. Laws and policies that view children homogeneously as wards requiring parents' protection and approval have to be reviewed and amended.

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Marriage laws

In the Philippines, marriage can be entered into by a male and female who are both at least 18 years old, with both of their consent. However, contracting parties between 18 and 21 years old still require "parental consent," while those between 21 and 25 years old require "parental advice" (Family Code, 1987, Articles 5, 14 & 15).

In 2011, the median age of registered marriages was 25.3 for women and 28.0 for men. However, registered marriages below age 20 was 12.2% for women, more than four times the 2.7% rate for men (Phil. Statistics Authority, 2013).The marriage statistics also show that registered marriages are decreasing as more young people resort to live-in arrangements (cohabiting without marriage).

Among Filipino Muslims, the age of marriage is determined not just by the Family Code, but also by the Code of Muslim Personal Laws (CMPL, 1977). The CMPL allows a Muslim male to be married at age 15, and a Muslim girl at puberty, presumed to be at age 15. A girl between 12 and 15 may still be allowed to marry upon petition by a "wali," who solemnizes the marriage (Arts. 15-16).

In 2010, the lawmaking body of the Autonomous Region of Muslim Mindanao (ARMM), the Regional Assembly of ARMM, enacted the Gender and Development (GAD) Code of ARMM to harmonize the Muslim customary law and the Family Code. Governed by the Shariah, the CMPL and the amended Family Code, the ARMM GAD Code (2010) discourages child and early marriages, and urges strong advocacy campaigns against the traditional practice by ARMM agencies, NGOs, and civil society groups (Secs. 33 & 36), but did not raise the age of marriage.

On March 27, 2014, the Philippine government and the Moro Islamic Liberation Front signed the Comprehensive Agreement on the Bangsa Moro, which aims to end the decades-old conflict in Mindanao. The agreement includes the establishment of an autonomous Bangsa Moro government that will replace the ARMM. It is critical that the Marriage and Family Relations Law, as well as other sexual and reproductive health and rights policies of this new entity, is aligned with national laws and human rights principles.

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Gender-based violence

Extent of gender-based violence

There are different government agencies monitoring the incidence of gender-based violence (GBV), among which are the National Statistics Office (NSO), Department of Social Welfare, Department of Health, Philippine National Police (PNP), Department of Justice, Civil Service Commission and the Commission on Higher Education. Because they employ different categories, different methodologies, and different timeframes, the data from these sources are variable, yet they share the same disturbing level and rising trend of GBV.

The National Demographic and Health Survey in 2008 (NSO & ICF Macro, 2009) estimated that 29% of ever-married women between 15 and 49 years old experienced some kind of violence—physical, sexual, emotional or economic—that was inflicted by a husband or partner. Twenty percent of these women experienced physical violence, 8% sexual violence, and 23% other forms of violence (Table 16.9).

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Table 1. PNP Annual Comparative Statistics on Violence Against Women, 2004-2013

Reported Cases	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Rape	997	927	659	837	811	770	1,042	832	1,030	1,259
Incestuous Rape	38	46	26	22	28	27	19	23	33	26
Attempted Rape	194	148	185	147	204	167	268	201	256	317
Acts of Lasciviousness	580	536	382	358	445	485	745	625	721	1,035
Physical Injuries	3,553	2,335	1,892	1,505	1,307	1,498	2,018	1,588	1,744	3,564
Sexual Harassment	53	37	38	46	18	54	83	63	41	196
RA 9262 (Anti-VAWC Law)	218	924	1,269	2,387	3,599	5,285	9,974	9,021	11,531	16,517
Threats	319	223	199	182	220	208	374	213	240	426
Seduction	62	19	29	30	19	19	25	15	10	8
Concubinage	121	102	93	109	109	99	158	128	146	199
RA 9208 (Anti-Trafficking Law)	17	11	16	24	34	152	190	62	41	45
Abduction/ Kidnapping	29	16	34	23	28	18	25	22	20	23
Unjust Vexation	90	50	59	59	83	703	183	155	156	250
Total	**6,271**	**5,374**	**4,881**	**5,729**	**6,905**	**9,485**	**15,104**	**12,948**	**15,969**	**23,865**

Source: (PNP Women and Child Protection Center as cited by the Philippine Commission on Women in 2014)

Between 2004 and 2010, the Women and Children Protection Units of the regional hospitals of the DOH, reported an average of 6,224 new cases every year, with a mean increase of 156%. The number was highest in 2010, with 12,787 new cases. Over 59% of the cases were sexual abuse; over 37% were physical abuse; and the rest were neglect, combined sexual and physical abuse, and acts by minor perpetrators (DOH, 2013b).

Between 2004 and 2013, the PNP Women and Child Protection Center (as cited by the Philippine Commission on Women in 2014) reported a fluctuating trend of VAW cases hovering from 4,000+ to 6,000+ in 2004-2008; rising to 9,000+ – 15,000+ in 2009–2012; and spiking at 23,000+ in 2013. A table from the report (see below) lists a broad range of criminal acts filed with the police. It includes categories under older laws (e.g. acts of lasciviousness, seduction, concubinage, and unjust vexation); violations under the Anti-Violence Against Women and Children (VAWC) Law where charges against perpetrators were pressed, as well as those where complainants did not file charges (e.g. physical injuries).

Ten years after the Anti-VAWC Law, the proportion of those who do not press charges is significant—20% in 2013. This significant proportion could be due to barriers in reporting—e.g. physical, cultural, financial, and others; it could also be due to the perception that the law is too punitive.

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Legislation related to gender-based violence

There are several Philippine laws protecting against GBV. These laws were passed from 1995 onward.

The **Anti-Sexual Harassment Act** (RA 7877, 1995) penalizes sexual harassment in the workplace, education and training institutions. Sexual harassment is defined as the act of any person "having authority, influence or moral ascendancy over another" of demanding a sexual favor, regardless of whether the other person accepts or not. Violators are penalized with a fine or imprisonment or both. Workplace, education, and training institutions are mandated to set up a committee, the Committee on Decorum and Investigation, to monitor and investigate sexual harassment cases. There are proposals to expand the scope of the law to other public spaces and to perpetrators other than persons of authority, such as peers (Phil. Commission on Women, "Expanding the Anti-Sexual Harassment Law," n.d.).

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The **Anti-Rape Law** (RA 8353, 1997) redefined rape from a "crime against chastity" in the 1930 Revised Penal Code to a "crime against persons." Rape is defined as "carnal knowledge of a woman" by a man using force, intimidation or deceit, or when the victim is unable to reason or is less than 12 years old. Rape includes penetration of the vagina, mouth or anus by the penis or by any other object. It also includes marital rape, but in this case the crime is extinguished in case there is "subsequent forgiveness by the wife." In aggravated circumstances, rape is punishable by the maximum punishment, which was death, until the capital punishment was abolished in 2006. Currently the maximum punishment is life imprisonment.

There are proposals to amend the law, including to relax the required proof of force or lack of consent, remove the wife forgiveness clause, and raise the age of statutory rape to below 16 (Phil. Commission on Women, "Amending the Anti-rape Law," n.d.).

The **Rape Victim Assistance and Protection Act** (RA 8505, 1988) establishes rape crisis centers in every province or city; and provides the "rape shield," a rule where a complainant's past sexual conduct, opinion, or reputation is not admissible, "unless, and only to the extent that the court decides that it is material and relevant to the case."

The **Anti-Violence Against Women and their Children Act** (RA 9262, 2004) defines violence against women and children as "any act or series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which results in or is likely to result in physical, sexual, psychological harm or suffering or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty." Violations are punished to a level higher than similar acts in the Revised Penal Code, making this law one of the most punitive against GBV in Asia (Guanzon & Sercado, 2008, p. 364). The law provides immediate and long term relief through protection orders that women can avail of in the barangay (village) or the courts. However, divorce is not included in the remedies.

The implementation of the above law is hampered by many factors, including the lack of appropriation, costly and lengthy litigation, the lack of free legal aid system for women and retaliation of the husband (pp. 364-372).

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In 2007, the Anti-VAWC law was challenged by an accused husband for, among other things, violating the equal protection clause. However the constitutionality of the law was unanimously upheld by the Supreme Court in 2013, citing: "The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law" (Garcia v. Drilon, 2013).

The **Anti-Trafficking in Persons Act** (RA 9208, 2003) criminalizes a broad range of acts pertaining to the movement of persons within or across national borders, regardless of consent, using coercion, deception, payment, abuse of power or taking advantage of the person's vulnerability, for purposes of exploitation including for prostitution, slavery, forced labor, or the sale of body organs. Among the acts penalized are prostitution, pornography, sex tourism, sexual exploitation, slavery and debt bondage (Secs. 3 & 4). In 2013, the Anti-Trafficking law was further expanded to include other acts, such as "attempted trafficking," which lists further violations when the victim is a child, including recruitment for surrogate motherhood (RA 10364, 2013, Sec. 4).

A study by the UNDP Asia-Pacific on gender equality in the national laws of five Asian countries in 2010 reported that the Philippines fulfilled 60% of its 113 benchmark indicators (Cheema, 2010). Identified among the Philippines' deficiencies were: the absence of mandatory prosecution of VAW; the discriminatory provisions in laws against sexual offenses, such as adultery and concubinage; the forgiveness clause in the Anti-Rape Law; and the criminalization of prostitution in the Revised Penal Code (Art. 202).

Amendments are necessary to correct the inherent weaknesses or deficiencies in the laws, such as discriminatory provisions, as well as to correct the weaknesses in the laws' implementation.

Legislation and policies on sexual orientation

While there is no law explicitly criminalizing the sexual orientation of lesbians, gays, bisexuals and transgenders (LGBT), there is also no law that substantially upholds their equal rights. The Philippines is one of a minority of countries that has not signed any of the statements or resolutions advanced at the UN—at the General Assembly ("Joint Statement on Sexual Orientation, Gender Identity and Human Rights at United Nations," 2008) and the Human Rights Council ("Human Rights, Sexual Orientation and Gender Identity," 2011). Violations of LGBT rights are common, including "being shot, tortured, and robbed," according to the Chair of the Commission on Human Rights, Loretta Rosales (Bernal, 2014). Provisions of old laws on "public disorder" and "offenses against decency and good customs" are often used to arrest, detain, and extort LGBTs (International Gay and Lesbian Human Rights Commission [IGLHRC], 2012).

The Supreme Court in 2010 reversed a ruling by the Commission on Elections (Comelec) that disqualified Ang Ladlad, the first LGBT political party, from running for elections on the grounds that, among others, the party "advocates sexual immorality" (Ang Ladlad LGBT Party v. Comelec, 2010). In their reversal, the Supreme Court said that "We do not doubt that a number of our citizens may believe that homosexual conduct is distasteful, offensive, or even defiant. They are entitled to hold and express that view. On the other hand, LGBTs and their supporters, in all likelihood, believe with equal fervor that relationships between individuals of the same sex are morally equivalent to heterosexual relationships. They, too, are entitled to hold and express that view. However, as far as this Court is concerned, our democracy precludes using the religious or moral views of one part of the community to exclude from consideration the values of other members of the community." The decision added that "government must act for secular purposes and in ways that have primarily secular effects."

However, the Supreme Court declined to state whether or not the Yogyakarta Principles, which apply international human rights to sexual orientation and gender identity (SOGI), were binding on the Philippines.

In the legislature, efforts to pass an "anti-discrimination (of LGBT) bill" have been underway since 2000 (IGLHRC, 2012), but failed owing to the strong opposition led by Catholic Church officials. Fr. Melvin Castro, executive secretary of the Episcopal Commission on Family and Life of the Catholic Bishops Conference of the Philippines (CBCP), said in 2010: "we accept them, even if they have same-sex attraction, but we cannot accept if they will have same-sex relationships or same-sex unions" (CBCP for Life, 2013).

One law that can protect women who are lesbians, bisexuals or transgender is the Magna Carta of Women which includes "sexual orientation" among the prohibited grounds for discrimination against women (RA 9710, 2009). Under the law, public and private violators can be held liable (Ocampo, 2012, p. 209). Aside from the Magna Carta of Women, there are local laws or ordinances against discrimination that have been passed in major cities like Quezon City, Davao City, Bacolod, Angeles and in the province of Albay (IGLHRC, 2012).

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Other government agencies make the effort to counter anti-LGBT discrimination, but are bogged down by long-lasting biases. In 2009, Ernesto Torres, spokesperson of the Armed Forces of the Philippines announced that the military was open to the entry of LGBTs as proof that the Philippines has "zero tolerance" for discrimination within the military ranks. The condition, however, is that once inside the military, gays and lesbians must 'hide' their sexuality, and those who cross-dress could be dishonorably discharged (IGLHRC, 2009).

The Commission on Human Rights (CHR) includes anti-discrimination in its Strategic Plan for 2011-2015, declaring that it "advocates for the review of all legislations...to decriminalize homosexuality as well as to prevent discrimination, prosecution and punishment of people solely for their sexual orientation and gender identity." The Commission also commits to undertake all necessary legislative, administrative, and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the administration of justice (CHR, 2012).

There is a need to assist policymakers to have more substantive anti-discriminatory policies and programs. However, there is also a need to broaden the constituency supportive of SOGI laws and policies, which should include human rights advocates, professional groups and grassroots communities. To develop this constituency, there should be more public discussions and debates, and the popularization of the UN SOGI resolutions.

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Legislation and policies on gender identities

Transgender are people who identify and express themselves differently from the gender of their birth. In the Philippines they suffer from legal non-recognition and institutionalized discrimination. Bemz Benedito, a leader of the lesbian-gay-bisexual-transgender political party, Ang Ladlad, described the restricted life of transgender people (translated from Filipino): "...you cannot change your identity papers; you cannot consult endocrinologists so that you do not self-medicate and put your life at risk; you cannot go to the toilet without being humiliated; you cannot eat in a restaurant or dance in a bar because 'crossdressers are forbidden'; and you cannot be employed because you are unlike gay employees." (Assoc. of Transgenders in the Philippines, 2013).

The right to gender identity is poorly understood and unrecognized in Philippine laws and policies. Ocampo (2012) observed that the Supreme Court, in a case involving Ang Ladlad "interchanged 'LGBTs' with 'homosexuals'" and mistook "'lesbians, gay, bisexuals, and transgender' as categories of sexual orientations...unaware of their gender identity aspects" (p. 195).

There is no law that allows the sex of a person to be changed, and the Supreme Court in 2007 disallowed a man from changing his name and sex after a sex-change surgery (Silverio v. Republic of the Phils., 2007). The Court, however, allowed gender identity change to a woman who had a hormonal condition that caused her body to become masculine naturally, without sex-change procedure (Republic of the Phils. v. Cagandahan, 2008). Ironically in this case, the Court said that "where the person is biologically or naturally intersex, the determining factor in his gender classification would be what the individual..., having reached the age of majority, with good reason thinks of his/her sex."

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The laws and courts decree that sex and gender cannot be changed from the time of entry in the birth certificates. While Congress allowed the correction of clerical or typographical errors in the Civil Register in 2012, it disallowed changes in the date of birth or sex of a person, "unless the petition is accompanied by legal proofs" or in the case of gender change, "unless there is certification by an accredited government physician stating that petitioner has not undergone sex change or sex transplant" (RA 10172, 2012).

The Society of Transsexual Women of the Philippines (STRAP), in their submission to the 13th Session of the UN Human Rights Council Universal Periodic Review, complained about the lack of a clear-cut law allowing change of sex in legal documents. In this report, STRAP recommended a number of corrective steps, including: educating public authorities about "transexualism" and "its attendant legal, medical, social, cultural and economic dimensions"; training in sexual and gender diversity in education institutions, both public and private; and the amendment, enactment or repeal of laws in order to protect and fulfill the rights of transgender people (STRAP, 2012).

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Grievance and redress mechanisms for sexual and reproductive health services

Violations of the right to sexual and reproductive services are covered to some extent by different administrative and legislative grievance and redress mechanisms.

The laws and policies governing the exercise of the various health professions routinely include these mechanisms. For example, the Philippine Medical Association, (PMA) has a Code of Ethics governing its decorum (PMA, 2008). This is complemented by an Administrative Code (2007) which includes disciplinary action for errant members or officers (Chapter X). PhilHealth, the agency tasked to guarantee the financing of health care for all Filipinos, has grievance mechanisms against errant individuals and institutions clearly defined in the National Health Insurance Law (RA 10606, 2013, Secs. 27-28).

Specific to sexual and reproductive health, the HIV-AIDS Law and the RH Law spell out complaints and corrective mechanisms. Under the HIV-AIDS Law (RA 8504, 1998), certain acts are punishable, such as misleading information, unsafe practices and procedures, compulsory HIV testing, violation of confidentiality, and discriminatory acts or policies (Article VII). Penalties include imprisonment, fine, and administrative sanctions.

Specific to sexual and reproductive health, the HIV-AIDS Law and the RH Law spell out complaints and corrective mechanisms.

Under the RH Law (RA 10354, 2012), the following acts are punishable: providers' refusal to provide RH services and refer patients for reasons other than "conscientious objection"; providers' refusal to perform emergency RH cases even if they were "conscientious objectors"; public officers' restriction or coercion in the use of FP services and refusal to provide budget for the program;

employers' influencing the use or non-use of contraceptives by employees, and their termination of an employee because of pregnancy or the number of her children; and pharmaceutical companies' collusion with government in the procurement, distribution and sale of FP products (Sec. 23). The RH Law's Implementing Rules and Regulations (2013) also mandates the reporting of complaints to the DOH, which shall investigate and then determine whether the complaints should be brought to the courts or be dealt with administrative sanctions (Sec. 16.04).

Complaints regarding the implementation of the RH Law can, likewise, be directed to the Philippine Commission on Human Rights (CHR). The CHR is an independent body created by the Constitution (1987) that has powers to investigate human rights violations; provide legal protection and legal aid services, especially where the aggrieved are marginalized; and monitor the Philippine government's compliance with international treaty obligations (Sec. 17). The CHR is also the designated "gender ombud" in the Magna Carta of Women (2009), tasked to monitor government agencies' compliance with women's human rights, establish guidelines and mechanisms to ensure women's legal protection, and assist in the filing of cases against individuals and entities that violate women's human rights (Sec. 39).

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3. Recommendations

1. Government agencies charged with implementing, enabling and ensuring Sexual and Reproductive Health and Sexual and Reproductive Rights—including the Department of Health, Population Commission, Department of Education, Department of Social Welfare and Development, Philippine Commission on Women, National Youth Commission, Department of Justice, Philippine National Police, and Commission on Human Rights—in all levels, must be informed about the latest sexual and reproductive rights (SRR) standards and its import and applications to the country. This is to enable them to apply due diligence and greater accountability in the performance of their duties towards the realization of SRR in the Philippines.

2. The Commission on Human Rights (CHR), as lead monitor and advocate for human rights, including SRR, should convene a working group comprising of key government agencies, civil society organizations and legislators who are familiar with SRR and committed to strategic reforms, to develop a national framework and parameters on SRR that will be used to regularly monitor the country's compliance, including violations; provide corrective measures and mechanisms; and advocate for executive, legislative and judicial reforms as warranted.

    - The CHR should enlighten public discourse and public policy about findings and recommendations by the human rights bodies, such as the Human Rights Council, on deficiencies or violations of SRR by the Philippines.
    - The CHR should open a center for the reporting, investigation, and addressing of SRR violations—whether by government, private, or civil society entities.

3. The Philippine Commission on Women (PCW) should lead government agencies in eliminating discrimination against women based on their sexual and reproductive choices and action. Beyond gender-based violence, the PCW must be a strong advocate of women's human rights and equality, e.g. in regard to women's access to sexual and reproductive health services; women's recourse to abortion; and women's choices and expressions of sexual orientation and gender identity.
    - The PCW should enlighten public discourse and public policy about findings and recommendations by the Committee on the Elimination of Violence against Women on deficiencies or violations of SRR by the Philippines.

4. CSOs should push and work to popularize SRR, especially international human rights standards and related scientific evidences, and their implications and applications to the Philippines.
    - CSOs should lead public discussions on critical but taboo SRR subjects, such as adolescent sexuality and reproductive health, abortion, and SOGI.
    - CSOs should lead in the popularization of people's entitlements under laws and policies—such as the various laws against GBV, the AIDS Law, RH Law and other policies—enable people's access to these entitlements, monitor the implementation, and ensure and improve implementation through constructive engagements.
    - CSOs should lead in building a broad and multisectoral constituency of supporters of SRR at the national and local levels who will actively engage in public education and discourse, implementation of laws and policies, monitoring and data-collection, and policy advocacy for fuller compliance with SRR standards.
    - CSOs should systematically monitor the organized opposition to SRR in order to prevent and counter their moves; and to institute measures to make them accountable.

5. Legislators at the national and local levels should help build and maintain an enabling environment for the full exercise of SRR by reviewing current laws, monitoring their implementation, amending discriminatory laws or enacting new ones, and ensuring budgets for SRHR programs.
    - Legislators must review and amend, as necessary, the various anti-GBV laws and the AIDs law; repeal the abortion law and decriminalize abortion; and enact law on SOGI.
    - Legislators at the national level must ensure that the Bangsamoro Basic Law will, at the very least, not discriminate against SRR; and enable access to SRH services.

Legislators at the national and local levels should help build and maintain an enabling environment for the full exercise of SRR by reviewing current laws, monitoring their implementation, amending discriminatory laws or enacting new ones, and ensuring budgets for SRHR programs.

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About Likhaan

Likhaan Center for Women's Health is an organization of grassroots and professional activists dedicated to transforming health policies and programs for women based on social justice, equity and human rights. Established in September 1995, our core issues include maternal mortality, contraception, abortion, sexual autonomy, and health care access for the poor.

Likhaan has three core programs: organizing and capacitating community women and youth leaders, developing women-sensitive primary and secondary health care, and advocating for law and policy reforms at local and national levels. In the context of Likhaan's three core programs, our thrust is to continue advocating for health policies and programs that will respond to the needs and preferences of poor women. These include the implementation of the Reproductive Health Law. Likhaan is also actively engaged in developing a package of national health reforms towards "Universal Health Care."

These core advocacies are complemented by community organizing and the operation of Women's Clinics. Community organizing develop community leaders' capacity to learn and promote basic health knowledge and skills and engage with local governments to get effective health and social services. The Women's Clinics provide needed services and demonstrate that a Primary Health Care approach that is sensitive to women's needs and rights and that welcomes the participation of community women is both effective and sustainable.

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About the Country Profile

This country profile has been developed by the Likhaan Center for Women's Health of the Philippines. It is one of 14 country profiles on universal sexual and reproductive rights covering Bangladesh, Cambodia, China, India, Indonesia, Lao PDR, Maldives, Malaysia, Mongolia, Nepal, Pakistan, the Philippines, Sri Lanka, and Vietnam, produced as part of an initiative on universal access to SRHR. This publication was produced with support from the Asian-Pacific Resource and Research Centre for Women (ARROW). ARROW receives core grants from Sida and the Ford Foundation. The contents of this publication are the sole responsibility of Likhaan. These profiles are available at likhaan.org and arrow.org.my.

Likhaan center for women's health

arrow

Sida