

The Constitutionality of a Reproductive Health Care Law



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I. Introduction

A reproductive health care law (RH law) is consistent with existing laws such as the Local Government Code of 1991, Magna Carta of Women (RA 9710), Philippine AIDS Prevention and Control Act of 1998 (RA 8504), and international laws.

An RH law upholds rights that are constitutionally guaranteed. It upholds the rights to reproductive health, equal protection of the law and privacy. An RH law will contribute towards the decrease in number of unintended pregnancies and maternal deaths related to pregnancy, childbirth, and unsafe abortion which could be averted with increased access to modern contraceptives, sexuality education, and maternal care services including skilled birth attendants and emergency obstetric care.

An RH law upholds the constitutional guarantees on separation of church and state and non-establishment of religion and clearly manifests that conservative religious beliefs should not be used as basis for crafting Philippine laws. Public officials must enact laws that ensure women's right to life and health and public health and not those that aid religion. As decided by our Supreme Court, our standard in law should be secular standard and not religious standards. All these constitutional guarantees are there to maintain public good and uphold human rights.

Our laws should take into consideration international human rights standards, realities women face, public health, and medical science. Public officials should work towards a humane society where no woman should die from pregnancy, childbirth, and unsafe abortion. Good governance demands ensuring the right to control one's fertility with proper access to information, supplies and services on reproductive health including modern contraceptives and the right to sexuality education.

In light of the obligation of the Philippine government to protect women's rights to equality, non-discrimination, life and health under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Magna Carta of Women, it is imperative that the Philippine Congress immediately enact an RH law.

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A. Access to Contraceptives is a Fundamental Right

Access to supplies, services and information on modern contraceptives is a fundamental part of a person's basic human right to sexual and reproductive health. Modern contraceptives reinforce people's rights to determine the number and spacing of their children, prevent unintended pregnancies, and reduce the need for unsafe abortion. With access to modern contraceptives, people are able to attain their desired number of children and determine the spacing of pregnancies.

Modern contraceptive supplies and services should be made available and accessible to all Filipino citizens who would want to use them.

A.1. The Standard Definitions Based on International Medical, Scientific, and Human Rights Standards

A.1.a. Fertilization, Conception, and Pregnancy

The term conception should be differentiated from fertilization. Pregnancy begins with the implantation of the fertilized egg in the uterine wall.¹ The medical community has long differentiated fertilization from conception by defining that conception begins with the implantation of the fertilized egg on the uterine wall.²

A.1.b. Legal Personality Attaches upon Birth

The fetus does not have human personality. Article 41 of the Civil Code defines legal persons. Under Article 41 of the Civil Code, a fetus must be born alive (completely delivered from the mother's womb) to be considered a person endowed with legal personality, as follows:

Article 41. For civil purposes, the fetus is considered born if it is alive at the time it is completely delivered from the mother's womb. However, if the fetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four hours after its complete delivery from the maternal womb.

¹ WILLIAMS OBSTETRICS 664 (19th ed. 1993).

² Obstetric-Gynecologic Terminology 299, Edward C. Hughes, American College of Obstetricians and Gynecologists ed., 1972; WILLIAMS OBSTETRICS, id.

The question of when human life begins is not important since what is recognized in law is that human personhood begins with birth.³ The fetus (or “unborn” as used by the anti-choice groups) is not placed exactly on the same level as the life of the woman. The fetus is not accorded with the same rights and protection as legal persons.

In the South African case of *Christian Lawyers Association of South Africa v. The Minister of Health*, Case No. 16291/97 (10 July 1998), a group sued the South African Minister of Health to declare the 1996 Choice on Termination of Pregnancy Act unconstitutional based on section 11 of the 1996 Constitution providing that “everyone has the right to life” and on the argument that a fetus is included in “everyone”. The Court ruled that “everyone” was a legal alternative expression to “every person,” and historically legal personhood commences only at live birth. The Court ruled that it was not necessary to address the claim on the biological beginning of human life, since it cannot be concluded that the human life that had begun was that of a legal person. The Court followed the observation that “the question is not whether the conceptus is human but whether it should be given the same legal protection as you and me.”

In the 1991 Canadian case of *R. v. Sullivan*, 1 S.C.R. 489, the Supreme Court held that a fetus in the birth canal is not a “person” or a “human being” for the purposes of criminal law and thus the midwives assisting in delivery at the time of death cannot be convicted of criminal negligence causing death to another person.⁴

In Case 2141 of the Inter-American Commission on Human Rights (IACHR), the IACHR held that the phrase “in general, from the moment of conception” in the American Convention on Human Rights does not confer a right to life for the fetus, and therefore a doctor performing a late-term abortion need not be held guilty of murder by a state court.⁵

In the Canadian case of *Tremblay v. Daigle* (1989) 62 D.L.R. (4th) 634, the Supreme Court of Canada held that a father has no legal right based on his interest in a fetus to support an injunction to restrain an abortion as a fetus does not have a right to life and is not a “human being” within the Quebec Charter.⁶

In the Canadian case of *Winnipeg Child and Family Services (NW Area) v. G.(D.F.)* (1997) 152 D.L.R. (4th) 304, the Supreme Court of Canada held that a pregnant woman addicted to drugs cannot be involuntarily detained in order to prevent harm to her fetus as legal rights only accrue at birth and the *parens patriae* jurisdiction of the court does not apply to unborn children.⁷

³ Williams, Glanville, The fetus and the “right to life” *Cambridge law J* 1994; 33:71-78, at 78; see R.J. Cook, B.M. Dickens, Human Rights and Abortion Laws, *International Journal of Gynecology & Obstetrics* 65 (1999), at 85, citing *Christian Lawyers Association of South Africa v. The Minister of Health*, Case No. 16291/97 (10 July 1998).

⁴ *R. v. Sullivan*, 1 S.C.R. 489, available at <http://www.canlii.ca/ca/cas/scc/1991/1991scc22.html>

⁵ Case 2141, Inter-Am. C.H.R. 25/OEA/ser. L./V./II.54, doc. 9 rev. 1 (1981), available at <http://www.cidh.oas.org/annualrep/80.81eng/USA2141.htm>.

⁶ *Tremblay v. Daigle* (1989) 62 D.L.R. (4th) 634, available at <http://www.canlii.ca/ca/cas/scc/1989/1989scc96.html>.

⁷ *Winnipeg Child and Family Services (NW Area) v. G.(D.F.)* (1997) 152 D.L.R. (4th) 304, available at <http://www.canlii.ca/ca/cas/scc/1997/1997scc98.html>.

A.1.c. Child under the Convention on the Rights of a Child

The so-called “unborn” is not a child since the recognized definition of a child is “every human being below the age of eighteen years” as defined under Article 1 of the Convention on the Rights of the Child (CRC).

A.2. Contraceptives Are Not Abortifacient; Hysterectomy Is Not a Method of Abortion

Hormonal contraceptives, IUDs, and other modern methods of contraception and even hysterectomy are not methods of abortion. Contraceptives do not cause abortion since they do not disrupt an existing pregnancy⁸ as opposed to abortifacients that terminate an established pregnancy.

A.2.a. Definition of Contraceptives

Under Republic Act 9711, it is the Food and Drug Administration (FDA) that has the authority to regulate drugs and other devices. Hormonal contraceptives, IUDs, and other modern methods of contraception are approved by the FDA as legal and effective means of preventing pregnancy. These modern contraceptive methods are included in the Philippine National Drug Formulary (PNDF). Based on current FDA classification, oral and injectable hormonal contraceptives are prescription drugs while condoms are available over-the-counter.

Oral hormonal contraceptives including the emergency contraceptive levonorgestrel, injectable hormonal contraceptives, IUDs, barrier methods (such as condoms and diaphragms), and implantable hormonal contraceptives are all included in the World Health Organization (WHO) Model List of Essential Medicines under contraceptives.⁹

The discussion below on contraceptives, lifted from the 2011 WHO publication “Family Planning: A Global Handbook for Providers”, clearly provides evidence-based guidance that contraceptives are not abortifacients:

- i) Combined Oral Contraceptives (COCs)- Pills that contain low doses of 2 hormones—a progestin and an estrogen—like the natural hormones progesterone and estrogen in a woman’s body. COCs work primarily by preventing the release of eggs from the ovaries (ovulation).¹⁰

- ii) Progestin-Only Pills (POPs) - Pills that contain very low doses of a progestin like the natural hormone progesterone in a woman’s body. POPs do not contain estrogen, and

⁸ World Health Organization Department of Reproductive Health and Research, Johns Hopkins Bloomberg School of Public Health/ Center for Communication Programs (CCP), Knowledge for Health Project, and United States Agency for International Development Bureau for Global Health, Office of Population and Reproductive Health, Family planning: a global handbook for providers, Page 98, 2011 (hereafter WHO et al Family Planning: a global handbook for providers); WHO Representative to the Philippines letter response to Representative Edcel C. Lagman, June 6, 2011 (hereafter WHO letter response June 2011)

⁹ World Health Organization, WHO Model List of Essential Medicines, 17th List, March 2011, page 25-26. Available at: <http://www.who.int/medicines/publications/essentialmedicines> (last visited 1 July 2011). The list includes oral hormonal contraceptives, injectable hormonal contraceptives, intrauterine devices, barrier methods (such as condoms and diaphragms).

⁹ WHO et al Family Planning: a global handbook for providers, Page 1.

¹⁰ WHO et al, Family planning: a global handbook for providers, Page 25.

so can be used throughout breastfeeding and by women who cannot use methods with estrogen. POPs work primarily by thickening cervical mucus (this blocks sperm from meeting an egg) and disrupting the menstrual cycle, including preventing ovulation.¹¹

iii) Emergency Contraceptive Pills (ECPs)- Pills that contain a progestin alone (levonorgestrel or norgestrel), or a progestin and an estrogen together (estrogen and a progestin—levonorgestrel, norgestrel, or norethindrone (also called norethisterone)).^{12,13} ECPs work primarily by preventing or delaying ovulation. They do not work if a woman is already pregnant.¹⁴

iv) Progestin-Only Injectables-The injectable contraceptives depot medroxyprogesterone acetate (DMPA) and norethisterone enanthate (NET-EN) each contain a progestin. Progestin-only injectables work primarily by preventing ovulation.¹⁵

v) Monthly Injectables - Monthly injectables contain 2 hormones—a progestin and an estrogen. Monthly injectables work primarily by preventing ovulation.¹⁶

vi) Combined Patch - A small, thin, square of flexible plastic worn on the body. Continuously releases 2 hormones—a progestin and an estrogen in a woman's body—directly through the skin into the bloodstream. Combined Patch works primarily by preventing ovulation.¹⁷

vii) Combined Vaginal Ring - A flexible ring placed in the vagina. Continuously releases 2 hormones—a progestin and an estrogen—from inside the ring. Hormones are absorbed through the wall of the vagina directly into the bloodstream. Combined Vaginal Ring works primarily by preventing ovulation.¹⁸

viii) Implants - Small plastic rods or capsules, each about the size of a matchstick, that release a progestin like the natural hormone progesterone in a woman's body. A specifically trained provider performs a minor surgical procedure to place the implants under the skin on the inside of a woman's upper arm. Implants work primarily by thickening cervical mucus (this blocks sperm from meeting an egg) and disrupting the menstrual cycle, including preventing ovulation.¹⁹

ix) Copper-bearing Intrauterine Device - The copper-bearing IUD is a small, flexible plastic frame with copper sleeves or wire around it. A specifically trained health care provider inserts it into a woman's uterus through her vagina and cervix. IUD works primarily by causing a chemical change that damages sperm and egg before they can meet.¹⁹

¹¹ WHO et al, Family planning: a global handbook for providers, Page 25.

¹² Family planning: a global handbook for providers, Page 45 and 46 (2011 Update).

¹³ Family planning: a global handbook for providers, Page 46 (2011 Update).

¹⁴ Family planning: a global handbook for providers, Page 45 (2011 Update).

¹⁵ WHO et al, Family planning: a global handbook for providers, Page 60.

¹⁶ WHO et al, Family planning: a global handbook for providers, Page 81.

¹⁷ WHO et al, Family planning: a global handbook for providers, Page 101.

¹⁸ WHO et al, Family planning: a global handbook for providers, Page 105.

¹⁹ WHO et al, Family planning: a global handbook for providers, Page 109.

x) Levonorgestrel Intrauterine Device - The levonorgestrel intrauterine device (LNG-IUD) is a T-shaped plastic device that steadily releases small amounts of levonorgestrel each day. A specifically trained health care provider inserts it into a woman's uterus through her vagina and cervix. LNG-IUD works primarily by suppressing the growth of the lining of uterus (endometrium).²¹

xi) Female Sterilization - Permanent contraception for women who will not want more children. The 2 surgical approaches most often used are minilaparotomy (involving making a small incision in the abdomen where the fallopian tubes are brought to the incision to be cut or blocked) and laparoscopy (involving inserting a long thin tube with a lens in it into the abdomen through a small incision enabling the doctor to see and block or cut the fallopian tubes in the abdomen). Female sterilization works because the fallopian tubes are blocked or cut. Eggs released from the ovaries cannot move down the tubes, and so they do not meet sperm.²²

xii) Vasectomy - Permanent contraception for men who will not want more children. Through a puncture or small incision in the scrotum, the provider locates each of the 2 tubes that carries sperm to the penis (vas deferens) and cuts or blocks it by cutting and tying it closed or by applying heat or electricity (cautery). Vasectomy works by closing off each vas deferens, keeping sperm out of semen. Semen is ejaculated, but it cannot cause pregnancy.²³

In 2011, the WHO even submitted two position papers to the House of Representatives during its committee hearings on the RH bill that these contraceptives are not abortifacient.²⁴

Twenty-one medical experts came together on August 8, 2011 for an expert group meeting in the Philippines to examine raging questions on pregnancy and contraception applying scientific and evidence-based analysis. These experts, convened by Universal Health Care Study Group of the University of the Philippines, Manila, came from diverse scientific fields including biochemistry, physiology, pharmacology, obstetrics and gynecology, reproductive endocrinology and infertility, internal medicine, demography, and public health. Their findings are stated in Dr. Alberto Romualdez's article which appeared in the newspaper Malaya on August 24, 2011, as follows:

**Medical Experts' Declaration on the Action of Contraceptives
By Alberto Romualdez, M.D.**

Below is part of the report from an expert group convened recently by the Universal Health Care Study Group of the University of the Philippines Manila:

On Monday, 8 August 2011, 21 experts from diverse scientific fields including biochemistry, physiology, pharmacology, obstetrics and gynecology, reproductive

²⁰ WHO et al, Family planning: a global handbook for providers, Page 131.

²¹ WHO et al, Family planning: a global handbook for providers, Page 157.

²² WHO et al, Family planning: a global handbook for providers, Page 165.

²³ WHO et al, Family planning: a global handbook for providers, Page 183.

²⁴ Dated January 17, 2011 and June 6, 2011.

endocrinology and infertility, internal medicine, demography, and public health gathered to examine raging questions on pregnancy and contraception applying scientific and evidence-based analysis.

These are our conclusions:

1. Conception is not an exact scientific term. For some it means implantation; for others it is an event that occurs at some time after fertilization. No one at the meeting equates conception with fertilization.
2. Fertilization encompasses the process of penetration of the egg cell by the sperm cell and the combination of their genetic material to form the fertilized egg or the zygote. The process is estimated to take about 24 hours. At present, there is no accepted laboratory or clinical method of determining if and exactly when natural fertilization has taken place, but we accept that it has occurred after a pregnancy has been detected. Natural losses occur all the time; 33%-50% of all fertilized eggs never implant without the woman doing or taking anything.
3. All contraceptives, including hormonal contraceptives and IUDs, have been demonstrated by laboratory and clinical studies, to act primarily prior to fertilization. Hormonal contraceptives prevent ovulation and make cervical mucus impenetrable to sperm. Medicated IUDs act like hormonal contraceptives. Copper T IUDs incapacitate sperm and prevent fertilization.
4. The thickening or thinning of the endometrium (inner lining of the uterus) associated with the use of hormonal contraceptives has not been demonstrated to exert contraceptive action, i.e. if ovulation happens and there is fertilization, the developing fertilized egg (blastocyst) will implant and result in a pregnancy (contraceptive failure). In fact, blastocysts have been shown to implant in inhospitable sites without an endometrium, such as in Fallopian tubes.
5. Pregnancy can be detected and established using currently available laboratory and clinical tests – e.g. blood and urine levels of HCG (Human Chorionic Gonadotrophin) and ultrasound – only after implantation of the blastocyst. While there are efforts to study chemical factors associated with fertilization, currently there is no test establishing if and when it occurs.
6. Abortion is the termination of an established pregnancy before fetal viability (the fetus' ability to exist independently of the mother). Aside from the 50% of zygotes that are naturally unable to implant, an additional wastage of about 20% of all fertilized eggs occurs due to spontaneous abortions (miscarriages).
7. Abortifacient drugs have different chemical properties and actions from contraceptives. Abortifacients terminate an established pregnancy, while contraceptives prevent pregnancy by preventing fertilization.
8. Like all medical products and interventions, contraceptives must first be approved for safety and effectiveness by drug regulatory agencies. Like all approved drugs, contraceptives have "side effects" and adverse reactions, which warrant their use based on risk-benefit balance and the principles of Rational Drug Use. Risk-benefit balance also applies when doing nothing or not providing medicines, which can result in greater morbidities and death. In the case of contraceptives, which are 50-year-old medicines, the Medical Eligibility Criteria (MEC) developed by the WHO is the comprehensive clinicians' reference guiding the advisability of contraceptives for particular medical conditions.

9. The benefits of the rational use of contraceptives far outweigh the risks. The risk of dying from pregnancy and childbirth complications is high (1 to 2 per 1000 live births, repeated with every pregnancy). Compared to women nonsmokers aged below 35 who use contraceptives, the risk of dying from pregnancy and delivery complications is about 2,700 times higher.
10. The risk of cardiovascular complications from the appropriate use of hormonal contraceptives is low. While the risk for venous thrombo-embolism (blood clotting in the veins) among oral contraceptive users is increased, the risk of dying is low, 900 times lower than the risk of dying from pregnancy and childbirth complications. Heart attack and stroke are also rare in women of reproductive age and occur in women using hormonal contraceptives only in the presence of risk factors –like smoking, hypertension, and diabetes. The MEC will guide providers in handling patients with cardiovascular conditions.
11. The risk of breast cancer from the use of combined hormonal pills (exogenous estrogen or estrogen from external sources) is lower than the risk from prolonged exposure to endogenous estrogens (hormones naturally present in the body). Current users of oral contraceptives have a risk of 1.2 compared to 1.9 among women who had early menarche (first menstruation) and late menopause, and 3.0 among women who had their first child after age 35. The risk of breast cancer from oral contraceptive use also completely disappears after 10 years of discontinuing use.
12. Combined hormonal pills are known to have protective effects against ovarian, endometrial and colorectal cancer.
13. The safety and efficacy of contraceptives which passed the scientific scrutiny of the most stringent drug regulatory agencies, including the US FDA, warranted their inclusion in the WHO's "core list" of Essential Medicines since 1977. The core list enumerates "minimum medicine needs for a basic health care system listing the most efficacious, safe and cost-effective medicines for priority conditions."
14. Contraceptives are included in the Universal Health package of the Department of Health.
15. The use of contraceptives in family planning programs is known to reduce maternal mortality by 35% through the elimination of unintended pregnancy and unsafe induced abortions.

A.2.a. Jurisprudence on Contraceptives Not Being Abortifacient

In the case of United States, *Margaret S. v. Edwards*, the United States federal court held that "[a]bortion, as it is commonly understood, does not include the IUD, the 'morning-after' pill [EC pills], or for example, birth control pills."²⁵

A.2.b. Emergency Contraceptive Pills Are Not Abortifacient

Emergency contraception (EC) through emergency contraceptive pills can be used in cases of rape, when a contraceptive barrier method has failed (e.g., slipped condom, diaphragm, or cervical cap, or broken condom), and unprotected sex.

²⁵ United States, *Margaret S. v. Edwards*, 488 F. Supp. 181, 191 (E.D. La. 1980).

The WHO defines EC as a safe and effective method of preventing pregnancy.²⁶ According to the WHO, EC does not interrupt nor terminate an established pregnancy, thus, it is not a method of abortion.²⁷

Increased access to EC and other modern contraceptives reduce the number of unintended pregnancies and reduce the need for abortion.

The International Federation of Gynecology and Obstetrics (FIGO) stated that “[EC] is not an abortifacient because it has its effect prior to the earliest time of implantation.”²⁸

A.2.b.1. Global Acceptance of Emergency Contraceptive Pills

EC has been used for several decades in the global market.²⁹ In 1997, the levonorgestrel-only regimen was added to the WHO Model List of Essential Drugs³⁰ while the combined estrogen-progestin (Yuzpe) regimen was added to the list since 1995.³¹

Over 140 countries worldwide have registered EC pills such as Postinor and the like including 31 predominantly Catholic countries such as Argentina, Austria, Belgium, Bolivia, Brazil, Burundi, Chile, Colombia, Cuba, Dominican Republic, Ecuador, France, Guatemala, Hungary, Ireland, Italy, Lesotho, Lithuania, Luxembourg, Mexico, Nicaragua, Paraguay, Poland, Portugal, Rwanda, Slovakia, Slovenia, Spain, Uruguay, and Venezuela.³² Almost all of the ten ASEAN countries including Burma/Myanmar, Cambodia, Indonesia, Laos, Malaysia, Singapore, Thailand and Vietnam have registered levonorgestrel.³³

A.2.b.2. Jurisprudence Upholding Emergency Contraceptive Pills as Contraceptives

In the United Kingdom case of *Smeaton v. Secretary of State for Health*, the judicial challenge by the Society for the Protection of the Unborn Child claiming that emergency contraceptive pills contravened the Offenses against the Person Act of 1861 was dismissed by the High Court. The England and Wales High Court ruled that emergency contraception is not considered abortion under the scope of the current medical and legal science.³⁴

²⁶ See WHO, *Emergency Contraception, A Guide for Service Delivery*, Geneva, WHO/FRH/FPP/98.19 (1998), at 7.

²⁷ *Id.*, at 20 and 50.

²⁸ International Federation of Gynecology and Obstetrics (FIGO), *Ethical Aspects Of Induced Abortion For Non-Medical Reasons*, available at <http://www.figoo.org/default.asp?id=6057>.

²⁹ Certain Combined Oral Contraceptives for Use as Postcoital Emergency Contraception, 62 Fed. Reg. 8609, 8610 (1997) [hereinafter FDA Notice on ECP].

³⁰ See Elisa Wells & Michele Burns, ICEC, *Expanding Global Access to Emergency Contraception: A Collaborative Approach to Meeting Women's Needs*, at 6 available at <http://www.cccinfo.org/files/Expanding-Global-Access-to%20EC.rtf>;

³¹ See WHO, *Emergency Contraception, A Guide for Service Delivery*, supra note 1; The Yuzpe regimen has been declared safe and effective, WHO, *Levonorgestrel for EC* supra note 7; International Planned Parenthood Federation (IPPF), *Statement on emergency contraception*, IPPF Med Bull 1994; 28:1-4; American College of Obstetricians and Gynecologists (ACOG), *Practice Patterns. Emergency Oral Contraception*, No. 2, October 1996, *Int J Gynaecol Obstet* 1997; 56:203-10; Royal College of Obstetricians and Gynaecologists (RCOG), *Guidance*, April 2000, *Emergency Contraception: recommendations for clinical practice*, *Br J Fam Plann* 2000; 26:93-6.

³² International Consortium on Emergency Contraception (ICEC) webpage, available at <http://www.cccinfo.org> last visited June 20, 2010; ICEC, *EC Status and Availability*, available at <http://www.cccinfo.org/database/pill/viewAllCountry.php> and <http://www.cccinfo.org/database/pill/viewAll.php> last visited June 20, 2010; See Not-2-LATE.com, *The Emergency Contraception Website*, available at <http://ec.princeton.edu/worldwide>; See International Planned Parenthood Federation, *Directory of Hormonal Contraceptives*, available at [http://contraceptive.ippf.org/\(0jzjzjw2kylxp5541l1jpuj\)/introduction.aspx](http://contraceptive.ippf.org/(0jzjzjw2kylxp5541l1jpuj)/introduction.aspx).

³³ *Id.*

³⁴ See England and Wales High Court (Administrative Court), *Smeaton v Secretary of State for Health* [2002] EWHC 610 (Admin), (18th April, 2002) at 3.

Justice Munby ruled that “[u]p until the attachment stage, the embryo is not attached in any way to the woman herself.”³⁵ He added, “[c]urrent medical definitions given in medical dictionaries support the view that pregnancy begins once the blastocyst has implanted in the endometrium and more particularly, that miscarriage is the termination of such a post implantation pregnancy.”³⁶ The court ruled that “the morning-after pill cannot cause a fertilized egg which is implanted to de-implant – that is, it cannot work after the process of implantation is complete.”³⁷

The Judicial Section of France’s Conseil d’Etat on 25 April 2001 dismissed complaints against the authorization by the French l’agence du medicament of the marketing of two morning-after pills, Norlevo and Tetragynon both containing levonorgestrel.³⁸ In both cases, the Conseil d’Etat held that the product was a hormonal contraceptive and not an abortifacient.³⁹

In the United States case of *Brownfield v. Daniel Freeman Marina Hospital*, the California court ruled that a hospital could be held liable for failing to provide a rape survivor with information about and access to emergency contraception.⁴⁰ The court reached this result even though the hospital had a religious affiliation and state law exempted health care facilities with religious affiliations from liability for refusing to perform abortions or refusing to permit the performance of abortions in their facilities.⁴¹ The court concluded that this immunity did not apply to the provision of emergency contraception, which is a “pregnancy prevention” treatment, rather than an abortion.⁴²

A.2.c. Findings on IUDs

IUDs prevent pregnancy. They do not cause miscarriages. In medical practice, IUD is not used once a pregnancy is established.

The WHO guidelines affirm IUD use is safe for women who are at low risk of sexually transmitted diseases (STDs).⁴³ The laws and policies of countries worldwide provide women’s access to IUD. More than 100 million women worldwide use IUDs.⁴⁴ Contrary to claims that IUDs are abortifacients, the American College of Obstetricians and Gynecologists (ACOG) has definitively stated that IUD is not an abortifacient.⁴⁵

Researches have shown that prevention of fertilization is the dominant mode of action of IUDs. The WHO cited that the “antifertility effects” of IUD “take place before the ova

³⁵ Id. at 20.

³⁶ Id. at 27.

³⁷ Id. at 3.

³⁸ Id. at 52, citing Decision of the Judicial Section of France’s Conseil de’Etat, 25 April 2001.

³⁹ Id. at 52, citing Decision of the Judicial Section of France’s Conseil de’Etat, 25 April 2001.

⁴⁰ *Brownfield v. Daniel Freeman Marina Hospital*, 208 Cal. App. 3d 405, 413-14 (1989).

⁴¹ Id.

⁴² Id.

⁴³ The Intra-Uterine Device (IUD) Worth Singing About, PROGRESS IN REPRODUCTIVE HEALTH RESEARCH (World Health Organization)No. 60, 2002, at 1 available at: <http://www.who.int/reproductive-health/hrp/progress/60/Progress60.pdf>; WORLD HEALTH ORGANIZATION, SCIENTIFIC GROUP, MECHANISM OF ACTION, SAFETY AND EFFICACY OF INTRAUTERINE DEVICES. Number 753. TECHNICAL REPORT SERIES (1987) (stating “anti-fertility effects of IUD” take place before the ova reach the uterine cavity”);

⁴⁴ More than 100 million women worldwide use IUDs (Family Health International, The Copper IUD,20 (1) NETWORK,INTRAUTERINE DEVICES, (2000) available at <http://www.fhi.org/en/fp/fppubs/network/v20-1/nt2014.html>.

⁴⁵ See generally, The American College of Obstetricians and Gynecologists (ACOG) , TheIntrauterine Device, 104 ACOG Technical Bulletin Washington, DC: ACOG, (May 1987) (definitively stating that an IUD is not an abortifacient).

reach the uterine cavity.” Evidence show the pre-fertilization action of IUDs by interfering with sperm motility and survival, hindering ascent of sperm to the fallopian tubes (where fertilization occurs), and impeding egg development.⁴⁶

A.2.d. Hysterectomy Is Not a Method of Abortion

Hysterectomy is performed as a medical procedure to treat certain medical conditions. In practice, hysterectomy is not used as a method of abortion.

A.3. Public Health Relevance; Health Burden on Women in the Philippines; Millenium Development Goals

More than half of all pregnancies are unintended.⁴⁷ According to the UNFPA 2010 State of the World Population, 230 women die out of every 100,000 live births, only 36% of married women between the ages of 15-49 use modern contraceptive methods, 45 women out of every 1000 women aged 15-19 have began child-bearing, and only 60% of births are performed by skilled birth attendants.⁴⁸

Daily, there are 11 women dying while giving birth in the Philippines. Not a single death should happen due to pregnancy and childbirth. These preventable deaths could have been avoided if more Filipino women have had access to reproductive health information and health care including access to sexuality education, contraceptives, skilled birth attendants and emergency obstetric care.

To reduce maternal mortality in the Philippines and to achieve the Millennium Development Goal (MDG) 5 to reduce maternal mortality by 75% by 2015,⁴⁹ government officials must act now to mobilize the financial resources and political will to make modern contraceptives available and accessible for all Filipino women.⁵⁰

A.4. Findings and Recommendations of Treaty Monitoring Bodies on the Philippines in Relation to Unwanted Pregnancies, Access to Information and Services on Modern Contraceptives, Early Pregnancies, and Maternal Deaths

In 2006, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the United Nations committee that monitors a state’s compliance with CEDAW,

⁴⁶ Family Health International, Mechanisms of the Contraceptive Action of Hormonal Methods and Intrauterine Devices, <http://www.fhi.org/en/fp/fpothor/mechact.html> (last visited July 31, 2006) (showing that prevention of fertilization is the dominant mode of action of IUDs); WORLD HEALTH ORGANIZATION, SCIENTIFIC GROUP, MECHANISM OF ACTION, SAFETY AND EFFICACY OF INTRAUTERINE DEVICES. Number 753. TECHNICAL REPORT SERIES (1987) (stating anti-fertility effects of IUD “take place before the ova reach the uterine cavity.”); Family Health International, IUDs Block Fertilization, 16 NETWORK 1 (1996) available at <http://www.fhi.org/en/fp/fppubs/network/v16-2/nt1623.html>. (showing evidence that the pre-fertilization action of IUDs interferes with sperm motility and survival, hindering ascent of sperm to the fallopian tubes where fertilization occurs, and impeding egg development).

⁴⁷ Alan Guttmacher Institute (AGI), Meeting Women’s Contraceptive Needs in the Philippines, 1 In Brief 2 (2009), http://www.guttmacher.org/pubs/2009/04/15/IB_MWCNP.pdf.

⁴⁸ UNFPA 2010 State of the World Population; Skilled birth attendants are health professionals who have been educated and trained to proficiency in skills needed to manage normal labor and delivery, recognize the onset of complications, perform essential interventions, start treatment and supervise the referral of mother and baby for interventions that are beyond their competence or are not possible in the particular setting. Depending on the setting, health care providers such as auxiliary nurse-midwives, community midwives, village midwives and health visitors may also have acquired appropriate skills, if they have been specially trained (WHO Recommendations for the Prevention of Postpartum Haemorrhage, 2007.)

⁴⁹ Application to Include Misoprostol, January 21, 2011.

⁵⁰ Gynuity Health Projects and Family Care International, Postpartum Hemorrhage: A challenge for safe Motherhood, 2006.

recommended to the Philippines to “strengthen measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives more widely available and without any restriction and by increasing knowledge and awareness about family planning.”⁵¹

The Committee on Economic, Social, and Cultural Rights (CESCR Committee), the United Nations committee that monitors a state’s compliance with the International Covenant on Economic, Social, and Cultural Rights (ICESCR),⁵² expressed concern in its 2008 Concluding Observations on the Philippines on the “inadequate reproductive health services and information, the low rates of contraceptive use and the difficulties in obtaining access to artificial methods of contraception, which contribute to the high rates of teenage pregnancies and maternal deaths” in the country.⁵³ The CESCR Committee urged the Philippines to “adopt all appropriate measures to protect the sexual and reproductive rights of women and girls, inter alia, through measures to reduce maternal and infant mortality and to facilitate access to sexual and reproductive health services, including access to family planning, and information.”⁵⁴

In its 2009 Concluding Observations on the Philippines, the Committee on the Rights of the Child (CRC Committee), the United Nations committee that monitors a state’s compliance with the CRC, expressed serious concern on “the inadequate reproductive health services and information, the low rates of contraceptive use (36 per cent of women relied on modern family planning methods in 2006) and the difficulties in obtaining access to artificial methods of contraception, which contribute to the high rates of teenage pregnancies and maternal deaths.”⁵⁵

Section 5 of the Magna Carta of Women, on the State as the Primary Duty-Bearer, provides that “the State shall keep abreast with and be guided by progressive developments in human rights of women under international law and design of policies, laws, and other measures to promote the objectives of [the Magna Carta].” The Magna of Women clearly shows the obligation of the government to comply with international human rights standards that promote and protect the right to access information and services on modern contraceptives and sexuality education.

A.5. Benefits of Providing Access to Sexuality Education and Modern Contraceptives

Providing access to sexuality education and modern contraceptives provide a wide range of benefits to women, their families and society including preventing unintended pregnancies, maternal deaths related to pregnancy and childbirth, infant mortality, early pregnancies, sexually transmitted diseases, and HIV transmission and reducing abortion rates.

⁵¹ August 25, 2006 Committee on the Elimination of Discrimination against Women Concluding Comments on the Philippines, para. 28 [2006 CEDAW Committee Concluding Comments].

⁵² Ratified by the Philippines on 7 June 1974 without reservations.

⁵³ CESCR, Concluding Observations (2008) para. 31.

⁵⁴ CESCR, Concluding Observations (2008) para. 31.

⁵⁵ CRC, Concluding Observations (2009), para. 61.

B. An RH Law is Constitutional

B.1. The Constitution Mandates the Philippine Government to Make Modern Contraceptives Available

The constitution guarantees women's rights to equality, non-discrimination, life and health and requires the government to provide the full range of contraceptive methods including modern contraceptive methods. The Philippine government should provide the full range of contraceptive methods based on the provisions of the 1987 Constitution, as follows:

"The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men." (Article 2 on State Policies, Section 14)

The State shall protect and promote the right to health of the people and to instill health consciousness among them (Art. 2 on State Policies, Sec. 15)

"The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged, xxx women, and children. The State shall endeavor to provide free medical care to paupers. X x x (Art. 13 on Social Justice and Human Rights particularly Health, Sec. 11).

B.2. Existing Laws Mandate the Philippine Government Units to Make Modern Contraceptives Available and to Conduct Sexuality Education

B.2.a Existing Laws Mandate the Philippine Government to Make Modern Contraceptives Available

Existing laws already mandate the Philippine government units to make modern contraceptives available such as the Local Government Code, the Magna Carta of Women and the AIDS Prevention Act.

B.2.a.1. Local Government Code on Modern Contraceptives

Under Section 17 of the Local Government Code, local government units are required to provide basic services and facilities, among which are health services, family planning services, and population development services,⁵⁶ as follows:

SEC.17 Basic Services and Facilities. - (a) X x x Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.

⁵⁶ Local Government Code of 1991, Sec. 17 (1991), as reiterated in Administrative Order No. 270, February 21, 1992, art. 25 (1992).

(b) Such basic services and facilities include, but are not limited to, the following:

(1) For a Barangay:

X X X

(ii) **Health and social welfare services which include maintenance of barangay health center and day-care center;**

X X X

(2) For a municipality:

(iv) Social welfare services which include programs and projects on child and youth welfare, family and community welfare, women’s welfare, welfare of the elderly and disabled persons; community-based rehabilitation programs for vagrants, beggars, street children, scavengers, juvenile delinquents, and victims of drug abuse; livelihood and other pro-poor projects; nutrition services; **and family planning services;**

The local government code clearly defines the power, duties, and functions of barangay council, as follows:

(a) The **sangguniang barangay**, as the legislative body of the barangay, shall:

X X X

(23) **Provide for the delivery of basic services;** [Emphasis supplied]

B.2.a.2. Magna Carta of Women on Modern Contraceptives

The Magna Carta of Women requires the government to provide access to legal, safe, and effective methods of family planning and sexuality education, as follows:

Section 17. Women’s Right to Health. - (a) Comprehensive Health Services. - The State shall, at all times, provide for a comprehensive, culture-sensitive, and gender-responsive health services and programs covering all stages of a woman’s life cycle and which addresses the major causes of women’s mortality and morbidity: Provided, That in the provision for comprehensive health services, due respect shall be accorded to women’s religious convictions, the rights of the spouses to found a family in accordance with their religious convictions, and the demands of responsible parenthood, and the right of women to protection from hazardous drugs, devices, interventions, and substances.

Access to the following services shall be ensured:

X X X

(3) Responsible, ethical, legal, safe, and effective methods of family planning;

(4) Family and State collaboration in **youth sexuality education and health services** without prejudice to the primary right and duty of parents to educate their children;

(5) Prevention and management of reproductive tract infections, including **sexually transmitted diseases, HIV, and AIDS;**

X X X

(7) **Prevention of abortion** and management of pregnancy-related complications;

(8) **In cases of violence against women and children, women and children victims and survivors shall be provided with** comprehensive health services that include psychosocial, therapeutic, **medical,** and legal **interventions** and assistance towards healing, recovery, and empowerment;

X X X

(11) Management, treatment, and intervention of mental health problems of women and girls. In addition, **healthy lifestyle activities are encouraged and promoted through programs and projects as strategies in the prevention of diseases.** [Emphasis supplied]

B.2.b. Existing Laws Mandate the Philippine Government to Conduct Sexuality Education

B.2.b.1. Magna Carta of Women on Sexuality Education

Existing laws such as the Magna Carta of Women and the AIDS Prevention Act mandate the conduct of sexuality education. Section 17 of the Magna Carta of Women provides, as follows:

(b) **Comprehensive Health Information and Education.** - The State shall provide women in all sectors with appropriate, timely, complete, and accurate information and education on all the above-stated aspects of women's health in government education and training programs, with due regard to the following:

(1) The natural and primary right and duty of parents in the rearing of the youth and the development of moral character and the right of children to be brought up in an atmosphere of morality and rectitude for the enrichment and strengthening of character;

(2) **The formation of a person's sexuality that affirms human dignity;** and

(3) **Ethical, legal, safe, and effective family planning methods including fertility awareness.** [Emphasis supplied]

B.2.b.2. AIDS Prevention Act

The AIDS Prevention and Control Act requires HIV/AIDS education on transmission and prevention to be conducted in local communities, in schools, health facilities, and workplaces as well as for overseas Filipino workers and tourists.⁵⁷

⁵⁷ RA 8504, Sections 4-9.

B.2.c. Labor Code on Modern Contraceptives

The Labor Code requires employers employing more than 200 workers to provide modern contraceptives under the “Rules to Implement the Labor Code” on employment of women and minors, as follows:

Rules to Implement the Labor Code, Book III, Rule XII. Employment of Women and Minors. Section 11. - Employers who habitually employ more than 200 workers in any locality shall provide free family planning services to their employees and their spouses which shall include but not limited to, the application or use of contraceptives.

B.2.d. Ordinances Upholding the Right to Contraceptives Have Been Passed Throughout the Philippines

True to their being representatives of the people, many public officials have enacted reproductive health ordinances that ensure access to contraceptives such as in Luzon (the provinces of Aurora, Ifugao, Mt. Province; cities such as Quezon City, Antipolo City, Olongapo City; the municipalities of Tinoc, Sagada, Lagawe, Asipulo, Bontoc, and Paracelis), in Visayas (the municipalities of Talibon, Ubay and Carmen of Bohol province, and the municipalities of Llorente and Maydolong of Eastern Samar) and in Mindanao (the provinces of Sulu and Lanao Del Sur, General Santos City, and the municipalities of Lebak and Kapatagan).

These ordinances were not challenged or declared unconstitutional and remain in place until now clearly showing that government officials throughout the Philippines recognize the importance of laws that ensure access to modern contraceptives and sexuality education..

B.3. Right to Privacy

The constitutionally protected right to privacy covers matters related to marriage, procreation, contraception, family relationships, child rearing, education, decisions about medical care, among others.

In the 1965 United States Supreme Court case of *Griswold v. Connecticut*,⁵⁸ the appellants were arrested pursuant to Connecticut state statutes that prohibited using contraception, and penalized aiding and abetting the use of said contraception.⁵⁹ The appellants were charged with having violated these statutes by distributing “information, instruction, and medical advice to married persons as to the means of preventing conception.”⁶⁰ Justice Douglas, writing for the majority, found that, although there was no specifically guaranteed right to privacy guaranteed by the American Bill of Rights, the existing protections have penumbras of privacy emanating from them where privacy is protected from governmental intrusion. The Supreme Court invalidated the state laws prohibiting the use of contraceptives under the right to privacy of a married couple.⁶¹ The Supreme Court held, as follows:

⁵⁸Id.

⁵⁹Id. at 480.

⁶⁰Id.

⁶¹Id. at 484.

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a “governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.” *NAACP v. Alabama*, 377 U.S. 288, 307. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The [381 U.S. 479, 486] very idea is repulsive to the notions of privacy surrounding the marriage relationship. [Emphasis supplied]

In the 1972 US Supreme Court case of *Eisenstadt v. Baird*, the appellee William Baird attacked his conviction for violating a Massachusetts law for giving a woman a contraceptive foam at the close of his lecture to students on contraception. The law made it a felony for anyone to give away a drug, medicine, instrument, or article for the prevention of conception except in the case of (1) a registered physician administering or prescribing it for a married person or (2) an active registered pharmacist furnishing it to a married person presenting a registered physician's prescription. The Supreme Court invalidated the law prohibiting the distribution of contraceptives to unmarried persons under the Equal Protection Clause, holding that “whatever the rights of the individual to access to contraceptives may be, the rights must be the same for the unmarried and the married alike.” The Supreme Court held:

It would be plainly unreasonable to assume that [the State] has prescribed pregnancy and the birth of an unwanted child as punishment for fornication. X x x

X X X

If under *Griswold* the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible. It is true that in *Griswold* the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. **If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.** [Emphasis supplied]

In the 1977 case of *Carey v. Population Services International*,⁶² the Supreme Court declared unconstitutional a New York statute prohibiting sale or distribution of contraceptives to a minor under 16; for anyone other than a licensed pharmacist to distribute contraceptives to persons 16 or over; and for anyone, including licensed pharmacists, to advertise or display contraceptives. The Supreme Court held:

⁶² *Carey v. Population Services International*, 431 U.S. 678 (1977).

Although “[t]he Constitution does not explicitly mention any right of privacy,” the Court has recognized that one aspect of the “liberty” protected by the Due Process Clause of the Fourteenth Amendment is “a right of personal privacy, or a guarantee of certain areas or zones of privacy.” *Roe v. Wade*, 410 U.S. 113, 152 (1973). This right of personal privacy includes “the interest in independence in making certain kinds of important decisions.” *Whalen v. Roe*, 429 U.S. 589, 599–600 (1977). **While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among [431 U.S. 678, 685] the decisions that an individual may make without unjustified government interference are personal decisions “relating to marriage, *Loving v. Virginia*, 388 U.S. 1, 12 (1967); procreation, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541–542 (1942); contraception, *Eisenstadt v. Baird*, 405 U.S., at 453–454; *id.*, at 460, 463–465 (WHITE, J., concurring in result); family relationships, *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); and child rearing and education, *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, [262 U.S. 390, 399 (1923)].” *Roe v. Wade*, *supra*, at 152–153. See also *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639–640 (1974).**

The decision whether or not to beget or bear a child is at the very heart of this cluster of constitutionally protected choices. That decision holds a particularly important place in the history of the right of privacy, a right first explicitly recognized in an opinion holding unconstitutional a statute prohibiting the use of contraceptives, *Griswold v. Connecticut*, *supra*, and most prominently vindicated in recent years in the contexts of contraception, *Griswold v. Connecticut*, *supra*; *Eisenstadt v. Baird*, *supra*; and abortion, *Roe v. Wade*, *supra*; *Doe v. Bolton*, 410 U.S. 179 (1973); *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976). [Emphasis supplied]

III.

X x x *Eisenstadt v. Baird*, holding that the protection is not limited to married couples, characterized the protected right as the “decision whether to bear or beget a child.” 405 U.S., at 453 (emphasis added). Similarly, *Roe v. Wade*, held that the Constitution protects “a woman’s decision whether or not to terminate her pregnancy.” 410 U.S., at 153 (emphasis added). See also *Whalen v. Roe*, *supra*, at 599–600, and n. 26. These decisions put *Griswold* in proper perspective. *Griswold* may no longer be read as holding only that a State may not prohibit a married couple’s use of contraceptives. **Read in light of its progeny, the teaching of *Griswold* is that the Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the State.**

Restrictions on the distribution of contraceptives clearly burden the freedom to make such decisions. A total prohibition against sale of contraceptives, for example, would intrude [431 U.S. 678, 688] upon individual decisions in matters of procreation and contraception as harshly as a direct ban on their use. Indeed, in practice, a prohibition against all sales, since more easily and less offensively enforced, might have an even more devastating effect upon the freedom to choose contraception. Cf. *Poe v. Ullman*, 367 U.S. 497 (1961).

Limiting the distribution of nonprescription contraceptives to licensed pharmacists clearly imposes a significant burden on the right of the individuals to use contraceptives if they choose to do so. Eisenstadt v. Baird, supra, at 461-464 (WHITE, J., concurring in result). The burden is, of course, not as great as that under a total ban on distribution. Nevertheless, **the restriction of distribution channels to a small fraction of the total number of possible retail outlets renders contraceptive devices considerably less accessible to the public, reduces the opportunity for privacy of selection and purchase, 6 and lessens the possibility of price competition.** 7 Cf. Griswold v. Connecticut, 381 U.S., at 503 (WHITE, J., concurring in judgment). X x x The same infirmity infuses the limitation in 6811 (8). "Just as in Griswold, where the right of married persons to use contraceptives was 'diluted or adversely affected' by permitting a [431 U.S. 678, 690] conviction for giving advice as to its exercise, . . . so here, **to sanction a medical restriction upon distribution of a contraceptive not proved hazardous to health would impair the exercise of the constitutional right.**" Eisenstadt v. Baird, 405 U.S., at 464 (WHITE, J., concurring in result).

There remains the inquiry whether the provision serves a compelling state interest. Clearly "**interests . . . in maintaining medical standards, and in protecting potential life,**" Roe v. Wade, 410 U.S., at 154, **cannot be invoked to justify this statute. Insofar as 6811 (8) applies to nonhazardous contraceptives, 8it bears no relation to the State's interest in protecting health.** Eisenstadt v. Baird, supra, at 450-452; 463-464 (WHITE, J., concurring in result). 9 **Nor is the interest in protecting potential life implicated in state regulation of contraceptives.** Roe v. Wade, supra, at 163-164.

In U.S. jurisprudence, the right to privacy has also been extended to cases involving sexual privacy. Under Lawrence v. Texas, for instance, the court held that it is unconstitutional to prohibit homosexual sex, because it is private, consensual conduct.⁶³

In the case of *Smeaton v. Secretary of State for Health*, the court ruled that, "Government's responsibility is to ensure the medical and pharmaceutical safety of products offered in the market place and the appropriate provision of suitable guidance and advice. Beyond that, as it seems to me, in this as in other areas of medical ethics, **respect for the personal autonomy which our law has now come to recognize demands that the choice be left to the individual.** x x x"⁶⁴

These cases clearly show that constitutionally protected privacy rights precludes governmental interference in the freedom to make personal decisions relating to marriage, procreation, contraception, family relationships, child rearing and education.⁶⁵ Forbidding the sale of contraceptives rather than regulating their manufacture or sale infringes on privacy rights which are constitutionally protected rights.

⁶³ Lawrence v. Texas, 539 U.S. 558, 584 (2003)

⁶⁴ Smeaton, supra at 69, 70.

⁶⁵ Planned Parenthood v. Casey 505 US833 citing Carey v. Population Services International

Lawrence v. Texas and Carey v. Population Services International were mentioned in Justice Puno's concurrence in *Ang Ladlad v. COMELEC*⁶⁶ on the issue of privacy rights including the right to form intimate sexual relationships crucial to human existence, family life and development of human personality, as follows:

Only the most willful blindness could obscure the fact that sexual intimacy is "a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality[.]"

B.4. The State's Constitutional Duty to Defend the Rights of Spouses and Families to Found a Family in Accordance with their Religious Convictions

Knowing which medically safe and effective methods of contraception to use will help individuals and couples determine freely and responsibly the number, spacing and timing of their children. This in turn should ensure that all children are wanted and loved and will be properly provided for by their parents.

The Constitution states that it shall "defend the right of spouses to form a family in accordance with their religious convictions and the demands of responsible parenthood" (Art. 15, Sec. 14). Every person must be free to make sexual and reproductive decisions according to her or his own conscience and religious beliefs free from interference, coercion or constraint.

Excluding modern methods of contraception and merely promoting the use of natural family planning methods effectively impose a single or unitary view on family planning upon all the residents of the six barangays. This imposition is anathema to the State's Constitutional duty to defend "the right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood".

The State's defense of spouses' rights to found a family demands nothing less than embracing a pluralist approach to the spouses' decision to build a family. Whether the decision is to use natural family planning methods or artificial methods of contraception, spouses and individuals must be free to choose solely in accordance with their religious convictions, if any, and the demands of responsible parenthood.⁶⁷

Favoring only natural family planning methods is contrary to what is envisaged under the Constitutional duty of the State and divests spouses and individuals of any 'real' or 'informed' choice in founding their families. By allowing only natural family planning methods, women are being deprived not only the right under the Constitution to found a family in accordance with their own religious convictions, but the basic liberty of making these decisions on their own accord.

⁶⁶ *Ang Ladlad LGBT Party vs. COMELEC*, G.R. No. 190582 [hereafter *Ang Ladlad vs. COMELEC*]

⁶⁷ CONST., art. XV, sec. 3(4). See *Estrada v. Escritor*, A.M. No. P-02-1651, August 4, 2003, 408 SCRA 1, at 207, (Bellosillo, J., concurring).

B.5. Equal Protection of the Law

An RH law will allow health providers to continue to prescribe hormonal contraceptives and IUDs, allow stores and advertisers to sell and promote hormonal contraceptives and IUDs thereby upholding equal protection of the law.

Disallowing health providers to prescribe and dispense contraceptives will cause them to incur a direct economic injury or force them to disobey such prohibition and suffer legal sanctions⁶⁸ in violation of the equal protection clause.

B.6. An RH Law is Reasonable, Impartial and Promotes Equality and Non-Discrimination

An RH law is reasonable since it promotes rights that are protected human rights under the Philippine Constitution, existing laws, and international law. The use of modern contraceptives for prevention of pregnancy is reasonable. It promotes the constitutionally protected rights of women, public health, and public interest.

B.7. Constitutional Protection on Separation of Church and State and Non-Establishment of Religion

Government officials should uphold our constitution which guarantees the separation of church and state and non-establishment of religion. Government officials should not pass laws that prohibit access to information, supplies and services on contraceptives since such acts are tantamount to enacting legislation that establish the views of the Catholic Church hierarchy.

The guarantee of the separation of church and state is provided under Section 6, Art. II on Declaration of Principles and State Policies of the Philippine Constitution which states that “[t]he separation of [c]hurch and [s]tate shall be inviolable.”

The principle of separation of church⁶⁹ and state is to guard against the views of a dominant church from influencing the conduct of government and influencing policies to cater to a specific dominant church. The separation of church and state guarantees that one will not abuse the other or that one dominant religion or belief will not be used to govern the state and its people. That is why the Philippine Constitution has constitutional guarantees against public funds to be used for religious purposes and against religious denominations and sects from being registered as political parties. These are, as follows:

Section 29 paragraph 2, Article VI (Legislative Department): “No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher

⁶⁸ See *Carey v. Population Services International*

⁶⁹ See *Board of Education v. Everson*, 330 U.S. 1, 15-16 (1946) where the Court stated that “[n]either a State nor the Federal Government can set up a church... [or] pass laws which aid one religion, aid all religions, or prefer one religion over another... Neither... openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between Church and State.”

or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the Armed Forces, or to any penal institution, or government orphanage or leprosarium.”

Section 2 paragraph 5, Article IX, C (Commission on Elections): “Religious denominations and sects shall not be registered [as political parties].”

It must likewise be noted that while the 1987 Constitution guarantees freedom of religion, it also guarantees the non-establishment of religion. Section 5, Article III of the Bill of Rights states: “No law shall be made respecting an establishment of religion...” This clause was included in order to ensure that the government may not coerce anyone to support or participate in religion.⁷⁰

The beliefs of one dominant religion such as the Catholic Church cannot be enacted into law and policy. In such case, the religious beliefs and rights of others who do not share the Catholic Church hierarchical views on the right to contraception, inter alia, are infringed.

Roman Catholics make up 80.9% of the population of the Philippines.⁷¹ Although, as previously described, the Philippines is a constitutionally secular state,⁷² religious fundamentalism has interfered with politics and governance violating the constitutional guarantee of separation of church and state, as well as the non-establishment of a state religion.

The CESCR Committee noted this influence in May 2005, when it expressed concern over the “entrenched conservative religious influences [which] have often times inhibited and aborted attempts to improve the lot of the disadvantaged classes and to remove some of the socio-cultural ills which beset the Philippines.”⁷³ The CRC Committee expressed concern “at the lack of effective measures to promote the reproductive rights of women and girls and that particular beliefs and religious values are preventing their fulfillment.”⁷⁴

In the case of *Ang Ladlad vs. Comelec*,⁷⁵ the Supreme Court held, “**At bottom, what our non-establishment clause calls for is ‘government neutrality in religious matters.’ Clearly, ‘governmental reliance on religious justification is inconsistent with this policy of neutrality.’ We thus find that it was grave violation of the non-establishment clause for the COMELEC to utilize the Bible and the Koran to justify the exclusion of *Ang Ladlad*.”**

Religious beliefs should not be used as basis for our laws and policies since doing so would aid a specific religion and violate the guarantee of non-establishment of religion and

⁷⁰ See *Lee v. Weisman*, 505 U.S. 577, 587 (1992). In *Lee*, the U.S. Supreme Court invalidated the performance of a nonsectarian prayer by clergy at a public school’s graduation ceremony; see also *Santa Fe*, 530 U.S. at 310-312 where the court invalidated student-initiated and student-led prayers at football games because they coerce students to participate in religious observances; In *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996), the Seventh Circuit followed *Lee* in striking down prison programs where inmates’ sentences were affected by participation in substance abuse programs that stressed religion. It was held that the program runs “afoul of the prohibition against the state’s favoring religion in general over non-religion.”; see Center for Reproductive Rights (CRR), Petition for Certiorari in the U.S. Supreme Court case of *Greenville Women’s Clinic v. Comm’r, S.C. Dep’t of Health & Envtl. Control*.

⁷¹ CENTRAL INTELLIGENCE AGENCY (CIA) (United States), *The World Factbook*, Philippines, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html> (last visited September 1, 2011).

⁷² Phil. Const (1987), art. 2, § 6 (“Sec. 6: The separation of Church and State shall be inviolable.”)

⁷³ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Philippines, 12th Sess., 29th mtg., para. 8, U.N. Doc. E/C.12/1995/7 (1995), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1995.7.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1995.7.En?Opendocument).

⁷⁴ CRC, Concluding Observations (2009), para. 61.

⁷⁵ *Ang Ladlad vs. COMELEC*.

infringe on the right to freedom of religion. In the case of anti-reproductive rights advocates, they are trying to pass laws that impose their religious views despite clear international medical and scientific findings that modern contraceptives are not abortifacient. The public health and welfare and human rights of Filipino women who want to control their fertility and who die due to pregnancy and childbirth should be the primary consideration in making modern contraceptives available for pregnancy prevention.

B.8. Freedom of Thought, Conscience, and Religion

Every person must be free to make reproductive decisions according to her or his own conscience and religious beliefs free from interference, coercion or constraint.

Article 18 of the International Covenant on Civil and Political Rights (ICCPR), of which the Philippines is a State Party and has the obligation to fulfill, protects the individual's right to freedom of thought, conscience and religion. Article 27 of the ICCPR ensures the rights of minorities, *inter alia*, to enjoy their own culture and to practice their own religion. Both of these rights are violated when a predominant religion imposes its religion and beliefs on other faiths and believers such as what would happen if the religious beliefs become government policy.

The Human Rights Committee (HRC), the committee tasked to monitor the implementation of the ICCPR, defined the right to freedom of thought, conscience and religion in General Comment 22 as encompassing freedom of thought on all matters including personal conviction and emphasized that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.⁷⁶ The HRC stated that the fact that a religion is established as official or that its followers comprise the majority of the population shall not result in any impairment of the enjoyment of the rights under the Covenant, including articles 18 and 27, or in any discrimination against adherents to other religions or non-believers.⁷⁷ The government's role in protecting religious freedom is critical, otherwise, the predominant religion, or even well mobilized minorities, can invoke the state's power to curb the religious freedoms of others whose views differ from theirs.⁷⁸

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US833, the Court stated that it is **"a promise of the Constitution that there is a realm of personal liberty which the government may not enter."** The **"Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood."**⁷⁹ The Court recognized that **"[o]ur obligation is to define the liberty of all not to mandate our own moral code."**⁸⁰

In the United States, the Supreme Court observed in *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), that **"[t]he constitutional inhibition on legislation on the subject**

⁷⁶ Human Rights Committee, General Comment 22: The right to freedom of thought, conscience and religion (Art. 18) (48th Session 1993), para. 1, available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CCPR+General+comment+22.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CCPR+General+comment+22.En?OpenDocument).

⁷⁷ *Id.*, at para. 9.

⁷⁸ See Brief of Amici Curiae of Religious Coalition for Reproductive Choice (RCRC), et al. in *Don Stenberg, Attorney General of Nebraska, et al. v. Leroy Carhart* (No. 99-830) 530 U.S. 914 (2000).

⁷⁹ *Planned Parenthood v. Casey*.

⁸⁰ *Id.*, at 850.

of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be.”

In the 2001 case of *Pichon and Sajous v. France* (App. No. 49853/99) decided by the European Court of Human Rights (ECHR), two pharmacy owners were sued for refusing to provide oral contraceptive pills to customers and lost in the domestic courts. The pharmacists filed a complaint with the ECHR claiming their right to freedom of religion. **The ECHR pointed out that the main sphere protected by Article 9 on freedom of thought, conscience and religion is that of personal convictions and religious beliefs**, in other words what are sometimes referred to as matters of individual conscience. It also protects acts that are closely linked to these matters such as acts of worship or devotion forming part of the practice of a religion or a belief in a generally accepted form. The ECHR held that **the pharmacists’ right to freedom of religion was not violated since the pharmacists cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell contraceptives, since they can manifest those beliefs in many ways outside the professional sphere.** The ECHR held further that the right does not always guarantee the right to behave in public in a manner governed by that belief and does not protect “each and every act or form of behavior motivated or inspired by a religion or a belief”.

B.9. Religious Freedom and Vatican Council’s Dignitatis Humanae Declaration

The Vatican Council itself declared in 1965 that:

[T]he human person has a right to religious freedom. This freedom means that all men [and women] are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his [or her] own beliefs....⁸¹

It further declared that while “spreading religious faith... everyone ought at all times to refrain from any manner of action which might seem to carry a hint of coercion.”⁸² The Council added that “the Christian faithful, in common with all other men [and women], possess the civil right not to be hindered in leading their lives in accordance with their consciences.”⁸² Respect for one’s freedom of conscience and religion demands that the Catholic Church hierarchy and its conservative allies uphold this declaration.

The Catholic Church hierarchy is free to exercise its own beliefs but it must respect the free exercise of beliefs of others. What the principle of separation of church and state

⁸¹ Declaration on Religious Freedom Dignitatis Humanae on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious Promulgated by his Holiness Pope Paul VI on December 7, 1965.

⁸² Id..

⁸³ Id.

safeguards is against a particular religion influencing government laws and policies. It is the duty of public officials to ensure that laws and policies do not further the views of one religion but rather ensure that the rights of all citizens are protected.

B.10. Secular Morality Standard

The guarantees on separation of church and state and non-establishment of religion were precisely put in place to prevent religious morals from invading our laws and system of governance. As has been held by the Supreme Court in the *Estrada vs. Escritor*⁸⁴ and *Ang Ladlad vs. Comelec*⁸⁵ cases, our laws and system of governance should be based on secular morality and not religious morality.

Speaking through then Associate Justice Puno⁸⁶ the Supreme Court held in the case of *Estrada v. Escritor*⁸⁷ that “morality” must be understood in its secular conception:

“[W]hen the law speaks of ‘immorality’ in the Civil Service Law or ‘immoral’ in the Code of Professional Responsibility for lawyers, or ‘public morals’ in the Revised Penal Code, or ‘morals’ in the New Civil Code, or ‘moral character’ in the Constitution, **the distinction between public and secular morality on the one hand, and religious morality, on the other, should be kept in mind. The morality referred to in the law is public and necessarily secular, not religious** as the dissent of Mr. Justice Carpio holds. ‘Religious teachings as expressed in public debate may influence the civil public order but public moral disputes may be resolved only on grounds articulable in secular terms.’” [Emphasis supplied]

In the same case, the Supreme Court reiterated the prohibition against religious morality establishing a State-religion and violating State neutrality, thus:

“[I]f government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, i.e., to a ‘compelled religion,’ anathema to religious freedom. **Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens.** Expansive religious freedom therefore requires that **government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality.** [Emphasis supplied]

⁸⁴ A.M. No. P-02-1651, 4 August 2003, 408 SCRA

⁸⁵ *Ang Ladlad vs. COMELEC*.

⁸⁶ former Chief Justice

⁸⁷ A.M. No. P-02-1651, 4 August 2003, 408 SCRA, cited also in the petitioner’s MR.

Modern contraceptives are not immoral. The Philippine government cannot disallow contraceptives and expose people to risks of unwanted pregnancy. The state cannot prohibit modern contraceptives because such a policy violates fundamental human rights.

In the case of *Eisentadt*, the Supreme Court cited the Court of Appeals decision, as follows:

“To say that contraceptives are immoral as such, and are to be forbidden to unmarried persons who will nevertheless persist in having intercourse, means that such persons must risk for themselves an unwanted pregnancy, for the child, illegitimacy, and [405 U.S. 438, 453] for society, a possible obligation of support. Such a view of morality is not only the very mirror image of sensible legislation; we consider that it conflicts with fundamental human rights. In the absence of demonstrated harm, we hold it is beyond the competency of the state.”⁸⁸

B.11. Freedom of Speech and Expression

The Supreme Court held in the case of *Ang Ladlad* that “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.”⁸⁹

In the case of *Carey*, the Supreme Court held that prohibiting the advertisement of contraceptives suppresses expression of legal and constitutionally protected rights, as follows:

The District Court’s holding that the prohibition of any “advertisement or display” of contraceptives is unconstitutional was clearly correct. Only last Term *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976), held that a State may not “completely suppress the dissemination of concededly truthful information about entirely lawful activity,” even when that information could be categorized as “commercial speech.” *Id.*, at 773. Just as in that case, the statute challenged here seeks to suppress completely any information about the availability and price of contraceptives. Nor does the case present any question left open in *Virginia Pharmacy Bd.*; here, as there, there can be no contention that the regulation is “a mere time, place, and manner restriction,” *id.*, at 771, or that it prohibits only misleading or deceptive advertisements, *ibid.*, or “that the transactions proposed in the forbidden advertisements are themselves illegal in any way. Cf. *Pittsburgh Press Co. v. Human Relations Comm’n*, [413 U.S. 376 (1973)].” *Id.*, at 772-773. Moreover, in addition to the “substantial individual and societal interests” in the free flow of commercial information enumerated in *Virginia Pharmacy Bd.*, *supra*, at 763-766, the [431 U.S. 678, 701] **information suppressed by this statute “related to activity with which, at least in some respects, the State could not interfere.”** 425 U.S., at 760. Cf. *Bigelow v. Virginia*, 421 U.S. 809 (1975).

⁸⁸ *Eisentadt* at 1402.

⁸⁹ *Ang Ladlad vs. COMELEC*.

Appellants contend that advertisements of contraceptive products would be offensive and embarrassing to those exposed to them, and that permitting them would legitimize sexual activity of young people. But these are classically not justifications validating the suppression of expression protected by the First Amendment. At least where obscenity is not involved, we have consistently held that the fact that protected speech may be offensive to some does not justify its suppression. See, e. g., *Cohen v. California*, 403 U.S. 15 (1971).²⁷ As for the possible “legitimation” of illicit sexual behavior, whatever might be the case if the advertisements directly incited illicit sexual activity among the young, none of the advertisements in this record can even remotely be characterized as “directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). They merely state the availability of products and services that are not only entirely legal, cf. *Pittsburgh Press Co. v. Human Relations Comm’n*, 413 U.S. 376 (1973), but constitutionally protected. Cf. *Bigelow v. Virginia*, *supra*.²⁸ These arguments [431 U.S. 678, 702] therefore do not justify the total suppression of advertising concerning contraceptives.²⁹

C. The Philippine State Responsibilities under International Law to Provide Modern Contraceptives

Having ratified international human rights treaties such as CEDAW, ICCPR, ICESCR, and CRC, the Philippines is obligated to uphold women’s right to reproductive health and life, equality, non-discrimination, equal protection of the law and privacy by providing access to information, services, and supplies on modern contraceptives and access to sexuality education.

It is the obligation of the Philippines to provide the full range of contraceptive methods and to provide access to sexuality education under international human rights standards⁹⁰ and according to its commitments under the International Conference on Population and Development (ICPD) in 1994 and subsequent global policy documents including, more recently, the MDGs.

Denying access to modern contraceptives and to sexuality education is a blatant violation of the woman’s freedom to decide whether and when to bear children. Such denial risks women’s lives and health.

The ICCPR protects the “equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant,” including the “inherent right to life;” “the right to liberty and security of persons;” the “right to found a family;” among others.⁹¹

⁹⁰ CESCR, Gen. Comment 14, *supra* note 32, paras. 14, 21; see also the 1994 Cairo Declaration’s guiding principle that “[r]eproductive health-care programmes should provide the widest range of services without any form of coercion.” (emphasis ours) ICPD Programme of Action, *supra* note 28, Principle 8 (1995).

⁹¹ International Covenant on Civil and Political Rights, December 16, 1966, 21st Sess., U.N. Doc. A/6316 (entered into force March 23, 1976), arts. 3, 6(1), 9(1), 23(2), and 26.

The ICESCR, provides for the individual's "right to the highest attainable standard of health"⁹² The CESCR Committee has noted that the right to health includes "access to health-related education and information, including on sexual and reproductive health."⁹³

The right to modern contraceptives and to sexuality education is guaranteed by CEDAW, in particular of articles 2, 3, 4, 12 and 16; as well as articles 5, 10 and 11. CEDAW, ratified by the Philippines without reservations, is dedicated to eliminating discrimination against women. Article 1 of CEDAW defines discrimination as:

Any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁹⁴

In addition, Article 2 further states that, "States Parties condemn discrimination against women in all its forms, agree to pursue all appropriate means without delay a policy of eliminating discrimination against women."⁹⁵

Reproductive health is fundamental to women's health and social equality. Specifically, CEDAW commits States parties to: "ensure... access to specific educational information to help to ensure the health and well-being of families"⁹⁶; "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality with men and women, access to health care services"⁹⁷; ensure women "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."⁹⁸

The CEDAW Committee has consistently recognized that the denial or restriction of access to services that only women need such as pills and injectables constitutes "discrimination against women" since it is gender-based and has the effect of directly impairing or nullifying the enjoyment of exercise by women of rights such as the right to health, the right to life, to right to respect for privacy and family life, the right to freedom of expression (including the right to seek and receive information).⁹⁹

⁹² International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200a (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3 (entered into force January 3, 1976), arts. 12.1 and 12.2.

⁹³ General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12) (22nd Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 90, para. 11, U.N. Doc. HRI/GEN/1/Rev. 5 (2001).

⁹⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, art. 10(h), U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter, CEDAW], Art. 1.

⁹⁵ CEDAW, Art 2.

⁹⁶ CEDAW, generally.

⁹⁷ *Id.*, Article 12(1).

⁹⁸ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 16.1; Paragraph 7.3 of the International Conference on Population and Development (ICPD) Programme of Action provides "...the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so...the right to attain the highest standard of sexual and reproductive health. X x x [the] right to make decisions concerning reproduction free of discrimination, coercion and violence"; Paragraph 96 of the Beijing Platform for Action states, "The human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including their sexual and reproductive health, free of discrimination, coercion and violence."

⁹⁹ CEDAW General Recommendation No. 24, 20th session, 1999, 12 para. 31 (b), (c).

The denial of access to modern contraceptives and to sexuality education is an overt reflection of the State's ongoing failure to place a "gender perspective at the centre of all policies and programmes affecting women's health."¹⁰⁰

The denial of access to modern contraceptives and to sexuality education is in the context of an historic pattern of discrimination deeply entrenched in laws and policies, constituting a violation, by the Republic of the Philippines, of general and specific obligations under a number of articles under the CEDAW Convention. These include:

- a) *General obligations*: articles 2, 3 and 4;
- b) *Specific obligations*: articles 12 and 16;
- c) *Other specific obligations*: articles 5, 10 and 11.

Article 3 of CEDAW obligates States to take all appropriate measures to ensure the full development and advancement of women in order to guarantee their human rights.

Under Article 2(d) of CEDAW, States have the obligation to refrain from engaging in discriminatory acts or practices against women and employs all governmental institutions to adhere to this obligation.¹⁰¹ A policy, therefore, that denies access to modern contraceptives would be upholding the ideological framework of the religious right.

The effect of the definition of discrimination against women in article 1 of CEDAW is to incorporate by reference into CEDAW the full range of human rights and fundamental freedoms, including the right to life. Thus, the general obligations in article 2 require the State to ensure that it does not discriminatorily deprive women of their right to life.

The State is obliged to ensure that health goods and services are available in sufficient quantity, are of acceptable quality,¹⁰² and that these goods are "accessible to all, especially the most vulnerable or marginalized sections of the population."¹⁰³ Contrary to this obligation, the poorest segments of the population have been most detrimentally affected by the lack of access to modern contraceptives.

It is relevant to note that the international community has spoken against allowing religious norms to shape public policy specifically in the context of reproductive health. A WHO publication states that despite religious or other moral influence, "democratic governments that are accountable to their electorates and that have endorsed the Cairo Programme bear responsibility to formulate and advance laws that serve their populations' reproductive health."¹⁰⁴

¹⁰⁰ CEDAW Comm., Gen. Rec. 24, supra note 133, para. 31(a).

¹⁰¹ REBECCA COOK, ED., HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 245 (1994).

¹⁰² CESCR, Gen. Comment 14, supra note 34, para. 12.

¹⁰³ CESCR, Gen. Comment 14, supra note 34, para. 12 (b).

¹⁰⁴ REBECCA J. COOK, & BERNARD M. DICKENS, CONSIDERATIONS FOR FORMULATING REPRODUCTIVE HEALTH LAWS 8, World Health Organization, 2nd Ed.(2000).

Recommendation

Government officials should bear in mind their duty to enact laws that uphold international human rights standards and take into consideration the realities women face, public health, and medical science and their obligation to maintain public good. Our standard in governance and laws, as decided by the Supreme Court, is secular standards.

The Philippine government through the Philippine Congress should immediately enact an RH law. The legislative, judicial, and executive branches of government demand good governance and not conduct of imposition of religious morality prejudicial to public service. As government officials, they should ensure women's access to the full range of contraceptives and to sexuality education.

Women are the ones who bear the brunt of the delayed passage of an RH law. Women are the ones who die from childbearing, pregnancy, and unsafe abortion. Prevailing discrimination against women and total disregard for women's rights must stop. Those who fight for the human rights of women must stand up and fight for women's rights. The delayed passage of an RH law violates women's human rights and is an affront to women.

Modern contraceptives and sexuality education must be made available to women to prevent unwanted pregnancies and maternal mortality and morbidity related to pregnancy, childbirth, and unsafe abortion. A policy discriminating against women's right to access reproductive services unnecessarily puts women's lives and health at risk. It would do well for policy makers and service providers to face the realities of Filipino women's experiences to enable them to comprehend the grave consequences of discrimination against women.

The Philippines is obligated to uphold the Constitution and international human rights laws and to make the full range of reproductive health services including modern contraceptives, sexuality education, emergency obstetric care and skilled birth attendants accessible to women. The right of women to the full range of reproductive health services is very basic to women's human rights.

Policy makers and service providers have the duty to uphold women's right to health and life. There being no rational basis and no medical and scientific evidence to prohibit access to modern contraceptives, the Philippine Congress must immediately enact an RH law.

About EnGendeRights

EnGendeRights has done groundbreaking work in raising Filipino women's concerns to the international level especially the United Nations mechanisms. EnGendeRights spearheaded the drafting of a collaborative Shadow Report that was submitted to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) during its 36th Session in August 2006, New York. This submission was done in collaboration with the Center for Reproductive Rights (CRR), Reproductive Rights Resource Group, Philippines (3RG-Phils.), and Health Development and Initiatives Institute (HDII). EnGendeRights, through its executive director Clara Rita Padilla, orally presented highlights of the Shadow Report during the CEDAW-NGO dialogue and actively lobbied with the CEDAW experts leading to the successful adoption of strong sexual and reproductive health and rights language in the CEDAW Committee's Concluding Comments on six of the areas of concern stated in their Shadow Report (i.e., access to the full range contraceptive methods including emergency contraception, access to safe and legal abortion, sexuality education for adolescents, skills and education for women in prostitution, legalization of divorce and repeal of discriminatory Muslim Code provisions). These recommendations are very useful in legislative, judicial, and executive advocacy towards eliminating discriminatory laws, policies, and practices on women.

In its continued work on sexual and reproductive rights and raising awareness on the mechanisms under CEDAW, EnGendeRights also spearheaded the submission of a collaborative Request for Inquiry under the Optional Protocol to CEDAW in 2008 requesting the CEDAW experts to visit the Philippines to investigate the grave and systematic reproductive rights violations resulting from the restricting of access to contraceptives under EO 003 implemented in Manila City since 2000. The submission and the three updates submitted to the CEDAW Committee were done in collaboration with the Task Force CEDAW Inquiry, CRR and the International Women's Rights Action Watch, Asia Pacific (IWRAP-AP). EnGendeRights also collaborated in the submission of a joint request for an urgent appeal to the UN Special Rapporteurs on Health, Education, Violence against Women, Freedom of Religion or Belief, and Human Rights Defenders and the Independent Expert on Extreme Poverty on the reproductive rights violations related to Manila EO 003. This was submitted in March 2009 and was done also in collaboration with the Task Force CEDAW Inquiry, CRR and IWRAP-AP.



EnGendeRights, Inc.
Asserting Women's Rights