



# CRIMINALIZATION OF ABORTION IN THE PHILIPPINES

## Its Harmful Impact on Women's Health and Human Rights

**Terrified and hemorrhaging after taking an unregistered drug to induce an abortion, Kaye, a young woman from Manila, sought medical treatment at a government hospital. Instead of prompt and compassionate care, she was verbally abused by the staff and had to wait for almost 24 hours before receiving life-saving treatment for her complications. Hospital workers refused to provide treatment until Kaye admitted that she had self-induced an abortion. After the forced confession, she was immediately reported to the police by hospital staff. Police officers came to the hospital and brought Kaye to jail, where she was charged and detained for illegally inducing abortion.<sup>1</sup>**

### **The Philippines has one of the most restrictive and archaic abortion laws globally.**

The Revised Penal Code (RPC) penalizes abortion without any clear exceptions. Under the RPC, a woman who consents to and undergoes an abortion may be imprisoned for up to six years and anyone assisting her up to twenty years.<sup>2</sup> The RPC's abortion ban is a colonial legacy from the Spanish Código Penal of 1870 and, unlike the provisions in force in Spain, has not been amended since its adoption in 1930. In addition, there is a prenatal protection clause enshrined in the Philippine Constitution adopted in 1987, which declares that the government shall "equally protect the life of the mother and the life of the unborn from conception."<sup>3</sup> Despite the fact that other countries with similar prenatal protections explicitly allow abortion under

a range of circumstances, including Ireland, Hungary, and Poland, the Philippine Supreme Court has recently restrictively interpreted the prenatal protection clause to unjustifiably limit access to abortion.<sup>4</sup>

### **Inaccurate claims that modern contraceptives are abortifacients**

The chilling effect created by the ban on abortion has also impacted women's access to contraceptive information and services. While a 2012 national reproductive health law guarantees universal access to the full range of contraceptive information and services, its implementation has been hampered by judicial decisions limiting access to certain hormonal contraceptives and executive orders—all grounded on the pretense that modern contraceptives are or may be classified as abortifacients.<sup>5</sup>

Further, Postinor, the only dedicated emergency contraception pill available in the Philippines, was delisted in 2001 from the country's registry of drugs on the pretext that it is an abortifacient, despite contrary findings from the World Health Organization. The national reproductive health law also prohibits national government hospitals from purchasing and acquiring emergency contraceptives.<sup>6</sup> To promote women and girls' reproductive rights, the government must ensure access to the full range of contraceptive information and services, including modern and emergency contraceptives.

## The criminal ban does not stop women from seeking abortions and instead drives them to resort to illegal and unsafe procedures.

The criminalization of abortion does not prevent abortion; instead, it has made abortion unsafe and perpetuated abortion stigma. Despite the stringent abortion ban, the number of abortions performed annually continues to increase. Latest available estimates reflect an increase to 610,000 abortions in 2012 from 560,000 in 2008.<sup>7</sup> Because of the ban, abortions are typically performed clandestinely and in unsafe conditions; as a result, approximately two in every three women who undergo abortion experience a complication.<sup>8</sup> Further, an estimated 1,000 women died due to abortion complications in 2008—this translates to an average of at least three deaths each day.<sup>9</sup> While the government does not have comprehensive data on the arrests, prosecutions, and convictions of women and providers for consenting to or performing abortions, reports in the local media are common.<sup>10</sup>

## Efforts to maintain or increase penalties for abortion continue.

In 2014, an attempt by the legislature to review and modernize the RPC resulted in a proposal to increase the penalties for abortion, including for women who consent to the procedure.<sup>11</sup> Alarming, bills proposing stricter penalties for abortion have also been filed. Several bills filed before Congress to create exceptions to the ban on abortion have failed to pass into law and have been met with fierce criticism and opposition from anti-choice groups and religious fundamentalists.

**“The failure of the [Philippine Government] to provide the full range of sexual and reproductive health services, commodities and information resulted in unplanned pregnancies, unsafe abortions and unnecessary and preventable maternal deaths.”**

—Committee on the Elimination of Discrimination against Women<sup>12</sup>

## The government’s criminalization of abortion has led to serious violations of women’s reproductive rights.

For the past decade, UN treaty monitoring bodies have repeatedly expressed concern about the high number of unsafe abortions in the Philippines and urged the government to review its abortion ban, decriminalize the procedure, and legalize it on certain grounds, such as to save or protect the life or health of the pregnant woman, in cases of pregnancies resulting from rape or incest, and in cases of fetal impairment. These bodies found that restricting access to safe abortions effectively leaves women no option but to resort to unsafe abortions and violates a broad range of human rights. The Committee on the Elimination of Discrimination against Women (CEDAW Committee), the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights have expressed concerns about violations of the rights to life, health, privacy, and nondiscrimination arising from the Philippine criminal abortion ban due to its link to maternal mortality and morbidity. These bodies also noted the specific barriers faced by vulnerable subgroups of women, including socioeconomically disadvantaged women, adolescent girls, and survivors of sexual violence. In 2012, the CEDAW Committee conducted a special inquiry and found grave and systematic violations of women’s rights to make informed decisions about the number and spacing of their children, equality and nondiscrimination, health, and access to effective legal remedies arising from restrictions on reproductive rights including the criminal abortion ban. In 2016, the Committee against Torture also expressed concern about the ill-treatment of women seeking post-abortion care.<sup>13</sup>

Independent human rights experts have expressed similar concerns. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognized the long-term and immense negative effects of denying women abortion and post-abortion care services, noting that they amount to torture and ill-treatment.<sup>14</sup> The Special Rapporteur on health has also criticized abortion bans as government intrusion into women’s reproductive rights and human dignity, coercing women to continue with unwanted or unplanned pregnancies.<sup>15</sup> Further, the Special Rapporteur on violence against women has noted that gender-based violence, including lack of access to safe abortions, violates women’s “right to participate in and contribute to sustainable development.”<sup>16</sup>

## The Philippines must honor its international commitments to uphold women's reproductive rights.

In November 2016, the Philippine Commission on Human Rights made an unprecedented recommendation<sup>17</sup> for Congress to review the abortion ban and to consider the recommendations of the CEDAW Committee to decriminalize abortion, and in particular to permit the procedure where there is a threat to the woman's life and/or health and in cases of rape, incest, or serious fetal impairments. The government's immediate action is required to fulfill its obligations to protect women's lives and health, eliminate gender discrimination, and ensure respect for women's dignity.

### Abuses against women seeking post-abortion care

The criminalization of abortion creates a vicious cycle of impunity for abuses and ill-treatment of women seeking post-abortion care. While there are national laws and policies guaranteeing the right to compassionate, humane, and nonjudgmental treatment for abortion-related complications,<sup>18</sup> the penal provisions on abortion portray women as criminals undeserving of respectful, quality care. There is no legal obligation to report cases of abortion, unlike some acts that are prohibited by law,<sup>19</sup> but the practice continues; the CEDAW Committee has recommended that women seeking post-abortion care must not be "reported to authorities, threatened with arrest, or subjected to physical or verbal abuse, discrimination, stigma, delays in access to or denial of care."<sup>20</sup> To facilitate women and girls' access to post-abortion care and redress in cases of violations, the government must establish and enforce effective accountability mechanisms that provide timely and appropriate remedies and remove all barriers that impede women's access to justice.

### Endnotes

- <sup>1</sup> A pseudonym has been used to protect the woman's identity due to the criminal ban.
- <sup>2</sup> REVISED PENAL CODE, Act No. 3815, arts. 256–59 (Phil.).
- <sup>3</sup> CONST. (1987), art. II, sec. 12 (Phil.).
- <sup>4</sup> James M. Imbong and Lovely-Ann C. Imbong v. Hon. Paquito N. Ochoa, Jr., et al., G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 and 207563 (S.C., Apr. 8, 2014) (Phil.).
- <sup>5</sup> See Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof, Exec. Order No. 003 (2000) (Phil.); Further strengthening Family Health Services, Exec. Order No. 30 (2011) (Phil.); An Executive Order Declaring Sorsogon City as a Pro-Life City, Exec. Order No. 3 (2015) (Phil.). See also CENTER FOR REPRODUCTIVE RIGHTS, ACCOUNTABILITY FOR DISCRIMINATION AGAINST WOMEN IN THE PHILIPPINES: KEY FINDINGS AND RECOMMENDATIONS FROM THE CEDAW COMMITTEE'S SPECIAL INQUIRY ON REPRODUCTIVE RIGHTS (2015).
- <sup>6</sup> An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health, Rep. Act No. 10354, sec. 9 (2012) (Phil.) [hereinafter RPRHA].
- <sup>7</sup> LAWRENCE B. FINER & RUBINA HUSSAIN, UNINTENDED PREGNANCY AND UNSAFE ABORTION IN THE PHILIPPINES: CONTEXT AND CONSEQUENCES, IN BRIEF (Guttmacher Inst. 3 2013).
- <sup>8</sup> *Id.*
- <sup>9</sup> *Id.* at 5.
- <sup>10</sup> See Bombo La Union, *3 abortionists arestado sa raid sa La Union*, BOMBO RADYO PHILIPPINES, (March 5, 2016; Francis T. Wakefield, *Call center agent, huli sa pagpapa-abort*, BALITA, Feb. 17, 2016; Boy Cruz, *Buntis nadale ng 3 abortionists*, THE PHILIPPINE STAR, April 18, 2016. See also Gus Abelgas, *92-year-old abortionist arrested in Calcoocan*, ABS-CBN NEWS, Sept. 20, 2013; *Police Arrest Couple for Inducing Abortion*, COCONUTS MANILA, July 30, 2013; Aie Balagtas See, *Woman nabbed for abortion*, THE PHILIPPINE STAR, July 12, 2015.
- <sup>11</sup> Criminal Code Committee, *The Criminal Code of the Philippines* (2014) (Draft), secs. 23 and 53.
- <sup>12</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Philippines*, para. 52, U.N. Doc. E/C.12/PHL/CO/5-6 (2016); Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Philippines*, para. 40, U.N. Doc. CEDAW/C/PHL/CO/7-8 (2016); Committee against Torture, *Concluding Observations: Philippines*, paras. 38, 39, U.N. Doc. CAT/C/PHL/CO/3 (2016); CEDAW Committee, *Summary of the inquiry concerning the Philippines under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/OP.8/PHL/1, para. 51(v) (2015) [hereinafter CEDAW Committee, *Summary of the inquiry*]; Human Rights Committee, *Concluding Observations: Philippines*, para. 13, U.N. Doc. CCPR/C/PHL/CO/4 (2012); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Philippines*, para. 31, U.N. Doc. E/C.12/PHL/CO/4 (2008); Committee on the Elimination of Discrimination against Women, *Concluding Comments: Philippines*, paras. 27-28, U.N. Doc. CEDAW/C/PHI/CO/6 (2006).
- <sup>13</sup> CEDAW Committee, *Summary of the inquiry*, *supra* note 12, para. 33.
- <sup>14</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, paras. 46-50, 90, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013).
- <sup>15</sup> The Special Rapporteur on health, *Interim report prepared by the Special Rapporteur of the Human Rights Council on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, in accordance with Human Rights Council resolutions 15/22 and 6/29, paras. 12, 15, 16, 27, UN Doc. A/66/254 (Aug. 3, 2011).
- <sup>16</sup> The Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Ms. Rashida Manjoo, in accordance with Assembly resolution 67/144, paras. 39, U.N. Doc. A/69/368 (Sept. 1, 2014).
- <sup>17</sup> Philippine Commission on Human Rights, *Report of the Commission on Human Rights Philippines' National Inquiry on Reproductive Health and Rights*, at 10, 18, 29 (2016).
- <sup>18</sup> An Act Providing for the Magna Carta of Women, Rep. Act No. 9710, sec. 17 (2009) (Phil.); RPRHA, *supra* note 6, sec. 3(j); Department of Health, National Policy on the Prevention and Management of Abortion Complications (PMAC), Admin. Order No. 2016-0041 (2016) (Phil.).
- <sup>19</sup> Requiring Doctors, Hospitals, Clinics, etc. to Report Treatment for Physical Injuries, Pres. Decree 169, sec. 1 (1973) as amended by Amending Pres. Decree No. 169, Exec. Order 212, sec. 1 (1987) (Phil.).
- <sup>20</sup> CEDAW Committee, *Summary of the inquiry*, *supra* note 12, para. 52(v).

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