



EnGendeRights, Inc.
Asserting Gender Equality



Position Paper to Decriminalize Abortion, Provide Access to Safe and Legal Abortion, and Ensure Humane, Nonjudgmental, Compassionate Post-Abortion Care

The Philippines must decriminalize abortion, provide access to safe and legal abortion, and ensure humane, nonjudgmental, compassionate post-abortion care.

Despite the lapse of the three-year period in 2012 as required by the Magna Carta of Women to amend discriminatory laws on women and the lapse of almost a decade since the Committee on the Elimination of Discrimination against Women (CEDAW Committee) issued its recommendation in 2006 for the Philippines to remove the punitive provisions on abortion, the Philippine restrictive laws on abortion still persist to discriminate Filipino women.

The need to decriminalize abortion must be urgently addressed in light of the realities of unsafe abortion in the Philippines where current government efforts are even barring women from exercising their right to health services they badly need, i.e., the Department of Justice proposed criminal code that increases penalties for abortion, previously filed bills that increase penalties for abortion, the one billion budget cut of the Department of Health intended for contraceptives.

The upcoming review by the CEDAW Committee on Philippine compliance with the Convention on the Elimination of All Forms of Discrimination (CEDAW) is an opportunity for discussion of realities of unsafe abortion and how preventable deaths and suffering of women can be reduced.

The Realities of Unsafe Abortion

About 70 Filipino women resort to induced abortion every hour, 11 are hospitalized every hour due to complications from unsafe abortion,¹ and at least three die every day due to complications from unsafe abortion.²

Most of the women who are hospitalized and die from these complications are poor, Roman Catholics, married, with at least three children.³

Unsafe abortion has long been recognized globally as one of the causes of maternal mortality and morbidity. About 10% of all maternal deaths in the world are due to unsafe abortion,⁴ hence, the strong movement around the world to provide access to safe and legal abortion.

No woman should die from abortion complications. Deaths due to unsafe abortion are preventable deaths.

Women risk their health and lives by self-inducing abortion by using catheters, taking various drugs and liquids that are not prescribed for medical abortion, dispensing drugs without proper dosage and supervision, and binding their abdomen very tightly for a prolonged period of time. They may or may not expel their fetus, and may eventually suffer complications.

Such cases are common in our country where nearly three in ten births are either unwanted or mistimed⁵ and 2009 statistics estimates over half of the pregnancies are unintended and about 17% and one-third of the unintended pregnancies end in abortion nationwide and in the National Capital Region, respectively.⁶

Poor women, rural women and young women are likely to experience unintended pregnancy and resort to unsafe abortion procedures.⁷ Poor women comprise two-thirds of those who induce abortion.⁸ With lack of access to reproductive health information and services, low level of educational attainment, restricted access to gainful employment, inadequate income to pay for reproductive health services, and unequal power relations in intimate relationships, intimate partner violence, trafficking and rape, women are vulnerable to unintended pregnancy and complications from unsafe abortion.

Many women will resort to clandestine and unsafe abortion endangering their health and lives as long as unintended pregnancy is high.

The Relation between Gender-Based Violence and Unsafe Abortion

Among those who induce abortion are women and girls who are rape or incest victims or are abused women in intimate relationships.

A Filipino woman or girl is raped every 71 minutes. Last 2014, the PNP recorded 7,409 women reported they were raped. This is alarming. Yet this may just be the tip of the iceberg as these numbers only refer to the rape victims who reported to the police.

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

The 2004 national survey on abortion showed 13% of women who had an abortion were rape victims.⁹

Emergency contraceptives can be used to prevent unwanted pregnancies resulting from rape, however, many rape survivors do not seek medical care within the five-day window period that

emergency contraceptive pills are effective while many health care providers, social workers, police officers, and lawyers are not aware of the different methods of emergency contraception.

Intimate partner violence and unequal power relations in intimate relationships are crucial factors that impact women's vulnerability to unwanted pregnancies and unsafe abortion. The 2013 National Demographic and Health Survey (NDHS) estimates one-fourth of ever-married women age 15-49, have experienced emotional, physical, and/or sexual violence from their husbands. The survey also found that the more children a woman has, the more likely she is to have experienced violence¹⁰ pointing to the unequal power dynamics where women suffering intimate partner violence are unable to negotiate safe sex and end up resorting to clandestine and unsafe abortion to terminate their unwanted pregnancies.

Denial of Access to Safe and Legal Abortion and Denial of Access to Post-abortion Care Are Public Health Issues

Denying access to safe and legal abortion is a public health issue given the vast numbers of women and their families who are affected, the health care costs to treat complications from unsafe abortion incurred by the women and their families and the government, and the grave consequences to the health and lives of women and their families.

Women suffering abortion complications often face humiliation and are commonly threatened with arrest and prosecution at health care facilities.¹¹ They are treated as criminals rather than as patients. They are frequently denied timely access to humane, nonjudgmental, compassionate post-abortion care.¹²

Many women suffering complications due to spontaneous abortion, abortion due to trauma from intimate partner violence, and even fetal death have also been denied access to humane, nonjudgmental, compassionate post-abortion care and were threatened with criminal prosecution.

The Duties and Liabilities of Health Care Providers for Denying Access to Post-abortion Care

Health providers must realize that they are practicing a profession, thus, their primary duty is to act as health care providers not police officers, otherwise, women will simply not seek medical attention and end up dying for fear of being prosecuted.

Health providers must keep abreast with our laws requiring appropriate post-abortion care and the Department of Health Policy on Prevention and Management of Abortion and its Complications (PMAC), which has been implemented since 2000 providing training on post-abortion care for health care providers.

Health care providers who deny access to post-abortion care can be made liable for violating the Reproductive Health Law requiring humane, nonjudgmental, compassionate post-abortion care, the Magna Carta of Women requiring management of pregnancy related complications and Republic Act 8344 requiring the stabilization of patients in emergency situations. Doctors may

also be held liable for violating their Hippocratic oaths and the doctor-patient confidentiality by denying access to post-abortion care and threatening to report the women to the police.

Contrary to the misconception of some health care providers, there is no law requiring them to report women who induce abortion. PD 169 requires medical practitioners who treated serious or less serious physical injuries covered under articles 262-265 of the Revised Penal Code to report injury, diagnosis, and treatment. Articles 262-265 do not refer to abortion.

The Philippine Abortion Law is an Archaic Colonial Penal Law; The Philippines Needs to Liberalize Its Abortion Law

The illegality of abortion drives women to resort to undergo unsafe abortion procedures unnecessarily endangering their health and lives. The restrictive abortion law has also been used by doctors to unlawfully deny post-abortion care to women and to threaten women with prosecution.

Due to the restrictive abortion law, women suffering abortion complications do not seek medical attention, they delay medical care--sometimes until they are in danger of dying--for fear of being arrested, or they are forced to leave the health facilities without undergoing necessary emergency treatment when they are subjected by certain health care providers to humiliation and threats of prosecution and arrest.

As long as abortion remains illegal, women will be hospitalized and die from complications from unsafe abortion. Because of the stigma related to abortion brought about by the continued implementation of an archaic colonial Spanish law penalizing women who induce abortion and those assisting them and the imposition of religious beliefs on others, women will continue to suffer violations to their rights to health and life.

The Philippine penal law on abortion is only one of seven countries¹³ in the world with the most restrictive prohibitions on abortion. This Philippine penal provision was directly translated into English from the old Spanish Penal Code of 1870 that used to criminalize abortion—in the time of the Spanish friars and conquistadores. Without knowing the full consequences of such a harsh and restrictive law, our congress enacted the criminal provision in our Revised Penal Code of 1930, way before many of us were born, a time when the major international human rights treaties such as the Conventions on Civil and Political Rights, Economic and Socio-Cultural Rights, Torture, Women and Children have not yet taken force and effect.

The Philippine law on abortion does not even allow express exceptions based on rape, risks to the life and health of the woman and serious fetal impairment. The Philippine law on abortion must be liberalized.

Allowing outmoded colonial penal laws on abortion in Philippine law makes us all complicit to the estimated three women who die each day from unsafe abortion procedures. Letting such law to prevail in our society breeds hatred and hostility towards Filipino women who resort unsafe

abortion procedures and violates constitutional guarantees on equality, equal protection of the law and non-establishment of religion. Our laws should never countenance this.

Recommended Revision of Philippine Abortion Law

The revision of Philippine abortion law can be through a specific law removing the penalties for the women inducing abortion and safe abortion providers assisting them or through a law allowing abortion in cases of rape, risks to the life and health of the woman, serious fetal impairment, and all other cases where women undergo abortion.

The Liberalization of Abortion Laws around the World

Predominantly Catholic countries and former Spanish colonies have liberalized their laws on abortion including Spain with Prime Minister Zapatero at the helm of legalizing abortion on request during the first 14 weeks of the pregnancy in 2010 and other predominantly Catholic countries such as Belgium, France, Italy, Portugal, Poland, Hungary, Costa Rica, and Ireland and former Spanish colonies such as Uruguay and Colombia allowing abortion on certain grounds leaving the Philippines to contend with its antiquated colonial Spanish law.

Mexico City, a predominantly Catholic city, even provides safe and legal abortion for free. Asian countries such as China, Japan, Malaysia, Singapore and Vietnam have liberal abortion laws while Cambodia, Indonesia and Thailand have recently liberalized their laws to allow abortion on certain grounds.

Some people mistakenly believe that the Philippine Constitution prohibits abortion because of the provision on equal protection of the life of the woman and the unborn from conception.

On the contrary, other countries with constitutions and laws explicitly protecting the life of the unborn or life from conception allow abortion under certain exceptions such as Ireland, Slovak Republic, Poland, Kenya, Hungary, and Costa Rica.

The right to safe and legal abortion is guaranteed under the constitutional rights to health, life, equality, privacy, equal protection of the law, and non-establishment of religion especially since it is recognized in comparative jurisprudence and international law that the fetus is not on equal footing with the right of a woman.

In the United States, decriminalization of abortion decreased deaths from unsafe abortion. Abortion rates did not increase in Canada and Turkey after abortion was legalized. Netherlands has a liberal abortion law providing free services and has widely accessible contraceptives yet it has one of the lowest abortion rates in the world.

The Philippine International Obligations under the CEDAW Convention

In 2006, the CEDAW Committee recommended for the Philippines to remove its punitive provisions imposed on women who induce abortion and to provide access to quality services for the management of complications arising from unsafe abortions in order to reduce maternal mortality rates.

In the 2014 CEDAW Committee report on the inquiry on reproductive rights violations in the Philippines, the Committee recommended for the Philippines to amend articles 256 to 259 of the Revised Penal Code to “legalize abortion in cases of rape, incest, threats to the life and/or health of the mother, or serious malformation of the foetus and decriminalize all other cases where women undergo abortion.” The CEDAW Committee also recommended to the Philippines to provide access to quality post abortion care to women including by reintroducing misoprostol to reduce maternal mortality and morbidity rates and ensure that women experiencing abortion-related complications are not reported to law enforcement authorities and are not threatened with arrest.

In 2009, the CEDAW Committee issued recommendations to Peru to decriminalize abortion for rape victims in relation to the LC vs Peru complaint involving LC who was only 13 when a 34-year-old man started sexually abusing her and who eventually became pregnant as a result of the rape.

In a state of depression, LC attempted suicide by jumping from a building, suffering spinal injuries with a risk of permanent disability. Despite her serious and deteriorating condition, her doctors refused to perform an operation because she was pregnant and denied her request for therapeutic abortion. LC then miscarried spontaneously.

The CEDAW Committee recommended to Peru to provide reparation to LC, and to review its laws to establish effective access to therapeutic abortion, to include protocols to ensure health services are available and accessible in public facilities, and to decriminalize abortion when the pregnancy results from rape.

The Continued Discrimination against Women in the Philippines

The one billion DOH budget cut on contraceptives, the long-standing lack of access to contraceptives and effective sexuality education, the low usage of modern contraceptives at 38% contraceptive prevalence rate,¹⁴ the high rate of adolescent pregnancies,¹⁵ the pervasive fear of contraceptive side effects, will surely raise the number of unwanted pregnancies ending in unsafe abortion.

As aptly said by former Health Secretary Dr. Alberto Romualdez, “abortion is a medical procedure, not a moral issue.” It is outrageous that until now our country criminalizes women for a medical procedure that only women need. This is discrimination against women.

Conclusion

Human rights advocates and other stakeholders have been successful in decriminalizing discriminatory Philippine laws such as certain Revised Penal Code provisions on vagrancy and premature marriages within 301 days after the death of her husband, the anti-squatting law, among others.

As a state party to CEDAW, the Philippines should repeal its laws that punish women and girls who have undergone abortions to eliminate discrimination against women and as a matter of public policy to save women's lives.

We must uphold reproductive rights to the fullest extent where we champion women's rights. Our country will be a step closer to women's equality when every woman who decides to have an abortion is able to do so in a safe and legal manner. We owe such enabling environment to our mothers, sisters, and daughters who risked their health and lives by making the difficult decision to undergo unsafe abortion procedures and most especially to the women and adolescent girls who were hospitalized, threatened by health care providers, and those who died because of our long-standing restrictive abortion laws.

We urge public officials to heed the needs of women and their families who are gravely affected by this serious public health issue and the clamor to decriminalize abortion.

Increasing access to contraceptives, strengthening quality post-abortion care, providing safe and legal abortion, addressing gender-based violence such as rape, intimate partner violence and trafficking are ways to lower maternal mortality and morbidity related to unsafe abortion and meeting the state's commitment to reduce the global maternal mortality ratio to less than 70 per 100,000 births under Target 3 of the Sustainable Development Goals.

Our rule of law is governed by secular standards. To uphold women's rights to equality and eliminate discrimination against women, women must have access to safe and legal abortion. Philippine law must uphold secular standards, human rights, and public health.

We urge public officials to truly act as representatives of the Filipino people who will clamor for changes in our laws to uphold human rights and act based on reason, compassion, and conscience to respond to this public health and human rights issue.

We should all should work towards a humane society where no woman should die from unsafe abortion. Making abortion safe and legal will save the lives of women.

Signed:

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¹Alan Guttmacher Institute (AGI), Unintended Pregnancy and Induced Abortions in the Philippines: Causes and Consequences, page 3, 2013 estimates 610,000 unsafe abortions and over 100,000 hospitalizations due to complications from unsafe abortion each year. This translates to 70 women who induce abortion every hour and 11 women who are hospitalized every hour due to complications from unsafe abortion.

²AGI, Meeting Women's Contraceptive Needs in the Philippines, 1 In Brief 2 (2009) citing 2008 projections from 2000 statistics on abortion incidence in the Philippines. The estimated 1000 women deaths per year translates to three women dying every day due to complications from unsafe abortion.

³Singh S et al., Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences, New York: Guttmacher Institute, 2006; Two-thirds of those who induce abortion are poor.

⁴WHO Global causes of maternal death: a WHO systematic analysis.

⁵National Demographic and Health Survey 2013 (NDHS 2013).

⁶AGI, Meeting Women's Contraceptive Needs in the Philippines, 1 In Brief 2 (2009); citing 2008 statistics on abortion incidence in the Philippines; Nationwide, 17% of unintended pregnancies end in abortion while in the National Capital Region, 32% of unintended pregnancies end in abortion.

⁷AGI, 2013.

⁸Singh S et al., 2006.

⁹2004 national survey; Singh S et al., 2006.

¹⁰NDHS 2013 and 2008.

¹¹Center for Reproductive Rights, Forsaken Lives: The Harmful Impact of the Philippine Criminal Abortion Ban (2010) [hereinafter Center for Reproductive Rights, Forsaken Lives, 2010].

¹²Center for Reproductive Rights, Forsaken Lives, 2010.

¹³Six countries do not permit this exception Chile, Dominican Republic, El Salvador, Malta, Nicaragua, South Sudan while Philippines does not expressly provide this exception, available at <http://www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.shtml>

¹⁴NDHS 2013.

¹⁵One in ten adolescent women aged 15-19-yr old are already mothers or are pregnant with their first child or 57 per 1000 women aged 15-19 are already mothers or are pregnant with their first child (NDHS 2013).