



# Reasons Why We Need to Decriminalize Abortion

By Clara Rita A. Padilla

## 1) To save women's lives and prevent disability from unsafe abortion complications

**No woman should die or suffer disability from unsafe abortion complications.**<sup>1</sup> Deaths from unsafe abortion complications are preventable deaths with access to safe abortion<sup>2</sup> and post-abortion care.

This bill when passed into law will save the lives of thousands of women.

**The restrictive, colonial, and antiquated 1930 Revised Penal Code abortion law never reduced the number of women inducing abortion. It has only endangered the lives of hundreds of thousands of Filipino women who are forced to undergo unsafe abortion.** Prosecution of women who induce abortion and those assisting them is not the answer.

Despite the restrictive abortion law and without access to appropriate medical information, supplies and trained health providers, Filipino women, especially poor women with at least three children, have made personal decisions to induce abortion clandestinely and under unsafe conditions risking their lives and health.

**In 2012 alone, 610,000 Filipino women induced abortion, over 100,000 women were hospitalized,<sup>3</sup> and 1000 women died** due to unsafe abortion complications.<sup>4</sup> Based on statistics, the number of induced abortions increases proportionately with the increasing Philippine population.<sup>5</sup>

This 2012 statistics show that lack of access to safe and legal abortion has a grave public health impact on women's lives and health translating to:

- **3 women dying every day from unsafe abortion complications**<sup>6</sup>
- **11 women hospitalized every hour**<sup>7</sup>
- **70 women induce abortion every hour**<sup>8</sup>

**Each year, complications from unsafe abortion is one of the five leading causes of maternal death—between 4.7% – 13.2%—and a leading cause of hospitalization in the Philippines.**<sup>9</sup> The high number of women dying yearly from complications from unsafe abortion surpass even the number of people who die from dengue. This is unacceptable. No person should die from complications from unsafe abortion nor dengue.

The Philippines must decriminalize abortion now, otherwise, allowing outmoded colonial penal abortion laws in Philippine law makes us all complicit to the high number of women who die each day from unsafe abortion complications.<sup>10</sup>

**With abortion decriminalized, women's access to safe abortion and post-abortion care will not be impeded, thus, averting maternal deaths and disability from unsafe abortion complications.**

**Decriminalizing abortion will save the lives of women who can be anyone's daughter, partner, mother, sister, niece or granddaughter.**

**2) To reduce maternal deaths related to unintended/unwanted pregnancies and unsafe abortions during humanitarian crises including the COVID-19 pandemic**

This public health issue should urgently be addressed especially now with the impact of the COVID-19 pandemic resulting in higher rates of unintended and unwanted pregnancies due to lack of access to contraceptives and higher incidences of rape, intimate partner violence, and sexual exploitation. About 2.56 million women are estimated to have unintended pregnancies in 2020, a 42% increase.<sup>11</sup> During this pandemic, these women faced with unintended and unwanted pregnancies are in an extraordinary situation where their day-to-day reality is joblessness, hunger, poverty, and being stuck at home with their abusers with an estimated 20% increase in intimate partner violence.<sup>12</sup>

About 18,000 more adolescent girls are estimated to become pregnant due to the impact of the pandemic, worsening the high incidence of adolescent pregnancies in the Philippines--one of the highest in Asia prior to COVID-19 and described a national social emergency in 2019.<sup>13</sup> This 2020, there is also an estimated 178,000 adolescent women and girls between 15 and 19 years old with unmet need<sup>14</sup> for family planning,<sup>15</sup>

Without access to safe abortion, many of these women and adolescent girls would eventually end their pregnancies unsafely risking their lives and health and may end up in the statistics of the estimated 26% increase of 2020 maternal deaths due to the pandemic's disruption of access to health services.<sup>16</sup>

**3) To respect the woman's personal decision**

No one should force a woman to carry a pregnancy to term. We must respect a woman's personal decision-making, her right to bodily autonomy, and her basic right to life, health, and privacy.

The women who induce abortion are similar to the majority of the Filipino women—poor, Roman Catholic, married, with at least three children, and have at least a high school education.

Hundreds of thousands of Filipino women make personal decisions to induce abortion for various reasons (economic-75%; too young, under 25 years old-46%; health reasons- one-third; rape-one out of every nine women who induce abortion) but are unable to access safe abortion services.

Almost 50% of women who induce abortion are under 25 years old. These women can be anyone's daughter, sister or young mother. Some of these women are also rape survivors.

Abortion, as other concerns related to marriage, procreation, contraception, divorce, diverse relationships, are covered by the constitutional right to privacy (*Carey v. Population Services International*),<sup>17</sup> hence, such personal decisions preclude governmental interference.

**4) To repeal discriminatory laws against women and eliminate stigma, discrimination, and imposition of oppressive religious beliefs against women who induce abortion**

**The 1930 Revised Penal Code abortion law (Art. 256<sup>18</sup>-259 of the Revised Penal Code)<sup>19</sup> is a restrictive, colonial, and antiquated law that continues to perpetuate discrimination against women. This law was directly translated from Spanish into English from the 1870 Old Spanish Penal Code which**

**provisions can be traced back to the older 1822 Spanish Penal Code. This law has infringed Filipino women's right to bodily autonomy to end their pregnancies leading to maternal deaths and morbidities from unsafe abortion complications.**

Under the Magna Carta of Women (RA 9710), the State shall "take steps to... repeal existing laws that are discriminatory to women within three years from the effectivity of RA 9710."

Decriminalizing abortion will eliminate the judgmental, harsh, and inhumane treatment of women seeking abortion care for induced abortion (viable or therapeutic/medical necessity) including women needing emergency post-abortion care for unsafe abortion complications. This is a step towards eliminating discrimination, sexism, and misogyny against women.

Women suffering unsafe abortion complications bleed to death or die from sepsis because they do not seek health care for fear of prosecution while others have been denied emergency treatment, subjected to inhumane and delayed treatment and/or were threatened with prosecution and just leave the hospital.

**Even with the Reproductive Health (RH) Law (RA 10354), Magna Carta of Women (RA 9710), Anti-Hospital Deposit Law (RA 10932), and DOH AO ensuring access to post-abortion care, it is not only women suffering complications from unsafe abortions who have been denied post-abortion care and other life-saving emergency medical care--legal medical procedures to save women's lives--but also women suffering complications from naturally occurring medical conditions such as spontaneous abortion (commonly known as miscarriages), incomplete abortion, and intra-uterine fetal demise.<sup>20</sup> In one documented case, life-saving care was also denied to a woman where the fetal demise was caused by violence committed by the abusive partner.<sup>21</sup> Even when these naturally occurring medical conditions are not penalized by law, women are still at risk of dying when they are unlawfully denied timely emergency life-saving care.**

The harmful stigma women suffer from this restrictive law and the oppressive religious beliefs imposed on women will continue to place women's lives and health at risk until abortion is decriminalized in the Philippines.

#### **5) To provide incest and rape survivors and sexually exploited/trafficked women the opportunity to end unwanted pregnancies through safe abortion procedures**

Rape and incest survivors and sexually exploited women must be free to discontinue their unwanted pregnancies without risk to their lives.

#### **A. Women are discriminated and suffer further torture when denied access to safe and legal abortion in cases of rape**

A Filipino woman or girl is raped every 75 minutes.<sup>22</sup> About one in every eight Filipino women who induce abortion are rape survivors.<sup>23</sup>

One of the glaring consequences of rape is unwanted pregnancy. Some women and girls who became pregnant resulting from rape were forced to resort to clandestine and unsafe abortions to end their unwanted pregnancies while others have tried to commit suicide.<sup>24</sup>

**One research showed the following statistics of rape survivors who induced abortion:**

<b>Marital rape</b>	<b>57%</b>
<b>Incest</b>	<b>27%</b>
<b>Rape</b>	<b>83%</b> <sup>25</sup>

When one's daughter, sister, wife or mother becomes pregnant as a result of rape, there are many Filipinos who will support their female family member's decision to undergo such therapeutic abortion, however, even rape survivors are not expressly allowed by Philippine law to undergo abortion.

Denying safe and legal abortion to rape and incest survivors is torture, a clear injustice, and patently discriminates against women and girls. Without access to safe and legal abortion, these rape and incest victims end up part of the statistics of women and girls who die from unsafe abortion complications.

**B. Women who were raped, became pregnant as a result of the rape, and died due to complications from their unsafe abortion or risky childbirth**

There have been cases of **women who were raped, became pregnant as a result of the rape, and died due to complications from their unsafe abortion:**

**In 2012, a 19-year woman who was raped by her step-father became pregnant as a result of rape. Forced to induce an abortion under unsafe conditions, she died from complications.**<sup>26</sup>

**In 2004, a 26-year old doctor, forced to self-induce an abortion, died from infection due to complications from unsafe abortion. She became pregnant after she was raped by an older man who funded her medical education.**<sup>27</sup>

There have also been cases of **women who became pregnant as a result of the rape, were forced to carry their pregnancies to term, and died due to risky childbirth:**

**In 2015, a 21-year old woman with dwarfism condition who became pregnant as a result of rape, died after her risky childbirth.**<sup>28</sup>

**C. Young women and girls belonging to poor and large families end up sexually exploited/trafficked**

Poor women who lack access to contraceptives and safe abortion end up with too many children to feed further exacerbating their impoverished situation. Unfortunately, **many young women and girls belonging to poor and large families end up being sexually exploited/trafficked by their own parents demonstrating the intersectionality of gender-based violence, poverty, and inability to fulfill reproductive rights.**

In Maguindanao, Women's Desk police officers reported high incidence of child sexual exploitation/trafficking where the children belonging to poor and large families (with six or more children) end up sexually exploited/trafficked by their own parents.<sup>29</sup>

This highlights that increased access to contraceptives and safe and legal abortion can help curb trafficking. **This further emphasizes the need for access to safe abortion if and when these sexually exploited/trafficked children and young women end up with unwanted pregnancies.**

## **6) To save the lives of adolescent girls, women with disabilities, and other persons at risk**

### **A. Adolescent girls are at risk of dying due to lack of access to safe abortion**

Adolescent girls are at risk for undergoing unsafe abortion and for giving birth without the assistance of skilled birth attendants.<sup>30</sup>

**When adolescent girls are forced to carry a pregnancy to term, they are at high risk of dying or suffering disability.**<sup>31</sup>

**Pregnancies and childbirth of adolescent girls aged less than 18 years and those whose height are less than 4'9" are considered high risk pregnancies<sup>32</sup> leading to high levels of maternal mortality and morbidity.**<sup>33</sup> One research found adolescent girls have **two times risk of dying at childbirth** with a **much higher risk for 15-year old and below adolescent girls** while **the infants of adolescents girls had a three times risk of dying.**<sup>34</sup> Complications due to high blood are high for adolescent girls giving birth. They also tend to disregard basic pre-natal and post-natal care thereby putting themselves at risk and adding to occurrence of infant mortality.<sup>35</sup>

#### **A.1. Adolescent rape and incest survivors and sexually exploited adolescent girls are at risk of dying due to lack of access to safe abortion**

**The same research on rape survivors also cited that adolescent incest survivors become suicidal and their pregnancies are risky due to their young age and would have fetal infirmities due to blood relationship.**<sup>36</sup>

Without access to safe abortion, a 10-year old girl who became pregnant after being raped by her own father would be forced to carry her pregnancy to term--**the rape and forced pregnancy violate her rights at the same time she is at high risk of dying as such pregnancy at her young age is extremely risky.**

The Population Commission (POPCOM) cites about 40 to 50 adolescent girls aged 10-14 give birth every week.<sup>37</sup> It has been found that many adolescent girls aged 15 and below became pregnant due to sexual assault<sup>38</sup> showing the pervasive problem of sexual assault to this adolescent age group and the grave impact of such sexual assault on the rights, lives, and health of these adolescent girls. This highlights the imperative need to address such gender-based violence with due diligence including by providing access to emergency contraceptives and safe abortion and in effective prevention by raising the age of sexual consent to 16 as recommended by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee).<sup>39</sup>

**In Paraguay, two adolescent girls died during their risky childbirth after being raped and forced to carry their pregnancy to term (forced pregnancy):**

In 2018, a 14-year old girl in Paraguay who became pregnant after being raped by a 37-year old man died during childbirth. The hospital director said, “Her body was not ready for a pregnancy.”<sup>40</sup>

In 2018, a 12-year old in Paraguay was raped and forced to carry her pregnancy to term. She died during her child birth.<sup>41</sup>

Maternal deaths of Filipino adolescent girls remain generally unreported but this does not mean that this is not happening in the Philippines.

**B. Persons with disabilities are at risk of dying due to lack of access to safe abortion**

One in three adult deaf women are rape survivors while two in three deaf children are rape survivors.<sup>42</sup>

Without access to safe abortion, deaf women and girls and all other women and girls with disabilities facing unwanted pregnancies due to rape who induce abortion unsafely are risking their lives and health. The right of women with disabilities to autonomy and make personal decisions to end their pregnancies must be recognized to ensure their rights to health and life.

**C. Persons with diverse sexual orientation, gender identity, and expression are at risk of dying due to lack of access to safe abortion**

There are reports of lesbians, transgender men, and non-binary persons who have been raped and became pregnant resulting from the rape.<sup>43</sup> There have been Muslim lesbians who were raped in Jolo,<sup>44</sup> with the rape of one lesbian arranged by her father.<sup>45</sup> One Muslim lesbian committed suicide after being sexually abused.<sup>46</sup>

Hate crimes committed against lesbians, transgender men, and non-binary persons can be traced to the same issues denying rights to privacy and bodily autonomy rooted in patriarchy, imposition of oppressive religious beliefs, and lack of respect to the rights of others.

**Lack of access to safe abortion can lead to high maternal mortality and morbidity for people with diverse sexual orientation, gender identity and expression and sex characteristics (SOGIESC) who are being targeted for their SOGIESC.**

**7) To save the lives of poor women who are at risk due to lack of access to safe abortion**

**Poor women comprise two-thirds of those who induce abortion,<sup>47</sup> using riskier abortion methods, thus disproportionately experiencing severe complications,<sup>48</sup> while Filipino women with financial capability can access safe abortion in nearby Asian countries where abortion is legal such as in Vietnam, Cambodia, and Singapore—clearly showing that lack of access to safe abortion is a social justice/class issue.**

In the 2012 documentation of experiences of poor women in Manila City in relation to the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) inquiry on reproductive rights violations in Manila City,<sup>49</sup> it was found that many poor women risked their lives and health by

undergoing as many as six consecutive unsafe abortions using risky methods.

Ninety-eight percent of unsafe abortions are in developing countries.<sup>50</sup> In countries like the Philippines where induced abortion is legally restricted and often inaccessible, safe abortion is frequently the privilege of the rich, while poor women often resort to unsafe abortion procedures, causing deaths and morbidities.<sup>51</sup> In comparison, in almost all developed countries, safe and legal abortion is available upon request or under broad social and economic grounds, with services generally accessible and available.<sup>52</sup>

Decriminalizing abortion upholds poor women's rights including their rights to life, health, equality, non-discrimination, and equal protection of the law.

### **8) To save the lives of women with risky pregnancy conditions**

Safe abortions are safer than childbirth and for persons with risky pregnancies and are unable to access to safe abortion, they are at risk of dying when they are forced to carry their pregnancy to term.

One-third of the women who induced abortion cited health reasons for inducing abortion.<sup>53</sup> There are many reasons why a woman might want to induce abortion as her pregnancy and childbirth itself could lead to her death and disability.

The World Health Organization (WHO) found that 73% of all maternal deaths were due to direct obstetric causes:

1. Hemorrhage (27.1%)
2. Hypertensive disorders (14%)
3. Sepsis (10.7%)
4. Unsafe Abortion (7.9%)
5. Embolism (3.2%)
6. All other direct causes of death (9.6%).<sup>54</sup>

Pregnant Filipino women and girls may also have other common conditions that cause maternal death (e.g., hypertensive (14% of maternal deaths) and other cardiovascular diseases; less than 18 or greater than 35 years old; less than 4'9" in height or have dwarfism; having a fourth or more child; with tuberculosis, diabetes, bronchial asthma, goiter,<sup>55</sup> HIV,<sup>56</sup> malaria, severe anemia, malnutrition; a survivor of violence against women<sup>57</sup>; women with spinal metal plates). A woman may also have suffered a previous postpartum hemorrhage (PPH) and may want to induce abortion to avoid risk to her health and life due to PPH.

**In August 2015, Maria, not her real name, a 21-year old Filipino woman with dwarfism condition who became pregnant as a result of rape, died a day after her risky childbirth due to complications resulting from her dwarfism condition.<sup>58</sup> Her mother lamented that her daughter might still be alive had her daughter been able to access safe and legal abortion.<sup>59</sup>**

Although interventions exist to prevent these maternal deaths and address the pre-existing health concerns of women, the services and information regarding the health services may not be accessible to poor, rural, adolescent girls, and young women.

Other women may have conditions where their health providers also recommend them to induce abortion such those who are suicidal or have mental health concerns including those who are suicidal because of their pregnancy<sup>60</sup> or have broad social and economic concerns impacting their mental health status and women with cancer.<sup>61</sup>

## **9) To support the prevailing recognition that therapeutic abortion is legal to save the life of the woman and for medical necessity**

### **A. Abortion to save the life of the woman and for medical necessity is recognized as allowed in the Philippines**

**Abortion is recognized as allowed in the Philippines to save the life of the woman and for medical necessity**, hence, access to therapeutic abortion should encompass management of various clinical conditions for induced abortion (e.g., various conditions of the woman and pregnancy conditions of the woman).<sup>62</sup>

Abortion to save the life of the woman has been supported by commentaries of constitutionalist and priest **Fr. Joaquin Bernas**;<sup>63</sup> professors of forensic medicine to preserve the life and health of the woman (e.g., **Pedro Solis**),<sup>64</sup> and for medical necessity under Philippine jurisprudence (**1961 case of Geluz vs. CA, 2 SCRA 801**).<sup>65</sup> Legal experts such as **Dean Pacifico Agabin, Judge Alfredo Tadiar, Atty. Clara Rita A. Padilla and Atty. Jihan Jacob** and **reproductive rights activists such as Princess Nemenzo, Mercedes Fabros, and Dr. Florence M. Tadiar**, among others, have long advocated for decriminalization of abortion and women's access to safe abortion and post-abortion care.

Although therapeutic abortion is recognized as allowed in the Philippines, the problem is lack of information and the pervasive judgment imposed on women who induce abortion, hence, decriminalizing abortion is an important step towards eliminating discrimination against women and ensuring women's access to reproductive health services.

### **B. The Philippine government supports abortion to protect the life and health of women**

**The Philippine government unequivocally supports access to therapeutic abortion**, paving the way to decriminalize abortion, by citing in its **2019 state party report to the Human Rights Committee**, that women and health providers do not incur criminal liability based on the general principles of criminal legislation on the ground of necessity under **Article 11, paragraph 4, of the Revised Penal Code**<sup>66</sup> **justifying abortion to "protect the life and health of pregnant women."**<sup>67</sup>

The **Philippine Commission on Women (PCW)** recommended that **"justified abortion in circumstances where 'continuation of pregnancy endangers the life of the pregnant woman or seriously impairs her physical health' should...be considered."**<sup>68</sup>

In the **Commission on Human Rights (CHR) Report** on the National Inquiry on Reproductive Health and Rights, the CHR recommended to the legislature to: **"4. To review provision on abortion..., taking into consideration the studies forwarded by [the Center for Reproductive Rights] and EnGendeRights and other women's organizations on how the [restrictive abortion law] affect[s] provision of post abortion care; The legislature may likewise note CEDAW Committee views on the matter."**<sup>69</sup>



### **C. Jurisprudence support access to therapeutic abortion and post-abortion care as emergency cases**

Regardless of a person's religious or personal beliefs on abortion, **a health care provider cannot deny access to therapeutic abortion and post-abortion care on the basis of conscientious objections and third-party authorization since these are emergency cases.** The Supreme Court, in upholding the constitutionality of the RH Law, **ruled that medical care should be provided in emergency cases<sup>70</sup> (e.g., pregnancy-related complications which the WHO defines as including childbirth and abortion-related complications).**

#### **10) To address unintended/unwanted pregnancies due to lack of access to contraceptives, contraceptive failure rates, and coercive relations**

##### **A. Low modern contraceptive use and high unintended pregnancies**

- Only about four out of every ten women aged 15-49 use modern contraceptives<sup>71</sup>
- Seventeen percent of currently married women have an unmet need for family planning services while among sexually active, unmarried women, 49 percent have an unmet need for family planning<sup>72</sup>

Owing to lack of access to contraceptive information, services, and supplies, poor, rural, and young<sup>73</sup> women are likely to experience unintended pregnancy and resort to unsafe abortion procedures.<sup>74</sup>

**About one-third of unintended pregnancies end in abortion in the National Capital Region (NCR)<sup>75</sup> or about one in every nine pregnant women in the National Capital Region induce abortion<sup>76</sup> and about one in every 18 pregnant women nationwide induce abortion.<sup>77</sup>**

##### **B. Lack of access to contraceptives, contraceptive failure, coercive intimate relations, and rape lead to high unintended/unwanted pregnancies**

Death and disability from unsafe abortion complications could be prevented through sexuality education, use of effective contraception, provision of safe, legal induced abortion, and timely care for complications,<sup>78</sup> however, **while modern contraceptives can reduce unintended pregnancies and abortion to some extent, it will not eliminate the need for abortion as some women experience contraceptive failure as contraceptives are not 100% effective; many women and girls do not have access to contraceptive information, supplies, and services especially poor women, rural women, adolescent girls and young women; other women have contraindications to contraceptive use or choose not to use contraceptives while other women and girls are in situations of coercive control by partners<sup>79</sup> or become pregnant as a result of rape and incest.**

#### **11) To address the social costs of lack of access to safe abortion and post-abortion care**

Apart from the maternal deaths and lifelong disabilities related to lack of access to safe abortion and post-abortion care, social costs include the **time women spend in hospitals** for treatment and recovering from complications due to unsafe abortion.<sup>80</sup> This time spent in hospitals **lead to women's lower participation in national, community, and family matters taking them away from attending school, engaging in livelihood, and participating in family life.<sup>81</sup>**

Other **social costs of unsafe abortion** include the following:

- **An estimated nine living children will lose their mothers every day due to maternal mortality resulting from complications from unsafe abortion.**<sup>82</sup>
- **Many children who lose their mothers receive less health care<sup>83</sup> and education, are likely to have serious health problems, and are more likely to die.**<sup>84</sup>

**Social costs of unintended/unwanted pregnancies** include the following:

- **About two babies are reported abandoned every day.**<sup>85</sup>
- **In one orphanage, the house parent said that 98% of the children are not adopted** because most children were born as a result of incest rape with the fathers as perpetrators.<sup>86</sup>

Reasons for abandoning babies could include unintended pregnancies resulting from rape, poor women and their families cannot afford to raise another child, and young women who are unprepared to raise a child. **Although anti-choice groups say that adoption for unwanted pregnancies is an option, the reality is that most children in orphanages are not adopted.**<sup>87</sup>

In 2017, nine percent of adolescent women and girls (or one out of every 11) aged 15-19 have begun childbearing<sup>88</sup> with the POPCOM projecting around 200,000 adolescent women and girls will give birth in 2021.<sup>89</sup> POPCOM also cites that about 500 adolescent women and girls giving birth every day.<sup>90</sup>

When young women and adolescent girls are forced to carry their pregnancies to term the **social impact includes disruption of schooling and the resulting lack of career options due to low educational attainment and lack of necessary job skills. Lack of career options in turn result in lack of financial capability.**<sup>91</sup>

**12) To save the government over half a billion pesos since induced safe abortion services cost less than treatment of unsafe abortion complications**

Treating complications from unsafe abortion is estimated to cost health systems ten times more than induced safe abortion services offered in primary care, burdening the country's limited health system resources. **The Philippine government could save over half a billion pesos (Php) every year by decriminalizing abortion and ensure access to safe abortion.** Payments for post-abortion care by the Philippine Health Insurance Corporation more than doubled in the last two years—from Php 250 million in 2014 to Php 570 million in 2016.<sup>92</sup>

**13) To uphold women's fundamental human rights and confirm that women's rights prevail over prenatal protection**

**A. Women's rights prevail over prenatal protection**

**Decriminalizing abortion upholds women's rights to life and other fundamental human rights and confirms that women's rights--the rights of those with legal personality (Art. 41 of the Civil Code)—prevail over prenatal protection.**

**Women's right to life and other fundamental women's human rights prevail over the 1987 Constitutional prenatal protection** under Section 12, Article II on the Declaration of Principles equally protecting the life of the woman and the unborn from conception.<sup>93</sup> **Prenatal protection is not absolute and does not abrogate women's rights under the Bill of Rights such as the constitutional rights to health, life, privacy, religion, equality, and equal protection of the law which all guarantee the woman's right to safe and legal abortion.**<sup>94</sup>

**B. Legal personality only attaches upon birth; the fetus and embryos are not accorded the same legal protection as a person who is born**

**It is recognized in Philippine and comparative jurisprudence and international law that the zygote, blastocyst, embryo, and fetus are not on equal footing with the rights of a woman.**<sup>95</sup> Not placed exactly on the same level as the life of the woman, **the zygote, blastocyst, embryo and fetus are not accorded the same rights and protection as legal persons since legal personality only attaches upon birth (Art. 41, Civil Code).**

In the case of *Geluz vs. Court of Appeals*,<sup>96</sup> the Philippine Supreme Court held as early as 1961 that the husband of a woman who voluntarily procured her abortion was not entitled to damages from the physician who performed the procedure since the fetus was not yet born and thus does not have civil personality under Article 41 of the Civil Code. The Supreme Court even went further to state that that abortion is justified when there is a medical necessity to warrant it.<sup>97</sup>

**C. Other countries with the same constitutional prenatal protection allow access to safe and legal abortion**

**Other countries with the same constitutional prenatal protection allow abortion such as Costa Rica, Hungary, Kenya, Poland, Slovak Republic, and South Africa.** These examples show that the Constitution, being the law of the people, is justifiably interpreted liberally in favor of women.

**D. The Philippine Constitution must be liberally construed to save the lives of Filipino women and prevent disability resulting unsafe abortion complications**

The Philippine Constitution, an evolving law and the law of the Filipino people that guarantees constitutional rights, must be construed liberally to save the lives of Filipino women and prevent disability resulting from complications from unsafe abortion and that the woman's right to life encompasses her physical, mental, emotional, psychological well-being.

**E. Women's rights to life, health, privacy, religion or belief, equality, equal protection of the law prevail over prenatal protection**

When women are denied access to safe abortion and life-saving emergency care, this becomes a clear violation of women's rights to life, health, equality and non-discrimination, autonomy and bodily integrity, freedom from cruel, inhuman, and degrading treatment, and equal protection of the law.

**14) To uphold women's right to equal protection of the law**

**There is evidence of use of abortifacients by indigenous peoples (IP), e.g., Ati,<sup>98</sup> showing that abortion is common among IPs with the use of herbal abortifacients.**

**As regards our Muslim sisters, there are certain Islamic schools of thought that allow abortion within 120 days of pregnancy.<sup>99</sup>**

Denying access to safe and legal abortion under the Philippine law to women whose beliefs and religions allow them to induce abortion would be a violation of their right to equal protection of the law.

Access to abortion by all Filipino women must be safe and legal, hence, the need to decriminalize abortion and provide access to safe and legal abortion to all Filipino women of differing ethnicities, backgrounds, status, class, faiths or beliefs upholding the right of all Filipinos to equal protection of the law.

### **15) To uphold women's rights to freedom of thought, conscience, and religion**

A woman must be free to make a personal decision to end her pregnancy according to her right to freedom of thought, conscience, religion or beliefs free from interference, coercion or constraint.<sup>100</sup> This right is violated when women are denied access to safe and legal abortion.

When women induce abortion according to their religion or beliefs--be they indigenous women, Muslim women and other women whose religions recognize the importance of access to safe and legal abortion (e.g., Protestant denominations, Hinduism, and Buddhism),<sup>101</sup> and women with diverse beliefs (e.g., atheists, agnostics, among others), and even the majority of those who induce abortion who are Catholics, poor, with at least three children and with a high school education—their right to freedom of thought, conscience, religion or belief must be upheld.<sup>102</sup>

These same women want to decriminalize abortion to enable them and other women to have access to safe and legal abortion, thus, putting an end to women risking their lives and health when undergoing unsafe abortion.

**The Supreme Court in upholding the constitutionality of the Reproductive Health Law ruled that health care providers cannot deny medical care in emergency cases<sup>103</sup> (which includes abortion-related complications according to WHO) regardless of their religious beliefs, this clearly shows that such refusals are religious refusals that infringe on the constitutional right to freedom of religion or belief. Underscoring that while freedom to believe is absolute, freedom to act on one's belief is not absolute.<sup>104</sup>**

### **16) To uphold the constitutional guarantee on separation of church and state and non-establishment of religion**

#### **A. Constitutional guarantee on separation of church and state and non-establishment of religion**

Religious beliefs should not be used as basis for our laws and policies as doing so would aid a specific religion and violate the guarantee of non-establishment of religion<sup>105</sup> and infringe on the right to freedom of religion.

The Philippine government must uphold the constitutional guarantees of separation of church and state and non-establishment of religion. **Maintaining the restrictive abortion law would violate the principle of separation of church and state and would be tantamount to establishment of religion—allowing certain religious groups to influence our laws, governance, and impose their beliefs on the entire**

**Philippine population in violation of the constitutional guarantee on non-establishment of religion. This would infringe on the right to freedom of religion of women and health providers who want to provide health care to their patients.**

The principle of separation of church and state guarantees that Philippine laws and policies must not adopt the position of any major or minor religion.

People and their churches are free to exercise their own beliefs but they must respect the free exercise of beliefs of others. What the principle of separation of church and state safeguards is against any 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 any religion but rather ensure that the rights of all citizens are protected.

## **B. Secular standards**

As has been held by the Supreme Court in the *Estrada vs. Escritor*<sup>106</sup> and *Ang Ladlad vs. Comelec*<sup>107</sup> cases, **our laws and system of governance should be based on secular standards and not religious morality.**

In the words of former Secretary of Health Dr. Alberto Romualdez, Jr., “Abortion is **not a moral issue, it is a medical issue.**” Highlighting the need for a law decriminalizing abortion that upholds medical standards and the constitutional guarantee of secular standards over religious morality.

### **17) To be in line with the global trend liberalizing abortion laws to lower maternal deaths and morbidities related to unsafe abortion complications**

There is a global trend liberalizing abortion laws where about 85% of the countries around the world allow abortion on express grounds.<sup>108</sup> Over 30 countries have liberalized their abortion laws in the last two decades.<sup>109</sup>

#### **A. Asian countries with liberalized abortion laws**

Asian countries including Predominantly Catholic and Muslim countries have liberalized their abortion laws: 1) On request (gestational limits vary): Cambodia, China, Nepal, Singapore, Turkey, and Vietnam; 2) Certain grounds: Bhutan, Fiji, Indonesia, Iran, Iraq,<sup>110</sup> Japan, Malaysia, and Thailand;<sup>111</sup> 3) To save a woman’s life: Bangladesh, Iraq, Timor-Leste (a Southeast Asian predominantly Catholic country).<sup>112</sup>

Bangladesh, however, allows “menstrual regulation” since 1979 up to 12 weeks of gestation,<sup>113</sup> although many women still resort to clandestine abortions, some of which are unsafe.<sup>114</sup> Tunisia, a predominantly Muslim country in Africa, allows abortion on request. In 2019, the South Korean Constitutional Court declared their restrictive abortion law unconstitutional and gave lawmakers until 2020 to pass new legislation legalizing abortion.<sup>115</sup>

#### **B. Predominantly Catholic countries with liberalized abortion laws**

Predominantly Catholic countries and territories have liberalized their abortion laws:

- Spain<sup>116</sup> up to 14 weeks of the pregnancy and thereafter on specific grounds (with Prime Minister Zapatero at the helm of legalizing abortion on request in 2010)
- Belgium, France, and Italy allow abortion upon a woman’s request<sup>117</sup>

- Poland allows abortion to protect a woman’s life and physical health and in cases of rape, incest, and fetal impairment<sup>118</sup>
- Hungary allows abortion up to 12 weeks of gestation<sup>119</sup>
- Portugal allows abortion up to 10 weeks of gestation<sup>120</sup>
- Brazil on certain grounds
- Ireland up to 12 weeks of gestation and later gestational age with risk to the life and health of the woman or fatal fetal abnormality (as of January 1, 2019 under the Health (Regulation of Termination of Pregnancy) Act 2018 following the repeal of the Eighth Amendment (“unborn” protection) by referendum in May 2018 amending its previous explicit life exception provision)

Northern Ireland, part of the United Kingdom with a predominantly Christian population, allows abortion up to 12 weeks liberalizing its previous grounds limited to risk to life or permanent/serious damage to the woman’s physical/mental health.<sup>121</sup>

### **C. Former Spanish colonies with predominantly catholic populations have liberalized their abortion laws liberating their countries from the persisting bondage of colonialism**

Most former Spanish colonies with mostly predominant Catholic populations have liberalized their laws on abortion such as Argentina, Bahamas, Bolivia, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Jamaica, Mexico, Panama, Paraguay, Peru, Puerto Rico, Trinidad and Tobago, Uruguay, and Venezuela allow abortion on certain grounds.<sup>122</sup> Mexico City, a predominantly Catholic city, even provides safe and legal abortion for free<sup>123</sup> while the Mexican state of Oaxaca, one of Mexico’s poorest states, legalized abortion in 2019 allowing abortion during the first 12 weeks of pregnancy. Chile’s 2017 law has explicit exceptions for life, rape, fetal impairment, the constitutionality of which was upheld by the Constitutional Court. Chile’s law was first introduced by President Michelle Bachelet in January 2015—allowing abortion on certain grounds.<sup>124</sup>

**This leaves the Philippines to contend with its antiquated colonial Spanish law—a persisting bondage of colonialism--and only one of a handful countries worldwide which continue to penalize their women and adolescent girls for having an abortion.**

**In the past, the Philippines has repealed clearly discriminatory provisions in the colonial Revised Penal Code that unjustifiably inflicts hardship on women such as Art. 351 imposing penalty on the woman for premature marriage repealed under RA 10655.**

#### **18) To ensure women’s access to wide-acting life-saving essential medicines**

**The restrictive abortion law resulted in denial of access to life-saving medicines that can be used for complications for incomplete abortion, miscarriage, induction of labor, and post-partum hemorrhage.**

**Because there is lack of access to safe and legal abortion, demonization of abortion, and drugs that may also be used as abortifacients including non-registration and non-availability of misoprostol in the Philippines, there are more women bound to die not just from complications from unsafe abortion but also from miscarriage and post-partum hemorrhage.<sup>125</sup>**

Misoprostol is a life-saving drug registered by the World Health Organization’s Essential Medicine List for management of incomplete abortion and miscarriage, induction of labor where appropriate facilities

are available, medical abortion, and prevention and treatment of PPH where oxytocin is not available or cannot be safely used,<sup>126</sup> **Misoprostol is also one of the 13 life-saving commodities of United Nations Commission on Life-Saving Commodities for Women and Children along with implants and emergency contraception<sup>127</sup> and is ideal for low-resource settings,** geographically isolated and disadvantaged areas (GIDA) and other areas in Mindanao including Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) where there is inadequate supply of electricity as misoprostol is stable at room temperature and does not need refrigeration,<sup>128</sup> and, hence, can save many women's lives. Decriminalization of abortion will remove barriers that block access to essential health commodities and will pave the way to increased access to essential life-saving medicines.

In the time of COVID-19, compassionate use of drugs to save the lives of patients was widely used pending the approval of the Food and Drug Administration of such drugs and methods. In the same manner, it is high time that the Philippines recognize the urgency of providing access to safe abortion and access to drugs with various uses including management of incomplete abortion, miscarriage, abortion, and PPH in an effort to humanize the health care system and truly be responsive to saving women's lives. Decriminalization of abortion will ensure women's access to safe abortion, post-abortion care, and wide-acting medicines.

### **19) To adhere to the international health guidance of the WHO and the International Federation of Gynecology and Obstetrics to reduce maternal mortality due to unsafe abortion complications**

As early as 2003, the WHO issued its "Safe Abortion: Technical and Policy Guidance for Health Systems" (WHO Safe Abortion Guidance). In 2012, the updated version of the WHO Safe Abortion Guidance was released setting forth clinical and policy guidance and international human rights standards on abortion.<sup>129</sup> The WHO highlighted that the removal of legal restrictions on abortion results in reduced maternal mortality due to unsafe abortion complications and an overall reduction of maternal mortality.<sup>130</sup>

WHO identified the following barriers to accessing safe abortion:

- restrictive law;
- poor availability of services;
- high cost;
- stigma;
- conscientious objection of health-care providers; and
- unnecessary requirements such as mandatory waiting periods, mandatory counselling, provision of misleading information, third-party authorization, and medically unnecessary tests that delay care.<sup>131</sup>

In 1998, FIGO came out with their *Ethical Aspects of Induced Abortion for Non-Medical Reasons*<sup>132</sup> and recommended, "Neither society, nor members of the health care team responsible for counselling women, have the right to impose their religious or cultural convictions regarding abortion on those whose attitudes are different."

### **20) To comply with international human rights standards**

The Philippine government must comply with its international human rights obligation to decriminalize abortion as means for women to have access to safe abortion and post-abortion care ensuring women's

rights to life, health, equality and non-discrimination, autonomy and bodily integrity, freedom from cruel, inhuman, and degrading treatment, and equal protection of the law.

Without knowing the full consequences of the harsh and restrictive Old Spanish Penal Code, the Philippine Congress adopted the abortion law in our Revised Penal Code of 1930.<sup>133</sup> At the time the law was adopted, Filipino women did not even have the right to vote and the international bill of human rights and the rest of the core international human rights treaties have not yet been adopted. These international instruments were adopted and took force and effect much later--Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (ICCPR, adopted in 1966, took effect in 1976), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966, 1976), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979, 1981), Convention Against Torture (CAT, 1984, 1987), and Convention on the Rights of the Child (CRC, 1989, 1990).<sup>134</sup>

**The respective treaty monitoring bodies of these core international human rights instruments tasked to monitor states' compliance with their international human rights obligations have constantly recommended to the Philippines to review its abortion law, decriminalize abortion, allow abortion on various grounds, and ensure access to safe and legal abortion and post-abortion care to reduce maternal mortality and morbidity.**

#### **A. CEDAW Committee**

**As early as August 2006, over 14 years ago, the CEDAW Committee recommended in its Concluding Observations for the Philippines to “consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and provide them with access to quality services for the management of complications arising from unsafe abortions.”**

In May 2015, the CEDAW Committee released its report on its inquiry on reproductive rights violations and recommended to the Philippine government to amend articles 256 to 259 of the Revised Penal Code to “legalize abortion in cases of rape, incest, threats to the life and/or health of the mother, or serious malformation of the foetus and **decriminalize all other cases where women undergo abortion**, as well as adopt necessary procedural rules to guarantee effective access to legal abortion.”

In 2016, the CEDAW Committee recommended for the Philippines to “fully implement, without delay, all the recommendations issued by the Committee in 2015 in the report on its inquiry, including on access to modern contraceptives and legalization of abortion under certain circumstances<sup>135</sup> and to submit a follow up report in 2018 on the steps the government has taken to decriminalize abortion.<sup>136</sup>

#### **B. Compliance with International Human Rights Obligations of Other Countries**

**In compliance with international human rights obligations, particularly in reference to recommendations of the CEDAW Committee and Human Rights Committees to remove punitive provisions on abortion, several countries since in the past two decades (2000 onwards) have liberalized their laws on abortion such as Argentina, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Ireland, Mexico City, Panama, Paraguay, Peru, Trinidad and Tobago, Venezuela.**



Not decriminalizing abortion in the Philippines is a violation of our treaty obligations under CEDAW, ICESCR, ICCPR, CAT, and CRC. Having ratified these international conventions, the Philippines must fulfill its international treaty obligations to make abortion safe and legal.

**21) To ensure women’s access to safe abortion on all grounds since allowing abortion based only on certain exceptions will not suffice**

The following cases demonstrate that allowing abortions only on certain exceptions have caused denial of access to abortion at the risk of women’s lives and health:

- In 2012, even though abortion to save a woman’s life was recognized in Ireland, there was a case of an immigrant woman dentist who miscarried but was denied completion of abortion and eventually died from sepsis.
- In 2015, in Paraguay, a 10-year old girl who became pregnant after being raped by her stepfather was denied abortion by doctors since there was no life-threatening complications.<sup>137</sup> Her mother requested for the girl to undergo an abortion but, having been denied, the girl eventually gave birth at age 11--forced into motherhood against her will.<sup>138</sup>

These cases manifest the urgent need to decriminalize abortion on all grounds, clearly showing that exceptions on certain legal grounds would not suffice in saving women’s lives given the experience of women in other countries where there are strict legal regulations, refusals by providers even in cases of risks to the woman’s or girl’s life, and non-registration of abortifacient pills.

**22) To continue the historical fight to uphold women’s rights to equality and non-discrimination and respond to the outstanding clamor to pass the bill into law**

This fight to decriminalize abortion is part of the historical fight to uphold women’s rights to equality and non-discrimination including the fight for women’s right to vote, work, study; right against sexual assault, sexual harassment, trafficking; right to sexual and reproductive health including the full range of contraceptive methods, pre-natal care, maternal care, and post-natal care; right to SOGIESC, among others.

Many supporters of this bill--members of the women’s movement and other human rights advocates-- have long advocated for all these pro-women and pro-SOGIESC laws and bills including the Anti-Sexual Harassment Act, Anti-Rape Law and its proposed amendments, the Anti-VAWC Act, the Anti-Trafficking Act/Expanded Anti-Trafficking Act, Reproductive Health Law, Safe Spaces Act, Quezon City (QC) Gender-Fair Ordinance, Establishment of QC Protection Center for Women, Children and LGBT Survivors of Gender-based Violence, SOGIE/Comprehensive Anti-Discrimination Bill, the bills raising the age of sexual consent to 16<sup>139</sup>; repeal of laws that discriminate against women such as decriminalization of vagrancy (RA 10158; “prostitution” still to be repealed) and repeal of Art. 351 of the Revised Penal Code imposing penalty on the woman for premature marriage (RA 10655), among others.

A Facebook post on said bill on May 28, 2020, International Women’s Health Day, went viral in just six days with over 11,000 people supporting the Bill Decriminalizing Abortion and only 2000 unsupportive. Majority of the 13,000 comments support decriminalization of abortion and women’s right to bodily autonomy, privacy, health, and life. The outstanding clamor from the youth to decriminalize abortion as shown in this post is due to countless young women's and girls’ untold stories of rape and maternal deaths due to unsafe abortion and stories of women and young girls solely bearing the brunt of socio-

economic hardships brought about by early and unintended pregnancies. Clearly, there is overwhelming clamor to decriminalize abortion.

Legislators and other Philippine government officials must take heed of the clamor and express support for this bill.

As seen in this Facebook post, those who oppose the decriminalization of abortion are a minority. To those who oppose the decriminalization of abortion, this proposed bill when passed into law will not force them to undergo an abortion against their beliefs, however, this will provide access to services to countless women who decide to end their pregnancy and suffer complications from unsafe abortions.

Moreover, detractors cannot impose their beliefs on other people as such imposition of religious morality and religious doctrines in Philippine law violate the constitutional guarantees of separation of church and state, non-establishment of religion, and freedom of religion or belief.

### **It's time to decriminalize abortion to save women's lives**

The Philippines must take action now to pass the proposed law to decriminalize abortion.

It is high time for the Philippine government to decriminalize abortion as women's lives and health are at stake. If this colonial restrictive abortion law persists, we will constantly be faced with the public health issue of women dying and suffering disability from complications from unsafe abortion, spontaneous abortions, and other related medical conditions.

Allowing this colonial law to prevail in our society will continue to breed hatred and hostility towards Filipino women who induce abortion.<sup>140</sup> As long as abortion remains restricted in the Philippines and people impose their oppressive religious beliefs on women seeking life-saving abortion care, women will die and suffer disability from complications from unsafe abortion. It is incumbent upon the Philippine government to decriminalize abortion being the main barrier to women's access to safe abortion and even post-abortion care.

In the time of the COVID-19 public health concern, we witnessed health care providers who risked their lives to save COVID-19 positive patients. The same zeal and selflessness should continue to prevail to save the lives of women at risk of dying from complications from unsafe abortion and in the provision of access to safe abortion. Access to humane, nonjudgmental, and compassionate care for safe abortion and post-abortion care will only be widely accessible once abortion is decriminalized in the Philippines.

In the name of countless Filipino women who were denied access to safe abortion and humane post-abortion care, the women who died from complications of unsafe abortion, and the women who have to travel to nearby Asian countries just to access safe and legal abortion, the Philippines must repeal its colonial and restrictive abortion law and ensure access to safe and legal abortion and quality post-abortion care.

When passed into law, the bill decriminalizing abortion will also protect all skilled health providers--doctors, nurses, and midwives--performing safe abortion. These skilled health care providers are family, relatives, and friends of many Filipinos and could even be your very own health provider.

Access to safe and legal abortion and to quality post-abortion care are fundamental women's rights. The

primary causes of mortality and morbidity from unsafe abortion complications are not blood loss, infection, uterine perforation, and acute renal failure, rather it is the indifference and contempt toward women who bear the brunt of the restrictive colonial law on abortion.

It is time Filipino women should have access to safe and legal abortion as their basic right to life and health. It is imperative that women's right to access abortion is seen as a life and death medical concern that poses extremely urgent public health issues.

Representatives in the Philippine government should realize how human rights violations related to unsafe abortions are so pervasive in our society. They simply cannot ignore this important public health issue gravely impacting women's rights to life and health.

Philippine government officials, being representatives of the Filipino people, should act now before any more Filipino women, adolescent girls, and persons with diverse gender identities suffer the consequences of the country's abortion restrictions.

Every minute counts to save the lives and health of Filipino women who are denied their right to basic health care. To save women's lives, we need to decriminalize abortion now.

Take a stand and be counted in this fight to save women's lives by supporting the bill to decriminalize abortion. Together, let's end discrimination against women and fight for women's rights to life, health, equality, equal protection of the law, privacy and bodily autonomy, and against torture.\*\*\*

About the author: **Atty. Clara Rita "Claire" Padilla is the founder and executive director of EnGenderRights and she is the Spokesperson of the Philippine Safe Abortion Advocacy Network (PINSAN). She drafted the proposed bill to decriminalize abortion for PINSAN that has been discussed with various women's rights and reproductive rights activists, youth groups and other human rights advocates.**

**She has been practicing law for over 26 years and is known in the Philippines and internationally, working in the fields of gender and diverse sexual orientation, gender identities and expression. She has worked in the Philippines and in New York (i.e., International Visiting Legal Fellow at the Center for Reproductive Rights (CRR).**

**She has won several Supreme Court *en banc* cases including *Ang Ladlad v. COMELEC*, the constitutionality of the RH Law through an intervention, and the *Pioneer Texturizing Corporation v. NLRC and Lourdes de Jesus*.**

**She drafted the very first version of the Reproductive Health Care bill in 2001 and has proposed language for other draft bills, ordinances, and Administrative Orders that have been passed into law including the Anti-Sexual Harassment Act, RH Law, Expanded Anti-Trafficking Law, QC Protection Center for Victims of Gender-based Violence ordinance, QC Gender-Fair City ordinance, and the DOH AO 2016-0041 on Prevention and Management of Abortion Complications.**

She has advocated and proposed language for the passage of various laws including amendments to the Anti-Rape Law, Divorce, SOGIE/Comprehensive Anti-Discrimination Bill, gender recognition, marriage

equality, the bills raising the age of sexual consent to 16; repeal of laws that discriminate against women such as decriminalization of vagrancy (RA 10158; “prostitution” still to be repealed) and repeal of Art. 351 of the Revised Penal Code imposing penalty on the woman for premature marriage (RA 10655), among other

She spearheaded the submission of the request for inquiry on reproductive rights violations under the OP CEDAW to the CEDAW Committee in collaboration with the Philippine Task Force CEDAW Inquiry, Center for Reproductive Rights, and IRAW-Asia Pacific. She advocated for the adoption of the Optional Protocol to the International Covenant on Economic Social Cultural Rights in Geneva and the establishment of a strong promotion and protection mechanism in the ASEAN Intergovernmental Commission on Human Rights (AICHR). She has made oral interventions before the CEDAW Committee in New York (2006) and in Geneva (2016 and 2018) and before the Human Rights Council in Geneva (2008). Her articles and submissions have been published in the Philippines and internationally including Rappler, Philippine Daily Inquirer, Sunday Inquirer, Metro Working Mom, Ateneo Law Journal, and the United Nations Office of the High Commissioner for Human Rights, among others.

She has been conducting trainings and panel discussions in different parts of the Philippines and around the world such as in Cambodia, Lao PDR, Indonesia, Malaysia, Thailand, Nepal, India, South Africa, Kenya, Denmark, Poland, United States, and Portugal including panel discussions with legal luminaries such as former High Commissioner for Human Rights Navanethem Pillay, Professor Catharine MacKinnon, and Professor Rebecca Cook.

She facilitated discussions on gender equality and CEDAW for the justices of the Philippine courts and trainings on sexual harassment for members of the committee on decorum and investigation of the Philippine judiciary. Her trainings with EnGenderRights has involved trainings for judges, public prosecutors, government representatives, lawyers, academe, NGO workers, health care providers, police, social workers, barangay officials and community women and LGBTI leaders on gender-based violence, SRHR and SOGIE since 2005 up to the present.

She has also been a consultant of Senator Miriam Defensor-Santiago, Philippine Commission on Women, USAID-PRISM, UNICEF, UN Women Regional Office in Bangkok, Asia Pacific Forum for Women Law and Development based in Thailand, FIIAPP based in Madrid under Tender Agreement with the European Commission, Family Planning Organization of the Philippines (FPOP), and The Forum for Family Planning and Development, Inc. (The Forum). She has been the gender consultant of the Quezon City Office of the Mayor/Vice Mayor Joy Belmonte since 2011 and, as part of her consultancy work, she provides free legal counseling at the Quezon City Protection Center for Gender-based Violence which she helped establish.

She holds a Juris Doctor degree from the Ateneo de Manila Law School (1993) and a Bachelor of Arts degree in Communication from UP Diliman (1988).

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<sup>1</sup> Padilla, Clara Rita. Policy Brief: Access to Safe and Legal Abortion and Post-Abortion Care Can Save Filipino Women's Lives. EnGenderRights, December 2016, page 1 [hereinafter Padilla, Policy Brief Access to Safe Abortion].

<sup>2</sup> Abortion care encompasses the management of various clinical conditions including spontaneous and induced abortion (both viable and non-viable pregnancies), incomplete abortion and intrauterine fetal demise. World Health Organization, Medical management of abortion, 2018 [WHO, Medical management of abortion, 2018]. This guideline focuses exclusively on medical management of abortion. It provides new recommendations related to

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the following indications: medical management of incomplete abortion at  $\geq 13$  weeks of gestation<sup>3</sup> (Recommendation 1b) and medical management of intrauterine fetal demise at  $\geq 14$  to  $\leq 28$  weeks of gestation (Recommendation 2). In addition, this guideline includes updated recommendations related to the following indications: medical management of incomplete abortion at  $< 13$  weeks of gestation (Recommendation 1a), and medical management of induced abortion at  $< 12$  weeks (Recommendation 3a) and at  $\geq 12$  weeks (Recommendation 3b); induced abortion, as defined by World Health Organization International Classification of Diseases as: “intentional loss of an intrauterine pregnancy due to medical, or surgical means” including “therapeutic abortion”. World Health Organization, ICD -11 for Mortality and Morbidity Statistics, April, 2019, <https://icd.who.int/browse11/l-m/en#/http%3a%2f%2fid.who.int%2f1517114528>; World Health Organization, Preventing Unsafe Abortion, June 2019, available at <https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion>. WHO defined unsafe abortion as “when a pregnancy is terminated either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.”

<sup>3</sup> Guttmacher Institute, Unintended Pregnancy and Induced Abortions in the Philippines: Causes and Consequences, In Brief, page 3, 2013, No. 3, available at <https://www.guttmacher.org/sites/default/files/pdfs/pubs/IB-unintendedpregnancy-philippines.pdf> [Guttmacher, Induced Abortions in the Philippines, In Brief, 2013].

<sup>4</sup> Guttmacher, Induced Abortions in the Philippines, In Brief, 2013; Guttmacher, Meeting Women’s Contraceptive Needs in the Philippines, 1 In Brief 2 (2009) citing 2008 projections from 2000 statistics on abortion incidence in the Philippines [Guttmacher, Meeting Contraceptive Needs, In Brief, 2009].

<sup>5</sup> Guttmacher, Induced Abortions in the Philippines, In Brief, 2013.

<sup>6</sup> Padilla, Policy Brief, Access to Safe Abortion, page 1, *supra* note 1 providing mathematical computations of data from Guttmacher, Meeting Contraceptive Needs, In Brief, 2009.

<sup>7</sup> *Ibid.*, mathematical computations of data from Guttmacher, Induce Abortions in the Philippines, In Brief, 2013.

<sup>8</sup> *Ibid.*

<sup>9</sup> World Health Organization, Preventing unsafe abortion, Evidence brief, 2019; World Health Organization, Fact Sheet, Maternal mortality, 2019, available at <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>; 19 September 2019; UNFPA Preventable Maternal Morbidity and Mortality report to OHCHR under Human Rights Council Resolution 11/8 [UNFPA report to OHCHR]. Five direct complications account for more than 70% of maternal deaths, in which effective interventions are available: 1. Hemorrhage (PPH) at 25 per cent; 2. Infection at 15 per cent; 3. Unsafe abortion at 13 per cent; 4. Eclampsia -very high blood pressure leading to seizures at 12 per cent; 5. Obstructed labor at 8 per cent; 6. A number of additional factors, including in particular HIV, malaria, severe anemia, malnutrition and violence against women; The World Health Organization (WHO) found that 73% of all maternal deaths were due to direct obstetric causes: • Hemorrhage (27.1%) • Hypertensive disorders (14%) • Sepsis (10.7%) • Unsafe Abortion (7.9%) • Embolism (3.2%) • All other direct causes of death (9.6%) cited in the WHO Global causes of maternal death: a WHO systematic analysis, May 2014 citing 2003-2009 global, regional, and sub-regional estimates of causes of maternal death.

<sup>10</sup> *Ibid.*, page 7.

<sup>11</sup> Significant rise in maternal deaths and unintended pregnancies feared because of COVID-19, UNFPA and UPPI study shows, 14 August 2020, available at <https://philippines.unfpa.org/en/news/significant-rise-maternal-deaths-and-unintended-pregnancies-feared-because-covid-19-unfpa-and?fbclid=IwAR0s5aSzY97RwvHkkEpDSBH8kUxq2Zl2uGC5AOnB42na3zibpf42yp68Jro>

<sup>12</sup> Significant rise in maternal deaths and unintended pregnancies feared because of COVID-19, UNFPA and UPPI study shows, 14 August 2020, available at <https://philippines.unfpa.org/en/news/significant-rise-maternal-deaths-and-unintended-pregnancies-feared-because-covid-19-unfpa-and?fbclid=IwAR0s5aSzY97RwvHkkEpDSBH8kUxq2Zl2uGC5AOnB42na3zibpf42yp68Jro>

<sup>13</sup> Significant rise in maternal deaths and unintended pregnancies feared because of COVID-19, UNFPA and UPPI study shows, 14 August 2020, available at <https://philippines.unfpa.org/en/news/significant-rise-maternal-deaths-and-unintended-pregnancies-feared-because-covid-19-unfpa-and?fbclid=IwAR0s5aSzY97RwvHkkEpDSBH8kUxq2Zl2uGC5AOnB42na3zibpf42yp68Jro>

<sup>14</sup> Unmet need for family planning is defined as the percentage of women and girls who either do not want any more children or want to wait before having their next birth, but are not using any method of family planning.

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<sup>15</sup> Pandemic may increase live birth in PHL to almost 2M with FP efforts hampered, thousands of teens also projected to give birth, COMMISSION ON POPULATION AND DEVELOPMENT available at <https://car.popcom.gov.ph/popcom-pandemic-may-increase-live-births-in-phl-to-almost-2m/>

<sup>16</sup> Significant rise in maternal deaths and unintended pregnancies feared because of COVID-19, UNFPA and UPPI study shows, 14 August 2020, available at <https://philippines.unfpa.org/en/news/significant-rise-maternal-deaths-and-unintended-pregnancies-feared-because-covid-19-unfpa-and?fbclid=IwAR0s5aSzY97RwvHkkEpDSBH8kUxq2ZI2uGC5AOnB42na3zibpf42yp68Jro>. Before COVID-19, the Philippines had about 2,600 women dying every year due to complications from pregnancy or childbirth with up to 670 additional deaths in 2020. The total unintended pregnancies in 2020 may reach 2.56 million, 751,000 more than last year (42% increase). The unmet need for Filipino women of reproductive age (15-49 years of age) can also increase by another 2.07 million by end-2020, 67% increase from 2019.

<sup>17</sup> In the 1977 case of *Carey v. Population Services International*, 431 U.S. 678 (1977), 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: "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]; *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.";

In the 1965 United States Supreme Court case of *Griswold v. Connecticut*, the appellants were arrested pursuant to Connecticut state statutes that prohibited using contraception, and penalized aiding and abetting the use of said contraception. 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." 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;

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 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

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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: "X x x 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.";

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." The Court recognized that "[o]ur obligation is to define the liberty of all not to mandate our own moral code." ; 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;

In the United Kingdom 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" ;

Justice Puno's concurrence in *Ang Ladlad v. COMELEC* *Ang Ladlad LGBT Party vs. COMELEC*, G.R. No. 190582 [*Ang Ladlad vs. COMELEC*] mentioned *Lawrence v. Texas*, 539 U.S. 558, 584 (2003) and *Carey v. Population Services International* on the issue of privacy rights including the right to form intimate sexual relationships, 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[.]"[emphasis supplied]

<sup>18</sup> Art. 256. Intentional abortion. — Any person who shall intentionally cause an abortion shall suffer:

1. The penalty of reclusion temporal, if he shall use any violence upon the person of the pregnant woman.
2. The penalty of prision mayor if, without using violence, he shall act without the consent of the woman.
3. The penalty of prision correccional in its medium and maximum periods, if the woman shall have consented.

Art. 257. Unintentional abortion. — The penalty of prision correccional in its minimum and medium period shall be imposed upon any person who shall cause an abortion by violence, but unintentionally.

Art. 258. Abortion practiced by the woman herself or by her parents. — The penalty of prision correccional in its medium and maximum periods shall be imposed upon a woman who shall practice abortion upon herself or shall consent that any other person should do so.

Any woman who shall commit this offense to conceal her dishonor, shall suffer the penalty of prision correccional in its minimum and medium periods.

If this crime be committed by the parents of the pregnant woman or either of them, and they act with the consent of said woman for the purpose of concealing her dishonor, the offenders shall suffer the penalty of prision correccional in its medium and maximum periods.

Art. 259. Abortion practiced by a physician or midwife and dispensing of abortives.

<sup>19</sup> PHIL. REVISED PENAL CODE (Act No. 3815), arts. 256-259 (1930) [hereinafter REV. PENAL CODE]. The RPC imposes imprisonment of up to six (6) years for the woman who induced an abortion or anyone performed or assisted in the abortion with the consent of the woman (a woman who shall practice an abortion upon herself or shall consent that any person should perform it shall be punishable with imprisonment for two years, four months, and one day to six years; A person (other than the pregnant woman) who commits intentional (knowingly and willful) abortion, by administering drugs and beverages shall be punishable with imprisonment for two years, four months, and one day to six years if the woman consented; A physician or midwife who, taking advantage of his/her scientific knowledge or skill, primarily causes the abortion or assists in the same imprisonment for four years, nine months, and 11 days to six years if the woman consented; prescription is ten years for abortions committed with consent of the women). The RPC was based on the Spanish Penal Code of 1870 (*Codigò Penal*, arts. 425-428 (Spain) (1870) available at <https://bit.ly/38K9VIO>) with the penal provisions on abortion further traced to the older Spanish Penal Codes of 1848 and 1822. (*Codigò Penal*, arts. 376, 639-640 (Spain) (1822) available at <https://bit.ly/2RXVGE0>; *Codigò Penal*, arts. 337-340 (Spain) (1848) available at <https://bit.ly/2tnvfKe>).

<sup>20</sup> World Health Organization, *Medical management of abortion*, 2018.

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- <sup>21</sup> EnGendeRights interviews from Quezon City and Caloocan residents, June 2016; Center for Reproductive Rights and EnGendeRights Focus Group Discussion on Post-Abortion Care, May 27, 2014.
- <sup>22</sup> A total of 9,056 women and girls reported they were raped in 2015 with 2078 women, 6,978 children, Statistics from the Women and Children Protection Center (WCPC), PNP, 2015. From July 2016 to June 2017, PNP reported 9,204 cases. From July 2017 to June 2018, PNP reported 6,999 cases or one woman raped every 75 minutes (computed as 6999 divided by 365 days equals 19.175342465753, 1440 minutes in a day divided by 19.175342465753 equals one woman raped every 75 minutes).
- <sup>23</sup> Susheela Singh, et al., *Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences*, New York: Guttmacher Institute, 2006 *available at* <http://www.guttmacher.org/pubs/2006/08/08/PhilippinesUPIA.pdf> [Singh S et al, 2006]. Mathematical computation based on statistics that 13% of women who induce abortion are rape victim survivors.
- <sup>24</sup> Women's Crisis Center, *Feminist Action Research on Reproductive Health Needs and Concerns of VAW Survivors* [WCC, Feminist Action Research on RH].
- <sup>25</sup> WCC, *Feminist Action Research on RH*.
- <sup>26</sup> May 31, 2020 Facebook message to Atty. Clara Rita Padilla by someone who knew the 19-year old woman.
- <sup>27</sup> Center for Reproductive Rights *Forsaken Lives: The Harmful Impact of the Philippine Criminal Abortion Ban*, pp. 49-50, 63 (2011).
- <sup>28</sup> Phone calls made in 2015 by the police officer handling the case and the mother of the deceased rape victim to Clara Rita Padilla, Executive Director of EnGendeRights.
- <sup>29</sup> Participants to the EnGendeRights Online Course to Address Gender-based Violence in Humanitarian Crises for Police Officers held from June 8 to 18, 2020.
- <sup>30</sup> Clara Rita A. Padilla, *Ensuring Adolescent Right to RH Through an RH Law*: EnGendeRights, January 2012; 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.)
- <sup>31</sup> Field Health Service Information System (FHSIS) 2011 and 2014.
- <sup>32</sup> FHSIS 2011 and 2014.
- <sup>33</sup> Center for Reproductive Rights, *Implementing Adolescent Reproductive Rights Through the Convention on the Rights of the Child*, 1999, Sept, *available at*: [http://www.reproductiverights.org/pub\\_art\\_adolrights.html](http://www.reproductiverights.org/pub_art_adolrights.html).
- <sup>34</sup> UP PGH Teen Mom Program research of Dr. Emma Llanto.
- <sup>35</sup> Clara Rita A. Padilla, *Reasons Why We Need the RH Law*: EnGendeRights, 2010 [Hereinafter Padilla, *Reasons*, EnGendeRights, 2010.].
- <sup>36</sup> Women's Crisis Center, *Feminist Action Research on Reproductive Health Needs and Concerns of VAW Survivors*.
- <sup>37</sup> <https://newsinfo.inquirer.net/1336954/fwd-popcom-clarifies-at-least-40-teens-aged-below-14-give-birth-every-week-not-every-year>
- <sup>38</sup> UP PGH Teen Mom Program.
- <sup>39</sup> CEDAW Concluding observations CEDAW/C/PHL/CO/7-8, 25 July 2016, para. 26 (b) (CEDAW Concl. Obs 2016), *available at* [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/PHL/CO/7-8&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/PHL/CO/7-8&Lang=En).
- <sup>40</sup> Margaret Wurth, 14, Pregnant from Rape, Dead in Childbirth, Paraguay's harsh abortion law endangers adolescent girls, Human Rights Watch, March 26, 2018, *available at* <https://www.hrw.org/news/2018/03/26/14-pregnant-rape-dead-childbirth>.
- <sup>41</sup> See e.g. Paraguayan rape victim, 12, dies giving birth, *The Guardian* (2018) *available at* <https://bit.ly/2IOObYg>.
- <sup>42</sup> See CEDAW Communication R.P.B. v. the Philippines; See resources of Deaf Resources Philippines.
- <sup>43</sup> EnGendeRights & OutRight International (representing a total of 34 organizations) on Lesbian, Bisexual, Transgender Rights for the 64th Session, *available at*: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT\\_CEDAW\\_NGO\\_PHL\\_24215\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT_CEDAW_NGO_PHL_24215_E.pdf)
- <sup>44</sup> A 2013 report quoted a Tausug lesbian, president of a Jolo-based lesbian organization in



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“Dangerous Live: Being LGBT in Muslim Mindanao”, *Outrage*, December 10, 2013, accessed April 15, 2016, <http://outragemag.com/dangerous-lives-lgbt-muslim-mindanao/> [hereinafter “Dangerous Lives”].

<sup>45</sup> Submission for the 3rd Universal Periodic Review (2016) by Sexual Rights Network (drafted by Atty. Clara Rita A. Padilla), available at:

[https://www.upr-info.org/sites/default/files/document/philippines/session\\_27\\_-\\_may\\_2017/js13\\_upr27\\_phl\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/philippines/session_27_-_may_2017/js13_upr27_phl_e_main.pdf)

<sup>46</sup> *Id.*

<sup>47</sup> Singh S et al., 2006.

<sup>48</sup> Guttmacher, *Unsafe Abortion, Fact Sheet*, 2013.

<sup>49</sup> EnGenderRights and WomenLEAD, as co-convenors of the Philippine-based Task Force CEDAW Inquiry (Task Force CEDAW Inquiry; composed of twenty member NGOs), together with the New York-based Center for Reproductive Rights and Malaysia-based International Women’s Rights Action Watch-Asia Pacific (IWRAP-AP) submitted the request for inquiry to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in 2008 to investigate the impact on the health and lives of women resulting from Manila City Executive Order 003 Series of 2000 (EO 003) declaring Manila City as a “pro-life city” and discouraged the use of modern contraceptives. Documentation of women’s stories were done from 2008 through 2012.

<sup>50</sup> Guttmacher, *Facts on Induced Abortion Worldwide, In Brief*, 2012.

<sup>51</sup> WHO *Safe Abortion Guidance*, 2012.

<sup>52</sup> *Id.*

<sup>53</sup> 2004 national survey; Singh S et al., 2006; Guttmacher, *Induced Abortions in the Philippines, In Brief*, 2013.

<sup>54</sup> WHO *Global causes of maternal death: a WHO systematic analysis*, May 2014 citing 2003-2009 global, regional, and sub-regional estimates of causes of maternal death with a novel method, updating the previous WHO systematic review.

<sup>55</sup> *Field Health Service Information System (FHSIS) 2011 and 2014.*

<sup>56</sup> HIV and AIDS are considered to be the first cause of maternal death in South Africa.

<sup>57</sup> UNFPA report to the Office of the High Commissioner for Human Rights on the topic of Preventable Maternal Morbidity and Mortality and Human Rights for inclusion into the thematic study on the subject requested by the Human Rights Council Resolution 11/8 [UNFPA report to OHCHR].

<sup>58</sup> Phone calls made in 2015 by the police officer handling the case and the mother of the deceased rape victim to Clara Rita Padilla, Executive Director of EnGenderRights.

<sup>59</sup> Phone calls made in 2015 by the police officer handling the case and the mother of the deceased rape victim to Clara Rita Padilla, Executive Director of EnGenderRights.

<sup>60</sup> Padilla, Clara Rita. *Powerpoint Presentation for POGS National Convention*, November 2018.

<sup>61</sup> *Id.*, Padilla.

<sup>62</sup> WHO, *Medical management of abortion*, 2018.

<sup>63</sup> JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 84 (2009), at 118.

<sup>64</sup> Pedro Solis in his book on *Legal Medicine* stated that therapeutic abortions include to preserve the life of the woman and to preserve her health. Solis cites a U.S. case where the married woman was found to be unstable and a psychiatrist recommended abortion (citing *Camp and Purchase, Practical Forensic Medicine*, p.32, 1957).

<sup>65</sup> SCRA 801 [1961].

<sup>66</sup> Art. 11. Justifying circumstances. — The following do not incur any criminal liability: x x x 4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present; First. That the evil sought to be avoided actually exists; Second. That the injury feared be greater than that done to avoid it; Third. That there be no other practical and less harmful means of preventing it.

<sup>67</sup> Fifth periodic report submitted by the Philippines under article 40 of the Convention submitted to the Human Rights Committee on May 31, 2019 covering the period of 2012 until December 2017, prepared by DOJ as the lead agency under the guidance of the Presidential Human Rights Committee Secretariat (PHRCS) and in coordination with the DFA, paragraph 34.

<sup>68</sup> Office of the President, Philippine Commission on Women, *Letter from Ms. Emmeline Verzosa, Executive Director of PCW, to*

*Mr. Geronimo Sy, Assistant Secretary of the Department of Justice* (July 22, 2014), available at <https://bit.ly/2Jzykli>.

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- <sup>69</sup> Commission on Human Rights and United Nations Population Fund, *Let Our Voices Be Heard: Report of the Commission on Human Rights Philippine's National Inquiry on Reproductive Health and Rights* (2016), page 37, available at <https://uniteforreprorights.org/wp-content/uploads/2018/01/RH-Inquiry-Report.pdf>
- <sup>70</sup> James M. Imbong and Lovely-Ann C. Imbong v Hon. Paquito N. Ochoa, Jr., et al., G.R. No. 204819 (S.C., Apr. 8, 2014) (Phil.), available at [http://www.lawphil.net/judjuris/juri2014/apr2014/gr\\_204819\\_2014.html](http://www.lawphil.net/judjuris/juri2014/apr2014/gr_204819_2014.html) [hereinafter *Imbong v Ochoa*]
- <sup>71</sup> NDHS 2017. Only 40% of women aged 15-49 use modern contraceptive methods.
- <sup>72</sup> NDHS 2017. Total estimated unmet need for married and unmarried is 33%.
- <sup>73</sup> Using United Nations definitions to describe different groups of young people: adolescents: 10- to 19-year-olds (early adolescence 10-14; late adolescence 15-19); youth: 15- to 24-year-olds; young people: 10- to 24-year-olds
- <sup>74</sup> Guttmacher, *Induced Abortions in the Philippines*, In Brief, 2013.
- <sup>75</sup> Guttmacher, *In Brief*, 2009.
- <sup>76</sup> According to the 2009 Guttmacher report on the Philippines, over half of all pregnancies are unintended and one-third of these unintended pregnancies end in abortion in NCR (Guttmacher, *In Brief*, 2009). Using unmet need of 33% (NDHS 2017) and the Guttmacher finding of one-third of these unwanted pregnancies result in abortion, there are 11 out of 100 women who induce abortion in NCR (11%) or about one out of every nine women who induce abortion in NCR [computed as 100 pregnancies x .33 (33% unmet need) = 33 unmet need x .3333 (one-third end in abortions) = 10.9989 or 11 women induce abortion per 100 pregnancies or about one in every nine women induce abortion in NCR].
- <sup>77</sup> According to the 2009 Guttmacher report on the Philippines, over half of all pregnancies are unintended and 17% of these unintended pregnancies end in abortion nationwide (Guttmacher, *Meeting Contraceptive Needs*, In Brief, 2009). Using unmet need of 33% (NDHS 2017) and using the Guttmacher finding of 17% of these unwanted pregnancies result in abortion, there is one out of every 18 women who induce abortion nationwide or about one out of every 20 women nationwide [computed as 100 pregnancies x .33 (33% unmet need) = 33 unmet need x .17 (17% end in abortions) = 5.61 women induce abortion per 100 pregnancies; 100 divided 5.6 = 17.85 or one out of every 18 women induce abortion].
- <sup>78</sup> World Health Organization, *Preventing unsafe abortion*, Evidence brief, 2019.
- <sup>79</sup> International Planned Parenthood Federation, *How to Talk About Abortion A Rights-based Messaging Guide*, p. 4, 2015 (Updated 2018).
- <sup>80</sup> Center, *Legislative Brief*, p. 5, *supra* note 13.
- <sup>81</sup> Center, *Legislative Brief*, p. 5, *supra* note 13.
- <sup>82</sup> Three women die a day from abortion complications and most have at least three children. Also, the actual fertility rate is 3 children.
- <sup>83</sup> Florence M. Tadiar, *powerpoint*, 2016.
- <sup>84</sup> Family Care International and the Safe Motherhood Inter-Agency Group, *Maternal Health: a Vital Social and Economic Investment* (1998), available at [http://www.safemotherhood.org/facts\\_and\\_figures/good\\_maternal\\_health.htm](http://www.safemotherhood.org/facts_and_figures/good_maternal_health.htm).
- <sup>85</sup> ABS-CBN, 100 kids abandoned every 2 months, available at <http://news.abs-cbn.com/nation/09/19/10/100-kids-abandoned-every-2-months>
- <sup>86</sup> An orphanage in the National Capital Region.
- <sup>87</sup> Reports from orphanages.
- <sup>88</sup> NDHS 2017.
- <sup>89</sup> <https://newsinfo.inquirer.net/1336954/fwd-popcom-clarifies-at-least-40-teens-aged-below-14-give-birth-every-week-not-every-year>
- <sup>90</sup> <https://newsinfo.inquirer.net/1336954/fwd-popcom-clarifies-at-least-40-teens-aged-below-14-give-birth-every-week-not-every-year>
- <sup>91</sup> See CEDAW General Recommendation No. 21 Equality in marriage and family relations, i.e., Comment No. 36 and 37 on Art. 16 (2) of the CEDAW Convention; Padilla, *Reasons*, EnGendeRights, 2010.
- <sup>92</sup> Center, *Legislative Brief*, p.5, *supra* note 13; Philippine Department of Health and Philippine Commission on Population, *3rd Annual Report on the Implementation of the Responsible Parenthood and Reproductive Health Act of 2012*, 5 (2017), available at <https://bit.ly/2l2v5kP> [hereinafter *3rd Annual RPRHA Report*].
- <sup>93</sup> CONST. (1987), art. II, sec. 12 (Phil.) [hereinafter PHIL. CONST.].

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<sup>94</sup> PHIL. CONST., Art. II, § 14.

<sup>95</sup> 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).

<sup>96</sup> SCRA 801 [1961]

<sup>97</sup> SCRA 801 [1961]

<sup>98</sup> Herbal Therapies and Social-Health Policies: Indigenous Ati Negrito Women’s Dilemma and Reproductive Healthcare Transitions in the Philippines, available at <http://downloads.hindawi.com/journals/ecam/2015/491209.pdf>

<sup>99</sup> Sahih al-Bukhari, 4:54:430. Permitted without qualification under 120 days. Islamic schools prohibit after ensoulment except when there is risk to the woman’s life or fetal impairment.

<sup>100</sup> 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. The Human Rights Committee 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. The Human Rights Committee 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. 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. (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)); The Vatican Council itself declared in 1965 that “the human person has a right to religious freedom. 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.” See 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 respecting a person’s freedom of conscience, religion and belief free from coercion.

<sup>101</sup> See Frances Kissling, Opposition to Legal Abortion: Challenges and Questions, *Planned Parenthood Challenges 1991/1*; see Brief of Amici Curiae of RCRC, et al. in Stenberg v. Carhart citing the 71st General Convention, Episcopal Church, Resolution No. 1994-A054 (1994); the United Church of Christ, *Abortion, A Resolution of the 12th General Synod of the United Church of Christ* (1979) reaffirming the right of women to choose abortion in 1981, 1985, 1987, 1989, and 1991 and later upheld in the United Church of Christ, *Sexuality and Abortion: A Faithful Response, A Resolution of the 16th General Synod of the United Church of Christ* (1987); the Minutes of the 204th General Assembly of the Presbyterian Church (U.S.A.) 372 (1992); the United Methodist Church, *Resolution on Responsible Parenthood* (1988); the Churchwide Assembly on the Evangelical Lutheran Church in America, Social Teaching Statement on Abortion (1991); the Central Conference of American Rabbis in 1980; the Unitarian Universalist Association affirmed a woman’s right to choose to terminate her pregnancy in 1963 and resolved to reaffirm in 1987 its historic position “supporting the right to choose contraception and abortion as legitimate aspects of the right to privacy.”

<sup>102</sup> The Vatican Council itself declared in 1965 that “the human person has a right to religious freedom. 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.” See 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 respecting a person’s freedom of conscience, religion and belief free from coercion.

<sup>103</sup> *Imbong v Ochoa*.

<sup>104</sup> 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 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.

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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, European Court of Human Rights (ECHR), 2001) 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.”;

In the United Kingdom case of *Smeaton v. Secretary of State for Health*, the court ruled that “days are past when the business of the judges was the enforcement of morals or religious belief” (See England and Wales High Court (Administrative Court), *Smeaton v Secretary of State for Health* [2002] EWHC 610 (Admin), (18th April, 2002) at 48).

<sup>105</sup> The 1987 Philippine Constitution guarantees secularism through the principle of separation of church and state under Article II, Section 6 (Phil. Const (1987), art. 2, § 6 (“Sec. 6: The separation of Church and State shall be inviolable.”); This constitutional guarantee of separation of church and state guards against the views of a dominant church from influencing the conduct of government and influencing policies to cater to a specific dominant church (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.’”);

While the Constitution guarantees freedom of religion, it also guarantees non-establishment of religion under Article III, Section 5 of the Constitution; This non-establishment clause principally prohibits the state from sponsoring any religion, or favoring any religion as against other religions. (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 & Env’tl. Control*);

<sup>106</sup> *Estrada vs. Escritor*, A.M. No. P-02-1651, 4 August 2003, 408 SCRA [*Estrada vs. Escritor*] It mandates “government neutrality in religious matters...and avoid breeding interfaith dissension.” The Supreme Court ruled: “[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.;

It also means neutrality between religion and atheism, or of an individual’s decision in regard to the supernatural or spiritual, or not at all. (GOROSPE, R., *Constitutional Law: Notes and Readings on the Bill of Rights, Citizenship and Suffrage*, Vol. I (2006), p. 1007);

<sup>107</sup> In the case of *Ang Ladlad vs. Comelec* (*Ang Ladlad LGBT Party vs. COMELEC*, G.R. No. 190582 [*Ang Ladlad vs. COMELEC*].), 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*.”;

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- <sup>108</sup> Center for Reproductive Rights, World Map (2017), available at <http://www.worldabortionlaws.com/map/>.
- <sup>109</sup> Center for Reproductive Rights, A Global View of Abortion Rights, July 2014; Center for Reproductive Rights, Abortion Worldwide: 20 years of reform, Briefing Paper, August 2014, available at <https://www.reproductiverights.org/document/abortion-worldwide-20-years-of-reform> [Center for Reproductive Rights: Abortion Worldwide, 2014]
- <sup>110</sup> United Nations, Department of Economic and Social Affairs, Population Division (2014). Abortion Policies and Reproductive Health around the World, available at <https://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf>
- <sup>111</sup> Center for Reproductive Rights, The World's Abortion Laws Map, available at <https://reproductiverights.org/worldabortionlaws?country=ESP>; Center for Reproductive Rights, Abortion Worldwide, 2014.
- <sup>112</sup> Center for Reproductive Rights, Abortion Worldwide, 2014.
- <sup>113</sup> Guttmacher Institute, Menstrual Regulation and Unsafe Abortion in Bangladesh Fact Sheet 2017, available at <https://www.guttmacher.org/fact-sheet/menstrual-regulation-unsafe-abortion-bangladesh>.
- <sup>114</sup> Guttmacher Institute, Menstrual Regulation and Unsafe Abortion in Bangladesh Fact Sheet 2017, available at <https://www.guttmacher.org/fact-sheet/menstrual-regulation-unsafe-abortion-bangladesh>.
- <sup>115</sup> <https://edition.cnn.com/2019/04/11/health/south-korea-abortion-ban-ruling-intl/index.html>.
- <sup>116</sup> Center for Reproductive Rights, World Abortion Laws, available at <https://reproductiverights.org/worldabortionlaws?country=ESP>
- <sup>117</sup> Center for Reproductive Rights, Religious Voices Worldwide Support Choice: Pro-choice Perspectives in Five World Religions [Center for Reproductive Rights, Religious Voices, 2005]; See, Poster, Center for Reproductive Rights, The World's Abortion Laws (2017).
- <sup>118</sup> *Id.*
- <sup>119</sup> *Id.*
- <sup>120</sup> *Id.*
- <sup>121</sup> The Abortion (Northern Ireland) Regulations 2020 commenced on 31 March 2020, authorizing abortions to be carried out by a registered medical professional.
- <sup>122</sup> Center for Reproductive Rights, The World's Abortion Laws (2017); Center for Reproductive Rights, Abortion Worldwide, 2014.
- <sup>123</sup> Mexico City legalized abortion in the first trimester without restriction.
- <sup>124</sup> First introduced by President Michelle Bachelet in January 2015 decriminalizing abortion during the first 12 weeks of pregnancy if the woman is under 14 years old, if the woman's life is at risk, in case of rape, and when the fetus will not survive the pregnancy. It is set to face a full Senate vote before leading to President Bachelet's signature.
- <sup>125</sup> During the Enhanced Community Quarantine, Catherine Bulatao was reportedly rejected by six hospitals despite suffering post-partum hemorrhage and she bled to death on April 24, 2020. "Woman dies after being rejected by 6 hospitals in Caloocan and QC", Manila Bulletin, available at <https://news.mb.com.ph/2020/04/26/woman-dies-after-being-rejected-by-6-hospitals-in-calooacan-and-qc/>;
- <sup>126</sup> World Health Organization Model List of Essential Medicines, 21st List, 2019. Geneva: World Health Organization; 2019, available at <https://apps.who.int/iris/bitstream/handle/10665/325771/WHO-MVP-EMP-IAU-2019.06-eng.pdf?ua=1>.
- <sup>127</sup> United Nations Commission on Life-Saving Commodities for Women and Children, Commissioners' Report, September 2012.
- <sup>128</sup> Padilla, Clara Rita. Policy Brief: "Access to the Life-Saving Drug Misoprostol to Prevent and Treat Postpartum Hemorrhage Can Save Filipino Women's Lives", EnGendeRights, December 2016 [hereinafter Padilla, Policy Brief, Access to Misoprostol].
- <sup>129</sup> WHO Safe Abortion Guidance, 2012.
- <sup>130</sup> *Id.*, page 23.
- <sup>131</sup> World Health Organization, Preventing unsafe abortion, Evidence brief, 2019;
- <sup>132</sup> Ethical Aspects Of Induced Abortion For Non-Medical Reasons, Ethical Issues In Obstetrics And Gynecology

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by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health (October 2015), available at <https://www.figo.org/sites/default/files/uploads/wg-publications/ethics/FIGO%20Ethical%20Issues%202015.pdf4893.pdf>

<sup>133</sup> Padilla, Policy Brief Access to Safe Abortion, page 6, *supra* note 1.

<sup>134</sup> Padilla, Policy Brief Access to Safe Abortion, page 7, *supra* note 1.

<sup>135</sup> CEDAW Concluding observations CEDAW/C/PHL/CO/7-8, 25 July 2016, para. 40, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/PHL/CO/7-8&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/PHL/CO/7-8&Lang=En)

<sup>136</sup> CEDAW Concluding observations CEDAW/C/PHL/CO/7-8, 25 July 2016, para. 56, *id.*

<sup>137</sup> Pregnant 10-year-old rape victim denied abortion by Paraguayan authorities, The Guardian, May 4, 2015, available at [https://www.theguardian.com/world/2015/may/04/paraguay-pregnant-10-year-old-abortion?CMP=fb\\_us](https://www.theguardian.com/world/2015/may/04/paraguay-pregnant-10-year-old-abortion?CMP=fb_us); <https://www.washingtonpost.com/news/worldviews/wp/2015/08/14/denied-an-abortion-11-year-old-rape-victim-in-paraguay-gives-birth/>.

<sup>138</sup> Margaret Wurth, 14, Pregnant from Rape, Dead in Childbirth, Paraguay's harsh abortion law endangers adolescent girls, Human Rights Watch, March 26, 2018, available at <https://www.hrw.org/news/2018/03/26/14-pregnant-rape-dead-childbirth>.

<sup>139</sup> CEDAW Concl. Obs. 2016, para. 26 (b).

<sup>140</sup> Padilla, Policy Brief Access to Safe Abortion, page 7, *supra* note 1.