

10 September 2014

Hon. Leila M. de Lima
Secretary
Department of Justice
Padre Faura, Manila

RE: REINSTATEMENT OF THE PROVISIONS ON “JUSTIFIED ABORTIONS” IN THE DRAFT CODE OF CRIMES TO PROVIDE AN OPPORTUNITY FOR PUBLIC DISCUSSION ON THE LEGAL AND HUMAN RIGHTS IMPLICATIONS OF A TOTAL CRIMINAL BAN ON ABORTION

Dear Secretary de Lima:

We would like to draw the attention of the Department of Justice (DOJ) to the tragic reality that serious and widespread violations of women’s rights are being committed under the country’s absolute criminal ban on abortion and that, through the inclusion of provisions on justified abortions in the draft Code of Crimes by the Criminal Code Committee (the Committee), these violations could finally be publicly discussed and rationally deliberated upon before Congress and not just left to persist with unjustified impunity as has been the case for over 80 years.

In 2010 and pursuant to the directive of President Benigno “Noynoy” the DOJ constituted the Committee. The **Committee’s initial draft of Book II of the Code of Crimes provided for “justified abortions”** in cases where (1) abortion is performed after implantation of fertilized ovum arising from rape or incest, (2) continuation of pregnancy endangers life of pregnant woman or seriously impairs her physical, mental or emotional health, and (3) sonogram or other diagnostic test show the fetus suffers from incurable disease or serious deformity. However, these **provisions on “justified abortions” were deleted from the draft only after one public consultation in Cebu** and before extensive consultations in different parts of the country were conducted thereby pre-empting a national discussion about the need to consider exceptions to the total ban in light of compelling evidence of grave human rights violations.

The Philippines has an antiquated law on abortion and one of a handful of countries to criminalize abortion without recognizing clear exceptions allowing the procedure even in circumstances such as to save the life or protect the health of a pregnant woman, when pregnancy is a result of rape or incest, or in cases of fetal impairment. The uncompromising nature of the country’s abortion law becomes even more pronounced

when compared to developments in other predominantly Catholic countries and former Spanish colonies as well as in neighboring countries in East and Southeast Asia.¹

The provision in the Philippine Constitution which declares that the State shall “equally protect the life of the mother and the unborn from conception”² must not be so narrowly interpreted as totally proscribe abortion. Other countries with constitutions and laws explicitly protecting the life of the unborn or life from conception such as Ireland, Slovak Republic, Poland, Kenya, Hungary, and Costa Rica have recognized that abortion can be legally performed under certain exceptions and conditions.

The criminalization of abortion does not prevent women from having abortions rather it forces women to resort to unsafe abortions which is a leading cause of preventable maternal deaths. In the Philippines, **an estimated 560,000 abortions occurred in 2008 and this number has risen to 610,000 abortions in 2012.**³ The adverse effect of the ban on abortion is also reflected in **the latest data on the country’s maternal mortality ratio which has shown a dramatic increase within a four-year period (2006-2010) from 162 to 221 deaths per 100,000 live births**⁴ – reneging from the Millennium Development Goal (MDG) target of 52 per 100,000 live births. The incidence of unsafe abortion continues to rise and, **in 2012 and 2013, abortion was reportedly one of the top 3 obstetrics-gynecological cases in 8 out of 9 hospitals managed by the Department of Health (DOH).**⁵

The problem of women suffering from complications from unsafe abortion is aggravated when they decide to seek post-abortion care (PAC), whether in public or private hospitals or clinics. **It is estimated that 90,000 women were hospitalized for abortion complications in 2008 and over 100,000 women in 2012.**⁶ There is indisputable evidence showing that **in these settings, women are exposed to the risks of abuse, harassment, discrimination, prosecution, and punishment.**⁷ Violations of women’s rights occur in this context due to the absence of clear exceptions to the criminal ban on abortion and the fear of health care providers that they will be subject to criminal proceedings either as accomplices or accessories which is fueled to a certain degree by the practice in hospitals of maintaining blotters and of threatening to report or actually reporting women to the law enforcement authorities.⁸

The risk of criminal prosecution often deters women from seeking urgent medical attention even when faced with serious complications.⁹ Evidence shows that not only do health care providers threaten to report women who induce abortions, but they also threaten women who have not intentionally induced abortions but have experienced complications due to fetal death or a miscarriage. Even more appalling is the fact that some of these women who are threatened with criminal prosecution are in fact victims of domestic violence whose pregnancies ended abruptly because of physical violence perpetrated by their husband or partner.

The criminalization of abortion has significantly stigmatized a widely recognized and safe medical procedure. **The lack of definitive exceptions under the criminal ban has led health care providers to view women presenting with complications from unsafe abortion as criminals instead of patients in need of urgent medical care, frequently resulting in the denial of non-judgmental and life-saving treatment or significant delays as an informal punitive measure.** The ban has rendered nugatory the right of women to compassionate, quality, and humane PAC to which they are statutorily entitled under Republic Act No. 9710 otherwise known as “The Magna Carta of Women”¹⁰ and Republic Act No. 10354 otherwise known as “The Responsible Parenthood and Reproductive Health Act of 2012,”¹¹ with the framework for such right having been earlier established in the DOH’s Administrative Order No. 45-B, s. 2000, otherwise known as the “Prevention and Management of Abortion and its Complications Policy.”¹² The medical community itself has recognized that stigma associated with abortion, which stems largely from the criminal ban, has contributed to providers’ negative attitudes towards women who as a result become vulnerable to abusive and discriminatory treatment.¹³

The rights of women to life, health, privacy, equality and nondiscrimination, and to be free from cruel, inhuman, and degrading treatment are embodied in several international treaties and conventions voluntarily entered into by the Philippine government such as the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention Against Torture, Convention on the Rights of the Child and most notably, the Convention on the Elimination of All Forms of Discrimination against Women which establish binding legal obligations on the state. United Nations treaty monitoring bodies have repeatedly urged the Philippines to review its law on abortion. Clearly, **under international law, the Philippines has the obligation to immediately review its legislation on abortion and to take steps to allow abortion on certain grounds as a matter of human rights.**

We believe that an **evidence- and human rights-based approach** is needed to review the criminalization of abortion in light of the human toll of the ban as exposed by the staggering number of unsafe abortions and deaths each year.

Regrettably, on 19 August 2014, the DOJ announced that it has completed work on Book 2 of the Criminal Code on Crimes and Penalties. Reviewing the draft, we are deeply concerned that the Committee decided to continue criminalizing abortion without providing for any exceptions despite the overwhelming evidence of egregious violations of human rights as a result of the total criminal ban.

We are not putting forward before the DOJ the question of whether or not it supports the legalization of abortion but rather seeking its **support on the need to talk about the impact of the penal provisions on abortion and the importance of having exceptions to them.** It should be emphasized that the drafting of the Code was a crucial opportunity for the DOJ to create the possibility of making our penal statutes “relevant

and meaningful to the people.”¹⁴ We are concerned that the Committee precluded an important national discussion by eliminating these proposed exceptions before they can even be considered by the nation’s legislative branch and the people that they represent.

We are concerned that the DOJ turned a blind eye to the persistent and widespread occurrence of unsafe abortions and incidences of unnecessary and preventable deaths in the country. The current situation in the Philippines demands an urgent response as each day approximately 3 women die as a result of abortion-related complications, 274 women are hospitalized for abortion, and 1,671 women undergo medically unsafe abortion procedures despite the risk of criminal prosecution.¹⁵ We remain confident that the DOJ will not continue to condone the serious and widespread violations of human rights and will now take whatever steps are needed to protect the health and lives of Filipino women.

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¹ CENTER FOR REPRODUCTIVE RIGHTS, FORSAKEN LIVES: THE HARMFUL IMPACT OF THE PHILIPPINE CRIMINAL ABORTION BAN, 105-110 (2010) [hereinafter FORSAKEN LIVES].

² CONST. (1987), art. II, sec. 12 (Phil.) [hereinafter PHIL. CONST.].

³ AGI, UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHILIPPINES: CAUSES AND CONSEQUENCES 5 (2013), available at <http://www.guttmacher.org/pubs/IB-unintended-pregnancy-philippines.pdf> [hereinafter AGI, UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHILIPPINES].

⁴ Darroch JE et al., Meeting women's contraceptive needs in the Philippines, In Brief, New York: Guttmacher Institute (2009) No. 1 [hereinafter Darroch JE et al., Meeting women's contraceptive needs in

the Philippines].

⁵ Sheila Crisostomo, *To help stop rise in abortion cases – DOH* (Mar. 7, 2014) *The Philippine Star*, available at <http://www.philstar.com/headlines/2014/03/07/1298062/rh-help-stop-rise-abortion-cases-doh>.

⁶ AGI, UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHILIPPINES, *supra* note 3, at 5.

⁷ See FORSAKEN LIVES, *supra* note 1.

⁸ See FORSAKEN LIVES, *supra* note 1, at 53-54.

⁹ AGI, UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHILIPPINES, *supra* note 3, at 3.

¹⁰ An Act Providing for The Magna Carta of Women, Rep. Act No. 9710, sec.17 (Aug. 14, 2009) (Phil.).

¹¹ An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health, Rep. Act No. 10354, secs. 3(j) and 4(q)(3) (Dec. 21, 2012) (Phil.).

¹² Department of Health, Prevention and Management of Abortion and its Complications, Administrative Order No. 45-B (2000) (Phil.).

¹³ FORSAKEN LIVES, *supra* note 1, at 32-33, 39.

¹⁴ See DEPARTMENT OF JUSTICE, CRIMINAL CODE COMMITTEE, <http://www.doj.gov.ph/criminal-code-committee.html> (last visited July 14, 2014).

¹⁵ See AGI, UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHILIPPINES, *supra* note 3, at 3 and 5 and Darroch JE et al., Meeting women's contraceptive needs in the Philippines, *supra* note 4.