

LEGISLATIVE BRIEF

REALIZING A HEALTHY, EQUAL, AND THRIVING PHILIPPINES

THE ROLE OF ABORTION LAW REFORM
IN ACHIEVING THE NATION'S
DEVELOPMENT GOALS

CENTER
FOR
REPRODUCTIVE
RIGHTS

MISSION AND VISION

For more than 25 years, **the Center for Reproductive Rights** has used the power of law to advance reproductive rights as fundamental human rights around the world.

We envision a world where every person participates with dignity as an equal member of society, regardless of gender. Where every woman is free to decide whether or when to have children and whether to get married; where access to quality reproductive health care is guaranteed; and where every woman can make these decisions free from coercion or discrimination.

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I. INTRODUCTION

Respecting, protecting, and fulfilling women’s access to reproductive rights is essential to achieving a healthy, equitable, and developed Philippines. The International Conference on Population and Development Programme of Action, adopted by the Philippines in 1994, recognized that reproductive rights are a central part of ensuring a country’s development.¹ This recognition was reaffirmed in the recent Sustainable Development Goals, which call for universal access to reproductive health and rights.² Despite the widespread consensus on the significance of realizing women’s reproductive rights, the Philippine restrictive legal landscape on abortion continues to impede the country’s progress toward achieving sustainable development.

This briefing paper discusses the grave impact of the country’s restrictive abortion laws on women’s health and rights and the development of the nation. It highlights the critical role Congress members can play in fulfilling the government’s obligation to realize Filipinos’ reproductive rights. This includes ensuring that the constitution and country’s penal laws clearly legalize abortion, at a minimum, when a pregnancy endangers the life or physical or mental health of the pregnant woman.

CONGRESS AND WOMEN’S RIGHTS

Law and policymakers play an essential role in ensuring the full realization of women’s and girls’ rights and achieving a country’s health and development goals. International law recognizes that a legislator’s political will is crucial for strengthening a country’s legal framework on women’s rights. As the principal lawmaking body of the government, the Philippine Congress has a legal obligation to eliminate legislative barriers and repeal laws that perpetuate gender inequality and discriminate against women,¹ particularly those that criminalize or undermine access to reproductive health and services.² The Philippine Congress must ensure that religious ideologies are not used as the basis for secular laws that undermine women’s health and well-being.³ Furthermore, it must proactively enact and implement laws in accordance with international human rights norms and standards, including those guaranteeing adequate public funding for the implementation of projects and programs that help advance women’s rights.⁴ Finally, Congress should legislate measures that address the specific needs of vulnerable and disadvantaged groups of women, such as adolescent girls, rural women, poor women, and pregnant women and girls.⁵

II. CURRENT LEGAL FRAMEWORK ON ABORTION

The Philippine Congress, composed of the House of Representatives and the Senate, can play a vital role in shaping and improving the country's legal framework on abortion, including in the Philippine Constitution and the Revised Penal Code (RPC).³ As the legislative branch of the Philippine government, Congress has the ability to modify and repeal the RPC. In addition, when convened as a constituent assembly, Congress can also propose amendments and revisions to the constitution.⁴ A closer look at both the RPC and constitution reveals the significant need to ensure that any reform to these laws includes modifying the provisions of each that have effectively led to abortion being criminalized without any clear exceptions.

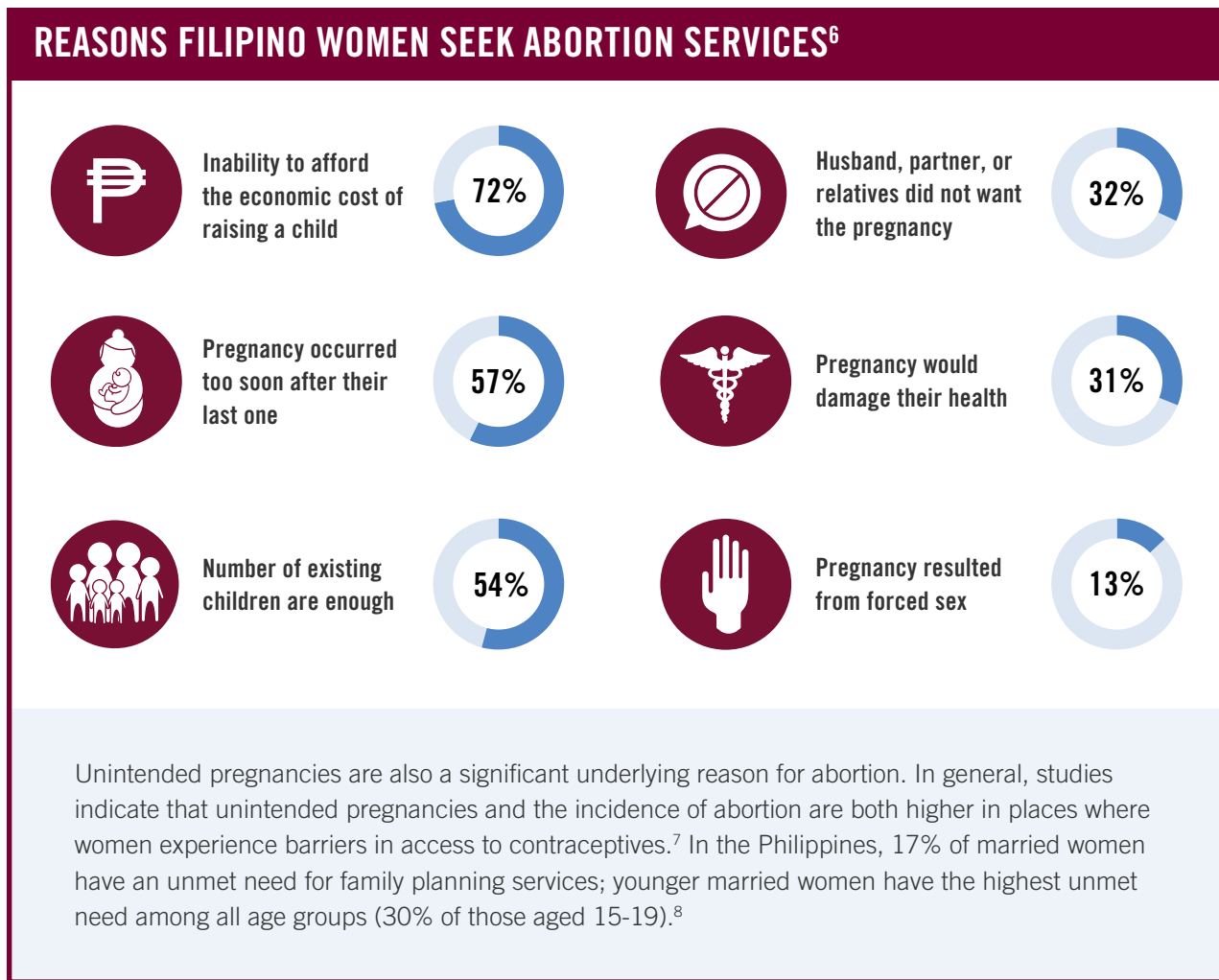
The RPC, an almost century-old law based on the Spanish Penal Code of 1870, defines abortion as a crime and imposes prison sentences ranging from one month to a maximum of 20 years for an individual found guilty of performing, supporting, or having an abortion.⁵ Under the general provisions of “justification” and “necessity”—the same principles that allow self-defense—the RPC can be interpreted to impose no criminal liability when an abortion is performed to save the life or health of the woman or girl because it was done “in order to avoid an evil or injury”⁶ or under the “impulse of an uncontrollable fear of an equal or greater injury.”⁷ However, because these defenses have not yet been adjudicated before a court of law, many health care providers fear openly providing safe abortions services under any circumstances.⁸ This ambiguity is perpetuated by recent laws and policies on reproductive health which affirm the “illegality” of abortion.⁹ The lack of legal clarity and fear of criminal liability put health care providers in a difficult situation. Many assume that they must turn away patients who seek an abortion, including in cases when the pregnancy poses a risk to the woman's or girl's life or health.¹⁰

The Philippine Constitution does not expressly refer to or prohibit abortion. It may be interpreted to allow abortion in certain circumstances, including at a minimum when the life or physical or mental health of the woman or girl is at risk. However, in addressing the question of whether a law allowing access to contraceptives that are abortifacients violates the constitution,¹¹ the Supreme Court narrowly interpreted Section 12 of the constitution's Declaration of Principles and State Policies, which contains provisions generally considered as “guidelines for executive or legislative action,”¹² as a “constitutional policy prohibiting abortion.”¹³ Section 12 calls upon the government to “equally protect the life of the mother and the life of the unborn from conception.”¹⁴ While this provision establishes the need to protect the life of a pregnant woman in addition to the fetus, the Court failed to prioritize a woman's life in their decision and ignored a woman's fundamental rights enshrined in the constitution's articles on the Bill of Rights and on Social Justice and Human Rights.¹⁵ Protecting these rights, which are violated when access to abortion is denied, should take precedence over any state interest in protecting the fetus.

Given Congress' unique mandate to lead any constitutional or penal code reform processes as well as its responsibility to ensure the realization of women's and girls' health and rights, legislators seeking to further the Philippines' sustainable development should ensure that any efforts on law reform push for the clear recognition of legal access to abortion at a minimum when a pregnancy poses a risk to the mother's life or health.

III. HOW RESTRICTIVE ABORTION LAWS HARM DEVELOPMENT, PUBLIC HEALTH, AND EQUALITY

Where restrictive abortion laws are in place, women are forced to undergo unsafe procedures that can pose a significant threat to their health and lives. Restrictive abortion laws also undermine a country's national development, including efforts to improve public health or end poverty. To effectively achieve development goals, like those related to public health, Congress must undertake a law reform process to reduce unsafe abortions and empower women and girls to fully realize their reproductive rights.



1. Legal Restrictions Do Not Reduce the Need for or Incidence of Abortion, But Only Make It Unsafe

Studies have shown that abortion rates are lower in countries with liberal abortion laws and where contraceptive information and services are accessible.¹⁶ According to the World Health Organization (WHO), restrictive laws on abortion do nothing to achieve the purported goal of reducing abortion; instead, they result in an increased number of women seeking unsafe abortions and facing avoidable complications or death.¹⁷ In the Philippines, restrictive abortion laws drive women to seek services from providers lacking the necessary skills and/or under unhygienic and dangerous conditions.¹⁸ Because of restrictions, abortions are performed clandestinely and there is no official data on the actual number of women undergoing abortions each year. Independent studies, however, show that there has been a steady increase in the number of abortions in the country. Estimates show that the incidence of abortion has increased from 560,000 in 2008 to 610,000 in 2012.¹⁹

MARICEL'S STORY: *THE FATALITY OF ABORTION STIGMA*

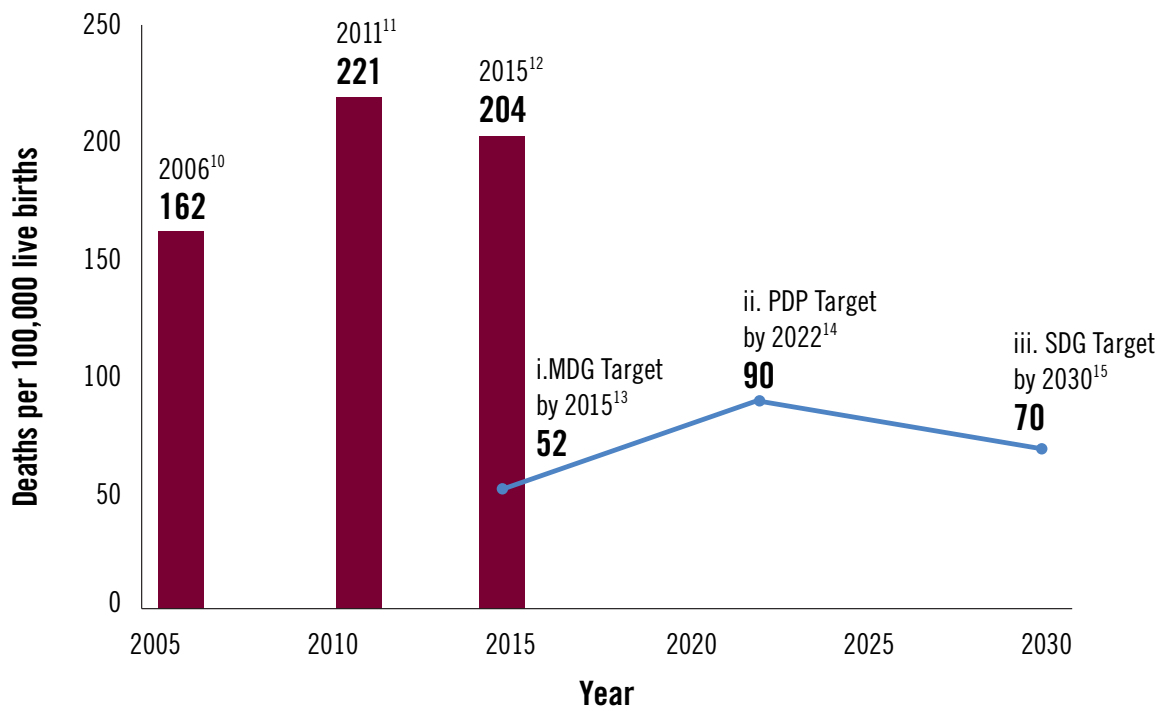
Maricel, an 18-year-old mother of one, tragically died after she delayed seeking lifesaving medical attention for abortion complications because she feared the law and being punished. She was granted a visa to work abroad as a domestic worker, and became pregnant when breastfeeding failed as a method of contraception. If she continued with the pregnancy, she would have been forced to give up the job opportunity. As a result, she tried to induce an abortion to avoid jeopardizing her employment.⁹ Unfortunately, her efforts led to fatal complications, which if treated immediately could have saved her life.

2. Restrictive Abortion Laws Contribute to the Philippines' Increasing Maternal Mortality and Morbidity Rates

Abortion is a safe medical procedure when done according to WHO standards.²⁰ However, legal abortion restrictions cause many women in the Philippines to suffer life-threatening complications. The number of women hospitalized for abortion complications increased from 90,000 in 2008 to 100,000 in 2012.²¹ These numbers can be expected to continue rising as the Philippine population and demand for services increases. Common complications of unsafe abortion include blood loss, hemorrhage, sepsis, infection, perforation of the uterus, damage to other internal organs, and death.²²

Unsafe abortion is also one of the leading causes of maternal mortality worldwide²³ and in the Philippines.²⁴ The number of abortion-related deaths in the country is estimated at 1,000 deaths annually, which contributes to the country's high maternal mortality ratio (MMR) and poor progress in achieving its international and national development goals.²⁵ Furthermore, due to stigma from legal restrictions on abortion, even women with potentially fatal complications may be forced to continue their pregnancies to term, undermining government efforts to reduce maternal mortality.²⁶

PHILIPPINES NOT ON TRACK TO MEET MATERNAL HEALTH GOALS



— MMR Targets

■ Actual MMR in the Philippines

- i. MMR target under the Millennium Development Goals by 2015
- ii. MMR target under the 2017-2022 Philippine Development Plan
- iii. MMR target under the 2015-2030 Sustainable Development Goals

3. Unsafe Abortions Due to Restrictive Laws Lead to Preventable Public Health Costs

The government could save over half a billion Philippine pesos (Php), approximately USD 10 million, every year by reforming its laws to ensure safe access to abortion. Payments for post-abortion care by the Philippine Health Insurance Corporation more than doubled in the past three years—from Php 250 million (approximately USD 5 million) in 2014 to Php 570 million (approximately USD 11 million) in 2016.²⁷ These costs do not include the time women spend in hospitals for treatment and recovering from preventable complications due to unsafe abortion. This time away also has social implications, leading to women's lower participation in national, community, and family matters because it takes them away from attending school, engaging in livelihood, and participating in family life.²⁸

GROWING NEED FOR REPRODUCTIVE HEALTH SERVICES

The population of the Philippines is projected to reach over 107 million by the end of 2018. Almost 28 million of these Filipinos are women of reproductive age (aged 15-49) who are the intended beneficiaries of reproductive health services under the country's national reproductive health law.¹⁶ However, with the increasing trend of pregnancies among girls 10 to 14 years old, government estimates show that the number of women and girls of reproductive age could reach over 33 million by the end of the year, comprising almost 31% of the population.¹⁷

4. Provisions Intended to Restrict Abortion Lead to Stigma and Barriers for Other Legal Health Services

Laws aimed at restricting access to abortion undermine access to other reproductive health services in the Philippines, including the implementation of the Responsible Parenthood and Reproductive Health Act of 2012 (RPRHA). This law guarantees Filipinos' access to reproductive health services, including modern contraceptives and post-abortion care.²⁹ However, given the stigma of abortion, RPRHA has not been widely accepted in practice. For example, a legal challenge filed before the Supreme Court by anti-choice groups improperly claimed that certain registered contraceptives are abortifacients—access to which is excluded under the law's definition of reproductive health rights.³⁰ In response to the case, the Court issued a restraining order in 2015 that remained in effect for over two years which prevented the use of certain hormonal contraceptives.³¹ In 2017, the Court issued a ruling requiring all modern contraceptives, after due notice and hearing, to be certified by the Food and Drug Administration as non-abortifacients before they could be made publicly available.³² The Court's order has undermined the implementation of RPRHA by limiting access to modern contraceptives, which has consequently increased the number of unintended pregnancies and negatively impacted development efforts.³³ The right to sexual and reproductive health care, including contraceptive information and services, have long been recognized as essential elements of development efforts. In fact, these rights are included under the Sustainable Development Goals and 2017-2022 Philippine Development Plan (PDP).³⁴ The PDP pledges that the government will provide sexual and reproductive health services from adolescence to adulthood to “promote the long and healthy lives of Filipinos” and accelerate full implementation of the RPRHA.³⁵

By criminalizing abortion with no clear exceptions, the RPC has caused harmful stigma for women needing care for miscarriages or complications from unsafe abortions. This stigma has also led to significant barriers in access to post-abortion care. While national laws guarantee women the right to access quality, compassionate and nonjudgmental post-abortion care, in reality this does not hold true.³⁶ The criminalization of abortion has resulted in many women being physically and verbally abused, harassed, threatened, intimidated, and discriminated against when seeking medical treatment for abortion-related complications, regardless of the circumstances surrounding the abortion.³⁷ These forms of abuse, which may include outright denial of life-saving treatment, stem from a misconception among health care providers that post-abortion care is aiding or abetting a crime (i.e. abortion). Many health care providers in such situations also feel the need to assert their moral authority and “teach a lesson” to women who have had abortions and are therefore perceived as criminals.³⁸ The U.N. Human Rights Committee has

found that “the shame and stigma associated with the criminalization of abortion” can exacerbate the physical and mental anguish a pregnant woman experiences.³⁹ The U.N. Committee on the Elimination of Discrimination against Women (CEDAW Committee) has similarly found that criminalizing abortion “serves no known deterrent value...[and] has a stigmatizing impact on women.”⁴⁰

DIANE’S STORY: *THE TRAGEDY OF ABUSE AND DENIAL OF CARE*

Diane was repeatedly beaten by her partner. During one assault, her partner kicked her abdomen while she was six months pregnant. Several weeks after the incident, Diane suspected that something was wrong with her pregnancy. When she consulted a private clinic, she learned that the fetus had died in utero and she urgently needed a procedure to avoid sepsis. She requested the termination at four different government hospitals and was refused every time. The reasons for denying the abortion varied. Some staff members inaccurately considered the evacuation of a dead fetus as an abortion that is not allowed under the law. Others suspected that Diane had induced an abortion and was therefore not deserving of proper care. There were also staff who did not categorize her condition as an emergency in need of urgent treatment. A private birthing home finally accepted her and agreed to clandestinely provide medical care without maintaining any records of the procedure. The entire experience left Diane utterly traumatized.¹⁸

5. Criminalizing Abortion Perpetuates Gender Inequality

Gender inequality is a critical barrier toward achieving human development goals.⁴¹ In a 2016 report, the Philippines ranked 116 out of 188 countries on the Human Development Index⁴² and 96 out of 159 countries on the Gender Inequality Index.⁴³ Measuring the human development costs of gender inequality, these indexes reflect how women in the Philippines continue to face discrimination in various areas, including with respect to their reproductive health. As part of the Sustainable Development Goals, governments are expected to promote gender equality and empower women and girls.⁴⁴ The Philippine Development Plan envisions a “society where there is equality of opportunities” and identifies “inequality-reducing transformation” as one of its major pillars to achieve the country’s developmental targets.⁴⁵ To achieve gender equality, the Philippine government must take steps to overcome systemic disadvantages faced by women and girls, particularly in the area of reproductive health given their reproductive capacities and health needs.⁴⁶

While the enactment of the RPRHA is a step toward improving women’s reproductive health, abortion laws which criminalize health services that only women need are discriminatory against women and perpetuate gender inequality.⁴⁷ These kinds of laws discriminate against women by undermining their capacity to make informed decisions about their bodies and lives. Denying women access to abortion can also force them to carry an unwanted pregnancy to term, which has been recognized as violating a range of fundamental human rights, including the right to life, health, non-discrimination, privacy, and freedom from cruel, inhuman, and degrading treatment as well as a woman’s right to decide the number and spacing of her children.⁴⁸ The government should recognize that ensuring access to safe and legal abortion is as important as guaranteeing women equal access to basic social and economic services such as education, employment, livelihood opportunities, social security, housing, water, and sanitation.

6. Restrictions on Abortion Disproportionately Harm Poor Women and Perpetuate Poverty

Restrictive laws on abortion disproportionately impact poor women who are more often forced to resort to riskier methods of abortion⁴⁹ without access to safer options. Unlike women from higher economic backgrounds who can afford skilled providers or travel abroad to undergo legal and safe abortions, most poor women rely on herbal concoctions, painful abdominal massages, or the insertion of a catheter or other object into the uterus to terminate a pregnancy, treatments which most often result in complications and life-threatening injuries.⁵⁰

Poverty and socio-economic status are also significant factors for women when deciding whether or not to undergo an abortion. Poor women face disproportionate barriers in accessing contraceptive information and services that would help prevent unintended pregnancies.⁵¹ In addition to lack of access to contraceptives, cost also factors into many women's decision-making. An estimated three out of four women who have had an abortion identified their inability to shoulder the costs of raising a child as a reason for their decision.⁵² The CEDAW Committee, in recognizing the link between violating a woman's right to control her fertility and poverty in the Philippines, stated that by "limiting women's rights to freely choose the number and spacing of their children, women and girls [are] effectively undermined in accessing and pursuing the same education and employment opportunities as men, thereby [driving them] further into or maintained in poverty."⁵³ In another report, the CEDAW Committee noted that there is a "direct correlation between the adverse effects of the criminalization of abortion and worsening socio-economic status" and that the "criminalization of abortion has a particularly adverse impact on women in situations of poverty."⁵⁴

HAYDEE'S STORY: *FEARING FOR HER LIFE*

Haydee, a married mother of one living in a poor, urban, and informal settlement, developed severe hypertension during her first pregnancy. During her second pregnancy, she suffered a stroke that left her face temporarily paralyzed and ultimately led to the termination of her pregnancy. As a result of her history, Haydee was warned not to become pregnant again because it could be fatal. Due to financial and practical barriers in accessing safe contraceptives to use with her medical condition, Haydee experienced two subsequent unintended pregnancies. Fearing for her life, she sought an abortion for both pregnancies. Despite the fatal condition of her pregnancy, private doctors denied her request for an abortion on both occasions because they said it was a "sin." Haydee was forced to resort to induce an abortion herself by taking Cytotec, a brand of misoprostol, at home without medical guidance. While the first abortion did not result in any serious complications, her subsequent attempt caused heavy bleeding for more than four weeks. When Haydee sought medical treatment at a government hospital, the staff coerced her into admitting that she had induced the abortion, scolded her for committing a "sin" and "killing her own child," and threatened to report her to the National Bureau of Investigation.¹⁹

IV. THE “EQUAL PROTECTION” OF PREGNANT WOMEN’S LIVES NECESSITATES ALLOWING ABORTION ON LIFE AND HEALTH GROUNDS AT A MINIMUM

Clearly establishing the legality of abortion at a minimum in cases when the woman’s or girl’s life or physical or mental health is at risk would allow the Philippine Congress to fulfill its mandate to reform laws that jeopardize women’s health and perpetuate gender discrimination. While the RPC and constitution have been subjected to overly restrictive interpretations, which have created a chilling effect on access to abortion, national, international, and comparative legal norms recognize that women’s and girls’ rights take precedence over any state interest in protecting the life of a fetus. These norms and standards make it clear that there is nothing that bars Congress from ensuring respect for women’s and girls’ rights by clarifying on its own when abortion may be allowed under the constitution and RPC.

Clear Intent of the Framers of the Constitution

While there is no definitive prohibition against abortion under the Philippine Constitution, its Declaration of Principles and State Policies states that the Philippine government “shall equally protect the life of the mother and the life of the unborn from conception.”⁵⁵ During deliberations on this provision, the framers of the constitution recognized that abortion is permitted when the intended effect is to save the life of the pregnant woman and rejected pleas from conservative groups to totally ban abortion.⁵⁶ The framers also rejected a proposal to include a statement in the Bill of Rights that states, “[t]he right to life extends to the fertilized ovum.”⁵⁷ It will therefore be in accordance with the intent of the framers to clearly allow abortion at a minimum in cases when the woman’s or girls’ life or physical or mental health is at risk.

Favorable Opinion of Legal Experts

Constitutional law experts have expressed that the Philippine policy on the equal protection of a pregnant woman and a fetus is “not an assertion that the unborn is a legal person... or an assertion that the life of the [fetus] is placed exactly on the same level of the life of the [woman].”⁵⁸ For legal experts, the policy recognized that it may be “necessary and legitimate to sacrifice the life of the unborn” to save the life of the woman.⁵⁹ Although these legal interpretations have not been tested before the courts in an actual case, it is clear that the constitution may be liberally construed in favor of allowing abortion, at the minimum, in cases where a pregnancy poses a risk to the woman’s or girls’ life or health.

National and International Laws Do Not Recognize Rights Prior to Birth

A fetus does not have rights under national and international laws and jurisprudence. Philippine civil laws together with past Supreme Court decisions express that legal personality begins at birth and that recognizing life does not confer legal personality or rights to the fetus.⁶⁰ Under the Philippine Civil Code, birth is necessary for a fetus to acquire rights; without actually being born alive, a fetus cannot exercise any rights, not even through a representative.⁶¹ In one case, the Supreme Court declared that a fetus is “not endowed with personality” and is therefore unable to have legal rights if it dies before natural birth.⁶² In another case, the Supreme Court cited the state policy on the equal protection of a pregnant woman and a fetus, finding that when a death has occurred it does not mean that a legal personality had existed.⁶³

Treaties and international agreements to which the Philippines is a party to have also recognized that human rights are not conferred prenatally. The Universal Declaration of Human Rights (UDHR) emphasized the importance of “birth” in acquiring human rights, declaring that “[a]ll human beings are born *free and equal in dignity and rights*.”⁶⁴ The drafting notes of the UDHR demonstrate that the reference to birth was included specifically to exclude the possibility of extending the right to life to a fetus.⁶⁵ Furthermore, the drafters of the International Covenant on Civil and Political Rights specifically considered and rejected a proposal to include a definition of the right to life in Article 6(1)⁶⁶ which stated that “the right to life is inherent in the human person from the moment of conception, [and] this right shall be protected by law.”⁶⁷ Furthermore, while the Preamble of the Convention on the Rights of the Child (CRC) states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,”⁶⁸ the notes of the history of the negotiations of the convention reflect that it “was not [meant] to preclude the possibility of abortion.”⁶⁹ In interpreting the CRC, the Committee on the Rights of the Child has even called on states to decriminalize abortion and ensure adolescents have safe access to abortion.⁷⁰

COMPARATIVE JURISPRUDENCE ALLOWING ACCESS TO ABORTION DESPITE PRENATAL PROTECTION

In several countries, constitutional courts have allowed women to legally access abortion under limited circumstances despite an existing constitutional recognition or legal protection of fetal interests.²⁰ Upholding the primacy of women's rights, these courts have liberally interpreted their constitutions in favor of women accessing safe and legal abortion in certain situations.

Spain

The penal provision on abortion in the Philippines is based on Spain's former penal code. While the Philippine law has remained in place, Spain now allows abortion up to 14 weeks of pregnancy.²¹ The Constitutional Court of Spain explained that the prevalence of the pregnant woman's life over fetal interests is constitutional because "if the life of the 'one to be born' were protected unconditionally, the life of the unborn would be more protected than the life of the already born [the mother], and the mother would be penalized for defending her right to life." On allowing abortion when there is a threat to the physical and mental health of a pregnant woman, the court noted "that the mother's health takes precedence is not unconstitutional either, especially when taking into consideration that the requirement that she make such an important and difficult sacrifice to her health under the threat of penal sanction can be considered inadequate [to motivate such a sacrifice]."²² The court also allows abortion on the grounds of fetal impairment and rape because of the situation's harmful impact on a pregnant woman's dignity and free development.²³

Ireland

The Irish Constitution acknowledges the "right to life of the unborn and with due regard to the equal right to life of the mother."²⁴ The Irish Supreme Court has stated that the recognition of a right to life of the unborn is not an absolute ban on abortion, and has permitted abortion when "it can be established as a matter of probability that there is a real risk to the life [including risk of suicide], as distinct from the health, of the mother which can only be avoided by the termination of her pregnancy."²⁵ Ireland recently voted in a referendum to repeal the provision on the equal right to life of the unborn and mother and a new law allowing abortions during the first 12 weeks of pregnancy and up to the 24th week in limited circumstances is expected to be enacted by the end of 2018.²⁶

Germany

The German Constitutional Court acknowledges that while a fetus has a constitutional right to protection based on the right to life enshrined in their constitution, abortion is permitted when protecting fetal interests severely affects a woman's right to life and health. The court explained that in a situation where a woman's health is endangered, "her own 'right to life and bodily inviolability' is at stake, the sacrifice of which cannot be expected of her for the unborn life." Other circumstances carved out by the court include pregnancies caused by rape, fetal impairment, and other "social or emergency" situations, all of which qualify as such extraordinary burdens that they outweigh the protection of fetal interests.²⁷

Italy

In balancing the "constitutional right to protection" of a pregnant woman and a fetus, the Constitutional Court of Italy has explained that the potential for life of a fetus cannot outweigh the right to life and health of a fully developed human being. They reason that this is because "there is no equivalence between the right not only to life, but also to health of someone who already is a person, such as the mother, and safeguarding the embryo that has yet to become a person."²⁸

V. A WAY FORWARD FOR THE PHILIPPINES

Ensuring women’s and girls’ access to abortion is a crucial step toward realizing a healthy, equitable, and developed nation. The CEDAW Committee has found that the “strict criminalization of abortion without any exemptions” in the Philippines has contributed to the “potentially life-threatening consequences of unplanned and/or unwanted pregnancies.”⁷¹ The CEDAW Committee also called on the Philippine government to “legalize abortion in cases of rape, incest, threats to the life and/or health of the mother, or serious malformation of the fetus and decriminalize all other cases where women undergo abortion, as well as adopt necessary procedural rules to guarantee effective access to legal abortion.”⁷² Similar recommendations on the need to remove punitive abortion provisions have been expressed by other U.N. bodies and human rights experts. These bodies and individuals have recognized the deleterious effects of the country’s criminal abortion provisions and acknowledged the link between unsafe and clandestine abortions and the high number of maternal deaths in the Philippines.⁷³ Additionally, recognizing the harms of restrictive abortion laws, the Commission on Human Rights called on the government to review the country’s laws on abortion and take note of the recommendations issued by CEDAW.⁷⁴

Given the extent and gravity of the harms caused by restrictive abortion laws in the Philippines, it is essential that any efforts to review the constitution and the RPC should prioritize women’s and girls’ reproductive health and respect their fundamental rights. Although both the RPC and constitution may be interpreted to allow abortion under certain circumstances, Congress should still adopt measures to avoid further restrictive interpretations of these laws and remove any doubts on the grounds when abortion may be allowed. Congress should also ensure that there is no language in the constitution that may be construed to restrict women’s access to abortion and immediately take steps to amend the RPC in accordance with established legal norms and clearly allow abortion at a minimum in cases of pregnancies that endanger the life or physical or mental health of the woman or girl.

CALL FOR CONGRESSIONAL ACTION

By clarifying ambiguities in Philippine law and setting distinct legal standards, Congress can take a crucial step in realizing Filipino women’s reproductive rights and leading the country toward achieving its health and development goals. Congress should:

- 1** As a legislative body, reform the Revised Penal Code to clarify that abortion may be legally performed at a minimum in cases when the woman’s or girl’s life or physical or mental health is at risk; and
- 2** As a constituent assembly, ensure that no language is included in the constitution that jeopardizes women’s and girls’ fundamental rights—particularly their right to life, health, liberty, bodily integrity, privacy, autonomy, dignity, equality, non-discrimination, and freedom from cruel and inhuman treatment—by precluding legal access to abortion.

“I want the law to see women’s situation on a ‘case-to-case’ basis. They should see if continuing the pregnancy would mean worsening the woman’s situation. Why should a woman bring a child into this world just to suffer?... If only the government would see the women’s situation, there would be no need for secrecy and untimely deaths. It is the fear of stigma [and] lack of knowledge that are stopping women from seeking help even if they are already bleeding to death...If it is legal, then hospitals will provide safe service to all women who need it.”

Imelda, a 30-year-old housewife in a family with no steady income and four children²⁹

ENDNOTES

- 1 Programme of Action of the International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995).
- 2 See, U.N. General Assembly Res. 16/35, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015) [hereinafter *Transforming our world: the 2030 Agenda for Sustainable Development*].
- 3 THE CONSTITUTION OF THE PHILIPPINES, 1987, art. VI.
- 4 *Id.*, at art. XVII.
- 5 PHIL. REVISED PENAL CODE (Act No. 3815), arts. 256-259 (1930).
- 6 PHIL. REVISED PENAL CODE, Act No. 3815, art. 11 (4) (The following requisites must be present: (a) the evil sought to be avoided actually exists; (b) the injury feared be greater than that done to avoid it; and (c) there is no other practical and less harmful means of preventing it).
- 7 See, *Ty v. Philippines*, G.R. No. 149275, September 27, 2004, citing *People v. Petenia*, G.R. No. L-51256, August 12, 1986 (For this exempting circumstance to be invoked successfully, the following requisites must concur: (1) existence of an uncontrollable fear; (2) the fear must be real and imminent; and (3) the fear of an injury is greater than or at least equal to that committed).
- 8 CENTER FOR REPRODUCTIVE RIGHTS, *Forsaken Lives: The Harmful Impact of the Philippine Criminal Abortion Ban*, 65-67 (2010) [hereinafter *Forsaken Lives*].
- 9 See e.g., AN ACT PROVIDING FOR A NATIONAL POLICY ON RESPONSIBLE PARENTHOOD AND REPRODUCTIVE HEALTH, REP. ACT No. 10354, sec. 3(j) (2012), available at <https://bit.ly/2HGiwfw> [hereinafter RPRHA]; NATIONAL POLICY ON THE PREVENTION OF ILLEGAL AND UNSAFE ABORTION AND MANAGEMENT OF POST-ABORTION COMPLICATIONS, 1 (2018) available at <https://bit.ly/2jeVC09>.
- 10 *Forsaken Lives*, supra note 8 at 66-67.
- 11 James M. Imbong and Lovely-Ann C. Imbong v. Hon. Paquito N. Ochoa, Jr. and Others, G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 and 207563, (S.C., Apr. 8, 2014) (Phil.) [hereinafter *Imbong v. Ochoa*].
- 12 Kilosbayan Inc. et. al. v. Manuel Morato and Philippine Gaming Management Corporation, G.R. No. 118910, November 16, 1995.
- 13 *Imbong v. Ochoa*, supra note 11.
- 14 THE CONSTITUTION OF THE PHILIPPINES, 1987, art. II, sec. 12.
- 15 *Id.*, at art. II, sec. 1, 5, 9, 11, 14, 15, art. XIII, sec. 1, 11, 12, 14.
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