

Life, Liberty, and the Pursuit of Local Support: Evaluating the Constitutionality and Human Rights Implications of Impeding the Full Implementation of the Responsible Parenthood and Reproductive Health Act of 2012 by Local Government Units

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I. INTRODUCTION

A. *Background of the Study*

More often than not, women’s contribution — if one can call it that — to the reproduction agenda is smeared with traces of religion and cultural biases, especially in a predominantly religious country such as the Philippines.¹ At times, the debate gets sidetracked and some groups insist that pushing for certain reproductive health rights of women would often lead to contraceptive mentality and a culture of abortion,² despite the reassurance by the Constitution and the Supreme Court that abortion is absolutely prohibited in the country.³

In the Philippines, abortion, population growth control, and contraception are considered three issues that have caused disharmony and alienation in recent times: “[f]rom television debates to sticker campaigns, from rallies by socio-political activists to mass gatherings organized by members of the clergy — the clash between the seemingly antithetical ideologies of the religious conservatives and progressive liberals has caused a deep division in every level of the society.”⁴ Even the new President of the

1. Maria Dulce F. Natividad, *Reproductive Politics, Religion and State Governance in the Philippines*, at 77 (2012) (unpublished Ph.D. dissertation, Columbia University) (on file with Columbia University Libraries, Columbia University).

2. *Id.* at 60.

3. See *Imbong v. Ochoa, Jr.*, G.R. No. 204819, 721 SCRA 146, 305 (2014).

4. *Id.* at 255-56 (citing Rosemarie Caasi, *Hontiveros, Tatad Debate on RH Bill*, ABS-CBN NEWS, Apr. 19, 2010, available at <https://news.abs-cbn.com/nation/04/19/10/hontiveros-tatad-debate-rh-bill> (last accessed May

Philippines, Rodrigo Roa Duterte, had stirred controversy when he said that he was not backing down on fighting the Roman Catholic Church for campaigning for the use of birth control all over the country.⁵

The Philippines is not in shortage of policies dealing with women's reproductive health rights. In 1966, the first regulation on sale and distribution of contraceptive drugs and devices was issued.⁶ In 1969, the existing regulation was further fortified, such that, devices or drugs "capable of provoking abortion or preventing conception as classified by the Food and Drug Administration shall [not] be delivered or sold to any person without a proper prescription by a duly licensed physician."⁷

Two years earlier, the Philippines enacted Republic Act No. 6365,⁸ creating the Commission on Population (PopCom) as a reaction to the United Nations Declaration on Population.⁹ The establishment of PopCom was

11, 2021) [<https://perma.cc/AN8G-8HR6>]; *Carlos Celdran Distributes Pro-RH Stickers in Quiapo*, GMA NEWS, Apr. 19, 2011, available at <https://www.gmanetwork.com/news/news/nation/218169/carlos-celdran-distributes-pro-rh-stickers-in-quiapo/story> (last accessed May 11, 2021) [<https://perma.cc/UWZ9-GFYS>]; & Kristine L. Alave & TJ Burgonio, *Massive Church Rally Set Against RH Bill*, PHIL. DAILY INQ., Aug. 3, 2012, available at <https://newsinfo.inquirer.net/241737/massive-church-rally-set-against-rh-bill> (last accessed May 11, 2021) [<https://perma.cc/AKY8-4FU4>].

5. Associated Press, *Duterte Ready to Clash with Catholic Church on Birth Control*, PHIL. DAILY INQ., June 27, 2016, available at <http://newsinfo.inquirer.net/792691/duterte-ready-to-clash-with-catholic-church-on-birth-control> (last accessed May 11, 2021) [<https://perma.cc/4HFX-ZVNP>].
6. An Act to Regulate the Sale, Dispensation, and/or Distribution of Contraceptive Drugs and Devices, Republic Act No. 4729, § 1 (1966). The sale and distribution of contraceptive drugs and devices must be done "by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner." *Id.*
7. An Act Regulating the Practice of Pharmacy and Setting Standards of Pharmaceutical Education in the Philippines and for Other Purposes, Republic Act No. 5921, § 37 (1969).
8. An Act Establishing a National Policy on Population, Creating the Commission on Population and for Other Purposes [Population Act], Republic Act No. 6365, § 3 (1971).
9. *Imbong*, 721 SCRA at 271. Heads of State of 12 nations signed a Declaration on Population, which was presented to Former Secretary-General U Thant of the

founded on the principles of “furthering the national development, increasing the share of each Filipino in the fruits of economic progress and meeting the grave social and economic challenge of a high rate of population growth[.]”¹⁰

In 1972, Presidential Decree No. 79 was enacted.¹¹ Aside from amending Republic Act No. 6365,¹² it made sure that family planning became a part of the national policy, and that all types of contraception, except those that induce abortion, be made available “to all persons desirous of spacing, limiting or preventing pregnancies.”¹³ In 2009, the Magna Carta of Women was signed, which forces the Philippine government to supply comprehensive health services and programs for women, “covering all stages of a woman’s life cycle[,] and which addresses the major causes of women’s mortality and morbidity.”¹⁴

As can be gleaned from this short history, family planning and contraception were originally geared towards population management.¹⁵ This stance was stunted in post-Martial Law years when former President Corazon Aquino ordered the cessation of all forms of family planning, except natural family planning methods.¹⁶ This was primarily attributed to Aquino’s connection with the Roman Catholic Church, an institution that had a hand in putting her in power.¹⁷ Nothing was more illustrative of this association and her faith than in the institutionalization of the right of the unborn from conception in the Constitution.¹⁸

United Nations on Human Rights Day, 10 December 1967. *Declaration on Population: The World Leaders Statement*, 1 STUD. FAM. PLAN. 26 1, 1 (1968).

10. Population Act, § 2.

11. Revising the Population Act of Nineteen Hundred Seventy-One [Revised Population Act], Presidential Decree No. 79, § 4 (f) (1972).

12. Population Act.

13. Revised Population Act, § 4 (f).

14. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710, § 17 (2009).

15. Natividad, *supra* note 1, at 41. See *Imbong*, 721 SCRA at 271.

16. Natividad, *supra* note 1, at 41.

17. *Id.*

18. *Id.* at 41-42 (citing Mercedes Lactao Fabros, et al., *From Sanas to Dapat: Negotiating Entitlement in Reproductive Decision-Making in the Philippines*, in NEGOTIATING REPRODUCTIVE RIGHTS: WOMEN’S PERSPECTIVES ACROSS COUNTRIES AND CULTURES 228 (Rosalind P. Petchesky & Karen Judd eds., 1998)).

Nevertheless, it was only fairly recently that the stance on family planning and contraception shifted from population management to “the promotion of public health, particularly, reproductive health.”¹⁹ This situation laid the groundwork for the passage of Republic Act No. 10354 or the Responsible Parenthood and Reproductive Health Rights Act (RPRH Act),²⁰ which was considered as an “enhancement measure to fortify and make effective the current laws on contraception, women’s health and population control.”²¹

Many advocates of reproductive health rights lauded the passage of the RPRH Act as a triumph²² and a “historical victory for Filipino women.”²³ To fully realize the objectives of the law, local government units (LGUs) have a “vital role in the implementation of the RPRH Act.”²⁴ In fact, in this regard, President Duterte enacted Executive Order No. 12, series of 2017,²⁵ ordering different department agencies to cooperate with LGUs in implementing the law.²⁶ However, there are issues that impede its full implementation,²⁷ including hindrances coming from the LGUs themselves.

19. *Imbong*, 721 SCRA at 271 (citing G.H. Ambat, *Promoting Reproductive Health: A Unified Strategy to Achieve the MDGs*, SEPO POLICY BRIEF, July 2009, at 1).

20. An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health [The Responsible Parenthood and Reproductive Health Act of 2012], Republic Act No. 10354 (2012).

21. *Imbong*, 721 SCRA at 272 (emphasis omitted).

22. Dharel Placido, *RH Law Advocates: We're the Bigger Winner*, ABS-CBN NEWS, Apr. 9, 2014, available at <https://news.abs-cbn.com/focus/04/09/14/rh-law-advocates-were-bigger-winner> (last accessed May 11, 2021) [<https://perma.cc/C4UE-BVM9>].

23. International Planned Parenthood Federation, *Reproductive Health Law is Historical Victory for Filipino Women*, available at <http://www.ippf.org/news/Reproductive-Health-Law-historical-victory-Filipino-women> (last accessed May 11, 2021) [<https://perma.cc/5BJP-ZGGW>].

24. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, Republic Act No. 10354, § 12.02 (2013).

25. Office of the President, *Attaining and Sustaining “Zero Unmet Need for Modern Family Planning” Through the Strict Implementation of the Responsible Parenthood and Reproductive Health Act, Providing Funds Therefor, and for Other Purposes*, Executive Order No. 12 [E.O. No. 12, s. 2017], 113 O.G. 451 (Jan. 9, 2017).

26. *Id.* § 3.

27. Maricel Cruz, *Lagman Blasts Sotto Over P1-B RH Budget Cut*, MANILA STAND., Jan. 10, 2016, available at <http://thestandard.com.ph/news/-main-stories/top-stories/196432/lagman-blasts-sotto-over-p1-b-rh-budget-cut.html> (last accessed

B. Statement of the Problem

The RPRH Act²⁸ is considered as a law strengthening the existing policies on population control, contraception, and women's health²⁹ by mandating the public sector to help in the distribution of reproductive health devices and methods, and in the dissemination of reproductive health-related information³⁰ with the aim of raising awareness among the masses.³¹ The seminal case of *Imbong v. Ochoa, Jr.*³² upheld its constitutionality, save for seven provisions in the law and their corresponding versions in the Implementing Rules and Regulations (IRR) and two provisions in the IRR itself.³³

With these primary objectives in mind, the IRR instructs the LGUs to “play a vital role in the implementation of the RPRH Act as the direct provider of both services and information to their respective constituents.”³⁴ The law and its IRR are replete with provisions concerning the functions and duties of LGUs in the implementation of the law. However, the Supreme Court, in *Imbong*, invalidated Section 23 (b) of the RPRH Act³⁵ and Section 5.24 of the IRR³⁶ for imposing criminal punishment on “any public officer who refuses to support reproductive health programs or shall do any act that hinders the full implementation of a reproductive health program, regardless of his or her religious beliefs.”³⁷

Because of this imposition, there are public officials who refuse to back down on their stance that the RPRH Act would only result in a contraceptive and abortion culture. Since Section 23 (b) of the RPRH Act and Section 5.24

May 11, 2021) [perma.cc/2JHF-QUZT] & Jee Y. Geronimo, *Supreme Court Stops Distribution, Sale of implants*, RAPPLER, June 30, 2015, available at <http://www.rappler.com/nation/97983-sc-stops-distribution-sale-implants> (last accessed May 11, 2021) [<https://perma.cc/7XHU-7GAF>].

28. The Responsible Parenthood and Reproductive Health Act of 2012.

29. *Imbong*, 721 SCRA at 272.

30. International Planned Parenthood Federation, *supra* note 23.

31. The Responsible Parenthood and Reproductive Health Act of 2012, § 20.

32. *Imbong v. Ochoa, Jr.*, G.R. No. 204819, 721 SCRA 146 (2014).

33. *Id.* at 375-76.

34. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 12.02.

35. The Responsible Parenthood and Reproductive Health Act of 2012, § 23 (b).

36. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 5.24.

37. *Imbong*, 721 SCRA at 376.

of the IRR were declared unconstitutional,³⁸ they are at liberty not to implement the law if they feel that it affects their religious beliefs. In February 2015, the mayor of Sorsogon City, Sally Lee, who was also re-elected in the 2016 elections, issued Executive Order No. 3, or an Executive Order Declaring Sorsogon City as a Pro-Life City.³⁹ The Executive Order is harmless and innocent on its face, making references to the right to life, right to health, and the protection of the life of the mother and the unborn from conception, found in the Philippine Constitution, Universal Declaration of Human Rights, and the Magna Carta of Women.⁴⁰ However, the Department of Health (DOH) and the Commission on Human Rights (CHR) report that, on the basis of the Executive Order, Sorsogon City refuses to release contraceptives and other artificial family planning methods to those who need them in the area,⁴¹ and imposes upon Sorsogonians the belief that the natural family planning method is the moral act to which one should resort if the need arises.⁴²

There is now a gap on how to address the enactment of Executive Order No. 3 and similar local issuances that impede the full implementation of the RPRH Act.⁴³ In line with this, this Note seeks to answer some issues related to the problem raised above: First, *are local issuances impeding the full implementation of a law, such as declaring an LGU as pro-life constitutional?* Second, *what are the human rights implications of these local issuances, specifically as regards women's reproductive health rights?* Looking for answers to these questions became significant in light of the news that the DOH was seeking to file a case against Sorsogon City.⁴⁴ Third, *how should LGUs approach the RPRH Act, such that it may be fully implemented and the reproductive rights of women may be respected and realized?* Lastly, applying the answers to the present situation, *what are the constitutional and human rights implications of Executive Order No. 3 of Sorsogon City?*

38. *Id.*

39. Office of the City Mayor, Declaring Sorsogon City as a Pro-Life City, Executive Order No. 3, Series of 2015 [E.O. No. 3, s. 2015] (Feb. 2, 2015).

40. *Id.* whereas cl. paras. 1-6.

41. Jee Y. Geronimo, *DOH Readies Case vs Sorsogon Mayor for 'Gross Violation' of RH Law*, RAPPLER, June 22, 2016, available at <https://www.rappler.com/nation/doh-case-sorsogon-city-mayor-violation-rh-law> (last accessed May 11, 2021) [<https://perma.cc/H6JD-CQ9B>].

42. *Sangguniang Panlungsod of the City of Sorsogon, An Ordinance Declaring Sorsogon City as a Pro-Life City and Providing for Its Guidelines and Policies*, Draft City Ordinance, § 3 (f) (2015).

43. The Responsible Parenthood and Reproductive Health Act of 2012.

44. Geronimo, *supra* note 41.

II. REPRODUCTIVE HEALTH IN THE PHILIPPINES AND RELIGION IN PHILIPPINE LAW

A. Reproductive Health Issues in the Philippines

1. In General

Health and its accompanying elements are not only significant in terms of one's biology and physical well-being, but also in terms of one's social conditions.⁴⁵ In fact, the RPRH Act recognizes reproductive health rights as one of the valuable ingredients of the government's anti-poverty programs.⁴⁶

Reproductive health plays a precious part in the lives of both women and men, but it is considered "more critical for women [because they] are more at risk with majority of the diseases and other concerns connected to reproductive health."⁴⁷ In fact, statistics also show that reproductive-related deaths are common to women. Data on the Philippines from the combined efforts of the World Health Organization (WHO), United Nations Children's Emergency Fund (UNICEF), United Nations Population Fund (UNFPA), and the United Nations Population Division Maternal Mortality Estimation Inter-Agency Group shows that in 2008, there were a total of 1,716 pregnancy-related deaths out of the 34,340 female deaths.⁴⁸ However, in 2015, there was a 6.3% ratio of maternal deaths among female deaths from the reproductive ages of 15 to 49.⁴⁹ Among those who are affected by maternal deaths are women from low-income areas because fertility among them remains high in numbers.⁵⁰ They are also not spared from being the subject

45. Mahmoud F. Fathalla, *The Impact of Reproductive Subordination on Women's Health: Family Planning Services*, 44 AM. U. L. REV. 1179, 1180 (1995).

46. Responsible Parenthood and Reproductive Health Act of 2012, § 11.

47. Thea Marie B. Jimenez, *Asserting Reproductive Rights: Assessing Philippine Reproductive Health Policies*, at 9 (2009) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) (citing REBECCA J. COOK, ET AL., *REPRODUCTIVE HEALTH AND HUMAN RIGHTS: INTEGRATING MEDICINE, ETHICS AND LAW*, 14 (2003)).

48. World Health Organization, et al., *Maternal Mortality in 2000-2017: Philippines*, at 2, available at https://www.who.int/gho/maternal_health/countries/phl.pdf (last accessed May 11, 2021) [<https://perma.cc/2JFV-S8C8>].

49. *Id.* at 1.

50. The World Bank, *Reproductive Health at a Glance (Philippines)*, at 2, available at <https://documents1.worldbank.org/curated/en/236811468093837668/pdf/>

of public ridicule because “[b]eing poor and pregnant makes women more vulnerable to the stigma of having untamed sexuality and rampant fertility, [including] the tag of being irresponsible parents and citizens.”⁵¹

Teen pregnancy is also prevalent in this country. In 2013, 19% of women from the age of 18–24 admitted to having engaged in sex even before reaching the age of majority.⁵² Again, the percentage is higher among poor women and women living in rural areas.⁵³

Another challenge faced by women is the rising number of those affected by human immunodeficiency virus (HIV). In a 2011 report, 27% of those affected are women of reproductive age.⁵⁴ However, the same report also showed that 59% of Filipinos were aware that HIV may be prevented by certain contraceptives.⁵⁵ But prevention of the spread of HIV and maternal deaths through contraceptives has remained a tough act. In 2004, a non-government organization reported that there were outright violations committed by LGUs when there was “continued banning of artificial contraceptives [and] depriv[ation] of basic [family planning] services by diverting money intended for contraceptives to the Natural Family Planning (NFP)-only program.”⁵⁶ The report saw this as a form of “discrimination against users of artificial contraceptives by pushing solely for NFP.”⁵⁷

629580BRIEFoPhoBOX0361514BooPUBLICo.pdf (last accessed May 11, 2021) [<https://perma.cc/5UR2-XHP3>].

51. Natividad, *supra* note 1, at 156.

52. Guttmacher Institute, Sexual and Reproductive Health of Young Women in the Philippines: 2013 Data Update, *available at* <https://www.guttmacher.org/fact-sheet/sexual-and-reproductive-health-young-women-philippines-2013-data-update#> (last accessed May 11, 2021) [<https://perma.cc/L936-A77E>].

53. *Id.*

54. The World Bank, *supra* note 50, at 3 (citing WORLD BANK, 2010 WORLD DEVELOPMENT INDICATORS 41 (2010)).

55. *Id.* (citing National Statistics Office (NSO) [Philippines] & ICF Macro, National Demographic and Health Survey 2008, at 157, *available at* <https://dhsprogram.com/pubs/pdf/FR224/FR224.pdf> (last accessed May 11, 2021) [<https://perma.cc/KCH7-6P4D>]).

56. Aurora A. Parong, *The Right to Health in the Philippines: Under the Weather*, in CIVIL AND POLITICAL RIGHTS VIOLATIONS: WHEN STATE ABUSE GOES TOO FAR 38 (J.M. Villero & Bernardo D. Larin eds., 2006).

57. *Id.* at 39 (citing LIKHAAN & ARROW, STATE OF FILIPINO WOMEN’S REPRODUCTIVE RIGHTS: 10 YEARS POST CAIRO SHADOW REPORT, PHILIPPINES 10 (2004)).

Again, poor women remained to be the victims of the lack of effective policies on reproductive health because they “often lack access to safer methods, better health facilities[,] and competent services.”⁵⁸ Because of this and the desire to alleviate their dire situation, some women find abortion as an immediate and useful tool to end their suffering, or to postpone it.⁵⁹

While the framers of the 1987 Constitution and the Supreme Court are in agreement that life begins from fertilization,⁶⁰ some women are unaware of this and believe that a period of two to four weeks is needed “before declaring that there is a human being growing inside them.”⁶¹ These women believe that during that period, they are not committing abortion.⁶² This reality exposes how one situation can be interpreted differently by a person inside the legal sphere and another outside of it.

Despite this, imposing abortion as a criminal offense will not decrease the number of people who resort to it.⁶³ The key, according to studies, is found in “helping women and couples get better information about sexuality, reproductive health and contraception, and better access to modern contraceptives.”⁶⁴ However, the WHO also argues that, while millions of women would like to utilize family planning, especially modern methods, they are not able to do so because there are “limited choice of methods; limited access to services; [] fear or experience of side-effects; cultural or religious opposition; [and] poor quality of available services” among others.⁶⁵

Because women are the most susceptible to reproductive health-related diseases and deaths, policies targeted to diminishing their suffering are needed. This finds support in the Philippine Constitution which “recognizes the role of women in nation-building, and [ensures] the fundamental equality before

58. *Id.* at 39.

59. *Id.* (citing Susheela Singh, et al., Unintended Pregnancy and Induced Abortion in the Philippines, Causes and Consequences, at 28, available at <https://www.guttmacher.org/sites/default/files/pdfs/pubs/2006/08/08/PhilippinesUPIA.pdf> (last accessed May 11, 2021) [<https://perma.cc/RTB5-BX7F>]).

60. *Imbong*, 721 SCRA at 304.

61. *Natividad*, *supra* note 1, at 150.

62. *Id.*

63. *Parong*, *supra* note 56, at 39-40 (citing Singh, et al., *supra* note 59).

64. *Id.*

65. World Health Organization, Family Planning/Contraception Methods, available at <https://www.who.int/en/news-room/fact-sheets/detail/family-planning-contraception> (last accessed May 11, 2021) [<https://perma.cc/3BUS-3GKL>].

the law of women and men.”⁶⁶ The Constitution also highlights the need to protect women in the labor force “by providing safe and healthful working conditions, taking into account their maternal functions[.]”⁶⁷

2. Issue Blocking the Full Implementation of the RPRH Act:

Unconstitutionality of Penalizing Public Officers in Failing to Implement the Law

Because of the rise in reproductive health-related issues in the country and the obligations to comply with treaty obligations such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁶⁸ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶⁹, the RPRH Act was passed.

Since then, there has been an increase in the use of family planning methods.⁷⁰ According to the DOH, 2015 saw the rise of use from 41.14% in 2014 to 43.8% through the joint effort of non-governmental organizations and government agencies, such as the DOH, PopCom, and the Philippine Health Insurance Corporation (PhilHealth).⁷¹

66. PHIL. CONST. art. II, § 14.

67. PHIL. CONST. art. XIII, § 14.

68. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 9, 1980, 1249 U.N.T.S. 13. [hereinafter CEDAW].

69. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

70. Jee Y. Geronimo, *Use of Modern Family Planning Methods in PH Rose in 2015 - Report*, RAPPLER, June 22, 2016, available at <http://www.rappler.com/nation/137256-2nd-report-implementation-reproductive-health-rh-law-family-planning> (last accessed May 11, 2021) [<https://perma.cc/9DTL-RXMV>].

71. *Id.*

However, there have been issues⁷² that have blocked the full implementation of the RPRH Act⁷³ — one of which is the declaration by the Supreme Court that penalizing public officers who fail or decide not to support or implement the RPRH Act, or who do any act that may stunt its full implementation, is unconstitutional.⁷⁴ This gives public officials, especially those who are mandated to implement laws, unbridled discretion on whether to aid in the law's institutionalization or disregard the said mandate altogether. Such was the case in Sorsogon City when Mayor Sally A. Lee issued Executive Order No. 3 which declared the city as a pro-life city.⁷⁵

B. Religious Freedom and State-Church Relationship in the Philippines

1. Influences of Religion and their Pro-Life Philosophy in Philippine Politics and Policy-Making

In the sphere of politics, one can best observe the impact of religion during elections, which includes the endorsement of a candidate by religious groups.⁷⁶ Other religions, while not expressly campaigning for a candidate,

72. See, e.g., Cruz, *supra* note 27 (The principal author of the RPRH Act accused the Senate of the deliberate stalling of the law's implementation through the budget allotment for acquisition of family planning supplies.) & Jocelyn R. Uy, *Supreme Court TRO Stalling Gov't Family Planning Program – DOH*, PHIL. DAILY INQ., June 4, 2016, available at <http://newsinfo.inquirer.net/789107/supreme-court-tro-stalling-govt-family-planning-program-doh> (last accessed May 11, 2021) [<https://perma.cc/8J24-M6JA>] (The Supreme Court issued a temporary restraining order to a hormonal contraceptive, which can prevent pregnancies for up to three years. It also issued a temporary restraining order prohibiting the Food and Drug Administration from granting pending applications for reproductive products).

73. The Responsible Parenthood and Reproductive Health Act of 2012.

74. See *Imbong*, 721 SCRA at 376.

75. E.O. No. 3, s. 2015.

76. Maria Isabel T. Buenaobra, *The Politics of Religion in the Philippines*, available at <http://asiafoundation.org/2016/02/24/the-politics-of-religion-in-the-philippines> (last accessed May 11, 2021) [perma.cc/L23M-RJ67] & Fiona Nicolas, *Duterte, Marcos Get INC Endorsement for May 9 Polls*, CNN PHIL., May 5, 2016, available at <http://cnnphilippines.com/news/2016/05/05/Iglesia-ni-Cristo-endorsement-duterte-marcos-May-9-elections.html> (last accessed May 11, 2021) [perma.cc/MFK9-PNFW].

resort to appealing to their followers by encouraging them to vote in accordance with their sense of morality.⁷⁷

Religions also try to influence the policies through lobbying or questioning their legality or constitutionality.⁷⁸ The most recent instance of this religious influence is the case of *Imbong v. Ochoa, Jr.*,⁷⁹ where several religious groups question the constitutionality of the RPRH Act.

Religious interference in the right of women to reproductive health is nothing new. Despite scientific research proving the contrary, religious objectors believe that modern methods of family planning, such as contraception, are abortifacients, or drugs and devices causing abortion.⁸⁰ Because of this aversion to modern methods, many policies and laws driven by religious frame of mind or lobbied by religious groups often impose upon women which family planning method to use,⁸¹ invoking their pro-life stance.⁸²

77. Buenaobra, *supra* note 76. See, e.g., Buena Bernal, SC: Comelec Can't Order Removal of Church's Anti-RH Traps, *RAPPLER*, Jan. 21, 2015, available at <http://www.rappler.com/nation/81533-supreme-court-team-patay-comelec> (last accessed May 11, 2021) [perma.cc/N5BF-7BZK] & The Diocese of Bacolod v. Commission on Elections, G.R. No. 205728, 747 SCRA 1 (2015). The Diocese of Bacolod released a poster enumerating senatorial candidates who were against the passage of the RPRH Act, tagging them as *Team Buhay*, and identifying those who were pro-RPRH Act as members of the *Team Patay*.

78. See, e.g., *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, 618 SCRA 32 (2010) (when religion became the basis of Commission on Elections (COMELEC) in denying the petition for registration of *Ang Ladlad*, a political party formed by and for the lesbian, gay, bisexual and transgender (LGBT) community) & Pew Research Center, *Global Views on Morality*, available at <http://www.pewglobal.org/2014/04/15/global-morality/table/abortion> (last accessed May 11, 2021) [https://perma.cc/BCV3-EJF5] (when some Filipinos consider looking at legal issues using moral lens).

79. *Imbong v. Ochoa, Jr.*, G.R. No. 204819, 721 SCRA 146 (2014).

80. Diya Uberoi & Maria de Bruyn, *Human Rights Versus Legal Control Over Women's Reproductive Self-Determination*, 15 HEALTH HUM. RIGHTS 161, 163 (2013).

81. *Id.*

82. See *Imbong*, 721 SCRA at 260.

III. “PRO-LIFE” IN THE PHILIPPINE CONSTITUTIONAL CONTEXT

A. *In the Context of the Right to Life*

The term “pro-life” is connected with the right to life, a basic human right from which other rights flow.⁸³ The Universal Declaration of Human Rights (UDHR) institutionalizes the right to life in Article 3,⁸⁴ but other articles in the UDHR also illustrate the right in different contexts, such as non-subjection to inhumane and cruel treatment.⁸⁵ The International Covenant on Civil and Political Rights (ICCPR) makes a stronger case for the importance of this right by calling it inherent, so much so, that “[n]o one shall be arbitrarily deprived of his [or her] life.”⁸⁶ The Philippines has its own version placed in the Bill of Rights: “No person shall be deprived of life[] ... without due process of law.”⁸⁷

An important aspect of the right of life that needs discussion is the question of when it begins. The Philippines proclaims to “equally protect the life of the mother and the life of the unborn from conception.”⁸⁸ This is a valuable declaration because it institutionalizes the moment where a person may claim his or her right, such as the right to life.⁸⁹

Naturally, for a very long time, this provision has been the subject of debate. In the seminal case of *Imbong v. Ochoa, Jr.*, the *ponente*, Associate Justice Jose Catral Mendoza, clarified that, using the principle of plain and legal meaning in statutory construction, and as supported by reliable sources, life begins from fertilization, or upon union of the male sperm and the female ovum.⁹⁰

83. EDWARD S. MIHALKANIN & ROBERT F. GORMAN, *THE A TO Z OF HUMAN RIGHTS AND HUMANITARIAN ORGANIZATIONS* 219 (2009).

84. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, art. 3 (Dec. 12, 1948) [hereinafter UDHR].

85. *Id.* art. 5.

86. International Covenant on Civil and Political Rights art. 6, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

87. PHIL. CONST. art. III, § 1.

88. PHIL. CONST. art. II, § 12.

89. PHIL. CONST. art. III, § 1.

90. *Imbong*, 721 SCRA at 296–97 (citing 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 4, at 596 & 668 (1986)). Notably, the Justices discussed that they can individually express their own opinion on the meaning of “conception.”

B. In the Context of Religious Freedom

There are provisions in the Constitution that deal with the term “pro-life.”⁹¹ However, recent updates in jurisprudence point out that the term “pro-life” has been associated with the beliefs of certain religious groups. In *Imbong*, the Supreme Court made mention of the term “pro-life” twice: (1) when it referred to the pronouncement made by Commissioner Jose Luis Martin C.

Justice Mendoza based his conclusion on the Record of the Constitutional Commission, where the definition of “conception” was lengthily discussed —

Rev. Rigos: In Section 9, page 3, there is a sentence which reads: “The State shall equally protect the life of the mother and the life of the unborn from the moment of conception.” When is the moment of conception?

...

Mr. Villegas: As I explained in the sponsorship speech, it is when the ovum is fertilized by the sperm that there is human life.

...

I propose to review this issue in a biological manner. The first question that needs to be answered is: Is the fertilized ovum alive? Biology categorically says yes, the fertilized ovum is alive. First of all, like all living organisms, it takes in nutrients which it processes by itself. It begins doing this upon fertilization. Secondly, as it takes in these nutrients, it grows from within. Thirdly, it multiplies itself at a geometric rate in the continuous process of cell division. All these processes are vital signs of life. Therefore, there is no question that biologically the fertilized ovum has life.

The second question: Is it human? Genetics gives an equally categorical ‘yes.’ At the moment of conception, the nuclei of the ovum and the sperm rupture. As this happens 23 chromosomes from the ovum combine with 23 chromosomes of the sperm to form a total of 46 chromosomes. A chromosome count of 46 is found only — and I repeat, only in human cells. Therefore, the fertilized ovum is human.

Since these questions have been answered affirmatively, we must conclude that if the fertilized ovum is both alive and human, then, as night follows day, it must be human life. Its nature is human.

Id.

From this discussion, it became clear that the intent of the framers of the Constitution was to preclude Congress from determining on its own when life begins.

91. *People v. Esparas*, G.R. No. 120034, 260 SCRA 539, 553 (1996) (J. Panganiban, separate opinion).

Gascon during the Constitutional Commission⁹² and (2) when it explained the unconstitutionality of the referral clause found in the RPRH Act.⁹³

By implication, it seems that the Supreme Court equates “pro-life” with conscientious objectors, or those whose religious or ethical beliefs are incongruent with the mandate of the RPRH Act.⁹⁴

1. In General

Because of the importance of religion in the country, it became imperative to establish rights and boundaries related to religion. The Philippines has

92. *Imbong*, 721 SCRA at 300 (citing IV RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 4, at 745 (1986)). Commissioner Gascon outlines and puts emphasis on his point as follows —

Mr. Gascon: ... As I mentioned in my speech on the US bases, I am pro-life, to the point that I would like not only to protect the life of the unborn, but also the lives of the millions of people in the world by fighting for a nuclear-free world. I would just like to be assured of the legal and pragmatic implications of the term ‘protection of the life of the unborn from the moment of conception.’ I raised some of these implications this afternoon when I interjected in the interpellation of Commissioner Regalado. I would like to ask that question again for a categorical answer.

I mentioned that if we institutionalize the term ‘the life of the unborn from the moment of conception’ we are also actually saying ‘no,’ not ‘maybe,’ to certain contraceptives which are already being encouraged at this point in time. Is that the sense of the committee or does it disagree with me?

Id.

93. *Imbong*, 721 SCRA at 335.

Though it has been said that the act of referral is an opt-out clause, it is, however, a *false* compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive. They cannot, in conscience, do indirectly what they cannot do directly.

Id.

94. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 3.01 (i). Notably, however, the IRR limits the definition of conscientious objectors to practicing skilled health professionals, not public officials.

“generally respected religious freedom.”⁹⁵ This is nowhere truer than constitutionally establishing the right of the people to freely exercise their beliefs without any hint of discrimination or preference.⁹⁶ It has also installed the separation of the State and the Church.⁹⁷ Despite this separation, the two institutions maintain a relationship whose characteristic is best described by Fr. Joaquin G. Bernas in the Constitutional Commission —

[O]ne of the things about the relation between Church and State is that it is a dynamic and changing relationship. The relationship between the Church and State throughout history has changed due to the development of the State’s and the Church’s self-understanding of itself. It is a very delicate relationship, and it is always a question of trying to balance the value which ‘separation’ stands for and the value which ‘religious liberty’ stands for.⁹⁸

Article VI, Section 29 prohibits Congress from writing appropriation laws that would favor any church, sect or religion, or any authority thereof, except when the latter “is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.”⁹⁹ The provision reinforces that public funds be allocated to programs and projects that would benefit the public in general and not any particular religious denomination. The second religion-related provision is Article XIV, Section 3 (3),¹⁰⁰ allowing students of public schools to study religion within school hours provided their parents give their written consent. The last provision is Article III, Section 5,¹⁰¹ which contains two parts: the free exercise clause and the non-establishment clause.

2. Free Exercise Clause

The first part of Article III, Section 5¹⁰² is the prohibition on issuing any law that may forbid the free exercise of religion. It includes “[t]he free exercise and enjoyment of religious profession and worship, without discrimination or

95. U.S. Department of State, Philippines, at 1, *available at* <https://2009-2017.state.gov/documents/organization/171666.pdf> (last accessed May 11, 2021) [<https://perma.cc/N4W9-L7F6>].

96. PHIL. CONST. art. III, § 5.

97. PHIL. CONST. art. III, § 5 & PHIL. CONST. art. II, § 6.

98. IV RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 4, at 970 (1986).

99. PHIL. CONST. art. VI, § 29.

100. PHIL. CONST. art. XIV, § 3 (3).

101. PHIL. CONST. art. III, § 5.

102. PHIL. CONST. art. III, § 5.

preference[.]”¹⁰³ The framers of the Constitution gave a preferential status to this basic right.¹⁰⁴

To explain the free exercise clause, its two aspects must also be explored: the freedom to believe and the freedom to act on one’s belief.¹⁰⁵ The State cannot reach nor regulate the freedom of one’s belief, such being in the realm

103. PHIL. CONST. art. III, § 5.

104. Islamic Da’wah Council of the Philippines, Inc. v. Office of the Executive Secretary, G.R. No. 153888, 405 SCRA 497, 504 (2003).

105. Iglesia ni Cristo v. Court of Appeals, G.R. No. 119673, 259 SCRA 529, 542-43 (1996) (citing ISAGANI CRUZ, CONSTITUTIONAL LAW 176-78 (1991 ed.)). Justice Isagani Cruz explains and differentiates the two, thus —

The [freedom to believe] is absolute as long as the belief is confined within the realm of thought. The [freedom to act on one’s belief] is subject to regulation where the belief is translated into external acts that affect the public welfare.

(1) Freedom to Believe

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul — in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. ‘Men may believe what they cannot prove.’ Every one has a right to his beliefs and he may not be called to account because he cannot prove what he believes.

(2) Freedom to Act on One’s Beliefs

But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others. It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.

Id.

of the intangible. However, the same is untrue when one's belief is manifested physically and exhibited in the corporeal world. At this instance, the State cannot but regulate one's actions because they already involve the rights of others, such as television programs designed to evangelize or express one's religious beliefs when they already affect State's interests like "public health, public morals, or public welfare."¹⁰⁶

The State can encroach on the freedom of the people to their beliefs by imposing their own interpretation of how their religion should be practiced.¹⁰⁷ However, before the State may interfere with one's religious freedom, there must be a compelling State interest to do so.¹⁰⁸ Religious freedom must be scrutinized strictly using this test, "which requires the government to show that the challenged classification serves a compelling state interest and that the classification is necessary to serve that interest."¹⁰⁹

3. Non-Establishment Clause

The second part of religious freedom found in the Bill of Rights has to do with the non-establishment clause. The provision prohibits any law to be written that may found a religion, including favoring any religion by requiring anyone who wishes to exercise his or her civil or political rights to pass religious tests.¹¹⁰ Differentiated from the free exercise clause which is a part of one's civil liberties, the non-establishment clause is covered by a person's political freedom.¹¹¹ These two concepts work hand in hand this way — since freedom of religion is given a preferential status,¹¹² the framers of the Constitution saw the need to protect this freedom by preventing the State and

106. *Iglesia ni Cristo*, 259 SCRA at 544.

107. See, e.g., *Islamic Da'wah Council of the Philippines, Inc.*, 405 SCRA at 505. In the instant case, the Office of Muslim Affairs was given the task of issuing *halal* certifications, depriving Muslim organizations of the right to use their own standards.

108. *Estrada v. Escritor*, A.M. No. P-02-1651, 492 SCRA 1, 29 (2006).

109. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 139-40 (2009) (emphasis omitted).

110. PHIL. CONST. art. III, § 5.

111. BERNAS, *supra* note 109, at 345.

112. *Islamic Da'wah Council of the Philippines, Inc.*, 405 SCRA at 504.

any of its organs and agents from establishing any religion in order “to protect the rights of those who might dissent from whatever religion is established.”¹¹³

The non-establishment of religion clause is also referred to as the principle of the separation of the State and the Church,¹¹⁴ which is expressly and absolutely declared in the Constitution.¹¹⁵ In the deliberations of the Constitutional Commission, Fr. Bernas refuted an amendment that posited a collaboration between the State and Church;¹¹⁶ he thus expounded his view

I am afraid that this amendment, when it says that it welcomes the collaboration of churches and religious bodies to promote the total well-being of its citizens, is an invitation to entanglement of religion with the State. We do not need such invitation. We would much rather see the cooperation between the Church and the State grow dynamically without encouragement from anybody because, as I said, there is always the danger that the Church will try to impose itself on the State or else there may also be the danger that the State will try to impose itself on the Church. ... But there may be moments when what is called ‘collaboration’ is, in fact, interference.¹¹⁷

Fr. Bernas went on to say that if the line separating the State and Church would ever become blurry or worse, eliminated, and the two institutions become embroiled together, some religious fanatics or extremists might see this as an opening “to try to dictate their own will on the State.”¹¹⁸

For a violation to exist, it is enough that the State imposes principles of certain religions as policies of the State,¹¹⁹ or when the State favors religious morality in laws, and not public morality.¹²⁰ By using religious beliefs as

113. Richard John Neuhaus, *New Order of Religious Freedom*, 60 GEO. WASH. L. REV. 620, 627 (1992).

114. 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 4, at 971 (1986).

115. PHIL. CONST. art. II, § 6.

116. The proposed amendment is worded thus, “[w]hile the separation of Church and State shall be maintained, the State seeks the collaboration of the churches and religious bodies to promote the total well-being of its citizens and acknowledges the right of churches and religious bodies to comment on government policies and actuations.” 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 4, at 969 (1986).

117. 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 4, at 971 (1986).

118. *Id.* at 973.

119. *See, e.g., Imbong*, 721 SCRA at 334.

120. *Estrada*, 492 SCRA at 86.

justification in the formulation of laws and policies, the government would necessarily force its citizens to comply with principles that are considered part of religious agenda and impliedly endorse such belief in violation of the constitutionally established non-establishment of religion.¹²¹

C. Challenging the Constitutionality

1. The *Lemon* Test

A tool that would help determine whether a policy or law violates the non-establishment clause, and hence its constitutionality, is the *Lemon* test.

The *Lemon* test is based on the U.S. Supreme Court case, *Lemon v. Kurtzman*,¹²² which was adopted by the Philippine Supreme Court in various cases. The policy or law must pass the following elements of the test for its constitutionality to be upheld: “[f]irst, the statute must have a secular legislative purpose; second, its primary or principal effect must be one that neither advances nor inhibits religions; [and] finally, the statute must not foster an excessive entanglement with religion.”¹²³ The statute must principally serve a secular purpose, despite indirectly aiding a particular religion.¹²⁴

2. The “As Applied” Challenge of Constitutionality

The “As Applied” challenge of constitutionality, also known as relative constitutionality, is explained in the seminal case of *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas and Executive Secretary*.¹²⁵ It means a statute or ordinance “may be constitutionally valid as applied to one set of facts and invalid in its application to another.”¹²⁶ The statute’s invalidity is rooted in its enforcement by authorities, especially when they use the law to

121. See *Estrada*, 492 SCRA at 33.

122. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

123. *Id.* at 612 (citing *Board of Education v. Allen*, 392 U.S. 236, 243 (1968)).

124. See, e.g., *Aglipay v. Ruiz*, 64 Phil. 201 (1937) (when the Supreme Court upheld the decision of the Director of Posts to issue postage stamps in commemoration of the 33rd International Eucharistic Congress of the Catholic Church) & *Garces v. Estenzo*, G.R. No. L-53487, 104 SCRA 510 (1981) (when the Supreme Court upheld a *barangay* resolution for holding a *barrio fiesta* in celebration of the anniversary of the *barrio*’s patron saint, citing social tradition as a primary motivator for the merrymaking).

125. *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas and Executive Secretary*, G.R. No. 148208, 446 SCRA 299 (2004).

126. *Id.* at 347 (citing *Medill v. State*, 477 N.W.2d 703 (Minn. App. Ct. 1991) (U.S.)).

abuse and act arbitrarily.¹²⁷ The statute or ordinance may have been valid at one point in time, but because of altered conditions, such as public officers using the law to violate the rights of the people, it becomes invalid, and therefore the courts must strike it down.¹²⁸

D. Imbong v. Ochoa, Jr.: The Battle of Pro-Lifers Continues

Religious groups and pro-life entities took on challenging the RPRH Act¹²⁹ in the case of *Imbong v. Ochoa, Jr.*¹³⁰ The RPRH Act assures “universal access to medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive health care services, methods, devices, supplies which do not prevent the implantation of a fertilized ovum as determined by the Food and Drug Administration (FDA).”¹³¹ In addition, the law also seeks to promote “relevant information and education [about reproductive health] ... according to the priority needs of women, children[,] and other underprivileged sectors.”¹³² With the passage of the RPRH Act, the State reinforces its objective of eliminating practices and policies that are deemed oppressive or discriminatory against one’s reproductive health rights.¹³³

Essentially, the petitioners, most of whom classify themselves as part of the “pro-life” movement,¹³⁴ challenged the constitutionality of the law. One of their most contentious arguments was that the law promotes abortion despite the prohibition in the Constitution¹³⁵ and in the law itself.

But fundamentally, the petitioners hinged their arguments on freedom of religion; they insisted that the procurement by the State of contraceptives

127. *Id.*

128. *Id.*

129. The Responsible Parenthood and Reproductive Health Act of 2012.

130. *Imbong v. Ochoa, Jr.*, G.R. No. 204819, 721 SCRA 146 (2014).

131. The Responsible Parenthood and Reproductive Health Act of 2012, § 2, para. 5.

132. *Id.*

133. *Id.* § 2, para. 6.

134. *Imbong*, 721 SCRA at 146. In fact, this can be best observed by the names of the petitioners: in G.R. No. 204988, one of the petitioners is called Serve Life Cagayan de Oro City, Inc.; and Pro-Life Philippines Foundation, Inc. initiated the case G.R. No. 205720, both of which were part of the 14 petitions making up *Imbong v. Ochoa, Jr. Id.* at 1.

135. *See Imbong*, 721 SCRA at 290 & PHIL. CONST. art. II, § 12.

using public money acquired from taxation violated their religious beliefs; hence, the law was in contravention of religious freedom.¹³⁶

In relation to this, the petitioners targeted the prohibited acts in the law. According to them, while the law takes into consideration the religious feelings of health providers, it circumvents the constitutional right to religious freedom by requiring conscientious objectors to refer the patient to other medical practitioners who would be willing to furnish the methods, procedures, information, or medicine sought by the

said patient.¹³⁷ The petitioners thought that by obligating these people to refer or provide the methods or information themselves to the patients, the law would consequently make the former complicit in the very act to which they are in opposition because of their religion. They asserted that there was no compelling state interest to warrant their religious freedom to be undermined,¹³⁸ especially those of conscientious objectors.

In sum, the Supreme Court partially upheld the constitutionality of the law. Of the seven provisions in the law declared unconstitutional by the Supreme Court, five were stricken out¹³⁹ for being violative of the religious freedom of conscientious objectors:

- (1) Section 7¹⁴⁰ and its corresponding provision in the IRR, as they obligated religious group-owned private health facilities or hospitals to refer patients to another medical practitioner or facility, even though said patient is not in any life-threatening¹⁴¹ situation;

136. See *Imbong*, 721 SCRA at 320.

137. *Id.*

138. *Id.*

139. *Id.* at 375-76.

140. The Responsible Parenthood and Reproductive Health Act of 2012, § 7.

141. Emergency is defined as “a condition or state of a patient wherein based on the objective findings of a prudent medical officer on duty for the day there is immediate danger and where delay in initial support and treatment may cause loss of life or cause permanent disability to the patient.” Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 3.01 (k) & An Act Penalizing the Refusal of Hospitals and Medical Clinics to Administer Appropriate Initial Medical Treatment and Support in Emergency or Serious Cases, Amending for the Purpose Batas Pambansa Bilang 702, Otherwise Known as “An Act Prohibiting the Demand of Deposits or Advance

- (2) Section 23 (a) (1)¹⁴² for penalizing a healthcare service provider who refuses or fails to disseminate information related to reproductive health;
- (3) Section 23 (a) (3)¹⁴³ for punishing a healthcare service provider who opts out of or fails to refer a patient to another provider or facility, again, even though the patient is not in an emergency situation;
- (4) Section 23 (b)¹⁴⁴ for imposing criminal liability on any public officer who declines to fully implement any reproductive health program or decides to do an act that would prevent it; and
- (5) Section 17¹⁴⁵ as it affects the PhilHealth accreditation of a healthcare service provider if he or she refuses to render *pro bono* services to those in need.¹⁴⁶ All of these provisions were declared unconstitutional for disregarding the religious beliefs of those respectively involved.¹⁴⁷

The Supreme Court consistently upholds that the rectitude of contraceptive use or advocating for reproductive health is not a legal matter for the court to discuss,¹⁴⁸ and that one cannot dismiss his or her obligation to pay taxes for the sole reason that the funds would be utilized for policies that they deem contrary to their religious beliefs.¹⁴⁹ However, in support of the unconstitutionality of the specific provisions mentioned above, the Court held that obligating healthcare service providers to refer patients to other practitioners was a “*false* compromise because it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive. They cannot, in conscience, do indirectly what they cannot do directly.”¹⁵⁰ The Supreme Court explains its decision succinctly —

Payments for the Confinement or Treatment of Patients in Hospitals and Medical Clinics in Certain Cases”, Republic Act No. 8344, § 2 (1997).

142. The Responsible Parenthood and Reproductive Health Act of 2012, § 23 (a) (1).

143. *Id.* § 23 (a) (3).

144. *Id.* § 23 (b).

145. *Id.* § 17.

146. *Imbong*, 721 SCRA at 366.

147. *Id.* at 375-76.

148. *Id.* at 374.

149. *Id.* at 334.

150. *Id.* at 335-36.

In case of conflict between the religious beliefs and moral convictions of individuals, on one hand, and the interest of the State, on the other, to provide access and information on reproductive health products, services, procedures and methods to enable the people to determine the timing, number[,] and spacing of the birth of their children, the Court is of the strong view that the religious freedom of health providers, whether public or private, should be accorded primacy. Accordingly, a *conscientious objector* should be exempt from compliance with the mandates of the [RPRH Act].¹⁵¹

Notably, however, the IRR of the law contains the qualification that a conscientious objector is one who is “a practicing skilled health professional who refuses to provide legal and medically safe reproductive health care [], on the ground that doing so is against his or her ethical or religious convictions.”¹⁵² The Supreme Court did not say anything about how this definition affects its decision on public officers who are not in the health service, but it did say that the protection given to conscientious objectors must equally cover public or private medical practitioners.¹⁵³

IV. REPRODUCTIVE HEALTH RIGHTS AND THE RIGHT TO REPRODUCTIVE CHOICE IN INTERNATIONAL LAW

A. Reproductive Health Rights as Established Human Rights

Reproductive health covers “health conditions and social conditions that affect reproductive functioning[.]”¹⁵⁴ The right to reproductive health is said to be the intersection between reproductive rights and the right to health.¹⁵⁵ Originally, reproductive rights “have typically revolved around the protection of the rights of an individual to make autonomous reproductive decisions[.]”¹⁵⁶ These encompass the *decisional* facets of human rights, rooted in the rights to autonomy, liberty, and privacy.¹⁵⁷ On the other hand,

151. *Id.* at 336.

152. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 3.01 (i). The IRR provides for requirements in §§ 5.23 & 5.24 and was limited by *Imbong*. *Id.*

153. *Imbong*, 721 SCRA at 338.

154. Lance Gable, *Reproductive Health as a Human Right*, 60 W. RES. L. REV. 957, 958 (2010).

155. *Id.* at 960 (citing REBECCA J. COOK, ET AL., *REPRODUCTIVE HEALTH AND HUMAN RIGHTS: INTEGRATING MEDICINE, ETHICS, AND LAW* 255-393 (2003)).

156. Gable, *supra* note 154, at 969.

157. *Id.*

reproductive rights, as viewed by the right to health model, are grounded on economic, social, and cultural rights, or the *foundational* features of human rights.¹⁵⁸

However, reproductive health rights were not initially intended to be under the umbrella term of human rights. It was only in the 1994 International Conference on Population and Development (ICPD Programme of Action)¹⁵⁹ in Cairo, Egypt where the term “reproductive rights” was fully defined as the state of complete physical, mental, and social well-being, 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 responsible, safe, consensual, and satisfying sex life, and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so.¹⁶⁰ This further implies that women and men attain equal relationships in matters related to sexual relations and reproduction.¹⁶¹

The definition was then replicated in Section 4 (p) of the RPRH Act.¹⁶² Moreover, the ICPD Programme of Action reiterates that reproductive rights are composed of “certain human rights that are already recognized in national laws, international human rights documents and other [relevant United Nations] consensus documents.”¹⁶³ Because reproductive rights merely retell and rebrand already existing human rights, it is correct to say that reproductive rights *are* human rights.¹⁶⁴ Other compelling factors that argue for the establishment of reproductive health rights as human rights: “its centrality to human functioning; its contribution to overall human health; its

158. *Id.*

159. UNITED NATIONS POPULATION FUND, PROGRAMME OF ACTION OF THE INTERNATIONAL CONFERENCE ON POPULATION DEVELOPMENT (2014). [hereinafter ICPD Programme of Action].

160. *Id.*

161. *Id.* ¶ 7.2.

162. The Responsible Parenthood and Reproductive Health Act of 2012, § 4 (p).

163. *Id.* ¶ 7.3.

164. Angelmhina D. Lencio, Towards Reproductive Justice: The Human Rights Implications and the Constitutionality of the No Home Birthing Ordinances, at 50 (2016) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) (citing Beatrice Okpalaobi & Helen Onyi-Ogelle, Global Trend Towards the Reproductive Health Right of Nigerian Women: The Health Promotion Perspective, 2 JETERAPS 418, 419 (2011)).

interconnectedness with numerous other human rights; and its relationship with social factors involving sexuality, gender, and power.”¹⁶⁵

The United Nations Human Rights Office of the High Commissioner dissected the definition of reproductive rights into three sections.¹⁶⁶

The first part talks about the “right [] to decide freely and responsibly the number, spacing[,], and timing of [couples’ and individuals’] children and to have the information and means to do so.”¹⁶⁷ This can be executed by giving “access to contraception and to the necessary information on reproductive health issues.”¹⁶⁸

The second part or “the right to attain the highest standard of sexual and reproductive health”¹⁶⁹ includes matters related to childbearing and a sex life that is fulfilling and safe.¹⁷⁰ In practical terms, this right can be realized by providing “access to a comprehensive package of health services including voluntary family planning, abortion where it is *not* against the law, post-abortion care, ante- and post-natal care, both for mother and for child[.]”¹⁷¹ These services must be made available to the marginalized sector, and should hence be offered in “rural and underserved areas.”¹⁷²

The last section or “the right of all to make decisions concerning reproduction free of discrimination, coercion [,]and violence as expressed in human rights documents.”¹⁷³ This highlights the reproductive and sexual

165. Gable, *supra* note 154, at 985.

166. UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, ET AL., REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS: A HANDBOOK FOR NATIONAL HUMAN RIGHTS INSTITUTIONS 22–23 (2014). The next three paragraphs are based on the discussion in the study of Lencio, *supra* note 164, at 51–52.

167. ICPD Programme of Action, *supra* note 159, ¶ 7.3.

168. UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, ET AL., *supra* note 166, at 23.

169. ICPD Programme of Action, *supra* note 159, ¶ 7.3.

170. UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, ET AL., *supra* note 166, at 23.

171. *Id.* (emphasis supplied).

172. *Id.*

173. ICPD Programme of Action, *supra* note 159, ¶ 7.3.

rights of the most vulnerable sectors, such as people with disabilities, members of ethnic groups, and victims of gender-based violence.¹⁷⁴

The first and second parts are discussed further below.

B. Extent of Reproductive Health Rights and the Right to Reproductive Choice

1. Convention on the Elimination of All Forms of Discrimination Against Women

Arguably, the most important international document dealing with women's rights is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁷⁵ The Philippines has ratified CEDAW and is bound to comply with the obligations set therein.¹⁷⁶

The CEDAW notes that the “role of women in procreation should not be a basis for discrimination[.]”¹⁷⁷ In order to highlight this, it becomes important to assert a woman's right to reproductive choice. At the center of protecting reproductive health rights is the “empowerment of women and their capacity to decide[.]”¹⁷⁸

The CEDAW values and guarantees two concepts: autonomy and non-discrimination; and any violation thereof is a violation against liberty, social justice, and equality.¹⁷⁹ On one hand, non-discrimination highlights the right to equality. CEDAW defines discrimination as

174. UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, ET AL., *supra* note 166, at 23.

175. CEDAW, *supra* note 68.

176. *Id.* pmb1.

177. *Id.*

178. U.N. Committee on the Elimination of Discrimination Against Women, Statement of the Committee on the Elimination of Discrimination Against Women on Sexual and Reproductive Health and Rights: Beyond 2014 ICPD Review, at 2, available at http://www.astra.org.pl/pdf/onz/CEDAW_SRHR_26Feb2014.pdf (last accessed May 11, 2021) [<https://perma.cc/YQ5B-A5YH>].

179. Dr. Carmel Shalev, Rights to Sexual and Reproductive Health – The ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women (An Unpublished Paper Presented at the International Conference on Reproductive Health, Mumbai, India), available at <http://www.un.org/womenwatch/daw/csw/shalev.htm> (last accessed May 11, 2021) [<https://perma.cc/5PJ9-AK88>].

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁸⁰

Despite the pronouncement, equality is also valued in the field of reproductive health because it points to the differences between men and women, may the differences be biological or social, which are sometimes used to perpetuate dangerous stereotypes against women,¹⁸¹ or used to deprive women access to facilities or contraceptives that only they need.¹⁸²

On the other hand, autonomy in relation to reproductive health is defined as “the right of a woman to make decisions concerning her fertility and sexuality free of coercion and violence.”¹⁸³ In other words, autonomy is best exercised through the right to choose.¹⁸⁴ While not expressly mentioned in the CEDAW, autonomy is implied “in the fundamental freedoms it guarantees to women, on a basis of equality with men.”¹⁸⁵ Furthermore, autonomy is rooted in the other fundamental human rights enshrined in various international documents and conventions, such as privacy, dignity, and security.¹⁸⁶

a. Reproductive Choice

Dr. Camel Shalev, an expert member of the Committee on the Elimination of Discrimination Against Women, describes reproductive choice as the right of women “to make free and responsible decisions concerning matters that are key to control [] their lives[.]”¹⁸⁷ This includes the decision of whether or not women should procreate or have a family, and the “right to choose their preferred method of family planning and contraception.”¹⁸⁸ In short, reproductive choice is the idea “that every woman must have the right of

180. CEDAW, *supra* note 68, art. 1.

181. Shalev, *supra* note 179.

182. Uberoi & Bruyn, *supra* note 80, at 161.

183. Shalev, *supra* note 179.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

control over her body, her sexuality, and her reproductive life.”¹⁸⁹ The right to reproductive choice is internationally established and recognized because of its declaration and implication in international documents and human rights treaties.¹⁹⁰

V. REPRODUCTIVE HEALTH RIGHTS AND THE RIGHT TO REPRODUCTIVE CHOICE IN THE PHILIPPINES

A. Constitutional Basis

I. Right to Health

Reproductive health rights are “directly connected to right to health[.]”¹⁹¹ The right to health, in turn, is an important feature of the right to life.¹⁹² State recognition of this right starts off with the declaration in the Constitution that the Philippines “values the dignity of every human person and guarantees full respect for human rights.”¹⁹³ Through this, the State declaims that each individual human person has inherent rights that must be appreciated and protected.

The State “recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.”¹⁹⁴ True enough, subsequent statutes reiterate that the family is considered as the most basic but the most fundamental institution which public policy must protect.¹⁹⁵ The Constitution further elucidates that the State shall protect “[t]he right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;”¹⁹⁶ “[t]he right of the family to a family living wage and income;”¹⁹⁷ and “[t]he right of families

189. Lynn Freedman & Stephen Isaacs, *Human Rights and Reproductive Choice*, 24 *STUD. FAM. PLAN.* 18, 23 (1993).

190. *Id.*

191. UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, ET AL., *supra* note 166, at 83.

192. *Imbong*, 721 SCRA at 428 (J. Leonardo-De Castro, concurring opinion).

193. PHIL. CONST. art. II, § 11.

194. PHIL. CONST. art. II, § 12.

195. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209, art. 149 (1987).

196. PHIL. CONST. art. XV, § 3 (1).

197. PHIL. CONST. art. XV, § 3 (3).

or family associations to participate in the planning and implementation of policies and programs that affect them.”¹⁹⁸

Nonetheless, the Supreme Court clarified that these provisions are not self-executory. In *Basco v. Philippine Amusement and Gaming Corporation*,¹⁹⁹ the Court said that Sections 11 and 12 of Article II and Section 13 of Article XIII need legislation to be enforceable.²⁰⁰

The Supreme Court, nonetheless, expressly said that provisions on the right to health are self-executing.²⁰¹ Furthermore, as far back as 1993, the Court already ruled that instituting the right to health as a State policy “highlight[s its] continuing importance and imposes upon the [S]tate a solemn obligation to [] protect and advance [it].”²⁰²

2. The Right to Liberty and the Right to Privacy

The Constitution explicitly states that no one shall be deprived of life and liberty without due process of law.²⁰³ Recognizing the value of dignity of every human person, the Philippines has avowed to defend and advance a person’s right to liberty.²⁰⁴ However, the right to liberty does not only encompass the rights of those who have been unduly deprived of their freedom, but also includes a person’s decision-making faculties that would embrace choices at the core of his or her dignity and autonomy, such as decisions on “marriage, procreation, contraception, family relationships, child

198. PHIL. CONST. art. XV, § 3 (4).

199. *Basco v. Philippine Amusement and Gaming Corporation*, G.R. No. 91649, 197 SCRA 52 (1991).

200. *Id.* at 68. Being non-self-executing principles, they cannot give rise to a cause of action in the courts; they do not embody judicially enforceable constitutional rights. Moreover, they are considered as mere directives addressed to the executive and the legislative departments. If unheeded, the remedy will not lie with the courts; but rather, the electorate’s displeasure may be manifested in their votes. See *Kilosbayan, Incorporated v. Morato*, G.R. No. 118910, 246 SCRA 540, 564 (1995) & *Tondo Medical Center v. Court of Appeals*, G.R. No. 167324, 527 SCRA 746, 765 (2007) (citing *Tañada v. Angara*, 338 Phil. 546, 580-81 (1997)).

201. *Imbong*, 721 SCRA at 314.

202. *Oposa v. Factoran*, G.R. No. 101083, 224 SCRA 792, 805 (1993).

203. PHIL. CONST. art. III, § 1.

204. *Government of Hong Kong Special Administrative Region v. Olalia, Jr.*, G.R. No. 153675, 521 SCRA 470, 482 (2007).

rearing, and education.”²⁰⁵ In short, the right to privacy means the right to be left alone.²⁰⁶

While the Philippine Constitution’s express provision on the right to privacy only covers correspondence and communication,²⁰⁷ the Supreme Court said that the right to privacy or right to be left alone is incorporated in the right to liberty.²⁰⁸ Notably, the Supreme Court, in the same case, made references to *Griswold v. Connecticut*²⁰⁹ in arguing for the right to privacy in making personal decisions.²¹⁰ The Supreme Court used and upheld the same pronouncement on the right to privacy in *Imbong*, a case challenging the constitutionality of RPRH Act.²¹¹

B. Statutory Basis

1. RPRH Act, as Strengthened by *Imbong v. Ochoa, Jr.*

a. Guiding Principles

As discussed in the first part of this Note, the RPRH Act “is an enhancement measure to fortify and make effective the current laws on contraception, women’s health and population control.”²¹² The law is founded on constitutionally established rights such as the right to life, equal protection, the right to sustainable human development, the right to health, the right to information, and the right to choose “in accordance with [people’s] religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood.”²¹³ The law reiterates that it is a measure promulgated evincing the State’s obligation to protect the rights of the mother, children, youth and

205. *City of Manila v. Laguio, Jr.*, G.R. No. 118127, 455 SCRA 308, 337 (2005).

206. *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. No. 157870, 570 SCRA 410, 431 (2008) (citing *Ople v. Torres*, G.R. No. 127685, 293 SCRA 141, 153 (1998)).

207. PHIL. CONST. art. III, § 3 (1).

208. *Morfe v. Mutuc*, G.R. No. L-20387, 22 SCRA 424, 442 (1968) (citing *Public Utilities Commission v. Pollak*, 343 U.S. 451, 467 (1952)).

209. *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

210. *Morfe*, 22 SCRA at 444.

211. *Imbong*, 721 SCRA at 347.

212. *Id.* at 272.

213. The Responsible Parenthood and Reproductive Health Act of 2012, § 2, para. 1.

the unborn from conception.²¹⁴ The law “promote[s] openness to life”²¹⁵ conditioned on the parents’ capacity to raise their children “in a truly humane way.”²¹⁶ Nonetheless, it is the women who are at the core of all State efforts to resolve reproductive health care issues.²¹⁷

The following are the other principles that should guide the implementation and interpretation of the law: the right to make free and informed decisions independent of any coercion;²¹⁸ “[r]espect for protection and fulfillment of reproductive health and rights;”²¹⁹ providing effective and quality reproductive health care services as a primary duty;²²⁰ including “ethical and medically safe, legal, accessible, affordable, non-abortifacient, effective and quality reproductive health care services and supplies” as part of basic health care;²²¹ “ensur[ing] effective partnership among the national government, [LGUs,] and the private sector in the design, implementation, coordination, integration, monitoring[,] and evaluation of people-centered programs to enhance the quality of life and environmental protection;”²²² satisfaction of the needs of people throughout their entire life cycle;²²³ and recognizing individual preferences and choice of family planning methods.²²⁴ Furthermore, while abortion remains to be a criminal offense, the State shall make sure that women who are in need of post-abortive care “and all other complications arising from pregnancy, labor and delivery[,] and related issues shall be treated and counseled in a humane, nonjudgmental, and compassionate manner in accordance with law and medical ethics[.]”²²⁵

The law itself defines reproductive health rights 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

214. *Id.* § 2, para. 2.

215. *Id.* § 2, para. 7.

216. *Id.*

217. *Id.* § 2, para. 3.

218. *Id.* § 3 (a).

219. The Responsible Parenthood and Reproductive Health Act of 2012, § 3 (b).

220. *Id.* § 2, para. 5.

221. *Id.* § 3 (d).

222. *Id.* § 3 (f) (3).

223. *Id.* § 3 (p).

224. *Id.* § 3 (h).

225. The Responsible Parenthood and Reproductive Health Act of 2012, § 3(j).

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[.]²²⁶

However, the provision expressly excludes abortion and access to abortifacients as components of reproductive health rights.²²⁷ Furthermore, the repealing clause of the law specifically upholds prevailing laws against abortion.²²⁸

Reproductive health rights recognize that overall reproductive health is concerned with “the state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.”²²⁹ In order to realize and satisfy reproductive health rights, caring for reproductive health must ensure “access to a full range of methods, facilities, services[,] and supplies that contribute to reproductive health and well-being by addressing reproductive-health related problems.”²³⁰

226. *Id.* § 4 (s).

227. *Id.*

228. *Id.* § 29.

229. *Id.* § 4 (p).

230. *Id.* § 4 (q). It necessarily includes:

- (1) Family planning information and services which shall include as a first priority making women of reproductive age fully aware of their respective cycles to make them aware of when fertilization is highly probable, as well as highly improbable;
- (2) Maternal, infant[,] and child health and nutrition, including breastfeeding;
- (3) Proscription of abortion and management of abortion complications;
- (4) Adolescent and youth reproductive health guidance and counseling;
- (5) Prevention, treatment and management of reproductive tract infections (RTIs), HIV[,] and AIDS and other sexually transmittable infections (STIs);
- (6) Elimination of violence against women and children and other forms of sexual and gender-based violence;
- (7) Education and counseling on sexuality and reproductive health;
- (8) Treatment of breast and reproductive tract cancers and other gynecological conditions and disorders;
- (9) Male responsibility and involvement and men’s reproductive health;
- (10) Prevention, treatment[,]and management of infertility and sexual dysfunction;

The next part specifically talks about an important aspect of reproductive health, which is access to family planning.

b. Access to Family Planning

Section 7 of the RPRH Act²³¹ might be considered as the most invoked and most used provision in implementing the law. The provision mandates that “[a]ll accredited public health facilities shall provide a full range of modern family planning methods, which shall also include medical consultations, supplies[,] and necessary and reasonable procedures for poor and marginalized couples having infertility issues who desire to have children[.]”²³²

Family planning is a program or set of programs whose goal is to ensure that individuals or couples, married or not, have the ability to freely determine “the number and spacing of their children and to have the information and means to do so[.]”²³³ This means that they are given “access to a full range of safe, affordable, effective, non-abortifacient modern natural and artificial methods of planning pregnancy.”²³⁴ It is argued that it is illogical to offer people limited choices “[i]f the ultimate objective is to improve [their] quality of life.”²³⁵

The next part goes deeper into “contraceptives,” which was the subject of the most controversy in *Imbong*.

i. On Contraceptives

The petitioners in *Imbong* argued that the RPRH Act²³⁶ authorizes the use of contraceptives even after fertilization of the ovum, thus indirectly allowing the Constitutionally prohibited act of abortion.²³⁷

Representative Edcel Lagman, one of the proponents of the law, fired back and said that there are “various studies of the [World Health Organization

(11) Reproductive health education for the adolescents; and

(12) Mental health aspect of reproductive health care.

The Responsible Parenthood and Reproductive Health Act of 2012, § 4 (q).

231. *Id.* § 7.

232. *Id.*

233. *Id.* § 4 (e).

234. *Id.*

235. Fathalla, *supra* note 45, at 1185.

236. The Responsible Parenthood and Reproductive Health Act of 2012, § 4 (a).

237. *Imbong*, 721 SCRA at 290.

that] show that life begins from the implantation of the fertilized ovum [in the uterine lining;]”²³⁸ hence, contraceptive use even after fertilization but prior to implantation is still allowed.²³⁹ On this issue, the Supreme Court held, reiterating what the framers of the Constitution thought of the matter, that life begins during fertilization and *not* implantation.²⁴⁰ Thus, the use of contraceptives that “actually prevent the union of the male sperm and the female ovum, and those that similarly take action *prior to fertilization* should be deemed non-abortion, and thus, constitutionally permissible.”²⁴¹

The Supreme Court said that it is outside its purview to determine whether or not “the use of contraceptives or one’s participation in the support of modern reproductive health measures” is religiously moral.²⁴²

Ruth Dixon-Mueller argues that religious convictions aimed at limiting the right to use contraceptives “may be freely accepted by individuals but cannot be imposed on those who choose not to accept such values and norms.”²⁴³ Contraceptives, aside from recognizing individual preferences, “are meant to be used by women to empower themselves, to maximize their choices, to give them control over their fertility, and thus over their lives.”²⁴⁴ Enhancing the quality of life is another purpose of contraceptives.²⁴⁵

c. Reproductive Health Information

Reproductive health is not limited to providing medicines, supplies, or procedures to those who need them. The approach is holistic, in a sense that people must also be given access to reproductive health-related information so that they may be able to freely decide on their own.²⁴⁶ In fact, an informed choice or voluntarism is one of the cornerstones of the RPRH Act.²⁴⁷ In order

238. *Id.* at 291.

239. *Id.* at 292.

240. *Id.* at 293.

241. *Id.* at 300.

242. *Id.* at 331.

243. RUTH DIXON-MUELLER, *POPULATION POLICY & WOMEN’S RIGHTS: TRANSFORMING REPRODUCTIVE CHOICE* 14 (2016).

244. Fathalla, *supra* note 45, at 1184.

245. *Id.* at 1185.

246. The Responsible Parenthood and Reproductive Health Act of 2012, §§ 2, 4 (q), 7, & 11.

247. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 3.01 (w).

to achieve this goal, there must be “effective access to information that allows individuals to freely make their own decision[s], upon the exercise of free choice and not obtained by any special inducements or forms of coercion or misinterpretation, based on accurate and complete information on a broad range of reproductive health services.”²⁴⁸

VI. IMPLEMENTING THE RPRH ACT

A. Department of Health

Before the public can enjoy the rights and policies found in the RPRH Act,²⁴⁹ it is important that they are fully implemented. No other agency is better equipped to lead this than the DOH.²⁵⁰ The Administrative Code originally mandated the DOH to handle maternal and child health care, and family planning services.²⁵¹ Meanwhile, the RPRH Act specifically asks the DOH to incorporate the following obligations to its already existing mandate: “(1) [to] [f]ully and efficiently implement the reproductive health care program; (2) [to] [e]nsure people’s access to medically safe, non-abortifacient, legal, quality[,] and affordable reproductive health goods and services; and (3) [to] p]erform such other functions necessary to attain the purposes of this Act.”²⁵²

In this daunting task, however, the DOH is not alone. The DOH has a helper in the form of LGUs. The law specifically provides that the DOH shall “[s]upervise and provide assistance to LGUs in the delivery of reproductive health care services and in the purchase of family planning goods and supplies[.]”²⁵³ Furthermore, it shall also “[f]urnish LGUs, through their respective local health offices, appropriate information and resources to keep the latter updated on current studies and researches relating to family planning, responsible parenthood, breastfeeding[,] and infant nutrition.”²⁵⁴

248. *Id.*

249. The Responsible Parenthood and Reproductive Health Act of 2012.

250. *Id.* § 19.

251. Instituting the Administrative Code of 1987 [ADMIN. CODE], Executive Order No. 292, bk. IV, tit. IX, ch. 4, § 13, ¶¶ 1 & 3 (1987).

252. The Responsible Parenthood and Reproductive Health Act of 2012, § 19 (a).

253. *Id.* § 19 (b) (4).

254. *Id.* § 19 (b) (5).

B. Local Government Units

1. Exercising Local Autonomy

Before discussing the role of LGUs in the implementation of the RPRH Act, it is important to note that the Constitution grants them local autonomy in dealing with affairs affecting their community.²⁵⁵

In *Ganzon v. Court of Appeals*,²⁵⁶ the Supreme Court highlighted the importance of local autonomy. It said that local autonomy creates a more perceptive LGU that is accountable to its constituents.²⁵⁷ With local autonomy, the national government gives up certain powers to local governments, but only with regard to administrative matters on the local level.²⁵⁸

Despite the wide discretion given to them, LGUs continue to be answerable to the national government.²⁵⁹ In fact, the Local Government Code reflects this subordination — the Legislature, a national body of the State, produced the Code, and LGUs remain to be under the general supervision of the Office of the President.²⁶⁰ The approach of LGUs must still be in line with the nationwide goal and objectives that have been established by the President and the Congress.²⁶¹

In *Pimentel v. Aguirre, Jr.*,²⁶² the Supreme Court explained that the supervisory power of the President only means that the latter oversees that the actions of LGUs are in line with existing laws.²⁶³ LGUs still have the power to judge which course to take in accordance with the resources available to them, but they are still under the supervision of the President.²⁶⁴ Supervision is different from the power of control. The difference lies with the power of

255. PHIL. CONST. art. X, § 2.

256. *Ganzon v. Court of Appeals*, G.R. No. 93252, 200 SCRA 271 (1991).

257. *Id.* at 282 (citing PHIL. CONST. art. X, § 3).

258. *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, 336 SCRA 201, 216 (2000).

259. *Id.*

260. ADMIN. CODE, bk. III, tit. I, ch. 6, § 18.

261. *Pimentel, Jr.*, 336 SCRA at 217.

262. *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, 336 SCRA 201 (2000).

263. *Id.* at 216-17 (citing *Limbona v. Mangelin*, G.R. No. 80391, 200 SCRA 271, 286 (1991)).

264. *Id.*

the higher authority in inspecting the acts of those below it.²⁶⁵ A case explained it this way — “Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves.”²⁶⁶

Authorities with supervisory power “merely [see] to it that the rules are followed[,] but [they themselves do] not lay down such rules, nor [do they] have the discretion to modify or replace them.”²⁶⁷ While they can still instruct the act to be carried out or done in a certain way, they can do so if only to check that the act complies with already established rules or if within their authority; they cannot impose how those below them should approach it.²⁶⁸

The Department of Interior and Local Government (DILG) helps the Office of the President in this matter.²⁶⁹ The DILG is specifically given the following powers:

- (1) Advise the President on the promulgation of policies, rules, regulations [,]and other issuances relative to the general supervision of local government units;
- (2) Establish and prescribe rules, regulations[,] and other issuances and implementing laws on the general supervision of local government units and on the promotion of local autonomy and monitor compliance thereof by said units;
- (3) Provide assistance in the preparation of national legislation affecting local government units;
- (4) Establish and prescribe plans, policies, programs[,] and projects to strengthen the administrative, technical[,] and fiscal capabilities of local government offices and personnel;
- (5) Formulate and implement policies, plans, programs[,] and projects to meet national and local emergencies arising from natural and man-made disasters; and
- (6) Perform such other functions as may be provided by law.²⁷⁰

265. *Drilon v. Lim*, G.R. No. 112497, 235 SCRA 135, 142 (1994).

266. *Pimentel, Jr.*, 336 SCRA at 215.

267. *Drilon*, 235 SCRA at 142.

268. *Id.*

269. ADMIN. CODE, bk. IV, tit. XII, ch. 1, § 2.

270. *Id.* § 3.

In addition, one of the principles of decentralizing national powers to LGUs is to encourage private sectors to join in on the promotion of local autonomy by helping LGUs in the distribution of basic services.²⁷¹ But at the core of it all, the goal of local autonomy is to ensure that the standard of life in the local community is sustainable.²⁷²

a. Providing Basic Services in Accordance with the Local Government Code

i. The General Welfare Clause

Two of the most important duties of LGUs are found in Sections 16 and 17 of the Local Government Code.²⁷³ Under these provisions, any LGU is granted powers, including those expressly and impliedly given, and anything incidental thereto, in order to perform its duty to provide and promote the general welfare of the community.²⁷⁴

The Local Government Code takes *general welfare* to mean activities and policies that would support and enhance, among others, health and safety, comfort and convenience, public morals, the right of the people to a balanced ecology within the respective territorial jurisdiction of a local government unit,²⁷⁵ through their own legislative bodies.²⁷⁶ Despite the broad grant of authority delegated to local government units by the national legislative body, acts and policies made by LGUs pursuant to Section 16 of the Code must remain consistent with the national policies;²⁷⁷ LGUs “cannot defy [the national legislature’s] will or modify or violate it”²⁷⁸ since Section 16 is merely a delegation to the LGUs of the police power of the State.²⁷⁹ Furthermore,

271. LOCAL GOV’T CODE, § 3 (l).

272. *Id.* § 3 (m).

273. *Id.* §§ 16 & 17.

274. *Id.* § 16.

275. *Id.*

276. *Laguio, Jr.*, 455 SCRA at 328.

277. *Id.* at 327.

278. *Id.* (citing *Magtajas v. Pryce Properties Corporation, Inc.*, G.R. No. 111097, 234 SCRA 255, 273 (1994)).

279. *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509, 499 SCRA 434, 448 (2006).

regulations issued in accordance with this provision must be reasonable and not oppressive.²⁸⁰

ii. Basic Services and Facilities

Aside from the delegation of police power, LGUs are also given the task of being the providers of basic services and facilities within their respective territorial jurisdiction.²⁸¹ It can be gleaned from the provision that certain functions of national agencies and offices are devolved to the LGUs, meaning they are responsible for carrying out these specific duties,²⁸² as opposed to Section 16, which delegates legislative powers to LGUs.²⁸³ However, similar to the authority found in Section 16, LGUs are given powers incidental to those expressly granted to them.²⁸⁴

The list of responsibilities given to LGUs is not exhaustive.²⁸⁵ Section 17, however, contains a qualification. The provision does not cover services and programs that are funded by the national government through the General Appropriations Act (GAA), which changes every year.²⁸⁶ This means that the primary providers of these services remain to be the national government, unless “the [LGU] concerned is duly designated as the implementing agency for such projects, facilities, programs, and services.”²⁸⁷ The services which are not covered by Section 17 may be easily identified by looking at the GAA; and identifying which services the LGUs have the responsibility to provide despite the funding under the GAA may be known by looking at the specific law itself.²⁸⁸

280. *Albon v. Fernando*, G.R. No. 148357, 494 SCRA 141, 147 (2006) (citing *Batangas CATV, Inc. v. Court of Appeals*, G.R. No. 138810, 439 SCRA 326 (2004)).

281. LOCAL GOV'T CODE, § 17 (a).

282. *Id.* & Jimenez, *supra* note 47, at 17 (citing Emmie-Lou L. Siongco, *Examining the Philippine Legal and Policy Framework on Family Planning*, at 60 (2007) (unpublished J.D. thesis, Ateneo de Manila University School of Law) (on file with the Professional Schools Library, Ateneo de Manila University)).

283. LOCAL GOV'T CODE, § 16.

284. *Id.* § 17 (a).

285. *Id.* § 17 (b).

286. *Id.* § 17 (c).

287. *Id.*

288. *Id.*

Despite the devolution of certain functions and responsibilities, the national government (or a higher level of local government) may still intervene by increasing the provisions and supplies of a lower LGU, in case the latter fails to provide the same or if there are insufficient resources to comply with the unit's responsibilities.²⁸⁹ Another way the national government may supervise the implementation of Section 17 is through the field units of national agencies assigned to specific LGUs.²⁹⁰ These field units may also give technical assistance to these LGUs.²⁹¹

Health-related services have been transferred from the national government to LGUs through the approval of the Local Government Code.²⁹² Local governments are equipped with Local Health Boards, headed by the mayor in case of cities,²⁹³ whose job is:

- (1) [t]o propose to the *sanggunian* concerned, in accordance with standards and criteria set by the Department of Health, annual budgetary allocations for the operation and maintenance of health facilities and services within the municipality, city or province, as the case may be;
- (2) [t]o serve as an advisory committee to the *sanggunian* concerned on health matters such as, but not limited to, the necessity for, and application of local appropriations for public health purposes; and
- (3) [c]onsistent with the technical and administrative standards of the Department of Health, [to] create committees which shall advise local health agencies on matters such as, but not limited to, personnel selection and promotion, bids and awards, grievance and complaints, personnel discipline, budget review, operations review[,] and similar functions.²⁹⁴

Moreover, LGUs, except *barangays*, are required to appoint a health officer,²⁹⁵ who shall be in charge of the Office of Health within the hierarchy of his or her respective LGU.²⁹⁶ More importantly, the health officer is tasked to come up with guidelines on how to operate the office, with the approval of the local chief executive, and for the purpose of assisting the LGU “in the

289. LOCAL GOV'T CODE, § 17 (f).

290. *Id.* § 17 (h).

291. *Id.*

292. Jimenez, *supra* note 47, at 17.

293. LOCAL GOV'T CODE, § 102 (a) (2).

294. *Id.* § 102 (b).

295. *Id.* § 478 (a).

296. *Id.* § 478 (b).

efficient, effective and economical implementation of a health services program geared to implementation of health-related projects and activities[.]”²⁹⁷ Aside from the obligations mentioned above, the local health officer shall also extend technical assistance to the LGU in implementing Section 17 of the Local Government Code;²⁹⁸ give advice on all matters related to health;²⁹⁹ implement national laws, local ordinances and regulations pertaining to health;³⁰⁰ promote health through information campaigns;³⁰¹ and perform other functions that may be given to him or her by law or ordinance.³⁰²

2. Local Issuances

a. Executive Orders and Ordinances

In order to realize the power granted to LGUs and ensure that basic services are delivered to the local community, executive orders and ordinances may be issued by the appropriate authority. In this regard, the mayor,³⁰³ as the local chief executive of a city, shall oversee and control the services, activities and programs of the city government.³⁰⁴ In accordance with this, the city mayor shall:

- (i) [d]etermine the guidelines of city policies and be responsible to the *sangguniang panlungsod* for the program of government;
- (ii) [d]irect the formulation of the city development plan, with the assistance of the city development council, and upon approval thereof by the *sangguniang panlungsod*, implement the same;
- (iii) [p]resent the program of government and propose policies and projects for the consideration of the *sangguniang panlungsod* at the opening of the regular session of the *sangguniang panlungsod* every calendar year and as

297. *Id.* § 478 (b) (1).

298. *Id.* § 478 (b) (2).

299. LOCAL GOV'T CODE, § 478 (b) (4) (ii).

300. *Id.* § 478 (b) (4) (iii).

301. *Id.* § 478 (b) (4) (vii).

302. *Id.* § 478 (c).

303. The discussion is limited to the city government, the mayor, and the *sangguniang panlungsod*, considering that the illustrative example in this Note focuses on an executive order issued by a city mayor.

304. LOCAL GOV'T CODE, § 455 (b) (1).

often as may be deemed necessary as the general welfare of the inhabitants and the needs of the city government may require;[and]

- (iv) [i]nitiate and propose legislative measures to the *sangguniang panlungsod* and as often as may be deemed necessary, provide such information and data needed or requested by said *sanggunian* in the performance of its legislative functions[.]³⁰⁵

In determining the policy of the city and to assure that laws are faithfully implemented, the city mayor may issue executive orders³⁰⁶ and verify that basic services and facilities are distributed to his or her constituents in accordance with Section 17 of the Local Government Code.³⁰⁷

The power of the city mayor is under the reviewing powers of the provincial governor within the latter's jurisdiction.³⁰⁸ This power necessarily includes the attestation by the governor that the executive order is within the authority and powers granted to the city mayor by law.³⁰⁹ Within three days after its issuance, the city mayor must transmit the executive order to the governor for review.³¹⁰ In turn, the governor has 30 days from its submission to review it; otherwise, the executive order shall be considered valid and conforming with existing laws.³¹¹

As previously discussed, the LGUs have local autonomy and may decide on which course to take in order to provide quality living to their constituents. Aside from the issuance of executive orders, local autonomy may be exercised through local legislative power, and local legislative councils carry out this power.³¹² For cities, the power is lodged with the *sangguniang panlungsod*,³¹³ headed by the city vice-mayor.³¹⁴

While the *sangguniang panlungsod* comes up with local legislation, it is the city mayor who approves the same.³¹⁵ If he or she otherwise disagrees, he or

305. *Id.* § 455 (b) (1) (i)-(iv).

306. *Id.* § 455 (b) (2) (iii).

307. *Id.* § 455 (b) (4).

308. *Id.* § 30 (a).

309. *Id.*

310. LOCAL GOV'T CODE, § 30 (a).

311. *Id.* § 30 (b).

312. *Id.* § 48.

313. *Id.*

314. *Id.* § 49.

315. *Id.* § 54 (a).

she may exercise veto powers and return the proposed legislation accompanied by his or her objections³¹⁶ within 10 days.³¹⁷ However, the *sangguniang panlungsod* may agree with or may override the city mayor's veto.³¹⁸ In either case, the ordinance will be deemed effective.³¹⁹ If the mayor fails to communicate his or her veto, it is as if he or she had signed and approved the ordinance.³²⁰

Ordinances are also subject to review. The *sangguniang panlalawigan* has the power to review the ordinances or resolutions of the *sangguniang panlungsod*.³²¹ If the *sangguniang panlalawigan* finds the ordinance invalid for being beyond the authority given to *sangguniang panlungsod*, it shall inform the city mayor.³²² However, if the *sangguniang panlalawigan* takes no action on the matter within 30 days after the submission of the ordinance, then the ordinance shall be considered valid and in conformity with the law.³²³

b. Test of a Valid Local Issuance

Although given autonomy on certain matters, LGUs are still subject to the supervision of the President,³²⁴ and their policies must still be in accordance with the objectives that have been lined up by the President and the Congress.³²⁵ In order to fully supervise local governments, the DILG assists the Office of the President.³²⁶ In fact, aside from advising and creating policies on the exercise of supervision by the President,³²⁷ the DILG, through the Bureau of Local Government Supervision (BLGS), may keep an eye on local governments' compliance with national laws and policies.³²⁸ This monitoring

316. LOCAL GOV'T CODE, § 54 (a).

317. *Id.* § 54 (b).

318. *Id.* § 54 (a).

319. *Id.*

320. *Id.* § 54 (b).

321. *Id.* § 56.

322. LOCAL GOV'T CODE, § 56 (b) & (c).

323. *Id.* § 56 (d).

324. ADMIN. CODE, bk. III, tit. I, ch. 6, § 18.

325. *Pimentel, Jr.*, 336 SCRA at 217.

326. ADMIN. CODE, bk. IV, tit. XII, ch. 1, § 2.

327. *Id.* bk. IV, tit. XII, ch. 1, § 3 (1).

328. *Id.* bk. IV, tit. XII, ch. 4, § 12 (3).

mechanism is in addition to the review of executive orders and ordinances under the Local Government Code.³²⁹

In keeping with the principle of subordination of the local government to the national government, the executive orders and ordinances of the former must be considered valid in line with the policies of the latter. For a local issuance to be valid, the LGU must have issued it within its corporate powers.³³⁰ Furthermore, the local issuance must comply with the following requirements: “(1) *must not contravene the Constitution or any statute*; (2) *must not be unfair or oppressive*; (3) *must not be partial or discriminatory*; (4) *must not prohibit but may regulate trade*; (5) *must be general and consistent with public policy*; and (6) *must not be unreasonable.*”³³¹

The first requirement reiterates the primacy of the Constitution, and highlights the delegation of legislative power to LGUs, meaning any issuance thereof cannot trump the superiority of the legislative power of the delegating authority.³³² Essentially, if an issuance fails the test of constitutionality, it necessarily fails the test of uniformity with existing laws.³³³

3. LGU’s Role in the Implementation of the RPRH Act

a. LGUs as Direct Providers

The RPRH Act specifically states that LGUs shall partake an important role in its implementation, giving them the function of “direct provider[s] of both services and information to their respective constituents[.]”³³⁴ In fact, LGUs vitally participated in drafting the law’s IRR, which recognize that the law would be successful through the cooperation with and of LGUs.³³⁵

329. LOCAL GOV’T CODE, §§ 30 (a) & 54 (a).

330. *White Light Corporation v. City of Manila*, G.R. No. 122846, 576 SCRA 416, 433 (2009).

331. *Id.* (citing *Laguio, Jr.*, 455 SCRA at 326; *Tatel v. Municipality of Virac*, G.R. No. 40243, 207 SCRA 157, 161 (1992); *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, 204 SCRA 837, 845 (1991); & *Magtajas v. Pryce Properties Corp., Inc.*, G.R. No. 111097, 234 SCRA 255, 268-67 (1994)) (emphasis supplied).

332. *Laguio, Jr.*, 455 SCRA at 327 (citing *Magtajas*, 234 SCRA at 270-71).

333. *Id.*

334. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 12.02.

335. *Id.* whereas cl. para. 2.

Moreover, it is the LGU that has the duty to assure that there is a full array of responsible parenthood and reproductive health care services within its jurisdiction, and in accordance with the definitions of these services found in the law and the IRR.³³⁶ While it is the LGU that directly distributes the services and supplies to its constituents, the DOH is the one tasked to acquire them and observe how they are being used.³³⁷ In keeping with this duty, LGUs are obligated to send quarterly utilization reports to the DOH.³³⁸

Nevertheless, an LGU may come up with its own agenda in procuring, distributing, and monitoring reproductive health-related supplies and services, which shall be in line with the IRR and guidelines that may be imposed by the DOH.³³⁹

To this end, the DOH and LGUs shall cooperate in promoting responsible parenthood and reproductive health rights through a multimedia campaign.³⁴⁰ Notwithstanding, LGUs may implement their own communication plan that is germane to their communities, resources, and situation but still in accordance with the health promotion and communication plan of the DOH.³⁴¹

b. DILG Memorandum Circular No. 2015-145

The role of LGUs in the implementation of the RPRH Act is so vital that the DILG saw the need to issue Memorandum Circular 2015-145.³⁴² Aside from reiterating the key functions of the LGUs in the implementation of the law,³⁴³ the Memorandum Circular also expressly states that local ordinances, issuances, and policies must not be contrary to the RPRH Act, its principles, provisions,

336. *Id.* § 4.02.

337. *Id.* § 8.01.

338. *Id.* § 8.11.

339. *Id.* § 8.09.

340. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 10.01.

341. *Id.* § 10.05.

342. Department of the Interior and Local Government, Reiteration of Local Government Units' Role and Functions in the Implementation of RA 10354 Entitled "Responsible Parenthood and Reproductive Health Act of 2012" and its Implementing Rules and Regulations, Memorandum Circular No. 2015-145 [DILG M.C. No. 2015-145] (Dec. 29, 2015).

343. *Id.* § 2.

and IRR.³⁴⁴ Any issuance or ordinance made by local governments must be consistent with the goal of institutionalizing the implementation of the law.³⁴⁵

The DILG also observed that there remains a problem in the implementation of the law at the level of local governments, hence the need to recapitulate the obligations and duties of local governments in execution of the law.³⁴⁶

C. CEDAW Inquiry on Manila's Executive Order No. 003

In 2008, three concerned non-governmental organizations sent a letter to the Committee on the Elimination of Discrimination Against Women, seeking an inquiry under the Optional Protocol to the CEDAW³⁴⁷ into the implementation of Manila's Executive Order No. 003 issued in 2000 by former Mayor Jose L. Atienza, Jr.,³⁴⁸ the full title of which is *Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof*.³⁴⁹

Reading Manila's executive order, it would seem that contraceptives and artificial family planning methods were not altogether banned in the city. However, one study proposed that "by reason of the ambiguous wording of the executive order, it has led to several interpretations, which in turn, [have] resulted [in] a virtual ban of artificial contraceptives in the city of Manila."³⁵⁰

344. *Id.* § 5.

345. *Id.*

346. *Id.* § 1.

347. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 54/4, art. 8, U.N. Doc. A/Res/54/4 (Oct. 15, 1999).

348. 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, Committee on the Elimination of All Forms of Discrimination Against Women C/OP.8/PHL/1, ¶ 1, U.N. Doc. CEDAW/C/OP.8/PHL/1 (Apr. 22, 2015) [hereinafter CEDAW Summary Inquiry].

349. Office of the Manila City Mayor, *Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof*, Executive Order No. 003, Series of 2000 [E.O. No. 003, s. 2000] (Feb. 29, 2000). A thesis that was completed in 2009 discusses Executive Order No. 003 (2000). The thesis was written three years before the passage of the RPRH Act. See generally Jimenez, *supra* note 47.

350. Jimenez, *supra* note 47, at 26.

Public officials in Manila, in fact, had looked at the executive order as justification to prohibit the facilitation of contraceptives, ligation, and vasectomy.³⁵¹

The Committee drew the same results that it released in 2015. Executive Order No. 003 affirmed the city mayor's stance on *pro-life* matters.³⁵² Furthermore, the Executive Order pushed for the refusal to give women access to a full range of reproductive health services,³⁵³ the non-disbursement of public money for their procurement,³⁵⁴ and the advocacy that only *natural* family planning is to be provided and taught.³⁵⁵ Because of this, and despite the pro-choice provision in the order, the Executive Order deprived women of their right to choose which contraceptive method to use.³⁵⁶

Executive Order No. 003 was implemented when the Philippines had no law on reproductive health yet, which is why the Committee had to rely on the provisions of Republic Act No. 9710 or the *Magna Carta of Women*,³⁵⁷ but even this framework was not implemented well, said the Committee.³⁵⁸

The Committee found that the Philippine State was responsible for the violation committed by the City of Manila in 2000,³⁵⁹ considering “the accountability of States [P]arties for the implementation of their obligations under the Convention is engaged through the acts or omissions of all branches of government[.]”³⁶⁰ The Committee attributes to the Philippines accountability for violating Article 12 of the CEDAW,³⁶¹ which tasks State Parties to eliminate any barrier and discrimination against women in accessing family planning services.³⁶²

351. LINANGAN NG KABABAIHAN, ET AL., IMPOSING MISERY: THE IMPACT OF MANILA'S BAN ON CONTRACEPTION 7 (2007).

352. CEDAW Summary Inquiry, *supra* note 348, ¶ 2.

353. *Id.* ¶ 9.

354. *Id.* ¶ 11.

355. *Id.* ¶ 41.

356. *Id.* ¶ 12.

357. *Magna Carta of Women*.

358. CEDAW Summary Inquiry, *supra* note 348, ¶ 14.

359. *Id.* ¶ 21.

360. *Id.*

361. CEDAW, *supra* note 68, art. 12.

362. CEDAW Summary Inquiry, *supra* note 348, ¶¶ 31-36.

The Committee found that the Philippines grossly violated women's rights to reproductive health and reproductive choice by systemically declining them access to affordable modern and artificial methods of family planning and contraception³⁶³ such that

implementation over many years had a severe impact on their health and on their access to adequate health-care services. The Committee observes that the lives and health of many women were put at risk, given that they were compelled to have more children than they wanted or than their health permitted them to have. The Committee particularly takes note of the potentially life-threatening consequences of unplanned and/or unwanted pregnancies as a direct consequence of the denial of access to the full range of contraceptive methods[.]³⁶⁴

D. The Pro-Life City of Sorsogon: Scrutinizing a Strange Specimen

One issue the DILG saw that prevented the full implementation of the RPRH Act was Executive Order No. 3, series of 2015 (E.O. No. 3)³⁶⁵ issued by the City of Sorsogon. E.O. No. 3 was issued on 5 February 2015,³⁶⁶ 10 months after the Supreme Court released the decision in the case of *Imbong*.³⁶⁷

I. The Intent Behind Executive Order No. 3

On its face, E.O. No. 3 is harmless enough. It has five paragraphs for its preamble, pertaining to the following legal provisions: Article II, Section 11 of the 1987 Philippine Constitution (provision on the dignity of every human person);³⁶⁸ Article II, Section 12 of the Constitution (which talks about the sanctity of family life and the equal protection given to the life of the mother and the life of the unborn from conception);³⁶⁹ Article II, Section 15 of the Constitution (the right to health provision);³⁷⁰ Article XV, Section 3 (2) of the Constitution (the State's obligation to protect children from all types of neglect and abuse);³⁷¹ the provisions under the Universal Declaration of

363. *Id.* ¶ 34.

364. *Id.* ¶ 33.

365. E.O. No. 3, s. 2015.

366. *Id.*

367. *Imbong*, 721 SCRA at 146.

368. PHIL. CONST. art. II, § 11.

369. PHIL. CONST. art. II, § 12.

370. PHIL. CONST. art. II, § 15.

371. PHIL. CONST. art. XV, § 3 (2).

Human Rights which deal with the right to life, liberty, and security, and the right of children to be entitled to the same protection;³⁷² and lastly, provisions under the Magna Carta of Women which talk about providing culture-sensitive and religion-sensitive health care services to women, while respecting the spouses' right to found a family in line with their religious beliefs, and the right of women to be protected from hazardous drugs and substances.³⁷³

With all these declarations in mind, Mayor Sally Lee, who issued E.O. No. 3 and was once a supporter of the reproductive health policies of the government,³⁷⁴ declared "Sorsogon City as a Pro-life City"³⁷⁵ and even, boldly added that the "order shall take effect immediately."³⁷⁶

The DOH has sent representatives to Sorsogon seeking the repeal of the executive order.³⁷⁷ Lee's position was that government should protect its citizens from "[c]ontraception and abortion [that] destroy human life and undermine marriage and family."³⁷⁸

Due to the issuance of E.O. No. 3, Lee has received praise from the Roman Catholic community.³⁷⁹ According to one Fr. Shenan J. Boquet, a friend of Lee's whom she first met in the Asia-Pacific Congress for Life, Faith and Family (ASPAC) 2013 in Malaysia, making Sorsogon City a pro-life city was inspired by this ASPAC meeting.³⁸⁰ Fr. Boquet went on to praise Lee for "continu[ing] to educate her fellow citizens on the destructive effects of contraception and its deadly child, abortion."³⁸¹ Fr. Boquet defended Lee

372. UDHR, *supra* note 84, art. 25.

373. Magna Carta of Women, § 17 (a).

374. Brian Clowes, *Defending A "Pro-Life" City... Human Life International Visits The Philippines*, available at <http://thewandererpress.com/catholic/news/frontpage/defending-a-pro-life-city-human-life-international-visits-the-philippines> (last accessed May 11, 2021) [<https://perma.cc/TMD9-SNNX>].

375. E.O. No. 3, s. 2015.

376. *Id.*

377. Geronimo, *supra* note 41.

378. Fr. Shenan J. Boquet, *A "Pro-Life City?"*, available at <https://www.hli.org/2015/12/a-pro-life-city> (last accessed May 11, 2021) [<https://perma.cc/DQ42-VUCT>].

379. *Id.*

380. Ligaya Acosta, *Inspired by ASPAC, Filipino Mayor Declares City Pro-Life*, available at <http://www.hli.org/2015/02/inspired-aspac-filipino-mayor-declares-city-pro-life> (last accessed May 11, 2021) [<https://perma.cc/6N4D-AN2Y>].

381. Boquet, *supra* note 378.

from her detractors by saying that “[she] is simply exerting her moral responsibility as a Christian and leader to defend her people against the unjust aggression of the State and its attack against human life and the family.”³⁸²

Lee, together with others who support her, views *all* contraceptives as a window to abortion, and mere permission to use contraceptives *always* paves the way to the legalization of abortion.³⁸³ Because of her pro-life stance, Lee sought the help of Human Life International, a Roman Catholic apostolate of pro-life missionaries,³⁸⁴ in order to conduct trainings for public employees on marriage and family, natural family planning, the anti-life agenda, among others.³⁸⁵

Lee’s declaration has reportedly inspired other local chief executives to follow suit and declare their localities as pro-life.³⁸⁶

2. Proposed Ordinance and Resolution

One way of truly knowing the intention behind, and the goal of, issuing E.O. No. 3 is by looking at the proposed ordinance that was supposed to codify it, and the resolution adopting the proposed ordinance. While the proposed ordinance by the legislative council was precluded from being passed,³⁸⁷ studying it became important in order to fully grasp the consequence of the executive order.

The proposed Resolution mentions messages from Pope Benedict XVI and Pope Francis of the Roman Catholic faith as part of the preamble, both of which refer to the right of the unborn to be protected, and to the notion that “[e]very unborn child, though unjustly condemned to be aborted, has the face of the Lord”³⁸⁸ The Resolution basically seeks to adopt the Ordinance that was supposed to accompany E.O. No. 3.

382. *Id.*

383. Acosta, *supra* note 380.

384. Human Life International, Our Mission, *available at* <http://www.hli.org/about-us/our-mission> (last accessed May 11, 2021) [<https://perma.cc/J5N3-C44T>].

385. Acosta, *supra* note 380.

386. *Id.*

387. Geronimo, *supra* note 41.

388. *Sangguniang Panlungsod* of the City of Sorsogon, Resolution Enacting an Ordinance Declaring Sorsogon City as a Pro-Life City and Providing for Its Guidelines and Policies, Draft City Resolution, whereas cl. paras. 6-7. *See* Bishop Thomas J. Tobin, The “Throwaway Culture” Has Arrived at Our Doorstep, *available at* <https://catholicleader.com.au/analysis/pope-condemns-abortion-as->

The proposed Ordinance actually defines the term “pro-life,” as a stance that “oppos[es] abortion, infanticide, euthanasia[,] and embryo-destructive research, and all that kills [the] unborn and innocent human beings.”³⁸⁹

The proposed Ordinance enumerates several acts that may be regulated by the city: conducting of pro-life mission using modern natural family planning method³⁹⁰ and enjoining public health workers and offices, and private pharmacies and drug stores from selling, delivering, dispensing, and promoting abortifacient contraceptives, drug and other related medicines.³⁹¹

Penalties range from reprimand, suspension of public officer, removal from service, suspension of business operation, and revocation of business permit.³⁹²

3. Effects of Sorsogon City’s E.O. No. 3

Despite the non-passage of both the Ordinance and the Resolution, reports have shown that, because of E.O. No. 3, “the de facto effect is a ban since planning commodities were withdrawn from the city, and services ‘were stopped by the mayor arbitrarily.’”³⁹³

The CHR found out that even condoms are withdrawn, and the city government refuses to distribute them.³⁹⁴ This mirrors the intent of the Executive Order and the proposed Ordinance to only promote natural family

a-product-of-throwaway-culture (last accessed May 11, 2021) [<https://perma.cc/79EU-LTFY>].

389. Draft City Ordinance, § 3 (a). Abortion is also defined as “the ending of pregnancy through the removal or forcing out from the womb of a fetus or embryo before it is able to survive on its own.” *Id.* § 3 (d).

In order to clarify the council’s definition of “pro-life,” the proposed Ordinance also gives the definition of contraception as “methods or devices used to prevent pregnancy” and of abortifacient as “any drug or device that induces abortion or the destruction of a fetus inside the mother’s womb or the prevention of the fertilized ovum to reach and be implanted in the mother’s womb.” *Id.* § 3 (b) & (c).

390 *Id.* § 4 (b).

391 *Id.* § 4 (a) & (d).

392. Draft City Ordinance, § 8.

393. Geronimo, *supra* note 41.

394. Commission on Human Rights, CHR Probes Violations of RH Law, *available at* https://web.archive.org/web/20160706135144/http://chr.gov.ph/MAIN%20PAGES/news/PR_08Apr2016_RHLaw.htm (last accessed May 11, 2021).

planning methods in the locality, which the latter defines as “general title for the scientific, natural, and moral methods of family planning that can help married couples achieve or postpone pregnancies[.]”³⁹⁵ In fact, the proposed Ordinance also instructs the local population officer to conduct family planning seminars by advancing “the methods and advantages of modern natural family planning[.]”³⁹⁶ Because of this, some people were forced to buy contraceptives for themselves.³⁹⁷ Nurses, who were trained by the DOH, are also prevented from facilitating modern contraceptives to the people of Sorsogon.³⁹⁸

Moreover, the proposed ordinance tasks the City Health Office and barangay councils to facilitate the participation of non-government organizations and private sectors, “especially in the promotion of natural family planning method.”³⁹⁹

Some people, especially those from the Likhaan Center for Women’s Health, cannot help but notice that the effects of Sorsogon City’s E.O. No. 3⁴⁰⁰ are similar to those of Manila’s Executive Order No. 003⁴⁰¹ issued in 2000.⁴⁰² Manila’s executive order had been the subject of a National Inquiry which found that the ordinance violated women’s reproductive health rights.⁴⁰³

395. Draft City Ordinance, § 3 (f).

396. Draft City Ordinance, § 7.

397. Geronimo, *supra* note 41.

398. Center for Reproductive Rights, et al., Re: Supplementary Information on the Philippines, Scheduled for Review by the Committee on the Elimination of Discrimination against Women During its 64th Session, at 4, *available at* http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT_CEDAW_NGO_PHL_24168_E.pdf (last accessed May 11, 2021) [<https://perma.cc/RTX5-WAU3>] (citing DEPARTMENT OF HEALTH REGIONAL OFFICE V, SORSOGON CITY PRO-LIFE TIMELINE OF EVENTS AS OF MAR. 21, 2016 (on file with the Center)).

399. Draft City Ordinance, § 6.

400. E.O. No. 3, s. 2015.

401. E.O. No. 003, s. 2000.

402. Geronimo, *supra* note 41.

403. Center for Reproductive Rights, et al., *supra* note 398.

E. An Update: Executive Order No. 12, Series of 2017

In a surprising move, President Duterte passed Executive Order No. 12⁴⁰⁴ in January 2017. The goal of the Executive Order was to eliminate the unmet need for modern family planning methods of poor couples and women by 2018, “and all of Filipinos thereafter, within the context of the [RPRH] Law and its implementing rules[.]”⁴⁰⁵ The Executive Order defines *unmet need for modern family planning* as “those who are fecund and sexually active and want to limit or space their children but are not using any modern method of contraception.”⁴⁰⁶ The attainment of zero unmet need for modern family planning is in consonance with the current administration’s agenda of alleviating the burden of poor couples and individuals by giving them the opportunity to make use of their reproductive health rights effectively.⁴⁰⁷

In order to achieve this objective, the President tasks different department agencies, such as DOH and DILG, to cooperate with each other and “work in close collaboration with all LGUs for the implementation of the strategies [enumerated in the Executive Order].”⁴⁰⁸ On the part of the LGUs, the President merely “[*encourages* them] to integrate these strategies in their Local Development Plans (LDPs) and investment programs to support universal access to RH services[.]”⁴⁰⁹ The Executive Order suggests that this can be done by creating demand, deploying community volunteers, and providing service delivery network.⁴¹⁰

The President also orders the DOH to study “the gaps in the implementation of the RPRH [Act], issue corresponding orders and guidelines, and implement interventions to support LGUs [] in ensuring the equitable availability of, and access of all Filipinos to, modern family planning and other reproductive health care services.”⁴¹¹ The DILG, on the other hand, is instructed to “monitor compliance of LGUs with the implementation of the RPRH [Act.]”⁴¹²

404. E.O. No. 12, s. 2017.

405. *Id.* § 2.

406. *Id.* § 1.

407. *Id.* whereas cl. paras. 2-4.

408. *Id.* § 3 (a).

409. *Id.* (emphasis supplied).

410. E.O. No. 12, s. 2017, § 3 (a).

411. *Id.* § 3 (b).

412. *Id.* § 3 (c) (v).

VII. ANALYSIS, CONCLUSION, AND RECOMMENDATION

A. Analysis

Reproductive health has been considered as one of the most important aspects of a person's, especially a woman's, well-being and development. It is so vital that it is regarded as a human right innate in every human person.⁴¹³ Part of one's reproductive health is the right to reproductive choice, or the ability to make important reproductive health-related decisions that may affect one's development and welfare.⁴¹⁴ Reproductive choice is one of the cornerstones of reproductive health right.⁴¹⁵

There are various ways of asserting one's reproductive health rights and right to reproductive choice, but instead of being obliged to offer just one, States are compelled to provide a full range of modern family planning methods and supplies,⁴¹⁶ more so on the part of the Philippines when it enacted the Responsible Parenthood and Reproductive Health Act of 2012 (RPRH Act).⁴¹⁷ Having a full range of modern methods was a big step from having only natural family planning methods because it also took into consideration the specific and individual needs of women.

Of course, there remain some factors that prevent the full implementation of the RPRH Act, mostly coming from religious or conscientious objectors who believe that contraceptives and other forms of modern family planning method will *always* lead to abortion and result in a culture of loose morality.⁴¹⁸ Hence, trumping the reproductive choice of women, these objectors raise that being "pro-life" is the way to go.⁴¹⁹

Because of this, there arise certain legal issues: *First*, are local issuances impeding the full implementation of the RPRH Act, such as those declaring an LGU as pro-life, constitutional? *Second*, what are the human rights implications of these local issuances, specifically as regards women's

413. Shalev, *supra* note 179.

414. *Id.*

415. Dixon-Mueller, *supra* note 243, at 12.

416. General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, ¶ 3, U.N. Doc. E/C.12/GC/22 (May 2, 2016).

417. The Responsible Parenthood and Reproductive Health Act of 2012.

418. See Acosta, *supra* note 380.

419. *Id.*

reproductive health right? *Third*, how should LGUs approach the RPRH Act, such that it may be fully implemented and the reproductive rights of women may be respected and realized? *Lastly*, applying the answers to the present situation, is E.O. No. 3 of Sorsogon City⁴²⁰ valid and constitutional?

1. As Applied in the Case of Sorsogon City, Declaring a Local Government Unit as Pro-life Based Solely on Religious Beliefs is Unconstitutional for Establishing Said Beliefs as Policy of the Community

At this juncture, it is important to point out that the concept of relative constitutionality is used to analyze E.O. No. 3 within the context of religious freedom. As explained in Part III, relative constitutionality or “as applied” challenge of constitutionality, means that a law or ordinance that is valid and sound at one time may be declared unconstitutional because of certain changes in circumstances.⁴²¹

The term “pro-life” has no intrinsic conflict with the philosophy in the Constitution, as can be gleaned from the deliberations of the Constitutional Commission.⁴²² Declaring a community or LGU as pro-life should not be used to defeat the law. However, while innocent on its face, declaring an LGU as pro-life has serious legal consequences especially since the promulgation of *Imbong*, where the term has been associated with religious and conscientious objectors.⁴²³ This view comes from the stance that all artificial and modern contraceptives lead to and induce abortion, and that only natural family planning should be imposed on couples and individuals⁴²⁴ if they want to assert their right to space and time their child-bearing.

If such interpretation of the term is allowed to continue in the legal setting, other LGUs may follow suit, leading to a further and wider scope of violations of the RPRH Act.⁴²⁵ There should be no legal impediment for an LGU to declare itself as pro-life, but the interpretation of the term must be tempered in order to respect and fulfill women’s reproductive health rights, and the right to reproductive choice. Because of the different interpretations that may be attached to the term, declaring an LGU as pro-life must be considered on a

420. E.O. No. 3, s. 2015.

421. *Central Bank Employees Association, Inc.*, 447 SCRA at 348 (citing *Medill v. State*, 477 N.W.2d 703 (Minn. App. Ct. 1991) (U.S.)).

422. 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 4, at 745 (1986).

423. See *Imbong*, 721 SCRA at 320.

424. *Natividad*, *supra* note 1, at 60.

425. The Responsible Parenthood and Reproductive Health Act of 2012.

case-to-case basis. The intent of the declaration and how it is being, or planned to be, implemented must be examined.

While the framers of the Constitution recognized the importance of religion in a society, they also warned against the absolute cooperation between State and Church in the promotion of the citizens' well-being, such as when the Church starts "to impose itself on the State."⁴²⁶ This is when the "cooperation" between the two is seen as *interference*.⁴²⁷

In *Estrada*, the Supreme Court said that the government should refrain from imposing morality as defined by religious organizations.⁴²⁸ Otherwise, the government would impliedly endorse the unique views of those religious organizations. In *Imbong*, the Supreme Court also articulated that government officials should not use their respective religious beliefs, and impress them upon their constituents, as policies of the State.⁴²⁹

Looking at the proposed Ordinance and Resolution that were supposed to enact E.O. No. 3,⁴³⁰ it is apparent that the local government of Sorsogon City wanted to impose the Roman Catholic beliefs of its officials upon their constituents. E.O. No. 3, as can be gleaned from the reasoning of Mayor Lee⁴³¹ and the statements found in the proposed Ordinance and Resolution,⁴³² is a public document seeking to pave the moral path that Sorsogonians must take, making references to the Roman Catholic messages of Pope Benedict XVI and Pope Francis. This is made apparent by the imposition that natural family planning methods are the only methods that the LGU would provide, which cites that this is the moral and ethical thing to do based on their religious beliefs.⁴³³ The Executive Order charges Sorsogonians on what should be considered as moral or not in the exercise of their reproductive health right and right to reproductive choice. In fact, by thrusting only natural family planning methods, the local government of Sorsogon City violates these rights. This is discussed in the next part of the analysis.

426. 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 4, at 971 (1986).

427. *Id.*

428. See *Estrada*, 492 SCRA at 33.

429. *Imbong*, 721 SCRA at 334.

430. E.O. No. 3, s. 2015.

431. Boquet, *supra* note 378.

432. Draft City Resolution, whereas cl. paras. 6-7.

433. Draft City Ordinance, § 3 (f).

Specifically, the Executive Order seeks to promote the unique view of Roman Catholic teachings that all modern and artificial family planning methods would lead to abortion or a culture of contraception. This is incorrect, scientifically and legally. It has already been established that contraceptives and other forms of modern family planning methods are allowed so long as they do not induce, directly or indirectly, abortion.⁴³⁴ For this reason, the Supreme Court reiterates the vital work of the Food and Drug Administration (FDA), the government agency that has the expertise on this matter.⁴³⁵

Furthermore, there is an impending need to strike down E.O. No. 3 for being unconstitutional because its interpretation of the term “pro-life” has already inspired other local chief executives to impose the same religiously tainted policy in their local governments.⁴³⁶

The Supreme Court in *Estrada* discussed the *Lemon* test.⁴³⁷ This is a test which is used in determining whether a policy or statute violates the non-establishment clause of the Constitution. The test is applied to E.O. No. 3.

a. The Declaration Does Not Have a Secular Purpose

In *Estrada*, the Supreme Court clarified that a government action, statute, or policy does not violate the Non-Establishment Clause by indirectly promoting a certain religion if it has a legitimate secular purpose.⁴³⁸

At first blush, it seems that E.O. No. 3 seeks to implement secular policy in Sorsogon City. However, by going into the intent of the order and its effects in the locality, it becomes apparent that what it seeks to do is to limit the options of women and other individuals in their decision as to matters of their reproductive health, on the basis of interference with their religious beliefs. Because of express reference to messages of Pope Benedict XVI and Pope Francis⁴³⁹ and Mayor Sally Lee’s intent in issuing the order,⁴⁴⁰ E.O. No. 3’s direct purpose is to influence the policy in Sorsogon City and align it with Roman Catholic teachings. At this point, E.O. No. 3 already fails the *Lemon*

434. *Imbong*, 721 SCRA at 307.

435. *Id.*

436. Acosta, *supra* note 380.

437. *Estrada v. Escritor*, A.M. No. P-02-1651, 408 SCRA 1, 106 (2003).

438. *Id.* at 116.

439. Draft City Resolution, *whereas* cl. paras. 6-7.

440. Boquet, *supra* note 378.

test. However, to fully grasp the unconstitutionality of the order, the Note is going to discuss the other elements.

b. The Declaration's Primary Effect is One That Advances Religion

In *Estrada*, the Supreme Court held that when the law or the Constitution talks about morality, it refers to secular or public morality.⁴⁴¹

E.O. No. 3 and its proposed Ordinance's intent is to impose natural family planning methods as the only methods morally acceptable in the community. Again, it bears stressing that, while the Ordinance was not passed, the Executive Order is still being used to arbitrarily refuse women access to contraceptives and artificial family planning methods⁴⁴² and to mandate local officials to conduct "pro-life missions by encouraging modern natural family planning method[.]"⁴⁴³

How the Executive Order sees morality is best described by looking at the proposed Ordinance. It made references to the messages of Pope Francis and the promotion of a "culture of life" as uttered by Pope Benedict XVI.⁴⁴⁴ The primary effect of the Executive Order is to advance Mayor Lee's Roman Catholic beliefs. The Executive Order imposes the kind of morality that conforms to Roman Catholic teachings. The Supreme Court reiterates its stance that it only reviews policies and laws that have to do with public or secular morality.⁴⁴⁵ In fact, it made an express pronouncement about this in *Imbong*, saying "it is not within the province of the Court to determine whether the use of contraceptives or one's participation in the support of modern reproductive health measures is moral from a religious standpoint or whether the same is right or wrong according to one's dogma or belief."⁴⁴⁶

Because of this, it fails the second element of the *Lemon* test and violates the Non-Establishment Clause of the Constitution.

441. See *Estrada*, 492 SCRA at 87.

442. Geronimo, *supra* note 41 & Press Release by Commission on Human Rights, *CHR Probes Violations of RH Law* (Apr. 8, 2016) (available at <https://chr.gov.ph/chr-probes-violations-of-rh-law> (last accessed May 11, 2021)).

443. Draft City Ordinance, § 4 (b).

444. Draft City Resolution, whereas cl. paras. 6-7.

445. *Imbong*, 721 SCRA at 332.

446. *Id.* at 331.

c. The Declaration Fosters an Excessive Entanglement with Religion

According to the Supreme Court in *Estrada* and *Imbong*, hinging policies on religion implies that the government endorses that belief.⁴⁴⁷ As discussed above and in Part VI, E.O. No. 3⁴⁴⁸ was issued based on Mayor Lee's Roman Catholic leanings.⁴⁴⁹ It bears stressing that even the proposed Ordinance supports this conclusion. Basing the Executive Order on certain principles of the Roman Catholic faith implies that Mayor Lee and the local government of Sorsogon City endorse that belief, and this illustrates just how excessively entangled policy-making is with religion in Sorsogon City.

2. Local Issuances Imposing Only One Form of Family Planning Method Is Unconstitutional for Violating the Right to Liberty and Right to Privacy

The right to privacy is incorporated in a person's right to liberty.⁴⁵⁰ In *Morfe*, citing *Griswold*, the Supreme Court held that the right to privacy covers instances where an individual makes personal decisions;⁴⁵¹ succinctly, it is the right to be left alone.⁴⁵² These decisions go into the core of a person's autonomy.⁴⁵³ The matters covered were specified in *City of Manila v. Laguio, Jr.*,⁴⁵⁴ to wit: "marriage, procreation, contraception, family relationships, child rearing, and education."⁴⁵⁵ The same pronouncement in *Griswold* was reiterated in *Imbong*.⁴⁵⁶ The U.S. Supreme Court, in *Griswold*, further stated that the physical act of violation is not necessary for the violation of the right to privacy to occur.⁴⁵⁷ Furthermore, taking cue from *Griswold*, the U.S. Supreme Court, in *Eisenstadt v. Baird*,⁴⁵⁸ said that the right to privacy on

447. *Id.* at 334 & *Estrada*, 408 SCRA at 120.

448. E.O. No. 3, s. 2015.

449. Acosta, *supra* note 380.

450. *Morfe*, 22 SCRA at 442 (citing *Public Utilities Commission*, 343 U.S. at 467).

451. *Morfe*, 22 SCRA at 444.

452. *Social Justice Society*, 570 SCRA at 431 (citing *Ople*, 293 SCRA at 153).

453. *Laguio, Jr.*, 455 SCRA at 337 (citing *Lawrence v. Texas*, 539 U.S. 558 (2003)).

454. *City of Manila v. Laguio, Jr.*, G.R. No. 118127, 455 SCRA 308 (2005).

455. *Id.* at 337.

456. *Imbong*, 721 SCRA at 351 (citing *Griswold*, 381 U.S. at 479).

457. *Griswold*, 381 U.S. at 508-09.

458. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

matters involving one's reproductive health extends to unmarried individuals.⁴⁵⁹

Applying the decisions to the present situation, it seems that E.O. No. 3 and similar local issuances violate the right to liberty and privacy of an LGU's constituents, especially those who want to avail of the benefits and rights proffered in the RPRH Act. E.O. No. 3 limits the basic services that the local government of Sorsogon City provides to its people. Imposing only natural family planning methods interferes with a person's right to be left alone in making decisions that pertain to his or her reproductive health, especially in this case where one of the guiding principles for the implementation of the RPRH Act is the respect for the individual's preference and choice of family planning method.⁴⁶⁰

By violating a person's right to liberty and right to privacy, two Constitutionally established rights,⁴⁶¹ local issuances imposing only one form of family planning method, such as E.O. No. 3,⁴⁶² must be struck down as unconstitutional.

3. Local Issuances Imposing Only One Form of Family Planning Method Is Unconstitutional for Violating the Right to Health

Reproductive health right is "directly connected to right to health[.]"⁴⁶³ The right to health, on the other hand, is a vital element of the right to life.⁴⁶⁴ The Constitution obliges the State to "protect and promote the right to health of the people and instill health consciousness among them."⁴⁶⁵ The Supreme Court used to say that provisions in Article II need legislation to be implemented;⁴⁶⁶ however, in *Imbong*, it was expressly held that provisions on the right to health are self-executing.⁴⁶⁷ Because these provisions are self-

459. *Id.* at 449.

460. The Responsible Parenthood and Reproductive Health Act of 2012, § 3 (h).

461. PHIL. CONST. art. III, §§ 1 & 3.

462. E.O. No. 3, s. 2015.

463. UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *supra* note 166, at 83.

464. *Imbong*, 721 SCRA at 428 (J. Leonardo-De Castro, concurring opinion).

465. PHIL. CONST. art. II, § 15.

466. *Tondo Medical Center*, 527 SCRA at 765 (citing *Tañada*, 338 Phil. at 580-81).

467. *Imbong*, 721 SCRA at 314.

executing, persons can assert their rights judicially and the courts may review their case and rule upon it.⁴⁶⁸

In this case, since E.O. No. 3 and similar local issuances affect the reproductive health rights of the people, it follows that E.O. No. 3⁴⁶⁹ also violates the right to health of Sorsogonians, and as such, it must also be held unconstitutional on this ground.

4. Local Issuances Imposing Only One Form of Family Planning Method Violate the Reproductive Health Right and the Right to Reproductive Choice

a. Such Issuances Are Contrary to the Principles of CEDAW

An analysis of Part IV points to the argument that E.O. No. 3 violates reproductive right-related principles under the CEDAW.

The CEDAW is grounded on two principles: non-discrimination and autonomy.⁴⁷⁰ Autonomy is best manifested through the exercise of the right to choice.⁴⁷¹ Moreover, autonomy is hinged on other fundamental human rights, such as privacy and dignity.⁴⁷² The right to reproductive choice is subsumed under autonomy, and it includes the “right to choose [an individual’s] preferred method of family planning and contraception.”⁴⁷³ An inquiry made by the CEDAW found out that a violation of the right to reproductive choice may be done through systematically refusing women access to affordable modern and artificial methods of family planning and contraception,⁴⁷⁴ or by promoting and providing only natural family planning methods.⁴⁷⁵ Depriving women of access to these services and methods also affects their right to spacing and timing of their children, and may result in unwanted and unplanned pregnancies.⁴⁷⁶

468. *Kilosbayan, Incorporated*, 246 SCRA at 564 & *Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, 267 SCRA 408, 433 (1997).

469. E.O. No. 3, s. 2015.

470. Shalev, *supra* note 179.

471. *Id.*

472. *Id.*

473. *Id.*

474. CEDAW Summary Inquiry, *supra* note 348, ¶ 34.

475. *Id.* ¶ 41.

476. *Id.* ¶ 33.

According to the investigation made by the CHR and DOH, the citizens of Sorsogon could not get access to contraceptives and other modern reproductive health services from the LGU of Sorsogon, owing to E.O. No. 3 issued by Mayor Lee.⁴⁷⁷ The pro-life stance of the City of Sorsogon masked its true intention of depriving women of the choice of which family planning methods to use. In fact, E.O. No. 3, through the reading of its proposed Ordinance, limits the option to natural family planning method. Because of the foregoing, E.O. No. 3 violates the right to reproductive choice of women. Specifically, it is contrary to Articles 12 (1) and 16 (1) (e) of the CEDAW,⁴⁷⁸ which provide for access to family planning and access to means to exercise reproductive rights, respectively.

Reproductive choice is at the core of reproductive health, and in order to fully exercise this right, an individual must be fully informed of the choices available to her.⁴⁷⁹ This is where access to reproductive health-related information comes in, which E.O. No. 3 also violates. Through the Executive Order, as reflected in the proposed Ordinance, local population officers may conduct family planning seminars that advance only natural family planning methods,⁴⁸⁰ and local officials are regulated to conduct pro-life missions by encouraging natural family planning.⁴⁸¹ Because of this, many couples and individuals are restricted only to accessing information that is connected with natural family planning methods even though they may want to know about other methods.

b. Such Issuances Are Contrary to Article 12 of the ICESCR.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) obliges State Parties to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁴⁸² The right to health includes the right to have control over one’s body and health, giving importance to reproductive freedom.⁴⁸³

477. Geronimo, *supra* note 41.

478. CEDAW, *supra* note 68, arts. 12 (1) & 16 (1) (e).

479. Shalev, *supra* note 179; CEDAW, *supra* note 68, art. 10 (h).

480. Draft City Ordinance, § 7.

481. Draft City Ordinance, § 4 (b).

482. ICESCR, art. 12 ¶ 1, *opened for signature* Jan. 3, 1976, 993 U.N.T.S. 3.

483. Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 (2000), ¶

In 2016, the Committee on Economic, Social and Cultural Rights had the chance to elaborate on this right by issuing General Comment No. 22. This was in response to the many hurdles faced by women in accessing the full range of reproductive health facilities, information, and supplies.⁴⁸⁴ The General Comment reiterates what reproductive health entails — among them, the right to make free and responsible choices over one’s own reproductive health free from interference and coercion.⁴⁸⁵

a. Availability, Accessibility, and Acceptability

The General Comment also ties reproductive health with other human rights, highlighting their interdependence. The right to reproductive health is linked with the right to life, liberty, and privacy.⁴⁸⁶ The General Comment also underpins the three important standards of realizing this human right: availability, accessibility, and acceptability.

Availability means that State Parties should “provide the population with the fullest possible range of sexual and reproductive health care.”⁴⁸⁷ Notably, the General Comment expresses that individual conscience, which includes religious beliefs, should not be used to justify the refusal to make these services available.⁴⁸⁸

Accessibility, meanwhile, has three aspects: physical accessibility, economic accessibility or affordability, and information accessibility.⁴⁸⁹

Lastly, acceptability seeks to address other issues faced by women that would, more often than not, be used by other people to refuse them access to these services: culture, age, disability, and sexual diversity.⁴⁹⁰

8, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter General Comment No. 14].

484. General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (article 12 of the International Covenant on Economic, Social and Cultural Rights), ¶ 2, U.N. Doc. E/C.12/GC/22 (May 2, 2016) [hereinafter General Comment No. 22].

485. *Id.* ¶¶ 5 & 25.

486. *Id.* ¶ 10.

487. *Id.* ¶ 12.

488. *Id.* ¶ 14.

489. *Id.* ¶¶ 16–18.

490. General Comment No. 22, *supra* note 484, ¶ 20.

b. Obligation to Respect, Protect, and Fulfill and Violations Thereof

State Parties must act with the aim of progressively realizing women’s right to reproductive health, including the right to reproductive choice.⁴⁹¹ The realization of this human right obliges State Parties to respect, protect, and fulfill it. The obligation to respect calls State Parties to “refrain from directly or indirectly interfering with the exercise by individuals of the right to sexual and reproductive health.”⁴⁹² This includes reforming or repealing laws and policies that violate this right, making sure that women have access to full range of reproductive health facilities and information.⁴⁹³

The obligation to protect demands State Parties to preclude third parties from “directly or indirectly interfering with the enjoyment of the right to sexual and reproductive health.”⁴⁹⁴ The third parties usually involve non-State actors that are more or less engaged in the business of providing reproductive health services and information, such as insurance companies and drug manufacturers.⁴⁹⁵

Lastly, the obligation to fulfill calls for State Parties to “adopt appropriate legislative, administrative, budgetary, judicial, promotional[,] and other measures to ensure the full realization of the right to sexual and reproductive health.”⁴⁹⁶ This positive act also entails that States must become adept at updated and evidence-based standards for the conveying of reproductive health services,⁴⁹⁷ ensuring the “universal and equitable access to affordable, acceptable[,] and quality sexual and reproductive health services, goods[,] and facilities[.]”⁴⁹⁸

In the observance of these obligations, State Parties must direct their policies in fulfilling the following objective —

[T]he reduction of maternal morbidity and mortality; the full respect for the autonomy and privacy of women, notably by ensuring that women’s sexual and reproductive choices are always based on women’s freely given informed consent; respect for women’s sexuality and women’s right to establish sexual

491. *Id.* ¶ 33.

492. *Id.* ¶ 40.

493. *Id.*

494. *Id.* ¶ 42.

495. *Id.*

496. General Comment No. 22, *supra* note 484, ¶ 45.

497. *Id.* ¶ 46.

498. *Id.* ¶ 49 (c).

relations with consenting others; respect for women's right to life; and ensuring that women can enjoy the benefits of scientific progress. These services should, moreover, contribute to the elimination of gender discrimination and the removal of female stereotypes both inside and outside the health care sector.⁴⁹⁹

Concomitantly, violations of the right to reproductive health, including the right to reproductive choice, may be directly committed by States themselves through their agents.⁵⁰⁰ This includes "State interference with an individual's freedom to control his or her own body and ability to make free, informed[,] and responsible decisions in this regard[]"⁵⁰¹ and "[b]anning or denying access in practice to sexual and reproductive health services and medicines[.]"⁵⁰² Violations of the obligation to fulfill, on the other hand, cover the State's "failure to guarantee access to the full range of contraceptive options so that all individuals are able to utilize an appropriate method that suits their particular situation and needs."⁵⁰³

The ICESCR incorporates the right to have control over "one's health and body, including sexual and reproductive freedom,"⁵⁰⁴ into the right to health.⁵⁰⁵ The right to reproductive health, in turn, includes the right to make free and responsible choices free from coercion and interference.⁵⁰⁶ In the realization of this right, the three standards of availability, accessibility, and acceptability must be observed.⁵⁰⁷

499. Aart Hendriks, *Promotion and Protection of Women's Right to Sexual and Reproductive Health Under International Law: The Economic Covenant and the Women's Convention*, 44 AM. U. L. REV. 1123, 1142 (1995) (citing Rebecca Cook, *Reducing Maternal Mortality: A Priority for Human Rights Law*, in LEGAL ISSUES IN HUMAN REPRODUCTION 185-212 (Shiela McLean ed., 1989); Rebecca J. Cook, *International Protection of Women's Reproductive Rights*, 24 N.Y.U. J. INT'L L. & POL. 645 (1992); & Vanessa Merton, *The Exclusion of Pregnant, Pregnable, and Once-Pregnable People (a.k.a. Women) from Biomedical Research*, 19 AM. J.L. & MED. 369, 369-451 (1993)).

500. General Comment No. 22, *supra* note 484, ¶ 54.

501. *Id.* ¶ 56.

502. *Id.* ¶ 57.

503. *Id.* ¶ 62.

504. General Comment No. 14, *supra* note 483, ¶ 8.

505. *Id.*

506. General Comment No. 22, *supra* note 484, ¶¶ 5 & 25.

507. *Id.* ¶¶ 16-18.

Furthermore, State Parties are also obliged to aid in the progressive realization of women's right to reproductive health, including the right to reproductive choice.⁵⁰⁸ In the furtherance of this goal, State Parties must respect, protect, and fulfill this right. This may be done through the prevention of direct or indirect interference with the exercise of this right by the State and third parties,⁵⁰⁹ and by repealing laws and policies that breach it.⁵¹⁰ The order of the day is to ensure that women have universal access⁵¹¹ or the opportunity to choose from a full range of reproductive health facilities and information⁵¹² that are affordable and acceptable.⁵¹³ The agents of State Parties may also violate this human right;⁵¹⁴ the accountability attaches to all branches of government through their acts or omissions.⁵¹⁵

As discussed, E.O. No. 3 violates the reproductive health right and right to reproductive choice of the people of Sorsogon City. The local government of Sorsogon City, as subordinate to the national government,⁵¹⁶ and under the supervision of the Office of the President,⁵¹⁷ is an agent of the Philippine State. Its approach, policies, and acts must be aligned with the nationwide objectives established by the Congress and the President.⁵¹⁸ Aside from going against the mandates of a national law, which is discussed below, the issuance of Sorsogon City goes in contrast to the obligation of the State under the ICESCR, particularly Article 12⁵¹⁹ thereof, and must therefore be repealed by the State.

c. Such Issuances Go Beyond the Mandate Provided in the RPRH Act

The Supreme Court held that once a local issuance is found to have violated the Constitution, it follows that it also fails the test of uniformity with existing

508. *Id.* ¶ 33.

509. *Id.* ¶ 40.

510. *Id.*

511. *Id.* ¶ 49 (c).

512. General Comment No. 22, *supra* note 484, ¶ 45.

513. *Id.* ¶ 49 (c).

514. *Id.* ¶ 54.

515. CEDAW Summary Inquiry, *supra* note 348, ¶ 21.

516. Jimenez, *supra* note 47, at 17.

517. ADMIN. CODE, bk. III, tit. I, ch. 6, § 18.

518. *Pimentel, Jr.*, 336 SCRA at 217.

519. ICESCR, *supra* note 69, art. 12.

laws.⁵²⁰ However, an analysis of E.O. No. 3⁵²¹ vis-à-vis the RPRH Act⁵²² is still in order.

The RPRH Act enhanced the existing laws on women's health and contraception.⁵²³ It is founded on the established right to life, right to health, right to information, and right to choose, among others.⁵²⁴ Nevertheless, it is the women who are at the center of the State policies on reproductive health rights.⁵²⁵

The only method that the local government of Sorsogon City would provide was the natural family planning method, in stark violation of the RPRH Act and its IRR,⁵²⁶ which mandate LGUs to be the direct providers of the services and methods provided in the law, including artificial family planning method, such as contraceptives.⁵²⁷ Because it seeks to prohibit citizens of Sorsogon from accessing the full range of family planning methods and reproductive health services, E.O. No. 3 clearly violates the RPRH Act.

Furthermore, limiting the LGU's responsibility to natural family planning method, in a way, renders the mandate of the RPRH Act illusory. E.O. No. 3, the proposed ordinance, and the general intent of the city council of Sorsogon revert the situation prior to the passage of the law by imposing upon the citizens the belief that natural family planning method is the moral way to go, disrespecting the individual preferences of those who seek to access these methods.⁵²⁸

Sorsogon City also deviated from the mandate of the law by interpreting some important matters based on its own terms. For example, the phrase "upon determination of the FDA"⁵²⁹ is mysteriously removed from the definition of "abortifacient," creating a wider interpretation of the term, and consequently, a larger number of drugs to be prohibited in the locality. Worse,

520. *Laguio, Jr.*, 455 SCRA at 327 (citing *Magtajas*, 234 SCRA at 270-71).

521. E.O. No. 3, s. 2015.

522. The Responsible Parenthood and Reproductive Health Act of 2012.

523. See *Imbong*, 721 SCRA at 372.

524. The Responsible Parenthood and Reproductive Health Act of 2012, § 2, ¶ 1.

525. *Id.* § 2, ¶ 3.

526. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 12.02.

527. *Id.*

528. *Id.* § 3 (h).

529. *Id.* § 4 (a).

even if the planning method is FDA-approved, it would not be distributed in Sorsogon because of the stance that *all contraceptives lead to abortion*.⁵³⁰ Again, this is bolstered by the fact that only the natural family planning method is allowed in the city, which incidentally, the proposed Ordinance specifically labeled as the “moral” method.⁵³¹

5. Local Issuances Imposing Only One Form of Family Planning Method Violate the Mandate Given to Local Government Units as Direct Providers of the Reproductive Health Methods and Services to Their Constituents

Local government units are given the obligation to observe such mandate and cooperate with other government agencies in order to fully implement the law, specifically to provide directly both services and information to their constituents.⁵³²

While it is true that any public officer who refuses to implement the law or does any act that hinders its full implementation cannot be penalized, regardless of his or her religious beliefs,⁵³³ the LGUs are expressly mandated to be the direct providers of the services.⁵³⁴ The Supreme Court did not rule on the validity or constitutionality of this provision in the IRR; hence, it remains valid and subsisting. Because of this, any issuance or act of the LGU must be in accordance with the law and the IRR. Furthermore, while the law allows LGUs to have their own plan in implementing it, LGUs must look at the provisions in the law as minimum standards that it must follow and fully implement as discussed below.

a. In Implementing the RPRH Act, LGUs Should Look at the Services and Facilities Provided Therein as Minimum Standards, Merely Enhancing Section 16 of the Local Government Code

An analysis of Part VI leads to the following conclusion: LGUs exercise local autonomy and the broad powers given to them in order to promote and

530. Acosta, *supra* note 380.

531. Draft City Ordinance, § 3 (f).

532. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 12.02.

533. *Imbong*, 721 SCRA at 375.

534. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, §§ 4.02 & 12.02.

protect the general welfare of their constituents.⁵³⁵ They are also given discretion to exercise local autonomy in the implementation of the RPRH Act.⁵³⁶ However, due to the LGU's subordination to the national legislative body, its exercise of local autonomy is moderated. Moreover, the RPRH Act does not leave officials in the LGUs any choice but to implement it.

As such, in order to balance a local government's exercise of local autonomy in pursuit of the General Welfare Clause⁵³⁷ and the State's obligation to respect and fulfill women's right to reproductive health and right to reproductive choice,⁵³⁸ LGUs must look at the provisions of the RPRH Act as the minimum standards with respect to the LGU's directive to distribute basic services to its constituents; anything that they promulgate in relation to the law must only supplement the established guidelines set therein, and any violation or attempt at hindering the full implementation of the law must be disallowed.

b. Such Local Issuances Violate DILG Memorandum Circular No. 2015-145, and Executive Order No. 12, Series of 2017.

The DILG Memorandum Circular, although it does not carry as much weight as an executive order or law, expressly reiterates that issuances of LGUs must not be contrary to the RPRH Act and its IRR.⁵³⁹ Consequently, they must be in line with the principles of the RPRH Act, specifically its institutionalization.⁵⁴⁰

E.O. No. 3 violates this Memorandum Circular for the same reasons it violates the mandates of the RPRH Act on reproductive health rights, the right to reproductive choice, and the special directive to LGUs to serve as direct providers of the full range of family planning methods set in the law.

As regards Executive Order No. 12 of 2017, the DOH and DILG are given mandates to study the gaps in the implementation of the law⁵⁴¹ and to keep track of the compliance of LGUs with the enforcement of the law,⁵⁴²

535. LOCAL GOV'T CODE, § 16.

536. Responsible Parenthood and Reproductive Health Act of 2012, § 10, para. 2.

537. LOCAL GOV'T CODE, § 16.

538. ICESCR, *supra* note 69, art. 12.

539. DILG Mem. Circ. No. 2015-145, § 2.

540. *Id.*

541. E.O. No. 12, s. 2017, § 3 (b).

542. *Id.* § 3 (c) (v).

respectively. The use of the word “shall” in both provisions of the Executive Order implies that these mandates must be followed to the letter. On the other hand, LGUs are merely encouraged to incorporate the strategies enumerated in the Executive Order in their local development plans.⁵⁴³ Despite the wording, the Executive Order also repeals inconsistent issuances and orders,⁵⁴⁴ which suggests the ultimate objective of the government to fully implement the laws enacted by the Congress, with the specific goal of helping poor Filipinos in exercising their reproductive health rights.⁵⁴⁵

B. Need to Amend the RPRH Act and to Repeal Executive Order No. 3 and Similar Local Issuances

The Philippines, as a signatory to various human rights treaties, has an obligation to respect, protect, and fulfill the rights set therein. In relation to reproductive health rights, it has made a huge step in fulfilling these rights by enacting the RPRH Act.⁵⁴⁶ However, the realization of reproductive health rights does not stop there. There remain some issues that prevent its full implementation, like religious interference in policy-making. It becomes even more complicated when the public officials of local governments themselves hamper the implementation, especially since the IRR mandate the LGUs to directly provide and assure access to the full range of safe, affordable, effective, and non-abortifacient family planning methods — natural, modern, or artificial.⁵⁴⁷

Confusion further arose when the Supreme Court disallowed the provision penalizing public officials for doing any act that may hinder the full implementation of the law, taking into consideration their religious beliefs.⁵⁴⁸ For example, Mayor Sally Lee and the legislative body of Sorsogon City cannot be criminally punished for issuing E.O. No. 3, which, even without its implementing ordinance, already caused deprivation of access to reproductive methods and supplies among the people, specifically the female population, of Sorsogon City.⁵⁴⁹ This immensely violates the reproductive health right and right to reproductive choice of Sorsogonians, and also

543. *Id.* § 3 (a).

544. *Id.* § 6.

545. *Id.* whereas cl. paras. 2-4.

546. The Responsible Parenthood and Reproductive Health Act of 2012.

547. Rules and Regulations Implementing the Responsible Parenthood and Reproductive Health Act of 2012, § 12.02.

548. *Imbong*, 721 SCRA at 375.

549. Geronimo, *supra* note 41.

disregards their individual preferences for which family planning method to use. Furthermore, the Executive Order is also unconstitutional for violating the Non-Establishment Clause, right to liberty, right to privacy, and right to health, as discussed above.

With the analyses and conclusions drawn, there is now a need to clarify the role of LGUs in implementing the RPRH Act so as not to violate the reproductive health rights of their constituents. In order to fill this gap, the Author recommends the amendment of the RPRH Act.

The proposed amendment has the following features:

- (1) Local government units are tasked to fully implement the law, to provide the basic services proffered therein; however, they are still allowed to provide their own plan of action and implementation in the exercise of their local autonomy in protecting and promoting the general welfare of their constituents, if only to augment the minimum standards provided in the law. In this manner, local autonomy is not breached, and LGUs comply with the policies effected by the national government.
- (2) Local government units may enact any issuance in relation to the RPRH Act; however, they must do so only for the full implementation thereof, including but not limited to, declaring the local government unit as pro-life.
- (3) The recommendation also has a repealing clause so as to reflect the analysis of this study that E.O. No. 3 of Sorsogon City is invalid and inconsistent with the RPRH Act and the Constitution. The repeal also covers other acts of LGUs that hinder the full implementation of the RPRH Act. This recommendation highlights the responsibility of the Philippines, as a State Party to the CEDAW and ICESCR, to comply with its obligation to respect, protect, and fulfill women's reproductive health rights and the right to reproductive choice.

The proposed amendment is provided in full below.

SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
FIRST REGULAR SESSION)

SENATE

S.B. No. _____

Introduced by Sen. _____

EXPLANATORY NOTE

The Philippines is a country known for championing the reproductive health rights of its citizens by providing them with the full range of safe, legal, affordable, effective, and non-abortifacient family planning methods. This is done with the concerted efforts of the Department of Health, Food and Drug Administration, local government units, among others, as mandated by Republic Act No. 10354 or the Responsible Parenthood and Reproductive Health Act of 2012.⁵⁵⁰

Despite the efforts of the government to provide these services to its citizens, there remain issues that hamper the full implementation of the law; and unfortunately, those who were supposed to implement the law to its full extent caused some of these issues, even going to the extent of declaring their local government unit as pro-life,⁵⁵¹ citing religious beliefs as justification. It also became difficult to execute the law when the Supreme Court declared unconstitutional Section 23 (b) of the RPRH Act which prohibited public officials, elected or appointed, from doing any act that may hinder the full implementation of the law.⁵⁵²

550. The Responsible Parenthood and Reproductive Health Act of 2012.

551. See E.O. No. 3, s. 2015.

552. *Imbong*, 721 SCRA at 375-76.

The United Nations Human Rights Office of the High Commissioner specifies that reproductive rights not only include the right to decide freely and responsibly the number, spacing, and timing of children, but also the right to have the information and means to do so.⁵⁵³ In order to realize this right, providing access to contraception and reproductive health-related information becomes imperative.⁵⁵⁴ This includes offering a full package of health services, such as modern, natural, or artificial family planning, but not abortion when it is against the law of the respective State.⁵⁵⁵ As State Party to the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Economic, Social and Cultural Rights, the Philippines has the obligation to progressively realize women's reproductive health rights and the right to reproductive choice by observing and following through on its obligation of respecting and fulfilling them.

Taking into consideration the foregoing, the proposed law seeks to amend the RPRH Act in order to resolve the issues raised and, at the same time, to remain faithful to the obligation of the State to respect and fulfill the reproductive rights of women, especially their informed reproductive choice. To this end, the Senate reiterates that State organs and agencies, such as local government units, must ensure that their acts and issuances must be compliant with the objectives and principles of the national government, and the latter's responsibility to abide by its international obligations.

Sen. _____

553. ICPD Program of Action, *supra* note 159, ¶ 7.3.

554. UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *supra* note 166, at 23.

555. *Id.* General Comment No. 22, *supra* note 484, ¶ 2.

SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
FIRST REGULAR SESSION)

SENATE

S.B. No. _____

Introduced by Sen. _____

AMENDING SECTIONS 3 and 10 OF REPUBLIC ACT NO. 10354,
OTHERWISE KNOWN AS *THE RESPONSIBLE PARENTHOOD
AND REPRODUCTIVE HEALTH ACT OF 2012.*

Section 1. Section 3 (d) shall read as follows:

SEC. 3. *Guiding Principles for Implementation.* – This Act declares the following as guiding principles:

(d) The provision of ethical and medically safe, legal, accessible, affordable, non-abortifacient, effective and quality reproductive health care services and supplies is essential in the promotion of people's right to health, especially those of women, the poor, and the marginalized, and shall be incorporated as a component of basic health care, including the basic health care and facilities provided by local government units (LGUs). To this end, this Act shall set the minimum standards for the health care services to be provided by LGUs, enhancing Section 17 of the Republic Act No. 7160 or the Local Government Code of 1991;

Section 2. Section 3 (h) shall read as follows:

SEC. 3. *Guiding Principles for Implementation.* – This Act declares the following as guiding principles:

(h) The State shall respect individuals' preferences and choice of family planning methods that are in accordance with their religious convictions and cultural beliefs, taking into consideration the State's obligations under various human rights instruments. *Provided*, the State remains faithful to providing a full range of medically safe, legal, accessible, affordable, non-abortionifacient, effective and quality reproductive health care services and family planning in order to accommodate such individual preferences;

Section 3. Section 10 shall read as follows:

SEC. 10. *Procurement and Distribution of Family Planning Supplies.* – The DOH shall procure, distribute to LGUs and monitor the usage of family planning supplies for the whole country. The DOH shall coordinate with all appropriate local government bodies to plan and implement this procurement and distribution program. The supply and budget allotments shall be based on, among others, the current levels and projections of the following:

- (a) Number of women of reproductive age and couples who want to space or limit their children;
- (b) Contraceptive prevalence rate, by type of method used; and
- (c) Cost of family planning supplies.

Provided, That LGUs, as direct providers of both services and information to their respective constituents, may implement their own procurement, distribution, and monitoring program consistent with the overall provisions of this Act and the guidelines of the DOH. *Provided further*, That this Act shall set the minimum standards for the health care services to be provided by LGUs, enhancing Section 17 of Republic Act No. 7160 or the Local Government Code of 1991. *Provided finally*, That LGUs may also enact executive orders, ordinances and other local issuances in support of the institutionalization of this

Act, except those that may hinder its full implementation.
Local issuances that declare a local government unit as pro-life must be consistent with the provisions of this Act.

Section 4. *Implementing Rules and Regulations.* – The Department of Health Secretary or his/her designated representative as Chairperson, the authorized representative/s of the Philippine Commission on Women, Philippine Health Insurance Corporation, Department of the Interior and Local Government, Board of Midwifery, League of Provinces, League of Cities, and League of Municipalities, together with non-governmental organizations, people’s and women’s organizations, shall jointly promulgate the necessary rules and regulations for the effective implementation of the provisions of this Act.

Section 5. *Repealing Clause.* – All other laws, decrees, executive orders, or proclamations, including local issuances, inconsistent with, or contrary to the provisions of this Act are hereby amended or repealed accordingly.

Section 6. *Separability Clause.* – If any provision of this Act shall be declared unconstitutional or invalid, the other provisions not affected shall remain in full force and effect.

Section 7. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following its complete publication in the Official Gazette.