



## **Philippine Constitutional Guarantees, Comparative Law, and International and Regional Human Rights Standards Support the Right to Safe and Legal Abortion**

No woman should die from complications from unsafe abortion and lack of access to post-abortion care. Ensuring access to safe and legal abortion and quality post-abortion care will save Filipino women's lives and prevent disabilities from unsafe abortion complications.

### **I. THE PHILIPPINE CONSTITUTION ALLOWS ACCESS TO SAFE AND LEGAL ABORTION**

#### **A. Prenatal protection is not absolute**

The 1987 Constitution provision under Section 12, Article II on the Declaration of Principles equally protecting the life of the woman and the unborn from conception does not explicitly prohibit abortion.<sup>1</sup>

This prenatal protection yields to the fundamental rights of born persons.<sup>2</sup> Prenatal protection cannot be interpreted in a way that conflicts with the implementation of other State principles and policies set forth in Article II such as Section 15 on the State's duty to protect and promote health and Section 14 on the State's recognition of "the role of women in nation-building" and "the fundamental equality before law of women and men."<sup>3</sup>

Prenatal protection is not absolute and does not abrogate women's rights under the Bill of Rights such as the constitutional rights to health, life, privacy, religion, equality, and equal protection of the law, which all guarantee the woman's right to safe and legal abortion.

#### **B. Legal personality only attaches upon birth; the fetus and embryos are not accorded the same legal protection as a person who is born**

The unborn is not placed exactly on the same level as the life of the woman and is not accorded with the same rights and protection as legal persons. It is recognized in Philippine and comparative jurisprudence and international law that the embryos and fetus are not on equal footing with the rights of a woman.

The embryo and fetus do not have human personality.<sup>4</sup> Legal personality only attaches upon birth. Article 41 of the Civil Code defines legal persons. Under Article 41 of the Civil Code, a fetus must be born alive (completely delivered from the mother's womb) to be considered a person endowed with legal personality.



In the case of *Geluz vs. Court of Appeals*,<sup>5</sup> the Philippine Supreme Court held as early as 1961 that the husband of a woman who voluntarily procured her abortion was not entitled to damages from the physician who performed the procedure since the fetus was not yet born and thus does not have civil personality under Article 40 of the Civil Code. The Supreme Court held that a child should be born before the parents can recover damages since personal injury or death pertains primarily to the one injured. The Supreme Court even went further to state that that abortion is justified when there is a medical necessity to warrant it.<sup>6</sup>

Comparative jurisprudence ruling that the fetus is not accorded the same legal protection as a person who is born:

In the 1991 Canadian case of *R. v. Sullivan*, 1 S.C.R. 489, the Supreme Court held that a fetus in the birth canal is not a “person” or a “human being” for the purposes of criminal law and thus the midwives assisting in delivery at the time of death cannot be convicted of criminal negligence causing death to another person.<sup>7</sup>

In the Canadian case of *Winnipeg Child and Family Services (NW Area) v. G.(D.F.)* (1997) 152 D.L.R. (4th) 304, the Supreme Court of Canada held that a pregnant woman addicted to drugs cannot be involuntarily detained in order to prevent harm to her fetus as legal rights only accrue at birth and the *parens patriae* jurisdiction of the court does not apply to the fetus.<sup>8</sup>

### **C. Other countries with Constitutional prenatal protection allow access to safe and legal abortion**

Other countries with same constitutional protection of the life the unborn from conception allow abortion under certain exceptions such as Hungary, Costa Rica, South Africa, Ireland, Slovak Republic, Poland, and Kenya,<sup>9</sup> as follows:

Hungary enacted a new 2011 Constitution protecting fetal and embryonic life from the moment of conception.<sup>10</sup> Despite this new constitutional provision, Hungary still allows abortion up to 12 weeks of gestation,<sup>11</sup> and in cases where it is necessary to preserve the physical or mental health of the woman, rape or incest, the fetus is severely physically or mentally impaired or where the pregnancy poses a severe crisis for the pregnant woman.<sup>12</sup>

Although the Constitution of Costa Rica provides that, “[h]uman life is inviolable,”<sup>13</sup> Costa Rican permits abortion when necessary to preserve the life or health of the pregnant woman.<sup>14</sup> In 2004, the Costa Rican case Tribunal Supremo de Costa Rica, Sentencia No. 2004-02792 held that notwithstanding the fact that the “unborn” enjoys protection, therapeutic abortion is permitted.<sup>15</sup>



The South African 1996 Constitution provides that “everyone has the right to life”.<sup>16</sup> In the case of *Christian Lawyers Association of South Africa v. The Minister of Health*, the Court ruled that “everyone” was a legal alternative expression to “every person,” and historically legal personhood commences only at live birth; it was not necessary to address the claim on the biological beginning of human life, since it cannot be concluded that the human life that had begun was that of a legal person; “the question is not whether the conceptus is human but whether it should be given the same legal protection as you and me.”

The Irish Constitution provides that “the right to life of the unborn and, with due regard to the equal right to life of the mother.”<sup>17</sup> The Irish Supreme Court ruled that the woman has a right to an abortion where the pregnancy poses a risk to her life.<sup>18</sup> Ireland enacted a law in 2013 recognizing that abortion may be performed when there is risk to the life of a pregnant woman.<sup>19</sup>

The constitutionality of the Slovak abortion law was upheld by the Slovak Constitutional Court when it interpreted the Constitutional provision-- “Everyone has the right to life. Human life is worthy of protection even prior to birth.” The Court found that granting the right to life to a fetus would directly contradict women’s constitutional rights to health and privacy.<sup>20</sup>

Despite the Polish Constitution provision on “...legal protection of the life of every human being,”<sup>21</sup> in 1993, Poland amended its law and allowed abortions in cases of serious threat to the life or health of the pregnant woman, rape or incest, and prenatal tests indicate that the fetus is seriously and irreversibly damaged.<sup>22</sup> The amended law even provides that “[e]very human being shall have a natural right to life from the time of his conception.”<sup>23</sup>

Although the Kenyan Constitution provides that “[t]he life of a person begins at conception,”<sup>24</sup> Kenyan law allows abortion when “...in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.”<sup>25</sup>

When a Colombian citizen challenged the former abortion law that outlawed the procedure in all circumstances in April 2005,<sup>26</sup> the Colombian Constitutional Court issued a decision in 2006 liberalizing its abortion law by upholding that there is no Constitutional right to life before birth<sup>27</sup> and allowed abortion under three circumstances: when the life or health (physical or mental) of the woman is in danger; when pregnancy is a result of rape or incest; or when grave fetal malformations make life outside the uterus unviable.<sup>28</sup> Before the ruling, Colombia had one of the most restrictive abortion laws in the world with over 350,000 illegal abortions performed annually. The Court ruled that:



“when the legislature enacts criminal laws, it cannot ignore that a woman is a human being entitled to dignity and that she must be treated as such, as opposed to being treated as a reproductive instrument for the human race. The legislature must not impose the role of procreator on a woman against her will.”

## **D. Regional human rights jurisprudence ruling that the right to life of the fetus is not absolute**

### **D.1. European Convention on Human Rights**

The European Convention on Human Rights asserts in Article 2 that “[e]veryone’s right to life shall be protected by the law.”<sup>29</sup> Two key cases ruled that “everyone” does not include the unborn.

In its decision in *Paton v. United Kingdom*, the European Commission on Human Rights looked at the meaning “everyone’s” in the European Convention and determined that life was mostly regarded in the **postnatal** context, as seen in Articles 1, 5, 6, 8, 9, 10, 11, and 13 of the Convention.<sup>30</sup> [emphasis supplied]

The European Court of Human Rights in *Vo v. France* clearly distinguished that “everyone” does not extend absolutely to the unborn. Moreover, the “right to life” explicitly considers the health of a mother, especially if her life is in jeopardy. The court, in issuing its ruling, upheld the validity of laws allowing abortion in the 39 member states of the Council of Europe.<sup>31</sup> Paragraph 80 of the Court’s decision states:

“[T]he unborn child is not regarded as a ‘person’ directly protected by Article 2 of the Convention and that if the unborn do have a ‘right’ to ‘life’, it is implicitly limited by the mother’s rights and interests.”<sup>32</sup>

### **D.2. American Convention on Human Rights**

Article 4 of the American Convention on Human Rights states, “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception.”<sup>33</sup> Despite this prenatal protection, the Inter-American Commission has ruled that the right to life of the unborn is not absolute:

In *Baby Boy v. United States* and in the case of “Amelia” in Nicaragua, the Inter-American Commission decided that the right to life of the unborn is not absolute, particularly in circumstances when the woman is need of life-saving care.<sup>34</sup>



### **D.3. African Charter on Human and Peoples' Rights**

The drafters of the African Charter likewise refused to extend the right to life from the moment of conception.<sup>35</sup>

This is explicit in the language on the woman's right to health and the absence of the unborn's right to life in the African Charter. Article 4 of the Charter affirms, "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person."<sup>36</sup> In the 2000 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, **Article 14 authorizes "medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus."**<sup>37</sup> [emphasis supplied]

## **II. CONSTITUTIONAL GUARANTEES UPHOLD RIGHT TO ACCESS SAFE AND LEGAL ABORTION**

### **A. Constitutional Protection on Separation of Church and State and Non-Establishment of Religion**

The 1987 Philippine Constitution guarantees secularism through the principle of separation of church and state under Article II, Section 6.<sup>38</sup> The principle of separation of church and state guards against the views of a dominant church from influencing the conduct of government and influencing policies to cater to a specific dominant church.<sup>39</sup>

While the Constitution guarantees freedom of religion, it also guarantees non-establishment of religion under Article III, Section 5 of the Constitution.

This non-establishment clause principally prohibits the state from sponsoring any religion, or favoring any religion as against other religions.<sup>40</sup> It mandates "government neutrality in religious matters... and avoid breeding interfaith dissension," as held in the case of *Estrada v. Escritor*.<sup>41</sup> It also means neutrality between religion and atheism, or of an individual's decision in regard to the supernatural or spiritual, or not at all.<sup>42</sup>

In the case of *Ang Ladlad vs. Comelec*,<sup>43</sup> the Supreme Court held:

**"At bottom, what our non-establishment clause calls for is 'government neutrality in religious matters.' Clearly, 'governmental reliance on religious justification is inconsistent with this policy of neutrality.' We thus find that it was grave violation of the non-establishment clause for**



**the COMELEC to utilize the Bible and the Koran to justify the exclusion of *Ang Ladlad*.”<sup>44</sup>**

Maintaining the illegality of abortion would violate the principle of separation of church and state and would be tantamount to establishment of religion—allowing certain religious groups to influence our laws, governance, and impose their beliefs on the entire Philippine population.

## **B. Secular Standards**

As has been held by the Supreme Court in the *Estrada vs. Escritor*<sup>45</sup> and *Ang Ladlad vs. Comelec*<sup>46</sup> cases, our laws and system of governance should be based on secular morality and not religious morality.

## **C. The Right to Privacy in Personal Decisions Relating to Marriage, Procreation, Contraception, Abortion, Sexual and Family Relationships, Child Rearing, Education, and Medical Care**

The constitutionally protected right to privacy covers matters related to marriage, procreation, contraception, abortion, sexual and family relationships, child rearing, education, and decisions about medical care, among others.

In the 1965 United States Supreme Court case of *Griswold v. Connecticut*,<sup>47</sup> Justice Douglas, writing for the majority, found that, **although there was no specifically guaranteed right to privacy guaranteed by the American Bill of Rights, the existing protections have penumbras of privacy emanating from them where privacy is protected from governmental intrusion.**<sup>48</sup> The Supreme Court invalidated the Connecticut laws prohibiting the use of contraceptives under the right to privacy of a married couple.

In the 1972 US Supreme Court case of *Eisenstadt v. Baird*, the Supreme Court invalidated the law prohibiting the distribution of contraceptives to unmarried persons under the Equal Protection Clause, holding that "whatever the rights of the individual to access to contraceptives may be, the rights must be the same for the unmarried and the married alike." The Supreme Court held:

**“X x x If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”**

In the 1977 case of *Carey v. Population Services International*,<sup>49</sup> the Supreme Court declared unconstitutional a New York statute prohibiting sale or distribution of contraceptives to a minor under 16; for anyone other than a licensed pharmacist to distribute contraceptives to persons 16 or over; and for



anyone, including licensed pharmacists, to advertise or display contraceptives. The Supreme Court held:

“Although “[t]he Constitution does not explicitly mention any right of privacy,” the Court has recognized that **one aspect of the “liberty” protected by the Due Process Clause of the Fourteenth Amendment is “a right of personal privacy, or a guarantee of certain areas or zones of privacy.”** *Roe v. Wade*, 410 U.S. 113, 152 (1973). X x x While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among [431 U.S. 678, 685] the decisions that an individual may make without unjustified government interference are personal decisions “relating to marriage, *Loving v. Virginia*, 388 U.S. 1, 12 (1967); procreation, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 -542 (1942); contraception, *Eisenstadt v. Baird*, 405 U.S., at 453 -454; *id.*, at 460, 463-465 (WHITE, J., concurring in result); family relationships, *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); and child rearing and education, *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, [262 U.S. 390, 399 (1923)].” *Roe v. Wade*, *supra*, at 152-153. See also *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639 -640 (1974).

The decision whether or not to beget or bear a child is at the very heart of this cluster of constitutionally protected choices. That decision holds a particularly important place in the history of the right of privacy, a right first explicitly recognized in an opinion holding unconstitutional a statute prohibiting the use of contraceptives, *Griswold v. Connecticut*, *supra*, and most prominently vindicated in recent years in the contexts of contraception, *Griswold v. Connecticut*, *supra*; *Eisenstadt v. Baird*, *supra*; and **abortion, *Roe v. Wade***, *supra*; *Doe v. Bolton*, 410 U.S. 179 (1973); *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976). [Emphasis supplied]

### III.

X x x Similarly, *Roe v. Wade*, held that the Constitution protects “a woman's decision whether or not to terminate her pregnancy.” 410 U.S., at 153 (emphasis added). See also *Whalen v. Roe*, *supra*, at 599-600, and n. 26. X x x Read in light of its progeny, the teaching of *Griswold* is that the Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the State.”

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US833, the Court stated that it is “a promise of the Constitution that there is a realm of personal liberty which the government may not enter.” The “Constitution places limits on a State’s right to interfere with a person’s most basic decisions about family and parenthood.”<sup>50</sup> The Court recognized that “[o]ur



**obligation is to define the liberty of all not to mandate our own moral code.**<sup>51</sup>

In U.S. jurisprudence, the right to privacy has also been extended to cases involving sexual privacy. Under *Lawrence v. Texas*, for instance, the court held that it is unconstitutional to prohibit homosexual sex, because it is private, consensual conduct.<sup>52</sup>

In the United Kingdom case of *Smeaton v. Secretary of State for Health*, the court ruled that:

“Government’s responsibility is to ensure the medical and pharmaceutical safety of products offered in the market place and the appropriate provision of suitable guidance and advice. Beyond that, as it seems to me, in this as in other areas of medical ethics, **respect for the personal autonomy which our law has now come to recognize demands that the choice be left to the individual.** x x x”<sup>53</sup>

### **III. International Standards and Philippine International Obligations**

#### **International Standards**

As early as 2003, the World Health Organization (WHO) issued its “Safe Abortion: Technical and Policy Guidance for Health Systems” (WHO Safe Abortion Guidance). In 2012, the updated version of the WHO Safe Abortion Guidance was released setting forth clinical and policy guidance and international human rights standards on abortion.<sup>54</sup> The WHO highlighted that the removal of legal restrictions on abortion results in reduced maternal mortality due to unsafe abortion complications and an overall reduction of maternal mortality.<sup>55</sup>

#### **Philippine International Obligations**

The Committee on the Elimination of Discrimination against Women (CEDAW Committee), the United Nations (UN) treaty monitoring body tasked to monitor a state’s compliance with CEDAW, recognized that restrictive abortion laws result in a violation of women’s right to life,<sup>56</sup> lack of access to contraceptive methods and family planning services, as well as restrictive abortion laws, tend to coincide with the prevalence of unsafe abortions that contributes to high rates of maternal mortality.<sup>57</sup>

Other treaty monitoring bodies such as the Human Rights Committee and the Committee on the Rights of the Child have regarded high maternal mortality rates resulting from unsafe abortion as a violation of women’s rights to health and life.<sup>58</sup>

The UN treaty monitoring bodies have recommended to the Philippines to allow abortion on various grounds and ensure access to safe and legal abortion and post-abortion care to reduce maternal mortality and morbidity.



## A. CEDAW Committee

In its August 2006 Concluding Comments on the Philippines, the CEDAW Committee recommended for the Philippines to “consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and provide them with access to quality services for the management of complications arising from unsafe abortions”<sup>59</sup>

In May 2015, the CEDAW Committee released its report on its inquiry<sup>60</sup> on reproductive rights and recommended the following to the Philippine government:

- provide women access to quality post-abortion care in all public health facilities including by reintroducing misoprostol to reduce maternal mortality and morbidity rates<sup>61</sup>
- ensure that women experiencing abortion-related complications are not reported to law enforcement authorities, threatened with arrest, or subjected to physical or verbal abuse, discrimination, stigma, delays in access to or denial of care<sup>62</sup>
- 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, as well as adopt necessary procedural rules to guarantee effective access to legal abortion.”<sup>63</sup>

In the 2016 CEDAW Committee Concluding Observations, the CEDAW Committee recommended for the Philippines to “fully implement, without delay, all the recommendations issued by the Committee in 2015 in the report on its inquiry,<sup>64</sup> including on access to modern contraceptives and legalization of abortion under certain circumstances.”

In 2009, the CEDAW Committee issued recommendations to Peru to decriminalize abortion for rape victims in relation to the LC vs Peru communication involving LC who was only 13 when she became pregnant after being sexually abused by a 34-year-old man.

## B. Committee on Economic, Social, and Cultural Rights

In 2016, the CESCR Committee<sup>65</sup> stated:

**“52. The Committee recommends that the State party take all measures necessary to reduce the incidence of unsafe abortion and maternal mortality, including by amending its legislation on the prohibition of abortion to legalize abortion in certain circumstances. X x x The Committee draws the attention of the State party to its general comment No. 22 (2016) on the right to sexual and reproductive health.”**



### C. Human Rights Committee

In 2012, the Human Rights Committee stated:<sup>66</sup>

“13. X x x

**The State party should review its legislation with a view to making provision for exceptions to the prohibition of abortion, such as protection of life or health of the mother, and pregnancy resulting from rape or incest, in order to prevent women from having to seek clandestine harmful abortions. X x x”**

In the communication *K. Llantoy v. Peru*<sup>67</sup> filed with the Human Rights Committee, a 17-year old woman was prevented from terminating her risky pregnancy of an anencephalic fetus—a fetus with a partial brain.<sup>68</sup> In KL’s case, the fetus died five days after birth and KL fell into a deep depression.<sup>69</sup> The finding of the Human Rights Committee was: forcing her to carry her pregnancy to a term constituted cruel and inhuman treatment in violation of article 7 of the ICCPR,<sup>70</sup> violated her right to privacy under article 17;<sup>71</sup> and violated her right to receive the special care she required as an adolescent girl from the health system under article 24.<sup>72</sup> The State party was recommended to provide an effective remedy to the author, including compensation, and to adopt measures to prevent similar violations from occurring in the future.<sup>73</sup>

### D. Committee against Torture

In 2016, the Committee against Torture<sup>74</sup> stated:

“40. **The State party should:**

**X x x**

**(b) Review its legislation in order to allow for legal exceptions to the prohibition of abortions in specific circumstances such as when the pregnancy endangers the life or health of the woman, when it is the result of rape or incest and in cases of foetal impairment;**

**X x x**

**(d) Develop a confidential complaints mechanism for women subjected to discrimination, harassment or ill-treatment while seeking post-abortion or post-pregnancy treatment or other reproductive health services;**

**(e) Investigate, prevent and punish all incidents of ill-treatment of**



**women seeking post-pregnancy care in government hospitals and provide effective legal remedies to victims.”**

Not allowing abortion on broad and expressed grounds in the Philippines is a violation of our treaty obligations under CEDAW, ICESCR, ICCPR, CRC, and CAT. Having ratified these international conventions, the Philippines must fulfill its international treaty obligations to make abortion safe and legal.

**IV. The Philippine restrictive law on abortion endangers the lives and health of Filipino women; The Philippines needs to urgently provide access to safe and legal abortion and timely access to quality post-abortion care**

The Philippine penal law on abortion is one of the most restrictive in the world—penalizing the woman who undergoes abortion and the person assisting the woman without providing clear exceptions even when the woman’s life or health is in danger, the pregnancy is the result of rape or incest, or fetal impairment.<sup>75</sup> While a liberal interpretation of the law would allow therapeutic abortion to save a woman’s life and other justifiable grounds such as rape, incest, and fetal impairment and although Philippine laws allow access to humane, nonjudgmental, compassionate post-abortion care,<sup>76</sup> abortion is highly stigmatized.

The illegality of abortion in the Philippines has not stopped women from making personal decisions to terminate their pregnancies, it merely drives women to resort to clandestine and unsafe abortion methods unnecessarily endangering their health and lives. The restrictive abortion law has also been used by health providers to unlawfully deny post-abortion care to women and to threaten women with prosecution.

Due to the restrictive abortion law and stigma, 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 arrest and prosecution.<sup>77</sup>

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

**Recommended Revision of Philippine Abortion Law**

The revision of the Philippine colonial 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 or jurisprudence allowing abortion on broad grounds including upon request of the woman,



in cases of rape, risks to the life and health of the woman, serious fetal impairment, and all other cases where women undergo abortion.

### **Conclusion**

Providing access to safe and legal abortion and post-abortion care, *inter alia*, will greatly lower maternal mortality and morbidity related to unsafe abortion and in meeting the country's commitment to the Sustainable Development Goals to decrease the maternal mortality ratio to two-thirds of 2010 levels under Target 3.<sup>78</sup>

Access to safe and legal abortion and to quality post-abortion care are fundamental women's rights. The primary causes of mortality and morbidity from unsafe abortion complications are not blood loss, infection, uterine perforation, and acute renal failure, rather it is the indifference and contempt toward women who bear the brunt of the Philippine colonial law on abortion.

Public officials must uphold secular standards in Philippine law, not religious standards and work towards women's access to safe and legal abortion and quality post-abortion care as a means to achieve women's rights to equality and non-discrimination and uphold women's right to health and life.\*\*\*



<sup>1</sup> CONST. (1987), art. II, sec. 12 (Phil.) [hereinafter PHIL. CONST.].

<sup>2</sup> JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 84 (2009), at 118.

<sup>3</sup> PHIL. CONST., Art. II, § 14.

<sup>4</sup> Williams, Glanville, The fetus and the “right to life” Cambridge law J 1994; 33:71-78, at 78; see R.J. Cook, B.M. Dickens, Human Rights and Abortion Laws, International Journal of Gynecology & Obstetrics 65 (1999), at 85, citing Christian Lawyers Association of South Africa v. The Minister of Health, Case No. 16291/97 (10 July 1998).

<sup>5</sup>2 SCRA 801 [1961]

<sup>6</sup>2 SCRA 801 [1961]

<sup>7</sup> R. v. Sullivan, 1 S.C.R. 489, available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/733/index.do>

<sup>8</sup> Winnipeg Child and Family Services (NW Area) v. G.(D.F.) (1997) 152 D.L.R. (4th) 304, available at <http://csc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1562/index.do>.

<sup>9</sup> See Center for Reproductive Rights, The Right to Life Toolkit; See also the letter of EnGendeRights and Jihan Jacob addressed to the Department of Justice, August 1, 2014, entitled “Re: Reinstatement of the provisions on ‘justified abortions’ in the Draft Criminal Code of Crimes xxx.”

<sup>10</sup> A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY] (2011), art. II available at <http://www.mkab.hu/download.php?d=65>.

<sup>11</sup> Law No. 79 of Dec. 17, 1992 (Hu.), translated in 44 IDHL 249-50 (1993).

<sup>12</sup> Law on the Protection of Fetal Life (Act LXXIX of 1992) (Hung.) available at <http://reproductiverights.org/en/world-abortion-laws/hungarys-abortion-provisions>.

<sup>13</sup> CONST. (1949), title IV, art. 21 (Costa Rica) available at

[http://www.costaricalaw.com/constitutional\\_law/constitution\\_en\\_04.php](http://www.costaricalaw.com/constitutional_law/constitution_en_04.php).

<sup>14</sup> Código Penal [CP] (Penal Code) No. 4573, art. 121, May 4, 1970 (Costa Rica).

<sup>15</sup> Tribunal Supremo de Costa Rica, Sentencia No. 2004-02792

<sup>16</sup> Christian Lawyers Association of South Africa v. The Minister of Health, Case No. 16291/97 (10 July 1998), available at <http://www.globalhealthrights.org/wp-content/uploads/2013/01/HC-2004-Christian-Lawyers-Association-v.-Minister-of-Health.pdf>

<sup>17</sup> IR. CONST., 1937, art. 40 (3.3), available at

[https://www.constitution.ie/Documents/Bhunreacht\\_na\\_hEireann\\_web.pdf](https://www.constitution.ie/Documents/Bhunreacht_na_hEireann_web.pdf).

<sup>18</sup> Attorney General v. X and Others, [1992] 1 I/R/ 846P (Ir.).

<sup>19</sup> Protection of Life During Pregnancy Act (Act No. 35/2013) (Ir.) available at

<http://www.irishstatutebook.ie/2013/en/act/pub/0035/index.html>.

<sup>20</sup> Nález Ústavného súdu Slovenskej republiky, sp. zn. [Decision of the Constitutional Court of the Slovak Republic, No.] PL. ÚS 12/01-297 (Dec. 4, 2007) (unofficial translation on file with the Center for Reproductive Rights).

<sup>21</sup> CONST. (1997), art. 38 (Pol.) available at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>. s

<sup>22</sup> Act on Family Planning, Human Embryo Protection, and Conditions of Legal Pregnancy Termination (1993) (Pol.) available at [http://www.federa.org.pl/dokumenty\\_pdf/english/AbortionLaw1993.doc](http://www.federa.org.pl/dokumenty_pdf/english/AbortionLaw1993.doc)

<sup>23</sup> *Id.*

<sup>24</sup> CONST., art. 26 (2) (2010) (Kenya) available at

<https://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf> [hereinafter CONSTITUTION OF KENYA].

<sup>25</sup> *Id.*, art. 26 (4).

<sup>26</sup> Women’s Heath Journal, Abortion law challenged in constitutional court, Jan.-Mar. 2005, available at [http://findarticles.com/p/articles/mi\\_m0MDX/is\\_1\\_2005/ai\\_n17209597](http://findarticles.com/p/articles/mi_m0MDX/is_1_2005/ai_n17209597).

<sup>27</sup> Women’s Heath Journal, Abortion law challenged in constitutional court, Jan.-Mar. 2005, available at [http://findarticles.com/p/articles/mi\\_m0MDX/is\\_1\\_2005/ai\\_n17209597](http://findarticles.com/p/articles/mi_m0MDX/is_1_2005/ai_n17209597).

<sup>28</sup> Colombian Constitutional Court Decision C-355/2006; Women’s Link Worldwide, Colombia’s highest court rules in favor of easing one of the world’s most restrictive abortion laws, available at [http://www.womenslinkworldwide.org/pdf\\_press/press\\_release\\_2006510\\_col.pdf](http://www.womenslinkworldwide.org/pdf_press/press_release_2006510_col.pdf).

<sup>29</sup> Convention of the Protection of Human Rights and Fundamental Freedoms, art. 2(1), adopted November 4, 1950, 213 U.N.T.S. 222, Eur. T.S. No. 5 (entered into force Sept. 3, 1953).

<sup>30</sup> *Paton v. United Kingdom*, App. No. 8416/79, paragraphs 7-9, European Commission of Human Rights, Dec. & Rep. 244 (1980).

<sup>31</sup> Center for Reproductive Rights, Safe and Legal Abortion is a Woman’s Human Right, 2005.



- <sup>32</sup> Vo. V. France, App. No. 53924/400, Eur. Ct. H.R., Paragraph 80 (2004).
- <sup>33</sup> American Convention on Human Rights, *adopted* Nov. 22, 1969, O.A.S.T.S. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (*entered into force* July 18, 1978).
- <sup>34</sup> Baby Boy v. United States, Resolution 23/81, Case 2141, Inter-Am. Comm'n H.R., Resol. No. 23/81, OEA/Ser.L/V/II.54, doc. 9 rev. 1, paragraph 18(b) (March 6, 1981).
- <sup>35</sup> Draft African Charter on Human and People's Rights, art 17, O.A.U. Doc. CAB/LEG/67/1 (1979).
- <sup>36</sup> African Charter on Human and People's Rights, *adopted* June 27, 1981, art. 4, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M 58 (1982).
- <sup>37</sup> Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, *adopted* September 13, 2000, art. 14, O.A.U. Doc CAB/LEG 66.6 (*entered into force* November 25, 2005).
- <sup>38</sup> Phil. Const (1987), art. 2, § 6 ("Sec. 6: The separation of Church and State shall be inviolable.")
- <sup>39</sup> See Board of Education v. Everson, 330 U.S. 1, 15-16 (1946) where the Court stated that "[n]either a State nor the Federal Government can set up a church...[or] pass laws which aid one religion, aid all religions, or prefer one religion over another...Neither...openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'"
- <sup>40</sup> See Lee v. Weisman, 505 U.S. 577, 587 (1992). In *Lee*, the U.S. Supreme Court invalidated the performance of a nonsectarian prayer by clergy at a public school's graduation ceremony; see also *Santa Fe*, 530 U.S. at 310-312 where the court invalidated student-initiated and student-led prayers at football games because they coerce students to participate in religious observances; In *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996), the Seventh Circuit followed *Lee* in striking down prison programs where inmates' sentences were affected by participation in substance abuse programs that stressed religion. It was held that the program runs "afoul of the prohibition against the state's favoring religion in general over non-religion."; see Center for Reproductive Rights (CRR), Petition for Certiorari in the U.S. Supreme Court case of *Greenville Women's Clinic v. Comm'r, S.C. Dep't of Health & Envtl. Control*.
- <sup>41</sup> A.M. No. P-02-1651. August 4, 2003
- <sup>42</sup> GOROSPE, R., Constitutional Law: Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Vol. I (2006), p. 1007
- <sup>43</sup> Ang Ladlad LGBT Party vs. COMELEC, G.R. No. 190582 [*Ang Ladlad vs. COMELEC*].
- <sup>44</sup> Ang Ladlad vs. COMELEC.
- <sup>45</sup> Estrada vs. Escritor, A.M. No. P-02-1651, 4 August 2003, 408 SCRA [*Estrada vs. Escritor*]
- <sup>46</sup> Ang Ladlad vs. COMELEC.
- <sup>47</sup> *Id.*
- <sup>48</sup> *Id.* at 484.
- <sup>49</sup> *Carey v. Population Services International*, 431 U.S. 678 (1977).
- <sup>50</sup> *Planned Parenthood v. Casey*.
- <sup>51</sup> *Id.*, at 850.
- <sup>52</sup> *Lawrence v. Texas*, 539 U.S. 558, 584 (2003)
- <sup>53</sup> See England and Wales High Court (Administrative Court), *Smeaton v Secretary of State for Health* [2002] EWHC 610 (Admin),(18th April, 2002) at at 69, 70.
- <sup>54</sup> WHO Safe Abortion Guidance, 2012.
- <sup>55</sup> *Id.*, page 23.
- <sup>56</sup> See *Bringing Rights To Bear*, at 145 [hereinafter *Bringing Rights to Bear*]. See, e.g., Belize, U.N. Doc. A/54/38, 56 (July. 1, 1999); Chile, U.N. Doc. A/54/38, 228 (July 9, 1999); Colombia, U.N. Doc. A/54/38, 393 (Feb. 4, 1999); Dominican Republic, U.N. Doc. A/53/38, 337 (May 14, 1998); Paraguay, U.N. Doc. A/51/38, 131 (May 9, 1996). *Bringing Rights To Bear*, at 146; See, e.g., Antigua and Barbuda, U.N. Doc. A/52/38/Re v.1, Part II, 258 (Aug. 12, 1997); Chile, U.N. Doc. A/54/38, 209, 228 (July 9, 1999); Georgia, U.N. Doc. A/54/38, 111 (Jan. 7, 1999); Greece, U.N. Doc. A/54/38, 207 (Feb. 1, 1999); Guyana, U.N. Doc. A/50/38, 621 (May 31, 1995); Hungary, U.N. Doc. A/51/38, 254 (May 9, 1996); Lithuania, U.N. Doc. A/55/38, 158 (June 6, 2000); Mauritius, U.N. Doc. A/50/38, 196 (June 31, 1995); Mongolia, U.N. Doc. A/56/38, 273 (Feb. 2, 2001); Paraguay, U.N. Doc. A/51/38, 131 (May 9, 1996); *Bringing Rights To Bear*, at 146; See, e.g., Antigua and Barbuda, U.N. Doc. A/52/38/Re v.1, Part II, 258 (Aug. 12, 1997); Chile, U.N. Doc. A/54/38, 209, 228 (July 9, 1999); Georgia, U.N. Doc. A/54/38, 111 (Jan. 7, 1999); Greece, U.N. Doc. A/54/38, 207 (Feb. 1, 1999); Guyana, U.N. Doc. A/50/38, 621 (May 31, 1995); Hungary, U.N. Doc. A/51/38, 254 (May 9, 1996); Lithuania, U.N. Doc. A/55/38, 158 (June 6, 2000); Mauritius, U.N. Doc. A/50/38, 196 (June 31, 1995); Mongolia, U.N. Doc. A/56/38, 273 (Feb. 2, 2001); Paraguay, U.N. Doc. A/51/38, 131 (May 9, 1996).



<sup>57</sup> Bringing Rights To Bear, at 146. See, e.g. Antigua and Barbuda, U.N. Doc. A/52/38/Re v.1, Part II, 258 (Aug. 12, 1997); Chile, U.N. Doc. A/54/38, 209, 228 (July 9, 1999); Georgia, U.N. Doc. A/54/38, 111 (July 2, 1999); Greece, U.N. Doc. A/54/38, 207 (Feb. 1, 1999); Guyana, U.N. Doc. A/50/38, 621 (May 31, 1995); Hungary, U.N. Doc. A/51/38, 254 (May 9, 1996); Lithuania, U.N. Doc. A/55/38, 158 (June 16, 2000); Mauritius, U.N. Doc. A/50/38, 196 (May 31, 1995); Mongolia, U.N. Doc. A/56/38, 273 (June 2, 2001); Paraguay, U.N. Doc. A/51/38, 131 (May 9, 1996); Ukraine, U.N. Doc. A/51/38, 287 (May 9, 1996); Venezuela, U.N. Doc. A/52/38/Rev.1, 236 (Aug. 12, 1997).

<sup>58</sup> See Bringing Rights To Bear, at 156.

<sup>59</sup> CEDAW Committee, *Concluding Observations: Philippines*, para. 28. See also, CEDAW Committee, *General Recommendation No 33*, paragraph 47 (stating that laws which "[criminalize] behaviors that can only be performed by women such as abortion" are discriminatory), and CEDAW Committee, *General Recommendation No 24*, para. 31(c) (stating that "when possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion").

<sup>60</sup> CEDAW/C/OP.8/PHL/1, paras 49 to 52.

<sup>61</sup> Inquiry Report, para. 52(v).

<sup>62</sup> *Id.*

<sup>63</sup> Inquiry Report, para. 51 (v); Inquiry Report, para. 52(v) continued: "adopt a patient privacy policy ensuring doctor-patient confidentiality when treating women for post-abortion complications; ensure effective reporting procedures, available for women in need of post-abortion care to complain about abuse and discrimination, without fear of retaliation; and conduct research on the incidence of unsafe abortions in the State party and their impact on women's health and maternal mortality and morbidity, and make such information available to the Committee in its next periodic report."

<sup>64</sup> CEDAW/C/OP.8/PHL/1, paras 49 to 52.

<sup>65</sup> CESCR Concluding observations E/C.12/PHL/CO/5-6, 26 October 2016, para. 51-52.

<sup>66</sup> Human Rights Committee Concluding observations CCPR/C/PHL/CO/4, 13 November 2012.

<sup>67</sup> K. Llantoy v. Peru, Case No. 1553/2003, U.N. Doc. CCPR/C/85/D/ 1153/2003 (2005).

<sup>68</sup> *Id.* 2.1.

<sup>69</sup> *Id.* 2.5 & 2.6.

<sup>70</sup> *Id.* 6.3.

<sup>71</sup> *Id.* 6.4.

<sup>72</sup> *Id.* 6.5.

<sup>73</sup> K. Llantoy. v. Peru, Case No. 1553/2003, U.N. Doc. CCPR/C/85/D/ 1153/2003, 8 (2005).

<sup>74</sup> Committee against Torture Concluding observations CATCAT/C/PHL/CO/3, 2 June 2016.

<sup>75</sup> REVISED PENAL CODE, arts. 258-59, penalized from 6 months 1 day to 6 years; See, Pacifico Agabin, *The Legal Perspective on Abortion*, J. OF REPROD. HEALTH, RTS. & ETHICS 2 (1995); The Midwifery Act, Medical Act and Pharmaceutical Act permit the revocation or suspension of the licenses of any practitioner who performs abortions or provides abortifacients.

<sup>76</sup> The Responsible Parenthood and Reproductive Health Law (RPRH Law or Republic Act 10354) and Magna Carta of Women (RA 9710).

<sup>77</sup> EnGendeRights interviews from Quezon City and Caloocan residents, June 2016; Center for Reproductive Rights and EnGendeRights Focus Group Discussion on Post-Abortion Care, May 27, 2014.

<sup>78</sup> The global commitment is to reduce the maternal mortality ratio to less than 70 per 100,000 births.



### **About the Author**

Clara Rita “Claire” Padilla is the founder and executive director of EnGendeRights. She is a widely published feminist lawyer and human rights activist.

She has worked in the Philippines and in New York. In New York, she worked as an International Visiting Legal Fellow at the Center for Reproductive Rights from July 2002 through July 2003.

She holds a Juris Doctor degree from the Ateneo de Manila University and has been practicing law for over 23 years working in the fields of gender, gender-based violence, sexual and reproductive health and rights, and sexual orientation, gender identity and expression (SOGIE).

She has extensive experience in training, litigation, research, writing, and policy advocacy. After graduating from law school, she has dedicated her life in changing laws, policies, and practices that are discriminatory against women. As an advocate on reproductive rights, she has been quoted in various articles including the New York Times (Oct. 26, 2009).

She drafted the very first version of the Reproductive Health Care bill in 2001 when it first carried the name “Reproductive Health Care Law”. She has also proposed language for draft bills and ordinances that have been passed into law including the Anti-Sexual Harassment Act; the Expanded Anti-Trafficking Law or RA 10364; the Quezon City Gender-Fair City prohibiting discrimination based on SOGIE and providing affirmative acts passed in 2014; the ordinance creating the Quezon City Protection Center for victim-survivors of gender-based violence and abuse passed in 2012; the first comprehensive anti-discrimination bill prohibiting ethnic, racial or religious profiling to prohibit discrimination based on ethnicity, race, religion or belief, sex, gender, sexual orientation, gender identity, language, disability, or other status which was adopted on third reading by the Senate in December 2011, among others. She was also one of the drafters of the DOH AO 2016-0041 on Prevention and Management of Abortion Complications.

She has won several Supreme Court en banc cases including the 2010 landmark case of *Ang Ladlad vs. COMELEC* (G.R. No. 190582) where she and several other lawyers won their petition for certiorari with the Supreme Court granting the accreditation of the lesbian, gay, bisexual, and transgender (LGBT) party-list organization that was originally denied accreditation by the Commission on Elections (COMELEC). She was the lead counsel and drafter of the Comment-In-Intervention and Memorandum of the intervenors Catholics for RH et al in support of the Reproductive Health Law (RH Law) wherein their contribution was crucial in winning the constitutionality of the RH Law in an en banc decision of the Supreme Court. Another Supreme Court en banc case she won was the landmark case of *Pioneer Texturizing Corporation vs. National Labor Relations Commission and Lourdes de Jesus*. In the Pioneer case, she successfully argued that illegally dismissed employees should be automatically reinstated at work or in the payroll without need of a writ of execution with the Supreme Court overturning its previous doctrine laid down in *Maranaw vs. NLRC*.

She spearheaded the submission of the request for inquiry on Manila EO 003 (Series of 2000) to the CEDAW Committee which was a collaborative effort of the Philippine-based Task Force



CEDAW Inquiry, the New York-based Center for Reproductive Rights, and the Malaysia-based International Women's Rights Action Watch-Asia Pacific (IWRAP-AP) where the Philippines was found to have committed reproductive rights violations. She has made oral interventions before the CEDAW Committee in New York (2006) and in Geneva (2016) and before the Human Rights Council in Geneva (2008).

She advocated for the adoption of the Optional Protocol to the International Covenant on Economic Social Cultural Rights (OP ICESCR) in Geneva which was finally adopted in December 2008. She represented the Women's Caucus on the ASEAN Human Rights Body that advocated for a strong promotion and protection mechanism in the ASEAN Intergovernmental Commission on Human Rights (AICHR) that was eventually launched in October 2009. She was part of the OutRight Action International (OutRight) Advocacy Week team that met with UN officials and diplomats of various embassies in New York (2016).

She has been conducting trainings in different parts of the Philippines and around the world such as on the Optional Protocol to CEDAW for Cambodian government officials and UN Country Team in Cambodia (Cambodia, 2011, sponsored by UN Women), NGO-GO dialogues on CEDAW at an ASEAN High-Level Consultation Meeting (Vientiane, Lao PDR, 2008, sponsored by UN Women) and NGOs (East London, South Africa, 2012; Bogor, Indonesia, 2012; Kuala Lumpur, Malaysia, 2008, sponsored by the International Service for Human Rights (ISHR), Forum-Asia, and IWRAP-AP; Jakarta, Indonesia, 2007); on the Human Rights Committee Gender Discrimination Cases (Nepal, 2007); on sexual orientation, gender identity, and expression (SOGIE) (APCRSH, Hyderabad, India, 2007). She has represented Asia in several international panel discussions, *inter alia*, the problem of criminalization of sexual rights (Women Deliver Conference, Copenhagen, Denmark, 2016, panel sponsored by Amnesty International) and at a side event during the Commission on the Status of Women on economic, social, and cultural rights and the Beijing Declaration (New York, 2015, panel sponsored by ESCR-Net). She was also a panelist on domestic and family violence based on SOGIE at the ILGA World Conference (Bangkok, 2016, panel sponsored by OutRight). She has been a guest presenter for meetings of international legal experts (New York, 2005; Nairobi, Kenya, 2001 where the other participants/presenters included Navanethem Pillay, then President of the International Criminal Tribunal for Rwanda and former High Commissioner for Human Rights and Professor Catharine MacKinnon, sponsored by Equality Now). She has also acted as a speaker in the two AICHR ASEAN Maternal Health Conferences (2011, 2014) and participated in various international conferences and meetings on reproductive rights (e.g., Global Roundtable ICPD 10<sup>th</sup> Anniversary, London, 2004; International Consortium on Emergency Contraception (ICEC), New York, 2002) and global trainings of trainers on the Optional Protocol to CEDAW, *inter alia*, sponsored by IWRAP-AP (Warsaw, Poland, 2008).

She has been a speaker in several trainings for the Commission on Human Rights (CHR) staff on CEDAW Committee jurisprudence (September and December 2015; 2016) and continuing challenges on reproductive health (2017 co-sponsored by the Asia Pacific Forum and the CHR).



She was a speaker on sexual and reproductive health and rights for the 11th IBP National Convention in Cagayan de Oro (2007) with about 1200 lawyers, prosecutors, and judges. She was a speaker for the IBP Eastern Visayas with more than 700 lawyers and judges (2006) on the “Anti-Violence Against Women and Their Children Act of 2004” and “Gender Issues in Legal Ethics”.

She facilitated discussions on gender equality and CEDAW for the justices of the Philippine courts and trainings on sexual harassment for members of the committee on decorum and investigation of the Philippine judiciary in 2008 (a project under the European Commission).

She also drafted the following:

- A comparative study of gender-based violence (GBV) and HIV/AIDS legislation in ASEAN member countries and a model legislation addressing the link between GBV and HIV/AIDS, Philippine Commission on Women, 2009;
- Country Analysis of the AIDS, Gender and Age Situation and Response in the Philippines, Gertrudes Libang, Gladys Malayang, and Clara Rita Padilla, 2010 (co-written), available at [http://www.unicef.org/philippines/Engenderights\\_Final\(1\).pdf](http://www.unicef.org/philippines/Engenderights_Final(1).pdf);
- A Review of the Beijing Platform for Action Accountability Mechanisms, APWLD, November 2014
- Outcome Report and Background Paper, Asia Pacific Roundtable: International and Regional Standard setting to Eliminate Violence against Women, Bali, Indonesia, APWLD, 2013
- 2016 Universal Periodic Review submission of the Sexuality Rights Network
- Review of The Forum et al. consortium project entitled, “Sustained National and Local Advocacy for Reproductive Health in the Philippines” funded by the Bill and Melinda Gates Foundation (October through December 2016)



## About EnGendeRights

EnGendeRights has done groundbreaking work in raising Filipino women's concerns to the international level especially the United Nations mechanisms.

- Shadow Report to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and Oral Statements
  - August 2006 for the 36th Session done in collaboration with the Center for Reproductive Rights (CRR), Reproductive Rights Resource Group, Philippines (3RG-Phils.), and Health Development and Initiatives Institute (HDII). EnGendeRights executive director Clara Rita Padilla orally presented highlights of the Shadow Report during the CEDAW-NGO dialogue in New York. Recommendations included access to the full range contraceptive methods, access to safe and legal abortion, sexuality education for adolescents, skills and education for women in prostitution, legalization of divorce and repeal of discriminatory Muslim Code provisions.
  - June 2016 for the 64<sup>th</sup> Session:
    - EnGendeRights & OutRight International submission (representing a total of 34 organizations) on Lesbian, Bisexual, Transgender Rights
    - EnGendeRights individual submission on VAW, Marriage, and Family Relations
      - EnGendeRights executive director Clara Rita Padilla made an oral statement before the CEDAW Committee in Geneva
- Request for Inquiry to the CEDAW Committee
  - EnGendeRights as part of the Task Force CEDAW Inquiry together with the CRR and the International Women's Rights Action Watch, Asia Pacific (IWRAP-AP) submitted a Request for Inquiry under the Optional Protocol to CEDAW in 2008 requesting the CEDAW experts to visit the Philippines to investigate grave and systematic reproductive rights violations resulting from the restriction on contraceptives under EO 003 implemented in Manila City since 2000. CEDAW experts Pramila Patten and Violeta Neubauer conducted the on-site investigation in Manila in November 2012 investigating national and local government officials including heads of hospitals and clinics, representatives of the DOH, DILG, Manila City, among others. At that time, it was only the 2nd inquiry that has been conducted by the CEDAW Committee throughout the whole world.

In May 2015, the CEDAW Committee released its report on its inquiry (CEDAW/C/OP.8/PHL/1, paras 49 to 52) finding the government accountable for grave and systematic reproductive rights violations and recommended, *inter alia*, to the Philippine government to:

- provide women access to quality post-abortion care in all public health facilities including by reintroducing misoprostol to reduce maternal mortality and morbidity rates
- ensure that women experiencing abortion-related complications are not reported to law enforcement authorities, threatened with arrest, or subjected to physical or verbal abuse, discrimination, stigma, delays in access to or denial of care



- 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, as well as adopt necessary procedural rules to guarantee effective access to legal abortion.”

**EnGendeRights publications include:**

- Access to Safe and Legal Abortion and Post-Abortion Care Can Save Filipino Women's Lives (Policy Paper & Fact Sheets 2016)
- What You Should Know When Assisting Rape Survivors (2015)
- What You Should Know When Assisting Violence against Women Survivors (2015)
- The Constitutionality of a Reproductive Health Care Law (2012)
- Ensuring Adolescent Right to Reproductive Health through an RH Law (2012)
- Reasons Why We Need the RH Law (2010)
- Primer on the Inquiry Procedure under the OP CEDAW (2010)
- Advancing Reproductive Rights Using the Inquiry Procedure of the OP CEDAW and the UN Special Procedures: The Philippine Experience (2010)
- Stop VAW & Stop Rape flyers, BPO & Temporary and Permanent Protection Order flyers (2010)
- Engendering Women's Rights: A Paralegal Manual" on gender-based violence (2007)

**EnGendeRights press releases and position papers include:**

- EnGendeRights Calls for the Repeal of the Prostitution Law Penalizing Women in Prostitution (March 2012);
- Proposal to Include Misoprostol on the Philippine National Drug Formulary and the FDA Drug Registry for Postpartum Hemorrhage Prevention (July 2011)
- Calls to junk congressional bills restricting access to contraceptives and increasing penalties on abortion (May 2011, December 2006)
- Upholding Women's Right to Levonorgestrel as Emergency Contraceptive Pill submitted to the Bureau of Food and Drugs (BFAD) (March 2007);
- Marital Infidelity does Not Have a Place in Our Penal Laws (November 2007)
- The right to education of an adolescent who induced abortion (2007)



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EnGendeRights, Inc.  
Asserting Gender Equality

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