

# **Mapping the Path to Philippine Reproductive Rights Legislation**

## Signs of Progress Amidst Obstacles

While the Philippines is a signatory to multiple international conventions that affirm women's reproductive rights, attempts to enact legislation to promote a comprehensive national framework for modern family planning and evidence-based sex education have been thwarted by Catholic bishops, lay groups, and conservative politicians for over a decade. Partially as a result of this, the Philippines' reproductive health indicators are dismal relative to its neighbors'. This paper examines the debates around the Reproductive Healthcare law, whose constitutionality is currently being challenged by conservative groups in the Philippine Supreme Court, and the bargaining processes that characterized the passage of the law. Finally, it identifies the threats and opportunities of the existing law and the dangers of a Supreme Court reversal.

One of the key struggles for the women's movement, particularly in the Global South, is the mainstreaming of feminist principles within the traditionally male-dominated field of law. International human rights law has traditionally failed to account for women's human rights in its early development, and women were actively excluded from its creation (Cabal and Todd-Gher 2009, 120).

Even the principles that undergird legal systems suffer from an Enlightenment tradition that is explicitly patriarchal. In traditional liberalism, the understanding of the right to life and the right to health has traditionally been male-oriented and excluded reproductive rights, which have more to do with "private" experiences that affect women directly, such as pregnancy and childbirth, and are likely to elude men (Cook 1993). Thus, the legal boundaries between public and private were implicitly set to exclude women's issues from state regulation.

Fortunately, conceptions of human rights have been gradually changing to include women's reproductive rights. International conventions, such as the International Conference on Population and Development (ICPD) in Cairo, have mainstreamed the concern for issues such as maternal mortality and access to reproductive health services and family planning. These conventions, though merely establishing international norms, are slowly being translated into specific laws in different domestic contexts. This paper identifies landmark international conferences, goals, and treaties that affirm the reproductive rights of men and women, particularly in the realm of family planning, and evaluates the Philippines' commitment to these agreements.

The first section outlines international milestones and agreements to which the Philippines has acceded and the corresponding obligations these entail. The second section examines the state of Philippine legislation on reproductive rights and the strategies and discourses deployed by the major players in the reproductive rights debate. In particular, it will examine the debates surrounding the Reproductive Healthcare (RH) law, whose constitutionality is currently being challenged by conservative groups in the Philippine Supreme Court. It examines how the law addresses certain lacunae in Philippine legislation.

## INTERNATIONAL MILESTONES

Formally, the Philippines has signed multiple international conventions that affirm its duty to safeguard reproductive rights. As I discuss below, however, holding the state accountable to these international conventions has been one of the key concerns of the women's movement in the country.

On 5 August 1981, the Philippines ratified the Convention on the Elimination of All Forms of Discrimination against Women or CEDAW (Natividad et al. 2009). Signatories are obliged to pursue a policy of eliminating discrimination against women by ensuring the practical realization of equality and abolishing discriminatory laws, regulations, customs, and practices, and punishing discrimination by any person, organization, or enterprise (Philippine Commission on Women 2010). Bustelo (1995) explains that CEDAW enshrines women's rights to specific information and advice on family planning on the basis of the state's obligation to ensure the equality of men and women. Cook (1993) writes that the justification for Article 16 in CEDAW, which requires states to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations," is the understanding that the responsibilities that women have to bear, including the number and spacing of their children, have grave impacts on women's lives and their personal and mental health, and thus, affect their ability to access their rights to education, employment, and other activities related to their personal development. For these reasons, and also because reproduction imposes inequitable burdens of work on women, she says the elimination of discrimination against women logically requires enabling them to control their sexual and reproductive decisions. As such, CEDAW is often the basis of other consensus documents and claims for reproductive rights, particularly for women.

In the 1990s, the two United Nations (UN) Conferences in Cairo (1994 ICPD) and Beijing (1995 Fourth World Conference on Women: Action for Equality, Development and Peace) helped usher in a new paradigm grounding reproductive rights within the right to health. Such conferences, in effect, conceive of reproductive rights as part of the state's duties to provide for its citizens' health needs. Thus, reproductive rights do not merely protect a woman's autonomy over her body; they also ensure that the state actively caters to women's health needs.

In the ICPD Programme of Action, which was signed by 179 governments, including the Philippines, reproductive rights are explicitly outlined and conference participants agreed that family planning programs should not be coercive and that government goals should be focused on assisting couples and individuals to achieve their reproductive goals, such as the number, spacing, and timing of their children, by providing couples and individuals with the information and means to realize these goals. The Beijing Declaration and Platform for Action, on the other hand, supported by delegates from the Philippines, states that the human rights of women include the right to have control over and decide freely about matters related to their sexuality (Stark 2011). Both the 1994 Cairo and 1995 Beijing conferences emphasized the need to involve men in women's health interventions by encouraging and enabling men, through education and the reformulation of masculine roles, to share responsibility in sexual and reproductive behavior, including family planning (Lee 1999).

Finally, Hall (2010) notes that in 2010, the global community, including the Philippines, pledged to meet the UN Millennium Development Goals (MDGs), among which is the promotion of gender equality by achieving a reduction in maternal mortality rates by 75 percent by 2015, in conjunction with other targets.

### **THE PHILIPPINES: REPRODUCTIVE HEALTH INDICATORS AND CHALLENGES**

Stark (2011) argues that a commitment to women's reproductive rights is not fully displayed by states that merely respect them (in the sense of not violating them), or protect them (in the sense of preventing third parties from violating them), but by states that actually enable women to fulfil these rights (that is, proactively assuring their realization). She explains that this is generally understood to mean providing the population access to information that enables them to decide freely and responsibly on reproductive matters (comprehensive sex education), but also providing them with the means to realize these decisions (which includes access to modern methods of contraception). It is by this standard that the Philippines is assessed.

The Philippines, located in Southeast Asia, is an archipelago with 7,100 islands and a land area of about 300,000 square kilometers (Collas-Monsod et al. 2004). According to World Bank (2009) figures, 22.6 percent of the population is extremely poor (they earn less than US\$1.25 a day), while 45 percent of the population is moderately poor (they earn less than US\$2 a day). Poverty is disproportionately higher in rural areas. In 2012, the Philippines ranked 114th out of 186 countries on the Human Development Index, which measures life expectancy, educational attainment, and access to resources needed for a decent life (Malik 2013). Any assessment of reproductive rights, therefore, has to be assessed in conjunction with the vast class divisions of the country. Poor women, naturally, are disproportionately affected by the lack of access to healthcare services.

The 2013 report by the Guttmacher Institute on reproductive health indicators shows that the approximately 25 million women of reproductive age in the Philippines experience higher levels of unintended pregnancy and are at greater risk of unsafe abortion and maternal mortality and morbidity relative to many other countries, including Indonesia, Vietnam, and Thailand.

Based on the 2008 *Philippine National Demographic and Health Survey* (National Statistics Office & ICF Macro 2009), 37 percent of all births are not wanted, either at the time of pregnancy or entirely. The main reasons cited by women who did not use contraception were fear of side effects and lack of access. As the provision of modern contraception shifts from the public sector to more expensive private sources, poor women become increasingly vulnerable. While in 2003, two-thirds of women using modern contraception accessed it through public facilities, less than half of them did so in 2008.

In their 2011 family health survey released in 2012, the Department of Health (DoH), National Statistics Office, and United States Agency for International Development indicate that there is a high unmet need for contraception, evident in the disparity between the number of children Filipino women express they want (an average of 2.4 per woman) and the number of children they have (an average of 3.3 per woman), with the gap widening for the poorest women, birthing 5.2 children, almost two children more than their 3.3 average intended children.

In same report, it is noted that in 2011, one in four women used a traditional contraceptive method such as periodic abstinence, which is less effective than modern contraceptive methods such as condoms—

methods rejected by the powerful Philippine Catholic Church. Worse, poor women were less likely to use contraception, with rates of contraception use dropping significantly below the national average in regions where poverty is widespread, such as the Zamboanga peninsula in the southern island of Mindanao. Even among married women, the figures are dire. Only 49 percent of married women used contraception, a marginal increase from 2008. Between 1998 and 2011, one in five married women did not want a child soon or wanted to stop bearing children, but was not using any form of contraception.

Further, the 2008 survey reveals that more young people are starting to engage in sex despite religious taboos, with the median age at first sexual experience being 21.3 years old. Unfortunately, because of a lack of access to comprehensive sex education and contraception, these young women are at a greater risk of unwanted pregnancy. Teenage pregnancy rates having risen between 2000 and 2010, according to the 2011 family health survey. High rates of unintended pregnancy may lead to abortion.

The 2013 report by the Guttmacher Institute explains that abortion is illegal in the Philippines and the current abortion law does not contain explicit exemptions for abortion done to save a woman's life or in cases of rape, incest, or fetal impairment, making it among the strictest in the world. Largely because of this prohibition, it is difficult to provide direct estimates of the number of abortions in the Philippines. The report cites Juarez et al. (2005) who provide the most recent estimate of 27 abortions per 1,000 women of reproductive age in the Philippines in 2000, higher than Southeast Asia's average of 22 per 1,000 women. Five hundred and sixty thousand abortions are projected to have occurred in 2008, and 610,000 in 2012.

Singh et al. (2006) and Darroch et al. (2009), cited in the 2013 Guttmacher report, explain that a reason provided by three out of four women who underwent abortions is the cost of raising a child or another child. Roughly two-thirds of these women were poor. With close to half of abortions being undertaken by women under 25 years old, another commonly cited reason was fear of interrupting their education or not being ready for parenthood. A little over one in ten of these women mentioned forced sex as a reason for terminating their pregnancy. Close to one-third of the women who get an abortion do not tell anyone about it, as a result of the stigma attached to abortion. Moreover, most abortions are clandestine, which endangers women's lives. An estimated 1,000 women died in 2008 as a result of abortion

complications, and thousands more are hospitalized, over 100,000 of them in 2012.

All these reproductive challenges faced by women account for a high maternal mortality ratio, which is on the rise from 161 to 221 deaths per 100,000 live births between 2006 and 2011 (DoH et al. 2012). The World Health Organization's (WHO) representatives in the Philippines has warned that the Philippines will not hit MDG targets in terms of reducing maternal mortality if it continues at its current pace (Jaymalin 2013). Given the scale of maternal mortality, a legislative framework to address it is an urgent, humanitarian concern.

These challenges are exacerbated by the fact that from 1971 to 2006, roughly 80 percent of funding for modern contraception in the Philippines was provided by the United States government, and this funding was completely phased out in 2008 during the conservative Bush administration (Natividad et al. 2009). Thus, in 2008, only 18.6 percent of local government units procured family planning commodities, which means that the void previously filled by donations affected over 6.3 million poor women of reproductive age, who were likely to contract unwanted pregnancies and undergo abortions (ibid.).

One valuable sign that the Philippines was falling short of its international commitments to uphold reproductive rights is the warnings issued by international organizations: The UN Human Rights Committee (2012) issued strong recommendations for the Philippines to make exceptions to the abortion ban in cases of rape or incest, or when the mother's life or health is threatened; to ensure that reproductive health services are accessible to all women and adolescents; and to increase formal and informal campaigns in schools and mass media to generate awareness of the importance of using contraception and the right to reproductive health. The UN Committee on the Rights of the Child (2009) expressed concern at the "lack of effective measures to promote the reproductive rights of women and girls and that particular beliefs and religious values are preventing their fulfilment." The Committee also warned against the inadequate level of awareness of HIV/AIDS and other sexually transmitted infections among adolescents.

## SIGNS OF PROGRESS

Ideally, mere compliance with international obligations should be enough to ensure the protection of reproductive rights for men and women in the Philippines. However, in the face of conservative opposition and provisions in the constitution respecting the “sanctity of life,” which have been construed as an argument against modern family planning methods, explicit domestic legal tools have become necessary. Any struggle for reproductive health in the Philippines entails confronting the staunch opposition of the Catholic Church to modern contraceptive methods. As such, translating the international norms on reproductive rights and health has been an uphill battle for Filipino feminists.

In 2012, after fifteen years of lobbying from women’s groups, the Responsible Parenthood and Reproductive Health Act of 2012 or Senate Bill No. 2865 was enacted into law (R.A. 10354) via close margins in both Congress and the Senate. It was signed by President Benigno Aquino, himself an open supporter of the law. Aquino was preceded by two staunch opponents of reproductive rights legislation, former presidents Gloria Arroyo and Joseph Estrada. This was a massive breakthrough after various versions of reproductive rights legislation languished in the legislative branch for over a decade (Natividad et al. 2009).

The law is not controversial. Its key feature is to mandate the state and healthcare institutions to provide of medically safe contraceptives to its citizens. As a response to criticism from the Church, the law even has an opt-out provision for healthcare providers who, out of conscience, do not wish to provide contraceptives to patients.

However, shortly after the passage of the law, the Supreme Court issued a temporary restraining order in order to hear arguments from the law’s critics, who have argued that it is against the right to life enshrined in the Constitution. The Supreme Court has yet to issue a ruling ten months after blocking the implementation of the law.

Nonetheless, the Aquino administration allocated P2.5 billion in 2013 and P2.8 billion in 2014 toward family health and responsible parenting (Department of Budget and Management 2013 and 2014). Allocations for contraceptives by the Executive branch of government, however, are merely stop-gap measures. They are contingent on a regime’s willingness to address the reproductive health needs of citizens. Thus, a change in administration can easily lead to a reduction of funds for reproductive health.



Prior to the passage of R.A. 10354, there were two key laws that offered some guarantee of women's reproductive health. The first is Section 11 in Article 8 of its 1987 Constitution, which states that the state shall adopt a comprehensive approach to health development by making essential goods, health, and other social services available to all people at affordable cost, with a priority for women and other vulnerable groups. The second is the Magna Carta of Women, enacted in 2009, widely seen as the national counterpart of CEDAW. Prior to the passage of the Magna Carta of Women, the vague language of Section 11 made it vulnerable to capture by conservative forces.

Examples of this are the exclusion of modern contraceptive methods in sex education campaigns or health services based on the inclinations of the incumbent president. Ruiz's (2004) discussion of the Gloria Arroyo administration is a crucial case study. Arroyo, who was ushered into the presidency in 2001 based on a Church-backed "People Power" revolution that ousted Joseph Estrada, enacted policies that restricted access to modern contraception as a way of acknowledging her debt of gratitude to the Church and securing the continued support of the Church hierarchy. Arroyo and her Health Secretary made public statements against modern contraception and reversed commitments to reproductive health and family planning made by her two predecessors. She introduced a National Natural Family Planning Strategic Plan and created a Committee on Natural Family Planning and appointed the President of the Couples for Christ (CFC) Medical Mission Foundation as its chairperson. CFC is a conservative Catholic NGO recognized by Papal decree. During the March 2003 International Women's Day celebration, Arroyo declared that her administration would focus exclusively on natural family planning. The DoH then turned over US\$1.2 million of public funds to CFC to implement the government's natural family planning programme. The DoH also categorized intra-uterine devices as illegal abortifacients and imposed a ban on emergency contraceptive pills, even if these were registered with the Bureau of Food and Drugs and was legally approved by the DoH itself in 1999.

Another is that local government units had significant leeway in defining their own conceptions of "ethical" family planning methods instead of subscribing to a cohesive national policy, which resulted in different policies across the country, often to the detriment of women in areas that are governed by conservative politicians. The Local Government Code of the Philippines devolved responsibility for health

services to local governments in 1991, and this has resulted in three local leaders (in Laguna, Manila, and Puerto Princesa) implementing policies against modern contraception (Lee et al. 2009).

Lakshminarayanan (2003) writes that in the absence of a clearly defined national law that compels all local governments to provide modern contraception and reproductive health information to their constituents, the decentralization of powers in the Philippines means that local government units can choose not to provide contraceptive services. For example, even if the national DoH during the Ramos and Estrada administrations from 1992 to 2001 continued to distribute all contraceptives (pills, injectables, intra-uterine devices, and condoms), which were almost totally donor-funded, from central to local levels, local governments could refuse them. Several conservative local government leaders opted to cease providing modern contraceptives to their constituents and banned single people and adolescents from accessing public family planning services or receiving family planning information from local government health workers (Ruiz 2004). Cabal and Todd-Gher (2009) point out that in 2000, former Manila mayor Lito Atienza issued an Executive Order prohibiting city hospitals and health centres from providing artificial family planning services, which disproportionately affected poor women who relied on public services. Atienza also regularly awarded cash prizes to women with many children during medical missions and election campaign periods (Lee et al. 2009).

The Philippine Commission on Human Rights (CHR) ruled in 2010 that the Executive Order violates CEDAW and called for its immediate revocation and for the Manila city government to issue an apology to all women who were denied access to contraception as a result. CHR also encouraged other local government units to make modern contraceptives available in health centers. Unfortunately, CHR decisions are not binding unlike Court decisions, though they possess some moral force (Center for Reproductive Rights et al. 2012).

The Executive Order was also challenged in court by women's groups and condemned by international actors such as the UN Human Rights Committee (2012), but it has been upheld to this day. The lack of a robust reproductive health law can easily lead to a recurrence of policies such as the Manila contraceptive ban.

The Magna Carta for Women represented a significant step in addressing these problems. Section 17 is devoted to women's right to health, and relevant provisions include the provision by the state of

“comprehensive health services” that are culture-sensitive and address the major causes of women’s mortality, which accord due respect to the rights of their spouses, such as “responsible, ethical, legal, safe, and effective methods of family planning,” the prohibition of abortion, and “comprehensive health information and education,” provided that the natural and primary right of parents in educating their children in an atmosphere of morality takes precedence.

Crucial features of the law are the eradication of discriminatory practices, laws, and policies that infringe on a person’s exercise of sexual health and reproductive rights, state provision of information and access to all citizens, without bias, of all methods of family planning, both natural and modern, which have been proven safe and effective in accordance with scientific and evidence-based medical standards, such as those set by the WHO and registered and approved by the Food and Drug Administration (FDA), the mandate on local government units to comply with a national family planning framework, the provision of humane post-abortion treatment and counselling to women (while still upholding the criminalization of abortion), and explicit definitions reproductive health,<sup>1</sup> reproductive rights,<sup>2</sup> and sexual health.<sup>3</sup>

Somera (2009) writes that several women’s rights activists were displeased at the concessions that were made to Church and conservative groups in process of crafting of the Magna Carta of Women. For example, the word “ethical” in the section on reproductive health was a late addition to the bill that was pushed for by the Catholic hierarchy. It was not present in the initial version reconciled by both the Congress and Senate. The dilution of the language in support of modern family planning may, theoretically, be used by anti-RH groups to block the use of methods which they consider “unethical,” but Somera herself acknowledges that the law is still robust enough, with its provisions on religious freedom and guarantees of informed choice, to weather this challenge. The accommodation of the word “ethical” by advocates of the law also ought to be viewed in the context of realpolitik calculations, developed in the next section.

Furthermore, while language matters, the ability of rights holders to demand accountability and implementation is still strengthened by having more legal tools to draw on. No provision in the previous acts explicitly order the state to provide modern contraceptives to women. Despite the passage of the Magna Carta for Women in 2009 and the approval of its Implementing Rules and Regulations (IRR) in 2010, many legal scholars and reproductive rights activists still sought

the passage of specific reproductive rights legislation. Aguilung-Pangalangan (Pangalanan et al. 2011), herself a member of the drafting committee of the IRR of the Magna Carta of Women, argued that there is still a need for a well-crafted and comprehensive RH law. She explained that the IRR is a creation of the Executive Branch and cannot be a substitute for legislation. It is also subject to the policies of each administration, while specific legislation on responsible parenthood, reproductive health and population development provides a stable and permanent basis for advocates. The need remains for institutionalizing a nationwide and comprehensive law on these issues to counter the inconsistent application of laws throughout the country.

The International Labor Organization (2011) describes the Magna Carta of Women as “a framework law requiring specific laws,” while the Philippine Commission on Women (2012) explains that the health services included in Section 17 of the Magna Carta do not specifically spell out the crucial role and responsibility of men in reproductive health and responsible parenthood or the need for proper information on reproductive health and sexuality for adolescents, which R.A. 10354 does.

## **MAJOR SOCIAL FORCES**

Amucha et al. (2010) observe that in Mexico, the debates on women’s reproductive rights are a constant process of redefining the relationship between the Church and the state and what it means to be a “secular” state with a Catholic majority. The same is true for the Philippines. The struggle for the passage of the RH bill placed the debate about secularism and Church intervention in government affairs at the center of public discussion. It also raised existential questions about the oft-cited “identity” of the Philippines as a Catholic nation.

There remains a continuing public campaign by Catholic bishops, lay groups, and some Catholic medical professionals to oppose the provision of modern contraception by the state. Bautista (2010) writes that the Catholic Bishops Conference of the Philippines (CBCP) is the authoritative body of the Church in the Philippines and it expresses its positions in regular pastoral letters, “Bishop blogs,” sermons during the holy mass, and other political

pronouncements. He explains that the 1991 Second Plenary Council of the Roman Catholic Church of the Philippines (PCP-II) declared that while the Church and state are autonomous entities, the former should judiciously examine the government's actions without subverting its power.

Ironically, the CBCP in the Philippines has regularly intervened in political affairs, including playing a prominent role in the overthrow of two presidents: Marcos in 1986 and Estrada in 2001. (For an analysis of Church involvement in the so-called "People Power" movements, see the work of Claudio 2013.) It is one of the most powerful social and political actors in Philippine society and has been able to hold politicians hostage through methods such as threatening pro-choice politicians with public shaming during holy mass, sacramental denials, and excommunication (Bautista 2010). The CBCP's position on reproductive rights in the Philippines is based primarily on moral and ethical considerations drawn from Pope Paul VI's 1968 encyclical *Humanae Vitae*, which reiterated the Church's ban on artificial contraception and abortion, and John Paul II's 1995 encyclical condemning the "culture of death" that was brought about by a contraceptive mentality (Sjørup 1993). They argue that because contraceptives and sex education encourage selfish conceptions of freedom and free individuals from the burden of sexual responsibility, they lead people to view sex as a source of pleasure rather than for procreation, which then leads to promiscuity and the decline of the family as well as other social ills, such as abortion, divorce, euthanasia, and homosexuality (Bautista 2010). The Church equates modern contraceptive methods with abortion and refers to their proponents as "anti-life," while referring to itself and its supporters as "pro-life" because they protect the right to life of the unborn (David et al. 2012). The Church also argues that poverty is not a result of overpopulation but instead, corruption and the mismanagement of resources, and it asserts that Western countries are conspiring to reduce populations in the developing world when in fact it is Western consumption and greed that leads to an unequal distribution of resources (Baring 2012). It is important to note, however, that surveys since 2004 reveal that a majority of Catholics support reproductive health and population control measures in the Philippines (Bautista 2010). In social media campaigns against the reproductive health law, conservative groups have deployed false binaries such as the regular assertion that poor people need education and health care instead of condoms.

There were also attempts to present as “scientific fact” the supposed exponential increased risk of breast cancer for women who use oral contraception or disproportionately high rates of ineffectiveness of condoms. For example, in a video documentary interview with Atienza (2006), he claims that promoting modern contraception will always lead to more abortions because contraceptives are bound to fail. He argues that birth control is the farthest from a solution to poverty, and that “contraceptive materials are poison to the women’s body” and have been described as “pesticide” on the internet.

Medical doctors employed by the Manila government have admitted to teaching people that oral pills contain pesticides and that condoms do not prevent HIV because the virus is smaller than the condom’s pores and penetrates through it (Demetrio-Melgar et al. 2007).

There is also a strong tendency for opponents of reproductive rights legislation to cast it as a Western imposition, and its supporters as puppets of “first world” governments seeking to depopulate poor nations (Milette 2011). Through conjuring the bogeyman of eugenics, anti-RH legislators and advocates occlude the bill’s framework of choice, as opposed to imposed population control. The law’s orientation, however, as repeatedly stated in the deliberations, is not population management. None of its provisions force women to use contraceptives or to limit family size. In fact, there are clear provisions that safeguard against coercion and clarify that “there shall be no demographic or population targets and the mitigation, promotion and/or stabilization of the population growth rate is incidental to the advancement of reproductive health.”

Despite the public opposition of Catholic bishops, however, many self-identified Catholics have also broken ranks with the Church on this issue, dispelling the myth of “the Catholic vote” that has been deployed by bishops to intimidate politicians.

Social Weather Stations, one of the Philippines’ top non-profit social research institutions, released results of a nation-wide survey in October 2008 showing that 76 percent of adult Filipinos support family planning education in public schools and 71 percent favor the passage of the Reproductive Health Bill. The survey indicated that support was very high among both Catholics and non-Catholics. Church attendance and trust in the Catholic Church had no statistical influence on support for the reproductive rights law. Neither did socioeconomic class, sex, or civil status.

In 2008, some faculty members of the Ateneo de Manila University, a Jesuit University under the jurisdiction of the CBCP, expressed support for reproductive health legislation, independent of the university's position. They represented a faction of the Church that argued that Catholics can support reproductive health in good conscience.

David et al. (2012) explain that the proponents of stronger reproductive rights legislation are broadly divided into population management advocates and rights advocates. Their goals are the same, but they frame their arguments differently. Population management supporters use the language of sustainable development and poverty alleviation. Rights advocates do not rest their arguments on economic development consequences, but instead argue that reproductive health and informed choice are basic rights. They often cite the Philippines' international commitments to women's rights to remind the state of its obligations. They are generally composed of women's rights groups such as the NGO *Linangan ng mga Kababaihan Incorporated (LIKHAAN)* and other progressive groups.

Both population management advocates and rights advocates often implore the government to hold the Church to the rules of modern democratic politics. They also argue that scientific discourse is a crucial feature of a secular state, and regularly challenge the pseudoscientific claims of conservative groups. A senator who claimed in a public speech that he and his wife lost a daughter due to complications caused by oral contraception was widely criticized in social media after it was revealed that his daughter died two years before oral contraception became available in the Philippines. Unsurprisingly key players in the medical and scientific community in the Philippines backed the reproductive health law. Among them were the Philippine Medical Association, the DoH, the Philippine College of Physicians, the Philippine Society of General Internal Medicine, and Philippine Society for Microbiology and Infectious Diseases (Tubeza 2012).

A survey of the popular discourses in the pro-RH camp reveals a general tendency to emphasize that the law does not legalize abortion, but, in fact, reduces the need for it. This move may reflect a genuine moral distinction made by these groups between abortion and contraception or a strategic concession to attract more supporters.



## **R.A. 10354: THE POLITICS OF THE POSSIBLE**

A review of the amendments made in the later versions of the reproductive health law reveals some dilution of the non-ambiguous language of the original, which was patterned heavily after the ICPD program of action and succeeding WHO standards.

For example, in the latest version that was enacted into law, there is a strong emphasis on “responsible parenthood” and the protection of the family as a justification for providing access to family planning. In fact, the Aquino administration, in advocating for the bill, called it the “Reponsible Parenthood bill” as opposed to the more mainstream RH law. Such rhetoric allowed the administration to package the legislation in the context of family values, as opposed to simply contraception.

Access to relevant information and education on quality reproductive health care services, methods, devices and supplies is restricted to those that “do not prevent implantation of a fertilized ovum as determined by the [FDA].” This provision, in effect, brings the debate concerning abortifacients and non-abortifacients to the level of a regulatory agency. Once/if the law is implemented, conservative groups are likely to limit the scope of contraceptive services through arguing that certain contraceptives, like the intra-uterine device, may lead to “abortion.”

In the face of attempts by conservative legislators to scrap the section mandating medical assistance for women suffering from post-abortion complications, the law’s advocates were forced to include an explicit recognition that abortion is “illegal and punishable by law” (Boncocan 2012). Based on the way debates were framed in the legislative in 2012 and prior, there did not seem to be any other way for the provision on medical care for women post-abortion to have survived without this concession.

The provision on allowing minors access to modern methods of family planning has been severely restricted to only instances where parents or guardians provide written consent. Further, private schools are allowed flexibility in adopting the Department of Education’s sex education curriculum, and parents-teachers-community associations, school officials, and other interest groups need to be consulted in crafting the curriculum to account for their culture, religious, and ethical norms. There is also a requirement for the state to “promote openness to life,” as long as “parents bring forth to the world only those children that they can raise in a truly humane way.”



These amendments to the original version may negatively affect the provision of reproductive health services, but there is strong reason to believe that these concessions enabled the passage of the law.

Nonetheless, the IRR for this law are crafted in a more precise way that mitigates some of these concessions. For example, they specify that the law should be liberally construed to fulfill women's reproductive health and rights. They also require the state to "eradicate discriminatory practices, laws and policies that infringe on a person's exercise of reproductive health rights." They also prohibit discrimination against unmarried individuals in the provision of reproductive health care.

While the Supreme Court reviews R.A. 10354 and its implementation is halted, there is some comfort in the knowledge that the provisions on religious freedom, respect for cultural norms and parental authority, provision of funding support for natural family planning methods alongside modern ones, and prohibition on abortion and abortifacients, may help persuade the Supreme Court of its constitutionality.

## CONCLUSION

The road towards reproductive health and rights in the Philippines has been a long one. Despite signing multiple foreign agreements guaranteeing necessary reproductive health protections for women, the Philippine state has been slow to respond to its international obligations. It is clear that the RH Law, despite the many concessions accorded to its opponents, is the most significant attempt of the Philippine state to concretize the international norms it has formally agreed to. In this respect, should the Supreme Court strike down the law as unconstitutional, it would be a major setback for the Philippine women's movement. Not only would it nullify years of advocacy, it would also codify, via judicial fiat, state opposition to reproductive rights. With a Supreme Court decision against the RH Law, it will be even more difficult for the women's movement to lobby for state provision of reproductive health services in the future.

In that unfortunate event, it will also be interesting to observe how much power international norms, conventions, and institutions such as CEDAW, ICPD, or the WHO can wield over the Philippines by way of censure.

This article has provided a basic introduction to the law and the debates surrounding it. Given recent events, the topic is a moving target. A more complete assessment will be necessary if/once the law is implemented. However, this initial contribution already provides us with a glimpse on the difficulties in translating international norms that protect women into domestic contexts. A country like the Philippines, reflecting the endemic poverty in the Global South, is an ideal case study. Not only is it poor, its embedded Catholicism reveals how cultural norms interact and modify the concretization of international norms. Depending on the Supreme Court ruling, the Philippines, thus, can serve as either an inspiration or an omen for other countries in the Global South.

## NOTES

- 1 Defined in the Act as "the state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. This implies that people are able to have a safe and satisfying sex life, that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. This further implies that women and men attain equal relationships in matters related to sexual relations and reproduction."
- 2 Defined in the Act as "the rights of individuals and couples, to decide freely and responsibly whether or not to have children; the number, spacing and timing of their children; to make other decisions concerning reproduction, free of discrimination, coercion and violence; to have the information and means to do so; and to attain the highest standard of sexual health and reproductive health."
- 3 Defined in the Act as "a state of physical, mental and social well-being in relation to sexuality. It requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free from coercion, discrimination and violence."

## REFERENCES

- Amucha, A., S. Cruz, E. Aldaz, and M. Mejia'a. 2010. Politics, religion and gender equality in contemporary Mexico: Women's sexuality and reproductive rights in a contested secular state. *Third World Quarterly* 31(6): 989-1005.
- Atienza, L. 2006. Abortionist and pro-lifer ex-mayor Lito Atienza in Manila. Online, <https://www.youtube.com/watch?v=z6oxzgzPbTs>, accessed 10 Jan. 2014.
- Baring, R. 2012. Sources of conflict between the Church and its proponents. *De La Salle Social Development and Research Center Occasional Paper Series* 1: 1-19.
- Bautista, J. 2010. Church and state in the Philippines: Tackling life issues in a "culture of death." *Journal of Social Issues in Southeast Asia* 25(1): 29-53.
- Boncocan, Karen. 2012. Revised version of RH bill introduced in House. *Philippine Daily Inquirer*, 18 Oct. Online, <http://newsinfo.inquirer.net/291106/revised-version-of-rh-bill-introduced-in-house>, accessed 10 Jan. 2014.
- Bustelo, C. 1995. Reproductive health and CEDAW. *American University Law Review* 44(4): 1145-55.

- Cabal, L., and J. Todd-Gher. 2009. Reframing the right to health: Legal advocacy to advance women's reproductive rights. In *Realizing the right to health: Swiss human rights book*, vol. 3, ed. A. Clapham, M. Robinson, C. Mahon, and S. Jerbi, 120–38. Zurich: Rüffer & Rub.
- Castro-Guevara, M., et al. 2008. *Catholics can support the RH Bill in good conscience*, Philippines, viewed 10 January 2014, [http://aer.ph/pdf/papers/RH\\_Bill\\_Ateneo\\_Faculty.pdf](http://aer.ph/pdf/papers/RH_Bill_Ateneo_Faculty.pdf).
- Claudio, L. E. 2013. *Taming people's power: The EDSA revolutions and their contradictions*. Quezon City: Ateneo de Manila University Press.
- Center for Reproductive Rights, International Women's Human Rights Clinic, and City University of New York School of Law. 2012. Summary submission to the UN, Universal Periodic Review (UPR) of the Philippines, 13th session of the UPR Working Group of the Human Rights Council. Online, [http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS2\\_UPR\\_PHL\\_S13\\_2012\\_JointSubmission2\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/JS2_UPR_PHL_S13_2012_JointSubmission2_E.pdf), accessed 10 Jan. 2014.
- Collas-Monsod, S., T. Monsod, and G. Ducanes. 2004. Philippines' progress towards the Millennium Development Goals: Geographical and political correlates of subnational outcomes. *Journal of Human Development* 5(1): 121–49.
- Cook, R. 1993. International human rights and women's reproductive health. *Studies in Family Planning* 24(2): 73–86.
- Darroch, J. E., et al. 2009. *Meeting women's contraceptive needs in the Philippines*. USA: Guttmacher Institute. Online, [http://www.guttmacher.org/pubs/2009/04/15/IB\\_MWCNP.pdf](http://www.guttmacher.org/pubs/2009/04/15/IB_MWCNP.pdf), accessed 10 Jan. 2014.
- David, C., J. Atun, and A. La Viña. 2012. Framing in legislation: The case of population policy in the Philippines. *Population Research and Policy Review* 31(1): 297–319.
- Demetrio-Melgar, J., J. Pacete, E. Aguilino-Pangalangan, A. Lu, and L. Sabundayo. 2007. *Imposing misery: The impact of Manila's ban on contraception*. Manila: Linangan ng Kababaihan, Inc., Reproductive Health, Rights and Ethics Center for Studies and Training, and Center for Reproductive Rights. Online, [http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/CRR\\_ReportPhilippines.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/CRR_ReportPhilippines.pdf), accessed 10 Jan. 2014.
- Department of Budget and Management. 2013. Department of health, Philippines. Online, <http://www.dbm.gov.ph/wp-content/uploads/NEP2013/XIII/A.pdf>, accessed 10 Jan. 2014.
- . 2014. Overview of key budgetary approaches, Philippines. Online, <http://www.dbm.gov.ph/wp-content/uploads/NEP2014/Part%20II.pdf>, accessed 10 Jan. 2014.
- Department of Health (DoH), National Statistics Office, and United States Agency for International Development. 2012. Fertility and family planning: 2011 family health survey. Online, <http://www.scribd.com/doc/98937655/Fertility-and-Family-Planning-2011-Family-Health-Survey-for-2011>, accessed 10 Jan. 2014.
- Guttmacher Institute. 2013. *Unintended pregnancy and unsafe abortion in the Philippines: Context and consequences*. Online, <http://www.guttmacher.org/pubs/IB-unintended-pregnancy-philippines.html>, accessed 10 Jan. 2014.
- Hall, M. 2010. Using international law to promote millennium health targets: A role for the CEDAW Optional Protocol in reducing maternal mortality. *Wisconsin International Law Journal* 28(1): 74–107.
- Jaymalin, Mayen. 2013. WHO: Phl may not meet MDG on maternal deaths by 2015. *Philippine Star*, 24 Oct. Online, <http://www.philstar.com/science-and-technology/2013/10/24/1248556/who-phl-may-not-meet-mdg-maternal-deaths-2015>, accessed 10 Jan. 2014.
- Juarez, F., J. Cabigon, S. Sing, and R. Hussain. 2005. The incidence of induced abortion in the Philippines: Current level and recent trends. *International Family Planning Perspectives* 31(3): 140–49.
- Lakshminarayanan, R. 2003. Decentralisation and its implications for reproductive health: The Philippines experience. *Reproductive Health Matters* 11(21): 96–107.
- Lee, R. 1999. Men's involvement in women's reproductive health projects and programmes in the Philippines. *Reproductive Health Matters* 7(14): 106–11.
- Lee, R., L. Nacionales, and L. Pedroso. 2009. The influence of local policy on contraceptive provision and use in three locales in the Philippines. *Reproductive Health Matters* 17(34): 99–107.

- Malik, Khalid. 2013. *Human Development Report 2013*. UN Development Program.
- Natividad, J., G. Cruz, M. Marquez, M. Kabamalan, the University of the Philippines Population Institute (UPPI), and Demographic Research and Development Foundation (DRDF) Research Team. 2009. *2008 Situation of the Philippine population and reproductive health analysis*. Manila: UN Population Fund.
- Pangalangan, R., E. Aguilung-Pangalangan, H. Roque, and F. Hilbay. 2011. *Primer on legal issues in reproductive health*. Quezon City: University of the Philippines Law Complex. Online, <http://law.upd.edu.ph/files/pdf/rh-primer-online.pdf>, accessed 10 Jan. 2014.
- National Statistics Office & ICF Macro. 2009. *Philippine National Demographic and Health Survey 2008*. Online, <http://www.measuredhs.com/pubs/pdf/FR224/FR224.pdf>, accessed 10 Jan. 2014.
- Philippine Commission on Women. 2010. State obligations. Online, <http://pcw.gov.ph/international-commitments/cedaw/state-obligations>, accessed 29 Oct. 2012.
- . 2012. An RH law for Christmas is a gift for stable families and safe adolescence. 16 Dec. Online, <http://pcw.gov.ph/article/rh-law-christmas-gift-stable-families-and-safe-adolescence>, accessed 10 Jan. 2014.
- Republic Act of the Philippines No. 9710, or the Magna Carta of Women.
- Republic Act of the Philippines No. 10354, or An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health.
- Ruiz, C. 2004. The Church, the state and women's bodies in the context of religious fundamentalism in the Philippines. *Reproductive Health Matters* 12(24): 96-103.
- Singh, S., et al. 2006. *Unintended pregnancy and induced abortion in the Philippines: Causes and consequences*. USA: Guttmacher Institute. Online, <http://www.guttmacher.org/pubs/2006/08/08/PhilippinesUPIA.pdf>, accessed 10 Jan. 2014.
- Sjørup, L. 1999. Religion and reproduction: The Vatican as an actor in the global field. *Gender Technology and Development* 3(3): 379-410.
- Social Weather Stations. 2008. Third quarter 2008 Social Weather Survey, Philippines. Online, <http://www.sws.org.ph/pr081016.htm>, accessed 10 Jan. 2014.
- Somera, N. 2009. *Gains and gaps in the Philippine Magna Carta of Women*. Philippines: Isis International. Online, [http://www.isiswomen.org/index.php?option=com\\_content&view=article&id=1296:gains-and-gaps-in-philippine-magna-carta-of-women](http://www.isiswomen.org/index.php?option=com_content&view=article&id=1296:gains-and-gaps-in-philippine-magna-carta-of-women), accessed 10 Jan. 2014.
- Stark, B. 2011. The Women's Convention, reproductive rights, and the reproduction of gender. *Duke Journal of Gender Law & Policy* 18: 261-304.
- Tubeza, P. 2012. 23 medical groups urge Congress to pass RH Bill. *Philippine Daily Inquirer*. Online, <http://newsinfo.inquirer.net/322657/23-medical-groups-urge-congress-to-pass-rh-bill>, accessed 10 Jan. 2014.
- United Nations (UN) Committee on the Rights of the Child. 2009. Consideration of reports submitted by states parties under Article 44 of the Convention, concluding observations: The Philippines, CRC/C/PHL/CO/3-4. Online, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-PHL-CO4.pdf>, accessed 10 Jan. 2014.
- UN Human Rights Committee. 2012. Concluding observations on the fourth periodic report of the Philippines, adopted by the Committee at its 106th session (15 October - 2 November 2012), CCPR/C/PHL/CO/4. Online, <http://www.ccrpcentre.org/doc/2012/10/G1247605.pdf>, accessed 10 Jan. 2014.
- World Bank. 2009. Philippines country profile data. Online, <http://data.worldbank.org/country/philippines>, accessed 1 Sep. 2011.

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