

A CASE FOR DECRIMINALIZING ABORTION IN THE PHILIPPINES*

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ABSTRACT

Philippine abortion laws impose an absolute ban on abortion with the purpose of preventing women from undergoing the procedure. Yet, contrary to the ends sought, the termination of pregnancies continues as women subject themselves to clandestine and unsafe abortion. Abortion is an essential healthcare intervention that should be available to women and girls. It is a human right, supported by international human rights laws to which the Philippines is a State Party. The constitutional provision on the equal protection of the life of the mother and the life of the unborn from conception may be interpreted to allow instances of abortion to balance the protection of women's human right to abortion, with the interest to protect the unborn.

* *Cite as* Katrina Kaye Estrada, *A Case for Decriminalizing Abortion in the Philippines*, 97 PHIL. L.J. 410 (2024).

**J.D., University of the Philippines Diliman (2023). Editor, Philippine Law Journal, Vol. 96. B.A. Philosophy, *magna cum laude*, University of the Philippines Diliman (2019).

The author would like to thank Associate Professor Rommel Casis for his guidance as adviser in her Supervised Legal Research paper.

I. ABORTION

Abortion is “the removal of pregnancy tissue, products of conception or the fetus and placenta (afterbirth) from the uterus.”¹ It may either be induced or spontaneous. A spontaneous abortion is commonly known as a miscarriage. This is defined by the World Health Organization (WHO) as a “[s]pontaneous loss of a pregnancy prior to 24 weeks’ gestation, that is, before the [fetus] is usually viable outside the uterus.”²

Abortion is a common health intervention that can be managed with either medication or surgery.³ It is safe so long as conducted using the methods recommended by the WHO, considering the gestation age, and having it done by a skilled individual.⁴ In contrast, an unsafe abortion is an abortion conducted “either by persons lacking the necessary skills[,] or in an environment that does not conform to minimal medical standards, or both.”⁵

The WHO considers abortion as one of the easiest preventable causes of maternal mortality.⁶ Despite this, it remains to be “a critical public health and human rights issue.”⁷ The WHO first found unsafe abortion to be a “serious public health problem” way back in 1967.⁸

Restrictive abortion laws have long been linked with unsafe abortion.⁹ They are also linked to higher levels of maternal mortality.¹⁰ Furthermore, the “[r]estrictions on access to safe abortion create inequalities both within and

¹ *Abortion (Termination of Pregnancy)*, HARVARD HEALTH PUBLISHING HARVARD MEDICAL SCHOOL (Jan. 9, 2019), available at <https://www.health.harvard.edu/medical-tests-and-procedures/abortion-termination-of-pregnancy-a-to-z>.

² WORLD HEALTH ORGANIZATION, ABORTION CARE GUIDELINE xv (2022).

³ *Abortion*, WORLD HEALTH ORGANIZATION (Nov. 25, 2021), available at <https://www.who.int/news-room/fact-sheets/detail/abortion>.

⁴ *Id.*

⁵ World Health Organization, *Safe and unsafe induced abortion: Global and regional levels in 2008, and trends during 1995–2008*, 1, available at https://iris.who.int/bitstream/handle/10665/75174/WHO_RHR_12.02_eng.pdf;sequence=1

⁶ Lisa B. Haddad, *Unsafe Abortion: Unnecessary Maternal Mortality*, 2(2) REV. IN OBSTETRICS & GYNECOLOGY 122 (2009), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/>.

⁷ WORLD HEALTH ORGANIZATION, *supra* note 5, at 2.

⁸ Brooke Ronald Johnson Jr, Vinod Mishra, Antonella Francheska Lavelanet, Rajat Khosla, & Bela Ganatra, *A global database of abortion laws, policies, health standards and guidelines*, 95 BULL. WORLD HEALTH ORGAN 542 (2017), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC5487981/>.

⁹ *Id.*

¹⁰ *Id.*

between countries, making access to safe abortion a privilege of the rich and leaving poor women little choice but to resort to illegal and usually unsafe practices and providers.”¹¹ In fact, abortion has been legally restricted in almost every country since the end of the 19th century.¹²

The reasons for restricting abortion may be broken down into three. First, abortion was found to be dangerous, and abortionists were killing a lot of women; however, it should be noted that these women sought the medical intervention with knowledge of risking their lives in the process.¹³ Second, abortion was considered a sin.¹⁴ Third, and finally, the protection of the fetal life was prioritized.¹⁵

Given the legal restrictions imposed by states against abortion, and as a consequence thereof, the WHO itself warned that the unavailability of safe abortion services may force women to compromise their health and well-being in the process of self-inducing abortion or resorting to unskilled abortion providers.¹⁶

A. Abortion in the Philippines

The legal prohibition against abortion in the Philippines comes with a stigma that makes it extremely challenging to have a direct estimate of the number of abortions induced in the Philippines.¹⁷ However, in a 2020 study conducted by the UP Population Institute (“UPPI”) and the United Nations Population Fund (“UNPF”), it was estimated that there were 751,000 additional unintended pregnancies during the community quarantine in 2020, on top of the 1,809,000 unintended pregnancies without community

¹¹ Johnson et al., *supra* note 8.

¹² Marge Berer, *Abortion Law and Policy Around the World*, 19(1) HEALTH HUM RIGHTS 13–27 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473035/>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ World Health Organization, *supra* note 5.

¹⁷ Guttmacher Institute, *Unintended Pregnancy and Unsafe Abortion in the Philippines: Context and Consequences*, IN BRIEF 3 (April 2013), available at <https://www.jstor.org/stable/resrep32811>.

quarantine.¹⁸ This shows a 42% increase in the number of unintended pregnancies for 2020.¹⁹

Along with the rising number of unintended pregnancies is the increased number of induced abortions in the Philippines. Without the community quarantine, it is estimated that there could be 1,100,000 induced abortions in the Philippines every year.²⁰ For every month of community quarantine, this number increases by 17,000.²¹ Thus, the total number of induced abortions in 2020 was estimated to be at 1,261,500, assuming nine and a half months of community quarantine.²²

The increase in the number of induced abortions in the Philippines is nothing short of alarming, especially comparing the figures with estimates from 2012, which showed that 610,000 women resorted to induced abortion that year.²³

With the legal prohibitions against termination of pregnancy in the Philippines, there is effectively no regulation of abortion.²⁴ Thus, women are forced to subject themselves to unsafe abortion.

Given the prevalence of unsafe abortion, it comes as no surprise to have it as one of the leading causes of maternal mortality in the Philippines, comprising 8.4% of all causes.²⁵

The fact that abortion is legally prohibited does not deter women from taking them. Women who have abortions in the Philippines are typically Catholic, married, and mothers with at least a high school education.²⁶ Three of four women opt for abortion due to their inability to afford the cost of

¹⁸ Maria Paz N. Marquez, Elma P. Laguna, Maria Midea M. Kabamalan, & Grace T. Cruz, *Estimating the potential impact of the COVID-19 pandemic on key sexual and reproductive outcomes in the Philippines: Technical report 6* (2020), available at <https://www.uppi.upd.edu.ph/sites/default/files/pdf/UPPI-Impact-of-COVID-19-on-SRH.pdf>.

¹⁹ *Id.*

²⁰ *Id.* at 8.

²¹ *Id.*

²² *Id.*

²³ Clara Rita Padilla, *The reality of abortion in the Philippines*, RAPPLER, Sept. 13, 2015, available at <https://www.rappler.com/moveph/105680-reality-abortion-philippines/>.

²⁴ Regulation of abortion refers to all the laws, policies, and instruments pertaining to the regulation of pregnancy and abortion. WORLD HEALTH ORGANIZATION, *supra* note 2, at xv.

²⁵ Department of Health, *The 2018 Philippine Health Statistics* 200 (2018).

²⁶ Guttmacher Institute, *supra* note 17, at 4.

raising a child, or another one.²⁷ Additionally, nearly a third of women referred to health-related reasons in considering an abortion, and one-third felt that they would not be supported by their partner or family should they choose to continue the pregnancy.²⁸ Thirteen percent of women opted for abortion as their pregnancy was a result of forced sex.²⁹

In celebration of International Safe Abortion Day in 2021, a coalition of United Nations (UN) experts emphasized that abortion is “essential health care and a human right.”³⁰ In its Abortion Care Guideline, the WHO has included comprehensive abortion care as an essential health service.³¹ Comprehensive abortion care covers information, abortion management, and post-abortion care.³² It entails care for all kinds of abortion (induced, spontaneous, or incomplete), and even for fetal death.³³ Without safe and comprehensive abortion, women are exposed to physical health risks like incomplete abortion, hemorrhage, infection, uterine perforation, and damage to the genital tract and internal organs.³⁴

B. Philippine Abortion Laws

Abortion in all its forms is prohibited in the Philippines. Unintentional abortion is penalized with *prisión correccional* in its minimum and medium periods.³⁵ Intentional abortion is also subject to the penalty of imprisonment from *prisión correccional* to *reclusion temporal*, depending on the attendant circumstances.³⁶ Resorting to abortion is punished, whether the procedure is practiced by the pregnant woman herself or by her parents, without regard as to whether the pregnant woman consents to the procedure in the first place.³⁷ Even medical professionals (such as physicians, midwives, and pharmacists) are sanctioned with imprisonment, should they practice

²⁷ Guttmacher Institute, *supra* note 17, at 4.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Office of the High Commissioner for Human Rights, United Nations, *Abortion is essential healthcare and women's health must be prioritized over politics*, OFFICE OF THE HIGH COMMISSIONER UNITED NATIONS HUMAN RIGHTS WEBSITE (Sept. 28, 2021), available at <https://www.ohchr.org/en/statements/2021/09/abortion-essential-healthcare-and-womens-health-must-be-prioritized-over>.

³¹ WORLD HEALTH ORGANIZATION, *supra* note 2 at xix.

³² World Health Organization, *supra* note 5.

³³ *Id.*

³⁴ *Id.*

³⁵ REV. PEN. CODE, art. 257.

³⁶ REV. PEN. CODE, art. 256.

³⁷ REV. PEN. CODE, art. 258.

abortion.³⁸ The Revised Penal Code (RPC) sanctions all actors involved in any instance of abortion, may it be the medical practitioners, the parents of the pregnant woman, or the pregnant woman herself. From the time of the Code's effectivity in 1930, no change has been introduced to the relevant laws. Simply put, the State has consistently been imposing a total ban on abortion.

The Philippines' abortion laws are some of the strictest in the world. They make abortion illegal in absolutely all instances, which is why abortion a highly stigmatized topic.³⁹ The Philippines is one of the 21 countries that prohibit abortion under any circumstance.⁴⁰

Aside from the penal provisions, there are also special laws that deter medical professionals from assisting pregnant women from having abortion. The Philippine Midwifery Act sanctions the suspension or even revocation of the certificate of registration of any midwife "assisting or performing abortion."⁴¹ Meanwhile, physicians may be reprimanded or have their certificate of registration suspended or revoked, if they perform or aid in "any criminal abortion."⁴² Even pharmacists may be reprimanded, or may have their certificates of registration suspended or revoked by the aiding or abetting in criminal abortion, and even by dispensing or selling abortive drugs.⁴³

Thus, although the one who is subjected to the abortion is the pregnant woman only, in a sense, the law does not discriminate as to who shall be punished. The pregnant woman seeking abortion and any other person seeking to assist her are all punished by these penal provisions. What the abortion laws of the country restrict is the very act or behavior of abortion.

To reiterate, Philippine abortion laws make no exemption nor mitigating circumstance in favor of the pregnant woman, even if it should be the case that she herself would like to avail of the abortion. Neither do they provide exceptions in recognition of peculiar circumstances that the pregnant woman may be in, which may warrant the abortion. Even in the extreme scenario that the pregnant woman's life and health is at risk, and abortion

³⁸ REV. PEN. CODE, art. 259.

³⁹ Guttmacher Institute, *supra* note 17, at 2.

⁴⁰ Center for Reproductive Rights, *The World's Abortion Laws*, available at [https://reproductiverights.org/maps/worlds-abortion-laws/?category\[1348\]=1348](https://reproductiverights.org/maps/worlds-abortion-laws/?category[1348]=1348). This was last visited Dec. 18, 2020.

⁴¹ Rep. Act No. 7392, § 25 (1992). The Philippine Midwifery Act of 1992.

⁴² Rep. Act No. 2382, § 24(8) (1959). The Medical Act of 1959.

⁴³ Rep. Act No. 5921, § 13(e) (1969). An Act Regulating the Practice of Pharmacy and Setting Standards of Pharmaceutical Education in the Philippines and for Other Purposes.

would be the necessary means to preserve her life, the act of terminating a pregnancy remains to be legally prohibited.

Some provisions on state policies, as provided in Article II of the 1987 Constitution, are relevant in the review of the Philippine abortion laws. Section 12 thereof provides that the State “shall equally protect the life of the mother and the life of the unborn from conception.”⁴⁴ Meanwhile, Section 14 provides that the State “recognizes the role of women in nation-building” so it thereby mandates the State to “ensure the fundamental equality before the law of women and men.”⁴⁵

The provision on the equal protection of the life of the mother and the life of the unborn is commonly used to justify, if not strengthen, the already restrictive abortive laws of the country. There is a premium placed upon the life of the unborn, with an emphasis on their defenselessness, which is reflected in the State’s law and policy to deter all instances of pregnancy termination by penalizing such with imprisonment.

Senate Bill No. 2497, introduced by Senator Juan Ponce Enrile in 2010, sought for heavier penalties for abortive acts as defined in the Revised Penal Code. Its Explanatory Note, banking on the constitutional provision, stated that the bill was drafted for the purpose of protecting the unborn “in danger of being harmed, injured, or killed, bearing in mind that the unborn is totally incapable of protecting itself.”⁴⁶ In 2016, House Bill No. 567, introduced by Rep. Amado Bagatsing, also seeking to increase the penalties against abortion as provided in the Revised Penal Code, echoed the sentiment explained in Senate Bill No. 2497: to protect the life of the unborn who is totally incapable of defending themselves.⁴⁷

However, Section 12, Article II of the 1987 Constitution should be read with Section 14, which recognizes the inherent and independent value of women by emphasizing their role in nation-building and the subsequent duty of the State to ensure that women and men shall have equal rights.

As earlier mentioned, Philippine abortion laws do not discriminate regarding who may be held liable for the crime of abortion. They punish not only the pregnant woman who seeks abortion, but everyone who would

⁴⁴ CONST., art, II, § 12.

⁴⁵ CONST., art, II, § 14.

⁴⁶ Senate Bill No. 2497, 15th Congress, 1st Session, Explanatory note, (2011) (Phil.).

⁴⁷ Dionisio P. Tubianosa, *Stiffer penalties for abortion pushed*, HOUSE OF REPRESENTATIVES WEBSITE (Jan. 9, 2016, 8:43:12 AM), available at <https://www.congress.gov.ph/press/details.php?pressid=9262/>.

participate in its commission, regardless of age, sex, profession, or even purpose.

Although it is true that essentially “everyone” is punished for the commission of criminal abortion, it remains to be the case that women are the ones primarily affected by the penal provisions as the very behavior of terminating a pregnancy triggers the criminal liability. All participants to the commission of an abortion may be held criminally liable and share the experience of abortion stigma, but the effects and implications beyond remain disproportionate, with health risks and the responsibility of childrearing fall mainly upon the woman.

However, restricting access to abortions in no way reduces the number of abortions.⁴⁸ What it does is determine whether the kind of abortion women and girls may access is safe and dignified,⁴⁹ which is shown by Philippine statistics on the number of abortions induced in the country despite the abortion ban. The legal prohibition will not stop them from undergoing abortion, instead only forcing them to have an unsafe one.

As previously mentioned, there is a stigma that comes with abortion. This is seen in the Philippines where the Catholic Church has a strong influence on society as well as on government officials.⁵⁰ Family, civil, and penal laws in the country continue to be dominated by Canon law and laws of Spanish origin.⁵¹ Unfortunately, most, if not all, laws limit the realization of women’s sexual and reproductive health rights.⁵² This can be seen in Articles 256 to 259 of the Revised Penal Code, which ban abortion. These provisions continue to be unamended to this day, despite being promulgated in the early 1930s.

⁴⁸ Abortion, *supra* note 3.

⁴⁹ *Id.*

⁵⁰ Guttmacher Institute, *supra* note 17, at 4.

⁵¹ Carolina S. Ruiz Austria, *The Church, the State and Women’s Bodies in the Context of Religious Fundamentalism in the Philippines*, 12 (24) REPRODUCTIVE HEALTH MATTERS 96 (2004), available at <https://www.jstor.org/stable/3776585>.

⁵² *Id.*, citing Austria CSR, *The construction of Filipino women’s sexuality and gender roles in the Philippine legal system*, WOMENLEAD JOURNAL ON LAW AND CULTURE 25–54 (2001).

II. COMPARED: MEXICO AND PHILIPPINES

A. Comparing Backgrounds

For the purposes of this study, Philippine abortion law will be compared with Mexican abortion law. Although Mexico and the Philippines are geographically apart, they share many similar characteristics.

Mexico, or the United Mexican States, is a country located in southern North America, featuring extremes of both wealth and poverty.⁵³ The Mexican government is a federal republic with two legislative houses.⁵⁴ Meanwhile, the Philippines in Southeast Asia is governed by a unitary republic with two legislative houses as well.⁵⁵ Similar to Mexico, the Philippines is defined with the presence of extreme wealth and extreme poverty.⁵⁶ Even in terms of economic status, the two countries share similarities, with both classified as developing nations.

Like the Philippines, Mexico is heavily influenced by Spanish life and culture after being a colony thereof for 300 years.⁵⁷ The Philippines was under Spanish rule for 333 years.⁵⁸ The effect of the colonization in Mexico is made more noticeable by the fact that Spanish is the official national language, spoken by majority of the population.⁵⁹ Although the Philippines delisted Spanish as one of its official languages in 1987, its influence persists as one-third of the Filipino language is derived from Spanish words.⁶⁰

The similarities brought by Spanish colonization are not limited to language. In 2010, it was estimated that more than four-fifths of Mexico's population is nominally affiliated with Roman Catholicism.⁶¹ Thus, most of

⁵³ Martin David Bernstein & Henry Bamford Parkes, *Mexico*, BRITANNICA, available at <https://www.britannica.com/place/Mexico>.

⁵⁴ *Id.*

⁵⁵ Carolina G. Hernandez, *Philippines*, BRITANNICA, available at <https://www.britannica.com/place/Philippines>.

⁵⁶ *Id.*

⁵⁷ Virginia Mercado, *Who are we?*, D+C DEVELOPMENT AND COOPERATION, (Oct. 10, 2017), available at <https://www.dandc.eu/en/article/spains-colonial-rule-has-left-marks-mexico>.

⁵⁸ Hernandez, *supra* note 55.

⁵⁹ Bernstein & Parkes, *supra* note 53.

⁶⁰ Alan Weedon, *The Philippines is fronting up to its Spanish heritage, and for some it's paying off*, ABC NEWS, Aug. 10, 2019, available at <https://www.abc.net.au/news/2019-08-10/inside-the-push-to-bring-back-spanish-into-the-philippines/11356590>.

⁶¹ Bernstein & Parkes, *supra* note 59.

its holidays are associated with Christian feasts.⁶² Meanwhile, in a 2018 estimate, it was also found that about four-fifths of the Philippine population is affiliated with Roman Catholicism.⁶³

Cultural similarities are also seen in their family values. In Mexico, family is considered the most important element of society, may it be in the private or in the public life.⁶⁴ The same can be said of the Philippines as the family is considered the foundation of social life for most Filipinos, alongside filial piety, which is strongly held in Filipino culture.⁶⁵

Relevant to the discussion of abortion, both countries are State Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).⁶⁶ They also ratified the Optional Protocol to the Convention on the Elimination of Discrimination against Women (“CEDAW-OP”).⁶⁷ Both countries have also ratified other human rights treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“CESCR”), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), the Convention on the Rights of the Child (“CRC”), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“CMW”), and the Convention on the Rights of Persons with Disabilities (“CRPD”).⁶⁸

Despite all their similarities in history and culture, the two countries differ in an important aspect of policy: their respective laws on abortion. As of 2021, abortion is no longer a crime in Mexico. The Philippines stands in

⁶² Marvin David Bernstein & Angel Palerm, *Holidays and Festivals*, BRITANNICA, (last visited May 20, 2023), available at <https://www.britannica.com/place/Mexico/Holidays-and-festivals>.

⁶³ Hernandez, *supra* note 55.

⁶⁴ Bernstein & Parkes, *supra* note 59.

⁶⁵ Chara Scroope, *Family*, CULTURAL ATLAS, 2017, available at <https://culturalatlas.sbs.com.au/filipino-culture/filipino-culture-family>.

⁶⁶ United Nations Human Rights Treaty Bodies, *UN Treaty Body Database*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS WEBSITE (last visited May 13, 2023), available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en.

⁶⁷ *Id.*

⁶⁸ World Health Organization, *Global Abortion Policies Database*, WORLD HEALTH ORGANIZATION WEBSITE (last visited May 20, 2023), available at <https://abortion-policies.srhr.org/countries/?r%5B%5D=c167&r%5B%5D=c86&hrt=1&co=1&pia=1>.

the polar opposite with its absolute abortion ban unchanging from its effectivity in 1930.

In 1931, Mexico's federal law made abortion a crime.⁶⁹ The woman and the abortion practitioner found guilty of the crime may be sentenced to one to three years of imprisonment when the procedure is carried out with the woman's consent, and three to six years when carried out without.⁷⁰ However, there are exemptions from criminal liability for abortion in limited circumstances: whenever the pregnancy was a result of rape and the pregnant woman's life would be endangered by a continued pregnancy; or where the abortion is due to negligent behavior on the pregnant woman's part.⁷¹

With Mexico's federal structure of government, the treatment of abortion varied from state to state, with the federal penal code provisions being generally irrelevant at the state level, only applying if the abortion was carried out under "exclusively federal jurisdiction."⁷² Nonetheless, the federal law would still provide guidance to the different States by serving as a model for state penal codes.⁷³

A common ground for waiving penalties among the States is when the pregnancy is a result of rape.⁷⁴ Depending on the State, the penalty may also be waived when:

1. The abortion is the result of negligent behavior by the pregnant woman;⁷⁵
2. To save the life of the pregnant woman;⁷⁶
3. When the fetus has serious genetic malformations;⁷⁷
4. When the abortion is for the protection of the health of the pregnant woman;⁷⁸
5. When the pregnancy is due to non-consensual artificial insemination;⁷⁹ and

⁶⁹ Human Rights Watch, *Mexico: The Second Assault: Obstructing Access to Legal Abortion After Rape in Mexico* (2006), available at <https://www.hrw.org/report/2006/03/06/mexico-second-assault/obstructing-access-legal-abortion-after-rape-mexico>

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* This waiver is valid in 29 states.

⁷⁶ *Id.* This waiver is valid in 27 states.

⁷⁷ *Id.* This waiver is valid in 13 states.

⁷⁸ *Id.* This waiver is valid in 10 states.

⁷⁹ *Id.* This waiver is valid in 11 states.

6. For economic reasons when the woman already has three other children.⁸⁰

B. Mexico's Supreme Court of Justice of the Nation on the Decriminalization of Abortion

Recently, the Supreme Court of Mexico has issued landmark decisions affecting the country's laws on abortion. In a historic move in September 2021, Mexico's Supreme Court declared that imposing criminal penalties for terminating pregnancy through abortion is unconstitutional.⁸¹ The Court explained in a press release that although pregnancy deserves protection, "this protection cannot ignore the rights of women and pregnant people to reproductive freedom."⁸²

The case for the decriminalization of abortion, *Acción de Inconstitucionalidad* 148/2017 ("AI 148/2017"), was filed by the Attorney General's Office questioning the constitutionality of abortion-related provisions in the Criminal Code of the State of Coahuila de Zaragoza ("CPC").⁸³ It argued that Articles 195 and 196 violated women's rights to autonomy and reproductive freedom since the provisions imposed the penalty of imprisonment upon a woman who voluntarily terminated their pregnancy at the first stage of gestation, and upon any person who, with their consent, executed or aided in the abortion.⁸⁴

Ultimately, the Supreme Court decided to strike out certain abortion-related penal laws but opted to sustain others. Article 195 was sustained, as the provision only explained what a criminal abortion is.⁸⁵ Invalidating the law would prevent making forced abortion a crime, when such is an act dangerous

⁸⁰ Human Rights Watch, *supra* note 69. This is only valid in the state of Yucatan.

⁸¹ María Verza, *Mexico's Supreme Court rules that abortion is not a crime*, AP NEWS, Sept. 8, 2021, available at <https://apnews.com/article/health-mexico-courts-mexico-city-6de599fc7b9352608a9da86f2ccda0f6>.

⁸² Suprema Corte de Justicia de la Nación, *Suprema Corte Declara Inconstitucional La Criminalización Total Del Aborto*, SUPREMA CORTE DE JUSTICIA DE LA NACIÓN WEBSITE, Sept. 7, 2021, available at <https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6579>. (Translated through the website's translator).

⁸³ Human Rights Office of Mexico's Supreme Court of Justice of the Nation, Extract from the *Acción de Inconstitucionalidad* 148/2017, I, available at <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/summary/2022-05/Summary%20AI148-2017%20HRO.pdf>

⁸⁴ *Id.*

⁸⁵ *Id.*

to women and persons able to gestate, as to their right to decide whether they would like to continue their pregnancy.⁸⁶

However, the Supreme Court was firm in ruling that Article 196, which criminalized voluntary abortion, was invalid.⁸⁷ The first paragraph of Article 198 was also invalidated to allow women and persons able to gestate to be assisted by health workers in undergoing abortion, because the said provision sanctioned health professionals who assisted in abortion.⁸⁸

Article 199 on excusable pleas was also invalidated, as the Code's determination of the conduct as unlawful for the specific cases facilitates the notion of criminality.⁸⁹ From the same provision, sections on abortion after rape or after improper insemination or implantation were also invalidated for its effect of forcing women to endure the pregnancy that was fruit of such "violent invasive act[s]."⁹⁰

The first paragraph of Article 224, Section II was also invalidated, with Mexico's Supreme Court explaining that there was no reason to have a lower rank of punishment for conduct that injures a woman, depending on the civil relationship.⁹¹ In the same article, the second paragraph of Section II was invalidated for its failure to recognize that sexual violations can occur regardless of civil status.⁹²

On the merits of the case, the Court discussed the balance between women's right to decide and the protection of the constitutional interest of an unborn child.⁹³ It explained that the principle of human dignity, which protected the right to decide on the spacing of their children in a free and informed manner, implied the constitutional protection of the right to reproductive autonomy, and in turn, the right to choose and have access to the possible termination of pregnancy.⁹⁴

The Court placed a premium on human dignity as an essential prerequisite to all other fundamental rights necessary for individuals to

⁸⁶ Human Rights Office of Mexico's Supreme Court of Justice of the Nation, *supra* note 83 at I.

⁸⁷ *Id.*

⁸⁸ *Id.* at I–II.

⁸⁹ *Id.* at II.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

develop their personality.⁹⁵ It explained that human dignity is based on the central idea that women and persons who are able to gestate have the ability to freely control their bodies and create their identity and future without any sort of transgression.⁹⁶

Furthermore, women's decision to become mothers formed part of their autonomy and the free development of their personality.⁹⁷ The Court explained that the decision is founded on Mexico's principle of secularity, which had "which has a marked influence on the construction of this pillar of the right to decide and a direct link with the fundamental right to conduct life according to the life plan that is chosen."⁹⁸ However, the Court was also quick to clarify that the said principle did not mean that the State must ignore the different religious and ideological phenomena.⁹⁹

In affirming women's right to decide, the Court declared that the establishment of equality between men and women before the law stemmed from the recognition of historical discrimination against women.¹⁰⁰ The recognition of the right to choose was intended to eliminate the possibility of gender-based discrimination when it came to maternity and reproductive rights.¹⁰¹ The Court further emphasized that "[t]he right to decide is built on gender equality," implying the removal of stereotypes assigned to women or persons able to gestate with regard to matters of their sexuality.¹⁰² The Court posited that the failure to recognize the "elements that define women (and persons able to gestate)" would result in injury to gender equality when what is imposed upon them is a "social role that nullifies their dignity and the possibility of choosing an autonomous and individual life plan."¹⁰³

Alongside reproductive freedom, the Court focused on women's right to health, both physical and psychological. The decision provided that the right should be assessed as "the right to maintain an optimal psycho-emotional state."¹⁰⁴ It recognized "the right to health as a fundamental and indispensable guarantee for the exercise of other human rights and not only

⁹⁵ Human Rights Office of Mexico's Supreme Court of Justice of the Nation, *supra* note 83 at II.

⁹⁶ *Id.* at III.

⁹⁷ *Id.*

⁹⁸ *Id.* at IV.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at V.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at V–VI.

¹⁰⁴ *Id.* at VI.

as the right to be health,” in reference to provisions of the United Nations Committee on Economic, Social and Cultural Rights.¹⁰⁵ As such, states are mandated to respect, to protect, and to guarantee compliance with obligations arising from the right to health.¹⁰⁶ Thus, the State has the obligation “to reasonably prevent the risks associated with pregnancy and with abortion in unsafe conditions.”¹⁰⁷ It follows that the right to health and its protection includes the freedom to autonomously adopt decisions about one’s health, including that of reproduction, and the infrastructure to carry them out.¹⁰⁸

On women’s right to decide, the Court declared that it is not for the State to evaluate why a pregnancy is to be terminated since such belongs to the women’s sphere of privacy.¹⁰⁹ However, the right to choose reflects seven implications:

1. The necessity of sex education;
2. The necessity of access to information on family planning and birth control;
3. The recognition that women and persons able to gestate are holders of the right to decide whether or not to terminate their pregnancy;
4. The guarantee that the holder of the right makes an informed decision in relation to the continuation or termination of pregnancy;
5. That the right to decide has two spheres of protection—one refers to the sphere of the person who voluntarily chooses to continue the pregnancy and the other refers to the person who chooses to terminate their pregnancy;
6. The guarantee that pregnancy can be terminated in public health institutions in a manner that is accessible, free, confidential, safe, expeditious, and non-discriminatory; and
7. The right of the pregnant person to decide to terminate their pregnancy must be limited to a short period close to the beginning of the gestation process.¹¹⁰

Following the discussion of implications, particularly related to the last item, the Court explained the *nasciturus* as a constitutionally protected

¹⁰⁵ Human Rights Office of Mexico’s Supreme Court of Justice of the Nation, *supra* note 83 at VI–VII.

¹⁰⁶ *Id.* at VII.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at VIII–IX.

State interest.¹¹¹ The Court clarified that Mexican law does not consider the *nasciturus* as a person that can possess human rights so the exercise of the same may only be done from birth.¹¹² The Supreme Court affirmed that the gestation process has a constitutionally relevant value related to the expectation that a human being will be born from the existence of a fetus or embryo, thereby meriting the State's protection.¹¹³

To balance reproductive autonomy and protect the *nasciturus*, the Court provided that the window for a pregnant person to abort is "within a short period close to conception."¹¹⁴ The Court emphasizes that the period to decide to abort must be reasonable, and legislators may refer to scientific information in the construction of related laws.¹¹⁵

Thus, it was held that abortion can be done only within the first 12 weeks of pregnancy.¹¹⁶ According to the Court, the *nasciturus* would have only an incipient development during such period.¹¹⁷ It was further alleged that termination of pregnancy during this stage will not pose serious consequences on the woman's health.¹¹⁸

The validity of Article 195 of the CPC was sustained as it only established that "whoever causes death to the product of conception commits abortion, at any time during pregnancy."¹¹⁹ This has no point of contact with women's right to decide so its constitutionality cannot be questioned through this approach.¹²⁰

However, the Supreme Court did not hesitate to render Article 196 of the CPC unconstitutional,¹²¹ as the provision made consented abortion a crime.¹²² This has a direct impact on the reproductive freedom of women and

¹¹¹ "*Nasciturus*" is a word of Latin origin that refers to one who is to be born. Thus, they are called the *nasciturus* until the moment they are born, or at the beginning of childbirth. Jelena Simić, *The Protection of Nasciturus within the Civil Law*, PRAVNI FAKULTET UNIVERZITETA UNION (2018), available at <https://asestant.ceon.rs/index.php/pravzap/article/view/19193>

¹¹² Human Rights Office of Mexico's Supreme Court of Justice of the Nation, *supra* note 83, at IX.

¹¹³ *Id.* at X

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at XI.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at XII.

persons able to gestate to decide if they would like to continue their pregnancy, which is ultimately, a constitutional right.¹²³ The establishment of criminal measures with regard to pregnancy termination cannot be considered a legitimate end, as criminal law cannot involve ideological positions of moral nature in relation to pregnancy; such is strictly a matter of human rights and protection of constitutionally defined interests.¹²⁴ Through the provision, the right of women to decide was completely nullified, as it failed to achieve its intended purpose to prevent abortions.¹²⁵

The Court further stated that criminalizing voluntary abortion at any time meant the “total suppression of the constitutional right to choose of women and persons able to gestate.”¹²⁶

In the decision, the Court acknowledged that women terminated pregnancies even with the risk of facing criminal charges and the possibility of suffering injuries or diseases.¹²⁷ It also noted that in the penalization of abortion, the possibility of coordinating with pregnant persons so they can make informed decisions was rejected.¹²⁸

The Court also found Article 198, which punished those who assist in abortion, to be unconstitutional, because the provision rendered it impossible for woman who sought abortion to be assisted by those medically knowledgeable, thereby prohibiting voluntary abortion altogether.¹²⁹

Further, normative provisions, which provided for “non-punishable abortion” that “will be excused from the penalty of abortion,” were also held invalid.¹³⁰ The Court reasoned that the law qualified certain conduct as illicit and thereby aggravated the notion of criminality with regard to abortion, even when the same was resorted to as the pregnancy was without the pregnant person’s consent or when it was sought to protect the health of the person who is gestating.¹³¹

¹²³ Human Rights Office of Mexico’s Supreme Court of Justice of the Nation, *supra* note 83, at XII.

¹²⁴ *Id.*

¹²⁵ *Id.* at XII–XIII.

¹²⁶ *Id.* at XIII.

¹²⁷ *Id.* at XIV.

¹²⁸ *Id.*

¹²⁹ *Id.* at XV.

¹³⁰ *Id.*

¹³¹ *Id.*

The Supreme Court also held the normative premise in Article 199, Section I, which limited abortion to pregnancies resulting from rape, invalid,¹³² since it was found to be unresponsive to the premise it intended to regulate.¹³³ The time limit therein also failed to consider the crime's negative implications on the woman, such that forcing a pregnant person who was a victim of rape to continue the pregnancy would be a form of "revictimization."¹³⁴ The invalidity of normative provisions "non-punishable abortion" and "will be excused from punishment," as well as "within twelve weeks from conception" was held.¹³⁵

With the Court's holding in AI 148/2017, the subject laws criminalizing abortion in Coahuila were unanimously annulled.¹³⁶ The Court's decision in the lawsuit in the State of Coahuila affects the entire country of Mexico.¹³⁷ Court President Arturo Zaldívar explained that women may no longer be charged with the crime of abortion upon the circumstances the Court has ruled valid.¹³⁸ Thus, consented abortion is no longer criminal, but with the caveat of the reasonable period to terminate the pregnancy. Overall, the ruling is a recognition of a constitutional right to "legal, safe, and free abortion services" for situations outlined by the Court.¹³⁹

However, because of Mexico's federal system creating laws on abortion at the state level, states are still in the process of reforming their laws to comply with the Decision.¹⁴⁰ Indeed, no current legislation outrightly decriminalizes abortion upon all the states of Mexico, but the decision's impact cannot be denied. Judges throughout Mexico would have to follow the national precedent laid down by the Supreme Court. No woman can be put behind bars for voluntarily choosing to terminate her pregnancy, but, of course, with regard to the specific states' guidelines for the same. Legislation may vary from state to state given the nature of the Federal Republic of Mexico, but it remained that the policy of the ruling should be considered by

¹³² Human Rights Office of Mexico's Supreme Court of Justice of the Nation, *supra* note 83, at XVI.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at XVII.

¹³⁶ Verza, *supra* note 81.

¹³⁷ Center for Reproductive Rights, *Mexico Supreme Court Recognizes a Constitutional Right to Abortion*, CENTER FOR REPRODUCTIVE RIGHTS, Sept. 8, 2021, available at <https://reproductiverights.org/mexico-supreme-court-decriminalizes-abortion/>.

¹³⁸ Verza, *supra* note 81.

¹³⁹ Center for Reproductive Rights, *supra* note 137.

¹⁴⁰ Center for Reproductive Rights, *The World's Abortion Laws*, (last visited Dec. 18, 2020), available at <https://reproductiverights.org/maps/worlds-abortion-laws/?country=MEX>.

legislators themselves and should be consistent with the Constitution and the Supreme Court's interpretation of its provisions.

However, the Supreme Court of Mexico did not stop with AI 148/2017. It laid down a series of landmark cases consistent with the first one regarding decriminalizing abortion.

In AI 106/2018 and 107/2018, the Court ruled that states have no authority to establish in their local constitutions that the right to life begins from conception.¹⁴¹ Neither may they grant embryos or fetuses the same legal protections available to persons as the same may limit reproductive rights, especially abortion rights.¹⁴²

In AI 54/2018, the Court invalidated a part of the General Law regulating health services nationwide for it established an expansive right to conscientious objection, without providing for limits to protect the rights of patients to healthcare.¹⁴³ This is particularly relevant to ensure access to abortion as conscientious objections have been made to deny reproductive healthcare to women.¹⁴⁴

C. Analyzing Different Abortion Policies

As earlier pointed out, Mexico and the Philippines share similar characteristics, which is very reason why Mexican law is compared with Philippine law on abortion policy. However, although many significant aspects of its history and culture are alike, it remains that the policies they implement on abortion are on different ends of the spectrum.

Among the cultural similarities of the two countries, particularly significant is the nominal affiliation of about 80% of their respective peoples to the Roman Catholic Church. To both Mexico and the Philippines, the Catholic Church remains a significant influence when it comes to legislation. Further, both countries place a premium on family relations and values. Despite these similarities when it comes to moral influences, only Mexico has abortion decriminalized, along with the continuous effort to make sure that

¹⁴¹ Suprema Corte de Justicia de la Nación, *Mexican Supreme Court: Landmark Decisions At The Vanguard For Reproductive Rights Worldwide*, SUPREMA CORTE DE JUSTICIA DE LA NACIÓN WEBSITE, Oct. 1, 2021, available at <https://www.internet2.scjn.gob.mx/red2/comunicados/comunicado.asp?id=6606>. (Translated through the website's translator).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

safe abortion is accessible to women, subject to certain conditions. In contrast, the Philippines has been stagnant in this regard from the time that the Revised Penal Code was enacted.

The Federal Penal Code provisions of Mexico concerning abortion have been around since the 1930s, around the same time as the abortion laws of the Philippines in the Revised Penal Code. However, Mexico's abortion laws have been continuously changing, providing for exceptions or waivers in favor of those whose situations may compel them to terminate their pregnancy.

Although the different States of Mexico vary as to the circumstances exempting the woman from criminal penalty, there are at least some instances wherein abortion is allowed.

The recent ruling of the Mexican Supreme Court on abortion is revolutionary in a sense that it lays down an interpretation of the Constitution favorable to facilitating abortion. In its decision, the Supreme Court went so far as to say that the subject penal provisions on abortion are unconstitutional. Thus, even if only one state is party to that case, the impact of the decision affected all other states of the country. As earlier mentioned, the Mexican Supreme Court continues in its active effort to make decisions to ensure access to abortion.

Again, Philippine abortion laws differ as they remain to be unamended from the time they became effective. Almost a century has passed, yet no development has ever occurred in favor of allowing women access to abortion, even for particular or extraordinary cases. In this jurisdiction, there are no exceptions to the prohibition against abortion, much less mitigating circumstances that would reduce the penalty imposed on the woman who undertakes an abortion. There is absolutely no change in the Philippines' law on abortion.

The laws of Mexico and the Philippines recognize the *nasciturus* for the former and the unborn for the latter, respectively. In Mexico, although the *nasciturus* is afforded protection, it is still "not considered a person as holder of human rights" and therefore it is able to exercise rights only from the time of childbirth.¹⁴⁵ This is in stark contrast with Philippine law, where

¹⁴⁵ Human Rights Office of Mexico's Supreme Court of Justice of the Nation, *supra* note 83, at IX.

the Constitution provides that the life of the unborn shall be equally protected with the life of the mother, starting from conception.¹⁴⁶

In the Philippines, the Civil Code provides that it is birth that determines civil personality.¹⁴⁷ Meanwhile, the Child and Youth Welfare Code recognizes that a child's civil personality commences from the time of conception.¹⁴⁸ However, the Child and Youth Welfare Code is explicit in providing that the Revised Penal Code will be the applicable law in cases of abortion.¹⁴⁹

As Mexican law tempers the protection of the *nasciturus* in reference to the rights of the woman or the person able to gestate, the same cannot be said with Philippine law, which demands "equal protection" of the life of the mother and of the life of the unborn. Further, the current or common interpretation of Section 12, Article II of the 1987 Constitution is far too rigid to accommodate anything similar to the Mexican Supreme Court decision.

Both states recognize the necessity of equality between men and women. The 1987 Constitution mandates the State to "ensure the fundamental equality before the law of women and men."¹⁵⁰ However, Mexican law goes even further as the subject Supreme Court decision also recognizes that the "constitutional establishment of equality between men and women before the law was a result of the recognition of historical discrimination against women."¹⁵¹ Thus, the right of the woman to decide (whether or not to get abortion) is founded on gender equality which requires the removal of stereotypes on the basis of sex, in relation to the right to sexuality.¹⁵² Thus, the Supreme Court of Mexico itself states:

The mandate of legal equality of men and women before the law, based on what has been stated, means that when there is a situation that guarantees that women will be subject to a sphere of life not chosen[—]and that implies that they will not be able to perform in the same way as men[—] and another in which they will be able to have greater opportunities, the latter should be preferred.¹⁵³

¹⁴⁶ CONST., art. II, § 12.

¹⁴⁷ CIVIL CODE, art. 40.

¹⁴⁸ CHILD AND YOUTH WELFARE CODE, art. 5.

¹⁴⁹ CHILD AND YOUTH WELFARE CODE, art. 5.

¹⁵⁰ CONST., art. II, § 14.

¹⁵¹ Human Rights Office of Mexico's Supreme Court of Justice of the Nation, *supra* note 83, at V.

¹⁵² *Id.*

¹⁵³ *Id.* at VI.

It is also worth noting again that both states are parties to the relevant international human rights laws that make abortion a human right. Although admittedly, the same was not thoroughly discussed or referred to in the decision of the Mexican Supreme Court that decriminalizes abortion, the policy therein was still reflected.

Mexico and the Philippines may be both developing countries with a relatively shared culture brought about by the same experience of Spanish colonization; they may be both family-oriented and heavily influenced by the Catholic Church; they may have the same origin of law; and most importantly, they may both have committed in paper to the same treaties. However, the kind of policies they conceive in the present are at opposite ends of the spectrum.

III. DECriminalIZING ABORTION

A. Abortion Is a Human Right

In the emphasis of abortion as a human right, reference to international human rights law is proper, because states are duty-bound to the obligations mandated by the same.¹⁵⁴ Thus, as parties to treaties, they are obliged “to respect, to protect[,] and to fulfill human rights.”¹⁵⁵ In their obligation to respect, they are to desist from interfering with the enjoyment of human rights.¹⁵⁶ Further, in their obligation to protect, states are obliged to protect against abuses of human rights.¹⁵⁷ Finally, in their obligation to fulfill, states are mandated to commit to positive actions to promote the enjoyment of these rights.¹⁵⁸

The obligations that international human rights law impose on states are the very bases of assurance that persons and groups are protected, or at least, should be protected. With existing laws in every state, and with the subsequent changes made thereto, international human rights law provides the security that abuses by state powers shall be countenanced, and that the dignity or personhood of individuals remain primary. Thus, for this portion

¹⁵⁴ International Human Rights Law, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *available at* <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

of the discussion, treaties shall be mentioned as well as general comments and general recommendations, for the further understanding of the same.

General comments and general recommendations are published interpretations of human rights treaties by the treaty bodies themselves.¹⁵⁹ By using general comments, treaty bodies formally express their perspectives on issues.¹⁶⁰ General comments are “sources of non-binding norms that interpret and add detail to the rights and obligations contained in the respective human rights treaties.”¹⁶¹ Although these general comments are not binding, it should be repeated and understood that they are the interpretations of the human rights treaty bodies themselves. Human rights treaty bodies are “creatures of the human rights conventions establishing them.”¹⁶² Given their peculiar identity, they are the experts themselves to be deferred to, in properly understanding and applying these sources of law.

Thus, it follows that it is sound to use International Human Rights Law—through treaties, general comments, and general recommendations—in realizing and furthering human rights, particularly in the topic of abortion.

Both international and regional human rights bodies have recognized the importance of abortion as a human right; and with this, the recognition of the range of human rights violations from restrictive abortion laws to the lack of an access to safe abortion services.¹⁶³ International human rights norms have evolved to uphold the denial of safe abortion services to be a human rights violation.¹⁶⁴ Thus, treaty bodies have affirmed in numerous different instances that States have the obligation to ensure that legal abortion services

¹⁵⁹ General Comments, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://www.ohchr.org/en/treaty-bodies/general-comments>.

¹⁶⁰ Hellen Keller & Leena Grover, General Comments of the Human Rights Committee and their legitimacy, in UN HUMAN RIGHTS TREATY BODIES LAW AND LEGITIMACY (Hellen Keller, Geir Ulfstein ed.), 117 (2012), citing P. Alston, ‘The Historical Origins of the Concept of “General Comments” in Human Rights Law’ in L. Boisson de Chazournes and V. Gowland Debbas (eds.), *The International Legal System in Quest of Equity and Universality: Liber Amicorum Georges Abi-Saab* (The Hague: Martinus Nijhoff, 2001), 763–76, 775, fn. 49.

¹⁶¹ *Id.* at 129, citing D. Shelton, ‘Commentary and Conclusions’ in D. Shelton (ed.), *Commitment and Compliance* (Oxford University Press, 2000) 449–64, 451.

¹⁶² Helen Keller & Geir Ulfstein, UN HUMAN RIGHTS TREATY BODIES LAW AND LEGITIMACY (Hellen Keller, Geir Ulfstein ed.) 1 (2012).

¹⁶³ Johanna B. Fine, *The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally*, 19 (1) HEALTH HUM RIGHTS 69–80 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473039/>.

¹⁶⁴ *Id.*

are not only available, but also “accessible (including affordable), acceptable, and of good quality.”¹⁶⁵

In the WHO Abortion Care Guideline, the WHO enumerated nine main human rights standards on abortion and their corresponding bases in international law. In the list of the treaties relevant to the subject matter of abortion are: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of Discrimination Against Women (CEDAW);¹⁶⁶ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); the International Convention on the Production of the Rights of all Migrant Workers and Members of Their Families (ICMW); and the Convention on the Rights of Persons with Disabilities (CRPD).¹⁶⁶ The Philippines has ratified all these treaties.¹⁶⁷

The abortion-related human rights enumerated by the WHO Abortion Care Guideline are as follows:

1. The right to the highest attainable standard of physical and mental health, including sexual and reproductive health;¹⁶⁸
2. The right to non-discrimination and equality;¹⁶⁹

¹⁶⁵ *Id.*, citing the Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22, The Right to Sexual and Reproductive Health, UN Doc. E/C.12/GC/22 (2016); CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4 (2000), para. 12; Human Rights Committee (HRC), Communication No. 1153/2003, *K.L. v. Peru*, UN Doc. CCPR/C/85/D/1153/2003 (2005), para. 7; HRC, Communication No. 1608/2007, *L.M.R. v. Argentina*, UN Doc. CCPR/C/101/D/1608 (2011), para. 10; Committee on the Elimination of Discrimination against Women (CEDAW Committee), Communication No. 22/2009, *L.C. v. Peru*, UN Doc. CEDAW/C/50/D/22/2009 (2011).

¹⁶⁶ [Hereinafter “*The right to health*”], WORLD HEALTH ORGANIZATION, ABORTION CARE GUIDELINE: WEB ANNEX A: KEY INTERNATIONAL HUMAN RIGHTS STANDARDS ON ABORTION 1 (2022), available at <https://iris.who.int/bitstream/handle/10665/349317/9789240039506-eng.pdf>

¹⁶⁷ United Nations Human Rights Treaty Bodies, *UN Treaty Body Database*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS WEBSITE (last visited May 13, 2023), available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en.

¹⁶⁸ *The right to health*, *supra* note 166, at 3.

¹⁶⁹ *Id.* at 24.

3. The right to life;¹⁷⁰
4. The right to privacy;¹⁷¹
5. The right to be free from torture, cruel, inhuman and degrading treatment and punishment;¹⁷²
6. The right to decide freely and responsibly on the number, spacing and timing of children and to have the information and means to do so;¹⁷³
7. The right to information and education including on sexual and reproductive health;¹⁷⁴
8. The right to benefit from scientific progress and its realization;¹⁷⁵ and
9. The right of persons with disabilities to retain fertility on an equal basis with others.¹⁷⁶

On the more specific discussion of abortion regulation, the WHO provided three aspects to look out for: criminalization, grounds-based approaches, and gestational limits.¹⁷⁷

The WHO recommends the full decriminalization of abortion.¹⁷⁸ Decriminalization, as defined by the WHO Abortion Care Guideline, pertains to the removal of abortion from criminal laws, the non-application of other criminal abortions to the same, and the guarantee that actors participating in abortion will not be penalized.¹⁷⁹

Further, the WHO recommends against restricting abortion by grounds, and instead suggests for its availability upon request of the pregnant woman.¹⁸⁰ Until abortion is available in that manner, grounds-based approaches should be revised to ensure human rights compliance.¹⁸¹

As to the gestational limits, the WHO recommends against laws and other regulations that prohibit abortion based on gestational age limits.¹⁸²

¹⁷⁰ *Id.* at 27–28.

¹⁷¹ *The right to health*, *supra* note 166, at 33.

¹⁷² *Id.* at 36.

¹⁷³ *Id.* at 39.

¹⁷⁴ *Id.* at 40–41.

¹⁷⁵ *Id.* at 42.

¹⁷⁶ *Id.* at 43.

¹⁷⁷ WORLD HEALTH ORGANIZATION, *supra* note 2, at 21–29.

¹⁷⁸ *Id.* at xxv.

¹⁷⁹ *Id.* at xiii.

¹⁸⁰ *Id.* at xxv.

¹⁸¹ *Id.*

¹⁸² *Id.*

Relevant to the discussion of decriminalizing abortion are the first five of the nine rights enumerated by the WHO.

B. The Right to Health

The WHO enumerated as bases for the right to the highest attainable standard of physical and mental health, including sexual and reproductive health: Article 12 of the ICESCR; Article 25 of the UDHR; Article 5 of the ICERD; Articles 11, 12, and 14 of the CEDAW; Article 24 of the CRC; Article 25 of the CRPD; Articles 28, 43(e), and 45(c) of the ICMW; and the 1948 Constitution of the WHO.¹⁸³

The subject provisions of the ICESCR, CRC, and the CRPD provide for the right to the enjoyment of the highest attainable standard of health.¹⁸⁴ Meanwhile, Article 5 of the ICERD is more general as to requiring States Parties to prohibit and eliminate racial discrimination and to guarantee “[t]he right to public health, medical care, social security[,] and social services.”¹⁸⁵ Furthermore, the subject CMW provisions emphasized the right of migrant workers to receive medical care and access to medical care and social and health services on the basis of equality of treatment with the nationals of the State concerned.¹⁸⁶ Meanwhile, the provisions of the CEDAW reiterate the right to the protection of health and access to adequate healthcare facilities, including family planning, “on a basis of equality of men and women.”¹⁸⁷

The different international laws may have different manners of phrasing, but they all mean the same: that humans should be guaranteed the right to health. Of all the subject provisions, only Article 25 of the CRPD explicitly provides that the same included sexual and reproductive health. Article 11 of the CEDAW included in the right to the protection of health, the protection of the reproductive function. Meanwhile, Articles 12 and 14 of the CEDAW and Article 4 of the CRC made a reference to family planning in the discussion of the right to health.

¹⁸³ *The right to health*, *supra* note 166, at 3.

¹⁸⁴ International Covenant on Economic, Social and Cultural Rights, art. 25, Dec. 16, 1966, 933 U.N.T.S. 3 [hereinafter “ICESCR”].

¹⁸⁵ International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iv), Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter “ICERD”].

¹⁸⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families arts. 28, 43(e), & 45(c), Dec. 18, 1990, 2220 U.N.T.S. 3 [hereinafter “ICMW”].

¹⁸⁷ Convention on the Elimination of All Forms of Discrimination Against Women, arts. 11, 12, & 14, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter “CEDAW”].

Reiterating the declaration of the UN experts during the International Abortion Day in 2021, abortion is essential healthcare. The same sentiment is echoed by other institutions, such as the Heilbrunn Department of Population and Family Health, the Columbia University Mailman School of Public Health,¹⁸⁸ and the American College of Obstetricians and Gynecologists.¹⁸⁹ In fact, a 2022 study by the Division of General Obstetrics and Gynecology Specialists and the Division of Family Planning, Brigham and Women's Hospital, and Harvard Medical School also emphasize that indeed, abortion is essential healthcare and even advised on how to support the advocacy for supporting access to abortion.¹⁹⁰

The Committee on Economic, Social and Cultural Rights (CESCR) explained in General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) that “[h]ealth is a fundamental human right indispensable for the exercise of other human rights.”¹⁹¹ Thus, “[e]very human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life of dignity.”¹⁹² Indeed, the CESCR itself affirms the gravity of the importance of the right to health. Thus, the Committee furthered that the exercise of the right to health includes “the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference” including but not limited to torture.¹⁹³ The exercise is also formed by entitlements such that there is an opportunity “to enjoy the highest attainable level of health.”¹⁹⁴

In the exercise of the right to health, persons must have access to the range of necessary healthcare, and the autonomy to practice the same. This autonomy extends to sexual and reproductive health. The extent of the right to sexual and reproductive health is further substantiated in General Comment No. 22. However, General Comment No. 14 does provide that in the realization of women’s right to health, prohibitions against access to

¹⁸⁸ Mailman School of Public Health, *Abortion Care is Health Care*, COLUMBIA MAILMAN SCHOOL OF PUBLIC HEALTH WEBSITE, available at <https://www.publichealth.columbia.edu/research/featured-research/global-health-justice-governance/our-impact/abortion-care-health-care>.

¹⁸⁹ The American College of Obstetricians and Gynecologists, *Abortion Is Essential Health Care*, THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS WEBSITE, available at <https://www.acog.org/advocacy/abortion-is-essential>.

¹⁹⁰ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9575566/>

¹⁹¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12), Aug. 11, 2000, E/C/12/2000/4, 1 [hereinafter “General Comment No. 14”].

¹⁹² *Id.*

¹⁹³ *Id.* at 2–3.

¹⁹⁴ *Id.* at 3.

healthcare services, including that for sexual and reproductive health, should be removed.¹⁹⁵

General Comment No. 22 of the CESCR¹⁹⁶ provides that the right to sexual and reproductive health is “indivisible from and interdependent with other human rights.”¹⁹⁷ Furthermore, such is integral to the right to the highest attainable physical and mental health.¹⁹⁸ Thus, the CESCR provides that skilled healthcare providers should be available for the performance of sexual and reproductive healthcare services.¹⁹⁹ As such, essential medicines should be available as well, including drugs for abortion and for post-abortion care.²⁰⁰

In discussing information accessibility, General Comment No. 22 provides that the same includes “the right to seek, receive, and disseminate information and ideas concerning sexual and reproductive health issues generally, and also for individuals to receive specific information on their particular health status.”²⁰¹ The information herein includes maternal health, safe abortion, and post-abortion care.²⁰²

The CESCR provided that the “failure or refusal to incorporate technological advances and innovations in the provision of sexual and reproductive health services, such as medication for abortion”²⁰³ would jeopardize the quality of health care.

The Committee has also emphasized that States Parties have the obligation to ensure that individuals have access to the full range of sexual and reproductive health facilities, including the removal of barriers that may be faced.²⁰⁴ It cited criminalized abortion or restrictive abortion laws as examples—laws that limited full enjoyment to the right to sexual and reproductive health.²⁰⁵ Thus, abortion as part of sexual and reproductive

¹⁹⁵ *Id.* at 8.

¹⁹⁶ [Hereinafter “General Comment No. 22”], Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the right to sexual and reproductive health* (Art. 12 of the International Covenant on Economic, Social and Cultural Rights), May 1, 2016, E/C/12/GC/22.

¹⁹⁷ *Id.* at 3.

¹⁹⁸ *Id.* at 4.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* at 5.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 9.

²⁰⁵ *Id.*

health, and in general, just the right to health, should be accessible or, at the least, should not make anyone participant thereto a criminal.

The CESCRC enumerated that States Parties to the ICESCR have an obligation to respect, to fulfill, and to protect.

States Parties have the obligation to respect the universal right to sexual and reproductive health.²⁰⁶ States Parties are expressly told “not [to] limit or deny anyone access to sexual and reproductive health, including through laws criminalizing sexual and reproductive health services and information.”²⁰⁷ They are called on to reform laws that prevent the exercise of the right, and so the CESCRC specifically mentioned “criminalizing abortion” as an example.²⁰⁸ In furtherance of the obligation to respect, States Parties are also called “to repeal, and refrain from enacting, laws and policies that create barriers in access to sexual and reproductive health services,” even for abortion.²⁰⁹

In the Philippines, it can be seen that the absolute prohibition on abortion in the country ran contrary to its obligation to respect the right to sexual and reproductive health. This is affirmed by the example in the General Comment No. 22 that the criminalization of abortion amounts to a violation of the obligation to respect.²¹⁰

As to the States Parties’ obligation to protect, they are called “to prevent third parties from directly or indirectly interfering with the enjoyment of the right to sexual and reproductive health.”²¹¹ It is the duty of States to have laws ensure the full enjoyment of the right to sexual and reproductive health.²¹² It is also considered a violation of the obligation to protect when the State fails to take measures to prevent third parties from being violent upon those seeking abortion or post-abortion care.²¹³ Inevitably, this means that States Parties like the Philippines must be able to facilitate access to abortion-related services and medication.

Finally on the specific obligations of the States, they have the obligation to fulfill—that is “to adopt appropriate legislative [...] measures to

²⁰⁶ General Comment No. 22, *supra* note 196 at 10.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.* at 14.

²¹¹ *Id.* at 11.

²¹² *Id.*

²¹³ *Id.* at 12–13.

ensure the full realization of the right to sexual and reproductive health.”²¹⁴ The General Comment explicitly provided that safe abortion care and services should be afforded access by the State.²¹⁵

Every State should meet the minimum standards imposed. Hence, States Parties are called to, among others, “take measures to prevent unsafe abortions and to provide post-abortion care and counselling for those in need.”²¹⁶

General Comment No. 22 clearly established the right to safe abortion from the bigger umbrella of the right to sexual and reproductive health under article 12 of the ICESCR. The consistent inclusion of abortion and abortion care within the full scope of the right to sexual and reproductive health shows the recognition of the interpretation that abortion is not only health care matter but also a human right. The General Comment itself provides that prohibitions, legal or non-legal, to the access of abortion are violations of the States Parties’ duties to respect, protect, and fulfill. Thus, the Committee itself said that States Parties have, in general terms, the obligation to ensure access to these sexual and reproductive health care services, facilities, and medicine, including those related to abortion.

Meanwhile, the Committee on the Elimination of Discrimination against Women discussed how Article 12 of the CEDAW may be fulfilled by the States Parties in General Recommendation No. 24. Therein, the Committee expressly recommended to governments that “[w]hen possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.”²¹⁷

The other mentioned treaty provisions in relation to the right to health do not have corresponding General Comments to explicitly affirm that the right to abortion is eclipsed in the right to health. However, it could be noted that all the mentioned provisions emphasized the right to the enjoyment of the highest attainable standard of health.

From the General Comments, it can be derived that the right to health includes the right to sexual and reproductive health, and the latter ultimately includes abortion. As the Committee on the Elimination of Discrimination

²¹⁴ *Id.* at 11.

²¹⁵ General Comment No. 22, *supra* note 196 at 11.

²¹⁶ *Id.* at 13.

²¹⁷ [Hereinafter “General Recommendation No. 24”], Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, Feb. 2, 1999, A/54/38/Rev.1, 7.

against Women suggests, laws penalizing abortion should be amended to allow women access for the same. Ultimately, this is for the ends of allowing women to fully exercise their right to health.

Abortion is a human right, and safe abortion should be accessible and available to persons to ensure that they are able to exercise the true meaning of their right to health.

C. The Right to Non-Discrimination

The WHO included in the enumeration of relevant international human rights laws with regard to the right to non-discrimination and equality the following: Article 2 of the UDHR; Articles 3 and 26 of the ICCPR; Article 2 of the ICESCR; Article 1 of the ICERD; Articles 1 and 2 of the CEDAW; Article 2 of the CRC; Article 1 of the ICMW; and Article 5 of the CRPD.²¹⁸ These provisions tackled different dimensions to the discussion of non-discrimination and equality.

The UDHR, the ICCPR, and the ICMW talk about the application of their laws without distinction or discrimination of any kind—sex in particular.²¹⁹ Meanwhile, article 3 of the ICCPR provides for the responsibility of States Parties to make sure that men and women have the equal right to enjoy the provided civil and political rights.²²⁰ Similarly, the CRPD provides that the States Parties “recognize that all persons are equal before and under the law.”²²¹

The CEDAW also talks about equality in relation to men. Thus, State Parties are mandated to uphold the principle of equality of men and women in law,²²² and to also to provide “legal protection of the rights of women on an equal basis with men.”²²³ However, the most particular to the CEDAW in its discussion of women’s rights is its definition of “discrimination against

²¹⁸ *The right to health*, *supra* note 166, at 24.

²¹⁹ Universal Declaration of Human Rights art. 2, Dec. 10, 1948, 217 A (III) [hereinafter “UDHR”]; International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter “ICCPR”]; ICMW, art. 1.

²²⁰ ICCPR, art. 3, Dec. 16, 1996, 999 U.N.T.S. 171.

²²¹ Convention on the Rights of Persons with Disabilities, art. 5, Jan. 24, 2007, A/RES/61/106 [hereinafter “CRPD”].

²²² CEDAW, art. 2(a).

²²³ CEDAW, art. 2(c).

women.”²²⁴ Thus, the CEDAW expressly says that States Parties are to deplore discrimination against women.²²⁵

Other treaties also decry discrimination. The ICERD talks about racial discrimination,²²⁶ and the CRC talks about respecting the rights of children, without any kind of discrimination.²²⁷

Among the enumerated treaty provisions on discrimination, none of them have General Comments squarely discussing what they mean; but given the circumstances of abortion that is a behavior directly impacting women’s bodies, it is proper to discuss it with an emphasis on “discrimination against women” as contemplated in the CEDAW.

Among all international human rights laws, the CEDAW stands as the one particularly created to address the rights of women. It is an international bill of rights that provides the basis for achieving equality among women and men.²²⁸

A State Party to the CEDAW obliges itself to take all appropriate measures to ensure that women can enjoy all other human rights and fundamental freedoms.²²⁹ The CEDAW is a force in the affirmation of women’s reproductive rights while acknowledging culture and tradition as important factors in forming gender roles and family relations.²³⁰ It spells out what equality is and how it can be achieved. Not only is it an enumeration of rights to which women are entitled to, but it is also “an agenda for action by countries to guarantee the enjoyment of those rights.”²³¹

²²⁴ CEDAW, art. 1 provides: “For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

²²⁵ CEDAW, art. 2.

²²⁶ International Convention on the Elimination of All Forms of Racial Discrimination art. 1(1), Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter “ICERD”].

²²⁷ Convention on the Rights of the Child art. 2(1), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter “CRC”].

²²⁸ UN Women, *Convention on the Elimination of All Forms of Discrimination against Women*, UN WOMEN WEBSITE (last visited May 20, 2023), available at <https://www.un.org/womenwatch/daw/cedaw/>.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ CEDAW, Introduction.

The Convention tackles the issue of women's rights through the acknowledgement of "discrimination against women" which is defined therein as "any distinction, exclusion[,] or restriction made on the basis of sex" which intends to, or which effects the "impairing or nullifying the recognition, enjoyment[,] or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms" in different fields.²³²

In General Recommendation No. 33, the Committee on Elimination of Discrimination against Women noted that States Parties often have laws, customs, and practices that are discriminatory against women for being grounded on gender stereotypes.²³³ Given this reality, States Parties are called to amend or repeal provisions of law that discriminate against women.²³⁴

Squarely on the topic of abortion, the General Recommendation provides that States Parties are obliged "to ensure that women have access to the protection and remedies offered through criminal law, and that they are not exposed to discrimination" therein.²³⁵ It was explicitly provided that criminal acts that discriminate against women include "[c]riminalizing forms of [behavior] that can be performed only by women, such as *abortion*."²³⁶ The Committee itself describes abortion as discriminatory against women, by virtue of the fact that persons of the opposite sex, men, are not able to perform abortion this is due to their lack of a uterus.

Similarly, in General Recommendation No. 24, the Committee declared that State Parties should amend legislation criminalizing abortion "to withdraw punitive measures imposed on women who undergo abortion."²³⁷ This is in furtherance of the recommendation that State Parties should provide family planning and sex education to prevent unwanted pregnancy, and to provide safe motherhood services and prenatal assistance for the purpose of reducing maternal mortality.²³⁸

The Convention seeks to further forward women's rights to decide for themselves when it comes to family planning by requiring States Parties to

²³² CEDAW, art. 1.

²³³ [Hereinafter "General Recommendation No. 33"], Committee on the Elimination of All Forms of Discrimination Against Women, *General Recommendation No. 33 on women's access*, Aug. 3, 2015, CEDAW/C/GC/33, at 11.

²³⁴ *Id.*

²³⁵ *Id.* at 18.

²³⁶ *Id.* at 18.

²³⁷ CEDAW, Introduction.

²³⁸ *Id.*

take all appropriate measures to eliminate discrimination against women in all matters regarding marriage and family relations, including ensuring to women the same rights as men to decide freely and responsibly when it comes to planning the number of children they will have, and the spacing of their children.²³⁹

Understanding the General Recommendation, it can be seen that the very fact of criminalizing acts that may be performed only by a certain sex (women herein) is discriminatory.

In the Philippine context, all participants to an abortion are penalized. Thus, regardless of the pregnant woman's consent, even those who simply aid in the abortion (family members, medical practitioners) are punished. This may give the impression that abortion laws in the country are not discriminatory since everyone who participates is punished anyway. However, we must revert to the fact that what is being sanctioned is a behavior that only women can do. By the mere fact that only women can be subjected to abortion, and that abortion is criminalized—there is discrimination against women. Thus, the very act of imposing criminal liability upon abortion is discriminatory.

The other treaty provisions discussing discrimination are all consistent in holding against distinctions of any kind, particularly of sex. Analogously applying the interpretation of the Committee as to what is discriminatory against women (in criminal law), then indeed, having criminal sanctions for conduct specific to women is violative of the right to non-discrimination and equality.

D. The Right to Life

The right to life is provided for in Article 6 of the ICCPR, Article 6 of the CRC, Article 3 of the UDHR, Article 9 of the ICMW, and Article 10 of the CRPF.

The ICCPR, the CRC, and the CRPD emphasize the inherent right to life. However, the CRC focuses on the child's right to the same, and the subsequent duty of State Parties to ensure the child's "survival and development" to the "maximum extent possible."²⁴⁰

²³⁹ CEDAW, art. 16.

²⁴⁰ CRC, art. 6.

The UDHR states that everyone has the right to life.²⁴¹ Meanwhile, the ICMW provides for the law's responsibility to protect the lives of migrant workers and their families.²⁴²

Article 6.1 of the ICCPR is explicit: “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”²⁴³ As explained by the Human Rights Committee (HRC), it is the “supreme right from which no derogation is permitted.”²⁴⁴

Recognizing abortion as a human right does not run counter to the right to life. The HRC explained that the right to life should not be narrowly interpreted.²⁴⁵ The right to life was explained to include the “entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.”²⁴⁶ The exercise of the right to life thus inevitably includes that of pregnancy and abortion.

In General Comment No. 36, the HRC touches on the topic of pregnancy and the termination thereof:

“8. Although *States parties may adopt measures designed to regulate voluntary terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights* under the Covenant. Thus, restrictions on the ability of women or girls to seek abortion must not, *inter alia*, jeopardize their lives, subject them to physical or mental pain or suffering which violates article 7, discriminate against them or arbitrarily interfere with their privacy. *States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, and where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering*, most notably where the pregnancy is the result of rape or incest or is not viable. In addition, *States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, and they should revise their abortion laws accordingly*. For example, they

²⁴¹ UDHR, art. 3, Dec. 10, 1948, 217 A (III).

²⁴² ICMW, art. 9.

²⁴³ ICCPR, art. 6(1).

²⁴⁴ [Hereinafter “General Comment No. 36], Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, Oct. 18, 2018, CCPR/C/GC/36, at 1.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

should not take measures such as criminalizing pregnancies by unmarried women or apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, since taking such measures compel women and girls to resort to unsafe abortion. *States parties should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion* including barriers caused as a result of the exercise of conscientious objection by individual medical providers. *States parties should also effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions.* In particular, they should ensure access for women and men, and, especially, girls and boys, to quality and evidence-based information and education about sexual and reproductive health and to a wide range of affordable contraceptive methods, and *prevent the stigmatization of women and girls seeking abortion. States parties should ensure the availability of, and effective access to, quality prenatal and post-abortion health care for women and girls, in all circumstances, and on a confidential basis.*²⁴⁷

The HRC, through General Comment No. 36, acknowledges the necessity of abortion. It outlines the manner in which they should be legalized by the States. The HRC expressly provides that States Parties must remove barriers to women's access to safe and legal abortion, and neither should they introduce new ones. They expressly mandate against the criminalization of abortion.

General Comment No. 36 places a premium in protecting the pregnant person's right to life by ensuring that they have access to safe abortion. Thus, restrictions on access to abortion must "not jeopardize their lives," "subject them to physical or mental pain or suffering," "discriminate against them[,] or interfere with their privacy."²⁴⁸ These are the conditions that the HRC provides in States' limitations in accessing abortion. This portion of the General Comment emphasizes that abortion regulation should not cause "substantial pain or suffering" upon the woman or girl, citing the example of when the pregnancy stems from sexual violence like rape.²⁴⁹

Although the General Comment allows for the regulation of voluntary terminations of pregnancy, it places a premium on the protection of the life and rights of the pregnant woman or girl. It is clear in its interpretation of Article 6 of the ICCPR. It calls for the revision of abortion

²⁴⁷ General Comment No. 36, *supra* note 244. (Emphasis supplied.)

²⁴⁸ *Id.* at 2.

²⁴⁹ *Id.*

laws such that the State shall in no way regulate contrary to the States' duty to ensure that women and girls do not have unsafe abortion.

Again, States Parties are called to eliminate hindrances to the access of abortion so that pregnant persons may access them. These measures sought are all ultimately for the effective protection of the life and rights of women and children. Children themselves may be pregnant from instances of rape, for example, and the same could cause them much pain and suffering, contrary to the proper exercise and enjoyment of the right to life. The cited paragraph in the General Comment thus appears to contemplate the right to life of the pregnant person.

As to the right of the unborn, it is conceded that the cited portion of the General Comment does not appear to make reference to such. This is not the case for the Philippines, however. This shall be discussed later in this paper.

The other cited International Human Rights Laws all refer to the recognition of the inherent right to life. Admittedly, there is the question on the right to life of the unborn. However, the available General Comment of any of the provisions provided only refer to the life of the pregnant person. Thus, a definite position on the right to life can be afforded pertaining only to the right to life of the pregnant woman or girl.

E. The Right to Privacy

The right to privacy is seen in Article 17 of the ICCPR, Article 12 of the UDHR, Article 16 of the CRC, Article 22 of the CRPD, and Article 14 of the ICMW. The subject provisions all prohibit subjecting any person from "arbitrary or unlawful interference with his privacy."²⁵⁰ Thus, persons are entitled to the protection of the law against related interference and attacks.²⁵¹

General Comment No. 16 of the CCPR provides for an interpretation to the right to privacy under Article 17 of the ICCPR. It explains therein that "arbitrary interference" may also be committed by those already provided by the law, so that interference by law should be "reasonable in particular circumstances."²⁵² Admittedly, the General Comment does not mention

²⁵⁰ ICCPR, art. 17; UDHR, art. 12; CRC, art. 16; CPRD, art. 22; ICMW, art. 14.

²⁵¹ *Id.*

²⁵² [Hereinafter "General Comment No. 16"], Human Rights Committee, CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, April 8, 1988, at 1, *available at* <https://www.refworld.org/docid/453883f922.html>.

abortion. However, interpreting what an arbitrary interference is in light of the earlier discussion of what is discriminatory against women, we can see how the right to privacy is violated by the restriction or criminalization of abortion.

Indeed, it would be an arbitrary interference to criminalize a woman for performing a conduct that only she may do or be subjected to. In connection with the earlier discussion of the right to life, it could be seen as unreasonable to prohibit a woman from terminating a pregnancy, especially if it would cause pain or suffering.

The other aforementioned international human rights laws on the right to privacy all refer to prohibitions of arbitrary or unlawful interference with one's privacy. Indeed, none of them outrightly say that the criminalization of abortion is a violation of the right to privacy, but given their shared reference to "arbitrary or unlawful interference" similar to the ICCPR, when taken together, there is a stronger cause for invoking a violation of the right to privacy because of the unreasonable restriction of abortion in the Philippines (given the absolute ban).

F. The Right to Be Free from Torture, Cruel, Inhuman, and Degrading Treatment and Punishment

The right to be free from torture, cruel, inhuman, and degrading treatment and punishment (hereinafter "the right to torture") is composed of the CAT, which is the core instrument on torture; Article 7 of the UDHR; Article 15 of the CRPD; Article 37 of the CRC; and Article 10 of the ICMW.

The ICCPR and the UDHR similarly provide that "no one shall be subjected to torture or to cruel, inhuman[,] or degrading treatment or punishment."²⁵³ The CRC specifies the same mandate in connection to children;²⁵⁴ whereas the ICMW mandates the same in relation to migrant workers and their families.²⁵⁵ The CRPD has State Parties assume that protection against forms of exploitation, violence, and abuse shall be provided in favor of persons with disabilities.²⁵⁶

None of the subject provisions explicitly state that the criminalization of abortion is an act of torture. However, it has been recognized by human

²⁵³ ICCPR, art. 7; UDHR, art. 5.

²⁵⁴ CRC, art. 37(a).

²⁵⁵ ICMW, art. 10.

²⁵⁶ CRPD, art. 16(1).

rights bodies that the denial of access to abortion services by way of criminalization of abortion, among other barriers, can be deemed “cruel, degrading, and inhumane treatment,” that may be equivalent to torture and even arbitrary detention.²⁵⁷ Thus, in this sense, the absolute ban on abortion may be understood to be an act of torture to women when the procedure to terminate a pregnancy prevents undue pain and suffering on the part of the pregnant person.

G. The Issue of the Unborn Child’s Right to Life

In defense of Philippine laws on abortion is the policy in Article II, Section 12 of the 1987 Constitution, which states that the State “shall equally protect the life of the mother and the life of the unborn from conception.”²⁵⁸ By the wording of the constitutional provision, the unborn has a right to life and in furtherance of that, the protection accorded to it is as much as that afforded to the pregnant woman carrying it. This is echoed in the enumeration of the rights of a child in the Child and Youth Welfare Code. In fact, it provides therein that “[e]very child is endowed with the dignity and worth of a human being from the moment of his conception as generally accepted in medical parlance, and has, therefore, the right to be born well.”²⁵⁹

The Supreme Court of the Philippines discussed the issue of the right to life in *Imbong v. Ochoa*²⁶⁰ and held that the Reproductive Health Law²⁶¹ recognizes that abortion is a crime, in light of the policy that protection is granted to the unborn child from the moment of fertilization. However, it should be clarified that nowhere in the decision did the Court point out when life begins.

In effect, from the moment of fertilization, the unborn is afforded protection in furtherance of its right to life.

There is no applicable treaty that squarely tackles the rights of the unborn or even defines it. However, the CRC defines a child as any human being below the age of 18 years old, unless the applicable laws provide for an

²⁵⁷ Abortion is essential healthcare and women’s health must be prioritized over politics. *See* Office of the High Commissioner for Human Rights, United Nations, *supra* note 30.

²⁵⁸ CONST., art. II, § 12.

²⁵⁹ CHILD AND YOUTH WELFARE CODE, art. 3(1).

²⁶⁰ *Imbong v. Ochoa*, G.R. 204819, 732 Phil 1, Apr. 8, 2014.

²⁶¹ Rep. Act No. 10354 (2012). The Responsible Parenthood and Reproductive Health Act of 2012 [hereinafter “RH Law”].

earlier age of majority.²⁶² It is not clear whether the unborn is within the contemplation of who a child is under International Human Rights Law.

However, in the discussion of the right to life, we refer to Article 6 of the ICCPR and its corresponding interpretation in the HRC. In General Comment No. 36 tackling the same, it is provided that States Parties have the duty to “respect and ensure that the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life.”²⁶³

The right to life is a supreme and fundamental right.²⁶⁴ The HRC provides a caveat that the right should not be narrowly interpreted.²⁶⁵ Yet, it is clear that, as Article 6, paragraph 1 mandates the protection of the right to life and against the arbitrary deprivation of life, States Parties have the obligation “to respect and ensure the right to life,” through its laws and other actions, and to provide remedies for violations of the same, in favor of victims.²⁶⁶

As previously mentioned, the HRC, in interpreting Article 6 of the ICCPR, does not discourage abortion. In fact, it provides that, although State Parties may opt to regulate abortion, the same must not amount to any violation of the right to life of the pregnant person.²⁶⁷ Thus, any restrictions on the access to abortion should not amount to “physical or mental pain or suffering” on the pregnant person.²⁶⁸ Admittedly, this portion of the General Comment No. 36 only refers to the protection of the life of the pregnant woman or girl, and so it does not touch upon the life of the unborn child.

Moreover, General Comment No. 36 also allows for the “medical treatment or the medical means in order to facilitate the termination of life of afflicted adults, such as the terminal ill, who experience severe physical or mental pain and suffering and wish to die with dignity,” but with the instruction that there must exist “robust legal and institutional safeguards to ensure that medical professionals are complying with the free, informed, explicit[,] and unambiguous decision of their patients,” to ensure that patients are protected against pressure and abuse.²⁶⁹

²⁶² CRC, *supra* note 205, art. 1.

²⁶³ General Comment No. 6, *supra* note 244, at 2.

²⁶⁴ *Id.* at 1.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 2.

In both abortion and euthanasia, the HRC does not find that the right to life is violated, provided that legal safeguards to ensure the protection of persons are in place. Thus, the right to life of the pregnant person is not violated, but is in fact protected, with abortion.

Article II, Section 12 of the Constitution should be interpreted in a manner that would provide adequate protection for the lives of mothers and the unborn alike.

There are two main philosophies when it comes to interpreting the Constitution—Originalism and the Living Constitution. With Originalism, the Supreme Court, as the primary body tasked with interpreting the fundamental law of the land, is urged to exercise restraint in its interpretation of the Constitution, despite the changing times. Thus, any change to the Constitution should be through amendments from the people, instead of being from the initiative of the Supreme Court.²⁷⁰ On the other hand, the Living Constitution finds formal amendments to the Constitution too burdensome or complicated, thereby meriting the Supreme Court's amendment to the same.²⁷¹

To properly address the concerns of women, girls, and the unborn today and of the future, the constitutional provision should be read using the philosophy of the Living Constitution. This is to ensure that the reading of the same is responsive to the context of the time. The world has been altered in ways that no amount of foresight from the time of the constitution's drafting could anticipate.²⁷² Thus, with changing times, it follows that the Constitution would change as well.²⁷³

To follow the interpretation of the constitutional provision from its drafting in 1986 would not be responsive to the challenges and concerns we have today due to the dissimilar circumstances faced by the drafters then.

²⁷⁰ Richard F. Duncan, *Justice Scalia and the Rule of Law: Originalism vs. the Living Constitution*, REGENT U.L. REV. 29(1), 13 (2016).

²⁷¹ *Id.* at 13.

²⁷² David. A Strauss, *The Living Constitution*, THE UNIVERSITY OF CHICAGO LAW SCHOOL WEBSITE, Sept. 27, 2010, available at <https://www.law.uchicago.edu/news/living-constitution>.

²⁷³ *Id.*

In *J.M. Tuason & Co., Inc. v. Land Tenure Administration*,²⁷⁴ the Supreme Court, through Justice Fernando, extensively discussed how the Constitution should be read. Citing United States Supreme Court Chief Justice Marshall's pronouncement in *McCulloch v. Maryland*,²⁷⁵ the Constitution was described as enduring the test of time and attuned to the demands of human affairs.²⁷⁶ Emphasizing this point, Justice Fernando expounded:

Its framers were not visionaries, toying with speculations or theories, but men of affairs, at home in statecraft, laying down the foundations of a government which can make effective and operative all the powers conferred or assumed, with the corresponding restrictions to secure individual rights and, anticipating, subject to the limitations of human foresight, the problems that events to come in the distant days ahead will bring. Thus, a constitution, to quote from Justice Cardozo, "states or ought to state not rules for the passing hour, but principles for an expanding future."²⁷⁷

Furthermore, Justice Fernando stressed that the Constitution should be interpreted in a way that is not constricting but flexible, thus:

Our Constitution, any constitution, is not to be construed narrowly or pedantically, for the prescriptions therein contained, to paraphrase Justice Holmes, are not mathematical formulas having their essence in their form, but are organic living institutions, the significance of which is vital nor formal. *There must be an awareness, as with Justice Brandeis, not only of what has been, but of what may be.* The words employed by it are not to be construed to yield fixed and rigid answers but as impressed with the necessary attributes of flexibility and accommodation to enable them to meet adequately whatever problems the future has in store. It is not, in brief, a printed finality but a dynamic process.²⁷⁸

Thus, the subject constitutional provision should be read considering our context today.

²⁷⁴ *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, G.R. No. L-20164, 31 SCRA 413, Feb. 18, 1970. The decision involves a special civil action for prohibition to nullify Rep. Act No. 2616, as amended by Rep. Act No. 3453, a legislative act directing expropriation. Admittedly, the nature of the case is far-off from the issue of abortion. However, it is the discussion of the Constitution, which is relevant and pertinent for the purposes of this Note.

²⁷⁵ *McCulloch v. Maryland*, 17 U.S. 316, Mar. 6, 1819.

²⁷⁶ *Id.*

²⁷⁷ *Id.* Citation omitted.

²⁷⁸ *Id.* (Emphasis supplied.)

We live in a time where it is being recognized throughout the globe that abortion is a matter of healthcare, as certified by the WHO itself. Furthermore, there is a rising recognition of abortion as not only a healthcare matter, but more importantly, a human rights matter. This is reflected in treaties like the CEDAW, to which the Philippines is a signatory. The proper treaty bodies also emphasize the need to uphold abortion rights of women through their general comments and general recommendations. Experts themselves recognize the necessity of access to the procedure.

The Constitution should reflect the understanding we have today of abortion as a right. Thus, the “equal protection to the life of the mother and the life of the unborn” should not be narrowly interpreted such that the bare existence of conception warrants the “protection” of the life of the unborn by preventing abortion, and by preventing abortion only.

Given the different times we live in today, as compared to when the 1987 Constitution was drafted, a more holistic view taking context into account is imperative. In this pondering, we should ask: what becomes of the lives of the women denied abortion, and thereby forced to give birth? What happens to the lives of the children born as a result thereof?

A study found that women denied a wanted abortion experience more or graver harms and hardships (physical, financial, and even emotional) compared to those women who were able to get an abortion.²⁷⁹ Furthermore, it found that women who were able to receive abortion, compared to those who were denied the procedure, “are more financially stable, set more ambitious goals, raise children under more stable conditions, and are more likely to have a wanted child later.”²⁸⁰

Interpreting the constitutional provision further, a comparison with the earlier discussed Mexican ruling on the protection afforded to the *nasciturus* is appropriate. As earlier established, their jurisdiction shares similarities in culture, history, and law, with ours. Thus, a study of the same is sound, given the circumstances.

²⁷⁹ University of California San Francisco, *The Harms of Denying a Woman a Wanted Abortion Findings from the Turnaway Study* (2020), ADVANCING NEW STANDARDS IN REPRODUCTIVE HEALTH, available at https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf.

²⁸⁰ *Id.* at 2.

In Mexico, although the *nasciturus*, being unborn, cannot exercise human rights, they remain to be constitutionally protected in light of the expectation that they will be born.²⁸¹ To balance the rights of the woman or the person able to gestate with the protection of the *nasciturus*, the Supreme Court of Mexico held that the pregnant person's right to decide whether to opt for abortion should be within a short period close to conception.²⁸² The period must be reasonable, and the exact period for that must be provided for by legislators with the available scientific information.²⁸³

The Court noted that the right to decide if abortion would be resorted to is limited only to the first 12 weeks of pregnancy since there is only "incipient development" therein, and at that time, there would be more security in ensuring that that no serious consequences will arise as to the health of the woman.²⁸⁴

The Philippines can refer to the Mexican abortion policy, in balancing the interests of the unborn and the mother. The equal protection of the life of the mother and the life of the unborn should not be read to compromise the life of the pregnant person. There should be a window to allow the pregnant person to decide whether or not to terminate their pregnancy.

Thus, while we are presently advocating for the decriminalization of abortion, it does not follow that every and all instances of the same, at any given time, should be allowed (although that is what the WHO recommends, precisely because of our Constitutional limitations). Thus, it is proposed that at least the 12-week standard of Mexico be met. Hence, bearing Article II, Section 12 of the Constitution in mind, abortion should be allowed in the Philippines, subject only to limitations in time.

The same 12-week mark could apply as the fetus would still be underdeveloped at that point. With this compromise, the pregnant person would have the opportunity to exercise their right to life and their right to decide. This is particularly significant for pregnant persons who would be subjected to much physical or mental pain and suffering should they be forced to carry on with their pregnancies—whether they be for reasons to preserve their health or to avoid their revictimization (which is especially true for victims of sexual violence).

²⁸¹ Human Rights Office of Mexico's Supreme Court of Justice of the Nation, *supra* note 88, at 10.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.* at 11.

To be clear, for as long as an abortion will be done within the 12-week period, the same should be allowed regardless of the pregnant person's reason. For one, this is an exercise of the women's right to decide for herself, over her own body. Secondly, we note that a stigma against abortion still exists, and bureaucracies will only cause delays for women who want an abortion. Specifying allowable causes for an abortion, alongside seeking approvals from whomever (family members and government officials alike) could derail the very matters that are sought to be protected: the lives of women and the unborn. Women and girls are forced to consider abortion for various reasons. It would be both unfair, unreasonable, and discriminatory to shoehorn every instance of the same as mere allegations of "irresponsibility" on the part of the women and girls, when studies have shown that the decision to have an abortion is a complicated and nuanced one. These reasons range from matters of health to money, and support.

By opening this 12-week window for women and girls to decide, their lives are protected by giving them the opportunity to exercise autonomy and authority over their own bodies, lives, and destinies. Having access to safe and dignified abortion gives them better prospects of survival. It is a healthcare concern that ultimately impacts all other aspects of their lives. The same impact is significant for the unborn, because a wanted pregnancy on the part of their mother could bring them better prospects in life in the long-term.

Again, the very substantial similarities our jurisdiction shares with Mexico justifies this reliance.

At present, the absolute allowance of abortion may not be adopted given the subject constitutional provision. Thus, the proposed remedy is a balance that is attainable given the current limitations. "Equal protection" should be read in a way that different circumstances or contexts, especially those of the pregnant person, would be considered. After all, the quality of life of the unborn after birth would also be dependent on the quality of the pregnancy of the mother.

H. Decriminalizing Abortion in the Philippines

Abortion is a human right. That can be concluded from the foregoing discussion of the relevant human rights principles in international law, particularly the right to life. That abortion is a human right is also seen in the decision of the Mexican Supreme Court to decriminalize abortion.

This recognition is a trend that the Philippines must also follow, in light of legal developments. There should be a higher regard for the rights of pregnant persons (women, girls, and persons able to gestate). As earlier mentioned, Article II, Section 12 of the Constitution should be interpreted according to the context of today. There should be a balance between protecting the life of mothers (by providing women and girls the right to terminate a pregnancy) and protecting the life of the unborn.

The sweeping recommendation of the WHO (full decriminalization, removal of a grounds-based approach to abortion, and prohibition of setting gestational limits) cannot be applied in this jurisdiction because of Constitutional limitations. Thus, amendments to our abortion laws will require balancing interests.

Articles 256 (intentional abortion), 258 (abortion practiced by the woman herself or by her parents), and 259 (abortion practiced by a physician or midwife and dispensing of abortives) should be amended to the effect that intentional or voluntary abortion is allowed, but the right of the pregnant woman to exercise the same shall be limited to the first 12 weeks of conception, adopting the finding of the Mexican Supreme Court. Decriminalizing the acts penalized in these provisions not only gives the pregnant person the freedom to decide, but also allows them the opportunity to have a safe abortion through the aid of skilled medical professionals, as the latter will no longer be sanctioned in the performance of the procedure.

To force a pregnancy to the jeopardy of the woman's life is not at all protecting the life of the woman. Furthermore, the life of the unborn would also be put in danger in that situation. In the unfortunate occurrence that the mother dies, there will be a question of the protection of the right to life of the unborn (after their birth) if their primary caregiver is gone. And even before that, their development may be damaged or compromised if the body they are attached to is ill or in jeopardy. Their long-term development may be stunted, as a result of being born from an unwanted pregnancy.

According to the WHO, pregnancy can be safely ended regardless of gestational age.²⁸⁵ However, the constitutional provision protecting the unborn should be considered. Thus, voluntary abortion should be allowed only when they fall within the 12-week period referred to. It is necessary to approach the constitutional provision with balance.

²⁸⁵ WORLD HEALTH ORGANIZATION, *supra* note 2, at 28.

Only Article 257 punishing unintentional abortion should remain untouched as this is the sort of abortion not consented to by the woman. The proposition is to decriminalize induced abortion.

Although seemingly redundant, it is important to emphasize the following: restrictive abortion laws do not reduce the number of abortions; what they only do is determine whether women will have access to safe and dignified abortions.²⁸⁶

We should start recognizing what the WHO has been informing us: that abortion is a healthcare issue. The kind of healthcare Filipino women and girls will have access to is determinative of their present and their future. Concomitant to the determination that abortion is a healthcare issue is the responsibility of ensuring that healthcare professionals will not deny women and girls abortion when requested.

When abortion is decriminalized, healthcare professionals will no longer have legal reasons to deny the services. They will no longer be risking their licenses, and more importantly, practicing the procedure with the threat of imprisonment.

The Turnaway study, a longitudinal study focused on the effects of denying women abortion, made comparisons between women who were denied wanted abortions, and women who received wanted abortions.²⁸⁷

On the issue of health, the Turnaway study found that women who were denied of abortion and were forced to give birth had more threatening complications.²⁸⁸ This is consistent with the finding in the Philippines that abortion remains to be one of the leading causes of maternal mortality, which, as the WHO noted, is a preventable cause of death. Furthermore, these women who were denied abortion were also found to experience more physical complications than those who had the abortion. These conditions include migraines, joint pain, and gestational hypertension.²⁸⁹

With access to abortion, for one, we can reduce if not remove abortion as a leading cause of maternal mortality in the Philippines. Provided access to better healthcare, Filipino women and girls will not only have better

²⁸⁶ See *supra* note 49.

²⁸⁷ University of California San Francisco, *The Turnaway Study*, ADVANCING NEW STANDARDS IN REPRODUCTIVE HEALTH, available at <https://www.ansirh.org/research/ongoing/turnaway-study>.

²⁸⁸ University of California San Francisco, *supra* note 281, at 2.

²⁸⁹ *Id.*

chances of survival, but also an improved quality of life. Only through the decriminalization of abortion can the procedure be regulated. Through this regulation, the State will also have better data about which could result in policies and action points more responsive to the needs of women when it comes to healthcare.

By providing adequate access to abortion, the constitutional provision on recognizing the role of women in nation-building is in fact better realized. Women will be empowered with access to better health services, as we are referring to a human right.

Relatedly, the Turnaway study found that compared to women who received abortion, those denied the same and had to give birth were confronted with household poverty for at least four years; more seemingly did not have enough resources to meet their basic necessities; and had lower credit scores, more debt, and more negative financial records.²⁹⁰

With the opportunity to get an abortion, the safety of women and girls is better secured. The Turnaway study found that women denied abortion were most likely to be subject to physical violence by the man who caused the pregnancy.²⁹¹ Furthermore, these women were found to be more likely to raise the children alone.²⁹²

It should be noted that even children born from forced pregnancies (i.e., mothers who were denied abortion) are negatively affected. The same study found that compared to children of women who were born after their mothers received an abortion, they show worse child development; are more likely to live below the federal poverty line; and have poorer maternal bonding.²⁹³

In the decriminalization of abortion, legalization²⁹⁴ of induced abortion (as in intentional abortion as described in the Revised Penal Code) is sought. This will open the doors for safe abortion to be accessible. Decriminalizing abortion this way is in furtherance of ensuring that the ends of human rights are met, but without disregarding the law of the land.

²⁹⁰ University of California San Francisco, *supra* note 281, at 1.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.* at 2.

²⁹⁴ “Legalize, *vb.* 1. To make lawful; to authorize or justify by legal sanction.” *Legalize*, Black’s Law Dictionary (11th ed. 2019).

It would be inconsiderate, at the very *least*, to force a woman or girl to go through nine months of pregnancy to give birth, without any regard to their context and circumstances. Thus, it would be cruel to have a child born into this world when their birth mother is unprepared and unwilling to go through the pregnancy, without any opportunity to decide whether to continue the pregnancy or not. It seems far-fetched then to think that an unborn child would be better protected with a birth mother who, for legitimate reasons and within a considerable time frame, would want to get an abortion.

Thus, for the reasons stated above, the decriminalization of abortion is that which furthers human rights, and ultimately protects the interests of women, girls, and the unborn.

IV. CONCLUSION

It is a human right to provide access to safe, affordable, and quality abortion services, as the same is an essential healthcare intervention. Through this, women's rights are assured and protected. However, even before such reproductive health services could be available to the public, the first step of decriminalizing the same should be done.

After decades of unchanging penal provisions criminalizing abortion, it is high time for change: to decriminalize induced abortion. The allowance of intentional abortion should be subject to the 12-week period to decide. This is in respect of abortion as a human right for women, but with the constitutional protection for the unborn.

Only after the Philippines decriminalizes abortion will abortion be safe in the first place. There will be no need to resort to clandestine abortions. The State will be able to regulate or monitor the service once made available. Through proper regulation, the lives of women would be better protected, their rights respected.

It is time to decriminalize induced or intentional abortion.