

# Evolution of Divorce Bills in the Philippines and Their Alignment With the Constitutional Protection to Marriage and Family

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## I. INTRODUCTION

Divorce<sup>1</sup> — one of the most sought-after contemporary pro-women measures — is once again the talk of the town. In an unprecedented move, a Senate committee recently approved a consolidated bill allowing absolute divorce in

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I. Divorce, as used in this Article, refers to absolute divorce, where the marriage is dissolved and the parties are free to marry again, in contrast to relative divorce, where the spouses are not free to remarry. See Jorge M. Juco, *Fault, Consent and Breakdown — The Sociology of Divorce Legislation in the Philippines*, 14 PHIL. SOC. REV. 67, 67 (1966).

the country.<sup>2</sup> The corresponding committee-approved version<sup>3</sup> in the lower house (House Bill No. 9349<sup>4</sup>) marks the closest the Philippines has ever come to passing a divorce law since divorce was abrogated as a remedy in 1950.<sup>5</sup> The endorsement by the Senate Committee on Women, Children, Family Relations, and Gender of Senate Bill No. 2443<sup>6</sup> is a milestone in the decades-long battle that has only seen the slightest progress in Congress.

In light of this significant development, a closer look at what could very well soon become the Philippine Divorce Law — Senate Bill No. 2443 and House Bill No. 9349 — is merited. This Article reviews how divorce bills have evolved in the country, from the first one filed in 1988, leading to the current Senate Bill No. 2443 and House Bill No. 9349, and then proceeds to dissect the current bills' salient features. In looking at the provisions of the bills, the Article especially considers the measures or safeguards introduced in such bills that made it possible to hurdle the committee level, i.e., provisions

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2. Cecille Suerte Felipe, *Senate Panel OKs Absolute Divorce Bill*, PHIL. STAR GLOBAL, Sept. 20, 2023, available at <https://qa.philstar.com/headlines/2023/09/20/2297576/senate-panel-oks-absolute-divorce-bill> (last accessed Jan. 31, 2024) [<https://perma.cc/YMK4-KU82>]. See generally *An Act Expanding the Grounds for Dissolution of Marriage, Instituting Divorce and Setting the Procedures Thereof, Providing Protections to the Parties to the Marriage and its Common Children, Amending for This Purpose Executive Order No. 209, or The Family Code of the Philippines*, S. Comm. Rep. No. 124, 19th Cong., 2d Reg. Sess. (2023). The committee report, which recommended the approval of Senate Bill No. 2443 in substitution of Senate Bill Nos. 147, 213, 237, 554, 555, 1198 and 2047, was approved by the Committee on Women, Children, Family Relations and Gender Equality on Sept. 18, 2023. S. Comm. Rep. No. 124.
  3. See generally *An Act Reinstating Absolute Divorce as an Alternative Mode for the Dissolution of Marriage*, H. Comm. Rep. No. 806, 19th Cong., 1st Reg. Sess. (2023).
  4. *An Act Reinstating Absolute Divorce as an Alternative Mode for the Dissolution of Marriage*, H.B. No. 9349, 19th Cong., 1st Reg. Sess. (2023).
  5. Francesco Britanico, [ANALYSIS] *A Lawyer Looks at the Divorce Bill in the Philippines*, RAPPLER, Oct. 2, 2023, RAPPLER, available at <https://www.rappler.com/voices/imho/analysis-lawyer-looks-divorce-bill-philippines/> (last accessed Jan. 31, 2024) [<https://perma.cc/7ASC-5K7R>]. See also Felipe, *supra* note 2.
  6. *An Act Expanding the Grounds for Dissolution of Marriage, Instituting Divorce, and Setting the Procedures Thereof, Providing Protections to the Parties to the Marriage and its Common Children, Amending for This Purpose Executive Order No. 209, or The Family Code of the Philippines*, S.B. No. 2443, 19th Cong., 2d Reg. Sess. (2023).

that harmonize divorce with the constitutional mandate to protect the sanctity of marriage and family.

In undertaking the review, the Article no longer discusses the early history of divorce in the Philippines, it being already the subject of rich literature, although a brief history is reproduced herein. Further, it does not attempt to advocate for or against divorce and therefore does not dive into the merits of the arguments, except to the extent necessary to discuss the safeguards incorporated in the bills to ensure alignment with the constitutional protection to marriage and family.

## II. HISTORY

Much has been written about the early history of divorce in the Philippines.<sup>7</sup> In essence, divorce has not always been prohibited in the country. Absolute divorce was allowed and practiced by Filipinos during the pre-Hispanic period and during the American and Japanese occupation.<sup>8</sup> It was only disallowed during the Spanish regime and, later on, upon the effectivity of the Civil Code and the Family Code,<sup>9</sup> except for marriages covered by the Code of Muslim Personal Laws for Muslim Filipinos<sup>10</sup> and those under Article 26 of the Family Code between a Filipino citizen and a foreign national.<sup>11</sup> The early history of divorce in the Philippines may be summarized as follows —

Historically, divorce had been part of our legal system. At the beginning of the 16th century, before the Spanish colonial rule, absolute divorce was widely practiced among ancestral tribes[,] such as the *Tagbanwas* of Palawan,

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7. See Deogracias T. Reyes, *History of Divorce Legislation in the Philippines Since 1900*, 1 PHIL. STUD. 42, 42 (1953).

8. *Id.* at 42-48.

9. See Aurelia Miller, “Until Death Do Us Part?” *A Proposal for the Philippines to Legalize Divorce*, 24 CONN. J. INT’L L. 181, 182 (2008).

10. See A Decree to Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for its Administration and for Other Purposes [Code of Muslim Personal Laws of the Philippines], Presidential Decree No. 1083, art. 13 (1) (1977). Under Art. 13 (1), the title on Marriage and Divorce “shall apply to marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or [the] Code in any part of the Philippines.” *Id.*

11. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209, art. 26 (1987). Article 26 allows for judicial recognition of divorce decrees obtained abroad where the marriage was between a Filipino citizen and a foreign national. *Id.*

the *Gadangs* of Nueva Vizcaya, the *Sagadas* and *Igorots* of the Cordilleras, and the *Manobos*, *B'laans*[.] and *Moslems* of the Visayas and Mindanao Islands. Divorce was also available during the American period, starting from the 1917 (under Act No. 2710 enacted by the Philippine Legislative), during the Japanese occupation (under Executive Order No. 141), and until 1950. Only on 30 August 1950, when the New Civil Code took effect, that divorce was disallowed under Philippine law. Only legal separation was available. The same rule was adopted by the Family [C]ode of 1988, which replaced the provisions of the New Civil Code on marriage and the family.<sup>12</sup>

Even though the Civil Code did not adopt divorce as a remedy, in its draft, divorce was included. The majority of the members of the Code Commission were, in fact, in favor of liberalizing the provisions thereon. However, they were asked by then President Manuel Roxas to be conservative on the subject. Thus, divorce provisions were omitted and divorce was abrogated as a remedy.<sup>13</sup>

In the subsequent years, efforts to revive divorce in the country would surface. These efforts formally began during the Eighth Congress.

#### *A. Eighth Congress (1987-1992)*

Even before the Family Code took effect, and when only the Civil Code governed the laws on legal separation, a lawmaker had already filed a divorce bill in the House of Representatives.<sup>14</sup> In March 1988, five months before the effectivity of the Family Code, Representative Jorge Nuñez filed House Bill No. 6456,<sup>15</sup> seeking to allow divorce under three grounds: (1) adultery or concubinage; (2) an attempt by one spouse against the life of the other; and (3) incompatibility.<sup>16</sup> The first two grounds were already grounds for legal separation under the Civil Code, but the third one was the first time that incompatibility was proposed to be a ground in a divorce bill.

Representative Nuñez's bill did not see progress in Congress, and it would be more than a decade later before another divorce bill would be filed.

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12. An Act Reintroducing Divorce in the Philippines, H.B. No. 3843, explan. n., 19th Cong., 1st Reg. Sess. (2022).

13. Reyes, *supra* note 7, at 50.

14. See An Act Establishing Divorce, H.B. No. 6456, 8th Cong., 1st Sess. (1988).

15. An Act Establishing Divorce, H.B. No. 6456, 8th Cong., 1st Sess. (1988).

16. H.B. No. 6456, § 1. *Incompatibility* is defined as those involving “conflicts in personalities and dispositions that are irreconcilable and irremediable as to destroy the legitimate ends of matrimony and render it impossible for the parties to live together in a normal marital relationship.” *Id.*

*B. Eleventh (1998-2001) and Twelfth (2001-2004) Congresses*

In 1999, Representative Manuel Ortega filed a divorce bill in the House of Representatives, proposing the grounds for legal separation as grounds for divorce,<sup>17</sup> with the addition of irreconcilable marital differences as a catch-all ground.<sup>18</sup> Two years later, a divorce bill was filed in the Senate for the first time, authored by Senator Rodolfo Biazon,<sup>19</sup> and with a corresponding version in the lower house.<sup>20</sup> These bills also did not see progress in Congress.

*C. Thirteenth Congress (2004-2007)*

One of the consistent proponents of divorce is the women's group General Assembly Binding Women for Reform, Integrity, Equality, Leadership, and Action (GABRIELA). It began its efforts in Congress in 2005 when Representative Liza Maza filed House Bill No. 4016, seeking to introduce divorce as another remedy to failed marriages in addition to legal separation, declaration of nullity of marriage, and annulment.<sup>21</sup> In the explanatory note to the bill, Representative Maza underscored the pro-women nature of divorce, as it protects battered women and children from violence and abuse.<sup>22</sup> Emphasizing that the bill was crafted in consultation with women lawyers and inspired by the studies and inputs of various women's groups gathered by GABRIELA from its various chapters nationwide, Representative Maza noted

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17. An Act Legalizing Divorce, Amending for the Purpose Title II and Articles 55 to 67 Thereunder of Executive Order No. 209, as Amended by Executive Order No. 227, Otherwise Known as the Family Code of the Philippines, H.B. No. 6993, 11th Cong., 1st Reg. Sess. (1999).

18. H.B. No. 6993, § 1.

19. An Act Legalizing Divorce, Amending for the Purpose Title II and Articles 55 to 67 Thereunder of Executive Order No. 209, as Amended by Executive Order No. 227, Otherwise Known as the Family Code of the Philippines, S.B. No. 782, 12th Cong., 1st Reg. Sess. (2001).

20. An Act Legalizing Divorce, Amending for the Purpose Title II and Articles 55 to 67 Thereunder of Executive Order No. 209, as Amended by Executive Order No. 227, Otherwise Known as the Family Code of the Philippines, H.B. No. 878, § 1, 12th Cong., 1st Reg. Sess. (2001).

21. An Act Introducing Divorce in the Philippines, Amending for the Purpose Title II, Articles 55 to 66 Inclusive and Article 26 of Executive Order No. 209, as Amended Otherwise Known as the Family Code of the Philippines, and Repealing Article 36 of the Same Code, and for Other Purposes, H.B. No. 4016, 13th Cong., 1st Reg. Sess. (2005).

22. H.B. No. 6993, explan. n.

that the bill is sensitive to and representative of the experience of women across the country.<sup>23</sup>

House Bill No. 4016 proposed five grounds for divorce:

- (1) de facto separation of spouses for at least five years, at the time of filing of the petition;<sup>24</sup>
- (2) legal separation of spouses for at least two years;<sup>25</sup>
- (3) presence of any ground for legal separation that has caused the irreparable breakdown of the marriage;<sup>26</sup>
- (4) psychological incapacity of one or both spouses; and<sup>27</sup>
- (5) presence of irreconcilable differences that have caused the irreparable breakdown of the marriage.<sup>28</sup>

To recall, prior divorce bills had only proposed grounds for legal separation, as well as incompatibility and irreconcilable differences, as grounds for divorce.<sup>29</sup> It was in Representative Maza's bill that separation and psychological incapacity were first proposed as grounds for divorce.<sup>30</sup>

*D. Fourteenth (2007-2010), Fifteenth (2010-2013), and Sixteenth Congresses (2013-2016)*

There was no progress in the next three Congresses. Significantly, the presidents in these periods — President Gloria Macapagal Arroyo and President Benigno Aquino — both openly opposed divorce.<sup>31</sup> Nevertheless,

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23. H.B. No. 4016, explan. n.

24. *Id.* § 2 (1).

25. *Id.* § 2 (2).

26. *Id.* § 2 (3).

27. *Id.* § 2 (4).

28. *Id.* § 2 (5).

29. See H.B. No. 6456; H. B. No. 699; S.B. No. 782; & H.B. No. 878.

30. See H.B. No. 6993.

31. See Nadia Trinidad, *Bachelor P-Noy Rejects Divorce; Mum on Kris' Woes*, ABS-CBN NEWS, Aug. 19, 2010, available at <https://news.abs-cbn.com/nation/08/19/10/bachelor-p-noy-rejects-divorce-mum-kris-woes> (last accessed Jan. 31, 2024) [<https://perma.cc/B5ED-QX5T>] & Arroyo Opposes Divorce Bill, NEWS24, Mar. 19, 2005, available at <https://www.news24.com/news24/arroyo-opposes-divorce-bill-20050319> (last accessed Jan. 31, 2024) [<https://perma.cc/3N7Z-4LQA>].

GABRIELA persisted in filing divorce bills,<sup>32</sup> all of which remained pending until the end of every session.

*E. Seventeenth Congress (2016-2019)*

It was in the 17th Congress that the fight for divorce saw traction in both houses of Congress. For the first time in the House of Representatives, a divorce bill<sup>33</sup> was approved on third reading, garnering 134 *yees*, 57 *nays*, and two abstentions.<sup>34</sup> House Bill No. 7303,<sup>35</sup> the mother bill for four bills,<sup>36</sup> was

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32. *See generally* An Act Introducing Divorce in the Philippines, Amending for the Purpose Title II, Articles 55 to 66 Inclusive and Article 26 of Executive Order No. 209, as Amended Otherwise Known as the Family Code of the Philippines, and Repealing Article 36 of the Same Code, and for Other Purposes, H.B. No. 3461, 14th Cong., 1st Reg. Sess. (2008); An Act Introducing Divorce in the Philippines, Amending for the Purpose Title II, Articles 55 to 66 Inclusive and Article 26 of Executive Order No. 209, as Amended Otherwise Known as the Family Code of the Philippines, and Repealing Article 36 of the Same Code, and for Other Purposes, H.B. No. 1799, 15th Cong., 1st Reg. Sess. (2010); & An Act Introducing Divorce in the Philippines, Amending for the Purpose Title II, Articles 55 to 66 Inclusive and Article 26 of Executive Order No. 209, as Amended Otherwise Known as the Family Code of the Philippines, and Repealing Article 36 of the Same Code, and for Other Purposes, H.B. No. 4408, 16th Cong., 1st Reg. Sess. (2014).
  33. *See generally* An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines, H.B. No. 7303, 17th Cong., 2d Reg. Sess. (2018).
  34. Press Release by Press and Public Affairs Bureau, House approves “*Absolute Divorce Act of 2018*,” (Mar. 20, 2018) (on file with the House of Representatives).
  35. An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines, H.B. No. 7303, 17th Cong., 2d Reg. Sess. (2018).
  36. *See generally* H.B. No. 7303. *See also* Instituting Absolute Divorce in the Philippines and for Other Purposes, H.B. No. 1116, 17th Cong., 1st Reg. Sess. (2016); An Act Amending Title I, Chapter 3, of Executive Order No. 209, Otherwise Known as the Family Code of the Philippines, Prescribing Additional Ground for Annulment, H.B. No. 1062, 17th Cong., 1st Reg. Sess. (2016); Introducing Divorce in the Philippines, Amending for the Purpose Articles 26, 55 to 66 and Repealing Article 36 under Title II of Executive Order No. 209, as Amended, Otherwise Known as the Family Code of the Philippines, and for Other Purposes, H.B. No. 2380, 17th Cong., 1st Reg. Sess. (2016); & An Act Providing for Grounds for the Dissolution of a Marriage, H.B. No. 6027, 17th Cong., 2d Reg. Sess. (2016).

authored by 20 representatives,<sup>37</sup> led by Rep. Edcel Lagman, one of the staunchest proponents of divorce.

For the first time, a divorce bill contained a comprehensive set of guiding principles, touching on matters of affordability, availability of other remedies, women's rights, and other important aspects of divorce.<sup>38</sup> Section 3 of House Bill No. 7303 provides —

SEC. 3 *Guiding Principles*. — The following shall be the guiding principles of this [a]ct:

- (a) Absolute divorce shall be judicially decreed after the fact of an irremediably broken marital union or a marriage that is defective from the start;
- (b) The State shall assure that the court proceedings for the grant of absolute divorce shall be affordable and inexpensive, particularly for court-assisted litigants or petitioners;
- (c) Concerned spouses have the option to file for absolute divorce under this [a]ct or seek legal separation, annulment of marriage or nullification of marriage under the pertinent provisions of Executive Order No. 209, otherwise known as the Family Code of the Philippines;
- (d) The option of absolute divorce is a pro-woman legislation because, in most cases, it is the wife who is entitled to a divorce as a liberation from an abusive relationship and to help her regain dignity and self-esteem;
- (e) A six (6)-month cooling-off period is instituted after the filing of a petition for absolute divorce as a final attempt for reconciliation of concerned spouses;
- (f) A divorce decree shall include provisions for the care and custody of children, protection of their legitime, termination and liquidation of the conjugal partnership of gains or the absolute community, and alimony for the petitioner; and
- (g) Even as absolute divorce is instituted, the State has the role of strengthening marriage and family life by undertaking relevant prenuptial and post-matrimonial programs and activities.<sup>39</sup>

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37. See generally H.B. No. 7303. Reps. Edcel C. Lagman, Robert Ace S. Barbers, Emmi A. De Jesus, Arlene D. Brosas, Teddy Brawner Baguilat, Jr., Rodel M. Batocabe, Ariel “Ka Ayik” B. Casilao, France L. Castro, Nancy A. Catamco, Pia Cayetano, Sarah Jane I. Elago, Gwendolyn F. Garcia, Ana Cristina Siquian Go, Pantaleon D. Alvarez, Antonio L. Tinio, Carlos Isagani T. Zarate, Feliciano Belmonte, Jr., Kaka J. Bag-Ao, Doy C. Leachon, Eleonor C. Bulut-Begtang.

38. See *Id.* §§ 3 (a)-(g).

39. *Id.*



The grounds proposed in House Bill No. 7303 include: (1) the grounds for legal separation as modified or amended;<sup>40</sup> (2) the grounds for annulment of marriage as amended or modified;<sup>41</sup> (3) de facto separation for at least five years;<sup>42</sup> (4) psychological incapacity of either spouse, whether or not present at the time of celebration of marriage;<sup>43</sup> (5) gender reassignment surgery or transition;<sup>44</sup> and (6) irreconcilable marital differences.<sup>45</sup>

As mentioned in the guiding principles, a six-month cooling-off period was proposed,<sup>46</sup> wherein the court is mandated to exercise all efforts to reunite and reconcile the parties, except when the divorce petition is anchored on any ground under summary judicial proceedings,<sup>47</sup> and when the case involves acts of violence against women and their children or attempt against the life of the other spouse or child.<sup>48</sup> The second exception is consistent with the principle that divorce is a pro-woman legislation<sup>49</sup> because, in most cases, it is

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40. H.B. No. 7303, §§ 5 (a) (1)-(10). See FAMILY CODE, arts. 55 (1)-(10). Changes include the deletion of the word *repeated* to describe the ground of physical violence against the petitioner, a common child, or a child of the petitioner; inclusion of *chronic gambling* to the ground of drug addition and habitual alcoholism; deletion of the word *lesbianism* in the ground of homosexuality and reference to both spouses instead of only the respondent; restatement of the ground of “sexual infidelity or perversion” as “marital infidelity or perversion or having a child with another person other than one’s spouse during the marriage, except when upon the mutual agreement of the spouses, a child is born to them by *in vitro* or a similar procedure or when the wife bears a child after being a victim of rape;” inclusion of a common child and child of petitioner as victim under the ground of attempt by the respondent on the life of the petitioner; inclusion of children in the abandonment ground; and legal separation for more than two years. See *id.*
41. H.B. No. 7303, §§ 5 (b) (1)-(6). See FAMILY CODE, arts. 45 (1)-(6). A *proviso* is added stating that the second, fifth, and sixth grounds must have existed either at the time of the marriage or supervening after the marriage. See *id.*
42. H.B. No. 7303, § 5 (c).
43. *Id.* § 5 (d).
44. *Id.* § 5 (e).
45. *Id.* § 5 (f).
46. *Id.* § 3 (e).
47. *Id.* § 10, para. 1
48. H.B. No. 7303, § 10, para. 2.
49. *Id.* § 3 (d).

the wife who is entitled to a divorce as a liberation from an abusive relationship.<sup>50</sup>

One of the interesting bills substituted by House Bill No. 7303 is House Bill No. 6027,<sup>51</sup> introduced by Rep Baguilat, Jr. et al.<sup>52</sup> The divorce bill is novel in that it does not use the word “divorce” and instead refers to the remedy simply as “dissolution of marriage.”<sup>53</sup> It provides for a lone ground —

SECTION 1. *Dissolution of Marriage.* — A marriage may be dissolved based on irreconcilable differences, or severe and chronic unhappiness, of the spouses which shall have caused the irreparable breakdown of the marriage.<sup>54</sup>

At that time, the intentional omission of the word “divorce” was suggested to counter opposition to divorce.<sup>55</sup> However, the proposal was not adopted in the mother bill as Representative Lagman, the head of the technical working group on divorce, maintained to “call a spade a spade.”<sup>56</sup>

Meanwhile, in the upper house, a bill was also filed proposing absolute divorce in the Philippines.<sup>57</sup> In the explanatory note to Senate Bill No. 2134,<sup>58</sup> Senator Risa Hontiveros noted that, at that time, Malta had already passed a divorce law, leaving only the Philippines as the lone country, in addition to Vatican City, without such a law.<sup>59</sup>

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50. See Press Release by Press and Public Affairs Bureau, *House OKs Substitute Bill on Absolute Divorce* (Feb. 22, 2018) (on file with the House of Representatives).

51. See generally An Act Providing for Grounds for the Dissolution of a Marriage, H.B. No. 6027, 17th Cong., 2d Reg. Sess. (2016).

52. See generally *id.*

53. See *id.* § 1.

54. *Id.*

55. RG Cruz, *House Panel Drops Chronic Unhappiness, No-Fault Provision in Divorce Bill*, ABS-CBN NEWS, Feb. 20, 2018, available at <https://web.archive.org/web/20180220210610/https://news.abs-cbn.com/news/02/20/18/house-panel-drop-s-chronic-unhappiness-no-fault-provision-in-divorce-bill> (last accessed Jan. 31, 2024).

56. *Id.*

57. See generally An Act Instituting Absolute Divorce in the Philippines, S.B. No. 2134, 17th Cong., 3d Reg. Sess. (2013).

58. An Act Instituting Absolute Divorce in the Philippines, S.B. No. 2134, 17th Cong., 3d Reg. Sess. (2013).

59. See S.B. No. 2134, explan. n., para. 1.

Senate Bill No. 2134, like House Bill No. 7303, also provided for guiding principles,<sup>60</sup> although more condensed. It primarily enumerated gender equality, protection of women, and best interests of children as the guiding principles of the bill.<sup>61</sup> It listed nine grounds for divorce, including those that have earlier been proposed.<sup>62</sup>

Unlike House Bill No. 7303, Senate Bill No. 2134 did not pass the committee level.

Notably, the president during the 17th Congress, President Rodrigo Duterte, was opposed to divorce.<sup>63</sup>

#### *F. Eighteenth Congress (2019-2022)*

In the following Congress, legislators from both Houses continued to file divorce bills.<sup>64</sup> Unlike in the previous Congress, however, no divorce bill hurdled the committee level.

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60. See S.B. No. 2134, § 3.

61. *Id.* § 3 (a),

The other principles are that absolute divorce shall be judicially decreed after the fact of an irremediably broken union or a marriage that is defective from the start; that the State that assure that the court proceedings for the grant of absolute divorce shall be affordable and inexpensive, particularly for court-assisted litigants or petitioners; and that in resolving issues of child custody, visitation and child support, issues of sexual identity and orientation will not be made a factor in deciding the award/s.

*Id.*

62. See *id.* §§ 5 (a)-(i).

63. Pia Ranada, *Duterte Against Divorce — Malacañang*, RAPPLER, Mar. 19, 2018, available at <https://www.rappler.com/nation/198493-malacanang-duterte-against-divorce-philippines> (last accessed Jan. 31, 2024) [<https://perma.cc/8PGT-JSB5>].

64. See generally An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines, S.B. No. 288, 18th Cong., 1st Reg. Sess. (2019); An Act Instituting Absolute Divorce in the Philippines, S.B. No. 356, 18th Cong., 1st Reg. Sess. (2019); An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines, H.B. No. 0100, 18th Cong., 1st Reg. Sess. (2019); An Act Introducing Divorce in the Philippines, H.B. No. 838, 18th Cong., 1st Reg. Sess. (2019); & An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines, H.B. No. 2263, 18th Cong., 1st Reg. Sess. (2019).

*G. Nineteenth Congress (2022-2025)*

It is in the current Nineteenth Congress that proponents of the divorce bill are seeing the most progress. In both Houses, Senate Bill No. 2443 and House Bill No. 9349 have already hurdled committee levels<sup>65</sup> and are currently slated for second reading. Although a divorce bill had reached this level in the lower house before, as mentioned, this marks the first time that it happened in the Senate.

In the Lower House, House Bill No. 9349, the mother bill for six separate divorce bills,<sup>66</sup> was authored by 71 representatives, led by Representative Lagman.<sup>67</sup> It substantially reproduces the contents of the comprehensive House Bill No. 7303 with a few notable changes —

- (1) House Bill No. 9349 reduces the cooling-off period from six months to six days;<sup>68</sup>
- (2) The bill adds another ground for divorce, i.e., other forms of domestic or marital abuse;<sup>69</sup>
- (3) The bill increases the penalty against a spouse who uses threat or coercion to compel the other spouse to file the petition, and those who are guilty of collusion, from ₱200,000.00 to ₱300,000.00;<sup>70</sup> and

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65. *See generally* An Act Expanding the Grounds For Dissolution of Marriage, Instituting Divorce and Setting the Procedures Thereof, Providing Protections to the Parties to the Marriage and its Common Children, Amending for This Purpose Executive Order No. 209, or The Family Code of the Philippines, Comm. Rep. No. 124, 19th Cong., 2d Reg. Sess. (2023) & An Act Reinstating Absolute Divorce as an Alternative Mode for the Dissolution of Marriage, H. Comm. Rep. No. 806, 19th Cong., 1st Reg. Sess. (2023).

66. An Act Reinstating Absolute Divorce as an Alternative Mode for the Dissolution of Marriage, H.B. No. 78, 19th Cong., 1st Reg. Sess. (2022); An Act Reinstating Absolute Divorce as an Alternative Mode for the Dissolution of Marriage, H.B. No. 2593, 19th Cong., 1st Reg. Sess. (2022); H.B. No. 3843; An Act Amending Certain Provisions of Executive Order 209 as Amended, in Order to Define and Introduce Divorce and for Other Purposes, H.B. No. 3885, 19th Cong., 1st Reg. Sess. (2022); An Act Instituting Absolute Divorce as an Alternative Mode for Dissolution of Marriage, H.B. No. 4957, 19th Cong., 1st Reg. Sess. (2022); & An Act Instituting Absolute Divorce as an Alternative Mode for Dissolution of Marriage, H.B. No. 4998, 19th Cong., 1st Reg. Sess. (2022).

67. *See generally* H.B. No. 9349.

68. *Id.* § 12.

69. *Id.* § 5 (g).

70. *Id.* § 22.

- (4) The bill adds provisions on civil recognition of valid foreign divorce,<sup>71</sup> canonical or church dissolution of marriage,<sup>72</sup> waiver of expert testimony,<sup>73</sup> support,<sup>74</sup> award of damages to the offended spouse,<sup>75</sup> appeals,<sup>76</sup> community-based pre-nuptial and post-matrimonial programs and activities,<sup>77</sup> and community-based women's desk.<sup>78</sup>

Meanwhile, in the Upper House, Senate Bill No. 2443 was approved as the mother bill for seven separate bills. It was authored by Senators Hontiveros, Raffy Tulfo, Robinhood Padilla, Pia Cayetano, and Imee Marcos.<sup>79</sup> Aside from the traditional grounds, it introduced a novel ground

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A marriage annulment or dissolution, duly authorized by a church or religious entity, or a marriage termination duly authorized by customs and practices traditionally recognized, accepted and observed by an ICC or IP to which the parties belong, having the same effect as a decree of divorce, annulment, dissolution or declaration of nullity issued by a competent court.<sup>80</sup>

Aside from the authors, Senators Joseph Victor Ejercito, Grace Poe, Aquilino Pimentel III, and Loren Legarda signed the report.<sup>81</sup> The positive action by the Senate committee aligns with the openness of President Ferdinand Marcos, Jr. to divorce.<sup>82</sup> In an interview, President Marcos said that

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71. *Id.* § 6.

72. *Id.* § 7.

73. H.B. No. 9349, § 13.

74. *Id.*

75. *Id.* § 17.

76. *Id.* § 24.

77. *Id.* § 25.

78. *Id.* § 26.

79. *See generally* S.B. No. 2443.

80. *Id.* § 5 (F).

81. *See* S. Comm. Rep. No. 124, at 4, 4-1, & 5.

82. Kristine Joy Patag, *Marcos Open to Divorce, 'But Don't Make It Easy'*, PHIL. STAR GLOBAL, Mar. 18, 2022, available at <https://www.philstar.com/headlines/2022/03/19/2168525/marcos-open-divorce-but-dont-make-it-easy> (last accessed Jan. 31, 2024) [<https://perma.cc/3WDP-FZR2>].

“[t]here are cases where divorce is called for,” although he cautioned that the process should not be “easy.”<sup>83</sup>

### III. A CLOSER LOOK AT SENATE BILL NO. 2443 & HOUSE BILL NO. 9349

As shown in the previous section, the fight for the revival of divorce in the country began with the simplest propositions and evolved to be more nuanced through the years. As more and more grounds are added and/or modified, measures are introduced to address common objections to divorce, with a view to eventually passing a divorce law. One of these objections is its supposed unconstitutionality, the argument being that divorce violates the constitutional provisions on marriage and family,<sup>84</sup> specifically:

#### ARTICLE XV

SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.<sup>85</sup>

#### ARTICLE II

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.<sup>86</sup>

To address such concerns, the proponents have introduced safeguards in Senate Bill No. 2443 and House Bill No. 9349 to ensure that the availability of divorce as an option does not run counter to the constitutional protection to marriage and family.<sup>87</sup> The two bills begin by recognizing the State policies: (1) to protect and preserve marriage and (2) to safeguard the dignity of every human person by giving spouses the option of divorce.<sup>88</sup> In Senate Bill No. 2443 —

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83. Cathrine Gonzales, *Divorce Should Not Be an ‘Easy’ Option for Couples – Marcos*, PHIL. DAILY INQ., Mar. 19, 2022, available at <https://newsinfo.inquirer.net/1570711/divorce-should-not-be-an-easy-optionfor-married-couples#ixzz8Lr5S2Rrd> (last accessed Jan. 31, 2024) [<https://perma.cc/5QUL-UYSR>].

84. See Cheryl L. Daytec-Yañgot, *Till the Judge Do Them Part: The Prospect of Absolute Divorce in the Philippines*, 39 IBP J. 106, 134-36 (2014).

85. PHIL. CONST. art. XV, § 2.

86. PHIL. CONST. art. II, § 12.

87. See S.B. No. 2443, § 2 & H.B. No. 9349, § 2.

88. *Id.*

Sec. 2. *Declaration of Policy.* — While the State continues to recognize the sanctity of family life and endeavors to protect and strengthen the family as a basic autonomous social institution, it is also dutybound to safeguard the dignity of every human person, guarantee full respect for human rights, uphold the fundamental equality before the law of men and women[,] and protect and ensure the best interest of children as the paramount consideration in all matters concerning them.

Towards this end, the State shall adopt a divorce policy in keeping with the fundamental freedoms guaranteed under the Constitution, the rights guaranteed under the Universal Declaration of Human Rights, the International Convention of Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, and other International Human Rights Instruments of which the Philippines is a party.<sup>89</sup>

Likewise, in House Bill No. 9349 —

SEC. 2. *Declaration of Policy.* While the State continues to protect and preserve marriage as a social institution and as the foundation of the family, it shall also give the opportunity to spouses in irremediably failed marriages to secure an absolute divorce decree as an alternative mode for the dissolution of an irreparably broken or dysfunctional marriage under limited grounds and well-defined judicial procedures to terminate a continuing dysfunction of a long broken marriage; save the children from the pain, stress, and agony consequent to their parents' constant marital clashes; and grant the divorced spouses the right to marry again for another chance to achieve marital bliss.<sup>90</sup>

Complementing such policies are the following safeguards —

*First*, divorce may not be granted for any reason; it may only be permitted under the following *limited* grounds —

<i>Senate Bill No. 2443</i>	<i>House Bill No. 9349</i>
(1) Five years of separation, whether continuous or broken, without a judicial decree of separation, provided that when the spouses are legally separated by judicial decree, two years of separation suffices;	(1) The grounds for legal separation under Article 55 of the Family Code of the Philippines, modified or amended in the bill;
(2) Rape by the respondent spouse against the petitioner-spouse,	(2) Grounds for annulment of marriage under Article 45 of the Family Code of the Philippines, as restated in the bill;

89. S.B. No. 2443, § 2.

90. H.B. No. 9349, § 2.

<p>whether before or after the celebration of marriage;</p> <p>(3) The grounds for legal separation, provided that physical violence or grossly abusive conduct need not be repeated and that lesbianism and homosexuality per se shall not be a ground, unless either or both spouses commit marital infidelity;</p> <p>(4) A final decree of absolute divorce validly obtained in a foreign jurisdiction by any Filipino citizen, regardless of who they married;</p> <p>(5) Irreconcilable marital differences or irreparable breakdown of the marriage, despite earnest efforts at reconciliation, subject to a 60-day cooling off period; and</p> <p>(6) A marriage annulment or dissolution, duly authorized by a church or religious entity, or a marriage termination duly authorized by customs and practices traditionally recognized, accepted, and observed by an ICC or IP to which the parties belong, having the same effect as a decree of divorce, annulment, dissolution, or declaration of nullity issued by a competent court.<sup>91</sup></p>	<p>(3) When the spouses have been separated in fact for at least five years at the time the petition for absolute divorce is filed, and reconciliation is highly improbable;</p> <p>(4) Psychological incapacity of either spouse as provided for in Article 36 of the Family Code of the Philippines, whether or not the incapacity existed at the time of the marriage or supervenes after the marriage;</p> <p>(5) When one of the spouses undergoes a sex reassignment surgery or transitions from one sex to another, the other spouse is entitled to petition for absolute divorce with the transgender or transsexual as respondent, or vice versa;</p> <p>(6) Irreconcilable marital differences as defined.</p> <p>(7) Other forms of domestic or marital abuse as defined.<sup>92</sup></p>
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Significantly, both Senate Bill No. 2443 and House Bill No. 9349 combine “fault-based”<sup>93</sup> and “no-fault”<sup>94</sup> systems of divorce. In a fault-based divorce, a spouse has to prove *fault* on the part of the other spouse in order to obtain divorce as it views marriage as a contract that the spouses should honor

91. S.B. No. 2443, § 5.

92. H.B. No. 9349, § 5.

93. See Miller, *supra* note 9, at 196-97.

94. See *id.* at 197.



except when there is fault on the part of other spouse, commonly in the form of cruelty, adultery, or desertion.<sup>95</sup> On the other hand, in a no-fault divorce, fault does not need to be shown or proven to terminate the marriage.<sup>96</sup> Common reasons for no-fault divorce include incompatibility, irreconcilable differences, and irreparable breakdown of the marriage.<sup>97</sup> Although Senate Bill No. 2443 and House Bill No. 9349 contain traditional fault-based grounds such as violence and infidelity,<sup>98</sup> both bills also recognize irreconcilable marital differences as a ground for divorce.<sup>99</sup>

To further ensure the veracity of the ground for divorce, House Bill No. 9349 penalizes parties who collude in filing the divorce petition with imprisonment of five years and a fine of ₱300,000.00.<sup>100</sup> Additionally, public prosecutors are required to conduct investigations to find out if the spouses have colluded in filing the divorce petition.<sup>101</sup>

*Second*, divorce may only be granted under well-defined judicial procedures.<sup>102</sup> Absolute divorce may only be judicially decreed after the fact of an irreparably broken marriage is proven,<sup>103</sup> and a decree based on a stipulation of facts or a confession of judgment is not allowed.<sup>104</sup>

The procedure is laid down as follows —

SEC. 9. *Procedure for Obtaining Absolute Divorce.* —

- (a) The established and recognized procedures for securing legal separation, annulment of marriage, and nullification of marriage under the Family Code of the Philippines, as far as practicable and not in conflict with this Act, shall govern the process of obtaining a judicial decree of absolute divorce from the proper Family Court which shall be commenced by the filing of a verified petition for absolute divorce by the petitioner-spouse or joint petitioner-spouses.

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95. *Id.* at 196-97.

96. *Id.* at 197.

97. *Id.*

98. See S.B. No. 2443, § 5 (C) & H.B. No. 9349, §§ 5 (a) (1) & (8).

99. See S.B. No. 2443, § 5 (E) & H.B. No. 9349, § 5 (f).

100. H.B. No. 9349, § 22.

101. *Id.* § 9 (f). S.B. No. 2443 has no counterpart provisions.

102. See S.B. No. 2443, § 6 & H.B. No. 9349, § 2.

103. See S.B. No. 2443, § 3 (C) & H.B. No. 9349, § 3(a).

104. See H.B. No. 9349, § 9 (e).

- (b) The factors and grounds which militate against the grant of legal separation, the annulment of marriage, and nullification of marriage[,] as provided for in the Family Code of the Philippines[,] shall likewise be assessed, based on competent and credible proof, against the grant of absolute divorce.
- (c) When the application as a court-assisted petitioner is approved, the Family Code shall waive the payment of filing fees and other costs of litigation, and shall appoint a *counsel de officio* for the court-assisted petitioner and assign such number of social workers, psychologists, and psychiatrists, as may be necessary from a pool of accredited social workers and practitioners recognized by the Department of Social Welfare and Development (DSWD), to assist the said petitioner and the court free of charge, and assist the children of the parties.
- (d) All creditors of the conjugal partnership of gains or absolute community, as well as the personal creditors of the spouses, shall be listed in the petition for absolute divorce and notified of the filing thereof. The court shall take measures to protect the creditors and other persons with pecuniary interest.
- (e) No decree of absolute divorce shall be based upon a stipulation of facts or a confession of judgment.
- (f) Public prosecutors in provinces, cities[,] and capital towns are mandated to conduct investigations to find out whether or not there is collusion between the spouses in a petition for absolute divorce[;] or a spouse has coerced the other to file the petition and shall report their findings to the proper Family Court within sixty (60) days from the filing of the petition.<sup>105</sup>

While House Bill No. 9349 adopts the usual procedures for legal separation, annulment, and declaration of nullity of marriage that do not conflict with the provisions of the bill,<sup>106</sup> it provides for summary judicial proceedings in certain instances.<sup>107</sup> These include cases where the spouses have been de facto separated for at least five years, when one of the parties has contracted a bigamous marriage, when the spouses have been legally separated for at least two years, when one of the spouses has been sentenced to imprisonment for at least six years, and when one of the spouses has undergone

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105. *Id.* § 9 (a)-(f).

106. *Id.* § 9 (a).

107. *Id.* § 11.

a sex reassignment surgery or has transitioned to another sex.<sup>108</sup> When any of those grounds are invoked, the divorce petition shall be tried without regard to technical rules, and even without a lawyer.<sup>109</sup> The court may allow presentation of evidence *ex parte* and the decision shall be immediately final and executory.<sup>110</sup>

*Third*, to ensure a final attempt at reconciliation of the spouses before the court takes cognizance of the divorce petition, a 60-day cooling-off period is mandated.<sup>111</sup> During this period, the court must exercise all efforts to reunite and reconcile the parties, consistent with the constitutional protection to marriage and family.<sup>112</sup>

Notably, the earlier divorce bills had sought a cooling-off period of six months, similar to the cooling-off period for legal separation. However, under the present bills, this has been reduced to 60 days only, the typical cooling-off period in the United States.<sup>113</sup>

*Fourth*, there are now provisions for reconciliation during the pendency and after the finality of the divorce,<sup>114</sup> making the process easy for spouses should they choose to reconcile at any stage of the proceedings. Particularly, if the spouses agree to reconcile during the pendency of divorce or before the finality of judgment, they may simply file a joint manifestation under oath and upon finding by the Court that such is in order, the petition for divorce shall be dismissed.<sup>115</sup> Similarly, should the spouses reconcile after the finality of the divorce decree, the spouses shall file a joint manifestation and should the court find it in order, nullify the final divorce decree.<sup>116</sup> In reconciliation, the following guidelines should be observed:

SEC 21. Guidelines and Parameters for Reconciliation. — The following shall be the guidelines or parameters for reconciliation:

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108. *Id.* §§ 11 (a)-(e).

109. *Id.* at § 11, para. 2.

110. H.B. No. 9349, § 3 (x).

111. *Id.* § 12. S.B. No. 2443, § 8.

112. *Id.*

113. See Cornell Law School, *Divorce*, available at <https://www.law.cornell.edu/wex/divorce> (last accessed Jan. 31, 2024) [<https://perma.cc/2T8U-FQJL>].

114. See H.B. No. 9349, §§ 19-20.

115. *Id.* § 19.

116. *Id.* § 20.

- (a) Any reconciliation during the pendency of the divorce proceedings or after the finality of the divorce decree shall protect the interests of the concerned children;
- (b) The proper Family Court shall exercise due discretion[,] as warranted by evidence[,] which must protect the offended spouse or the children from future or recurrence of violence from the offending spouse whether or not to grant the joint manifestation of reconciliation in the following:
  - (1) Cases which involve acts of violence against women and their children under R.A. No. 9262; and
  - (2) Cases on attempt against the life of the offended spouse, a common child, or a child of the offended spouse;
- (c) When the decree of absolute divorce is nullified upon reconciliation of the parties, the separation of property or any forfeiture of the share of the offending spouse already effected shall subsist, unless the spouses agree to revive their former property regime;
- (d) The reconciling spouses shall also submit a plan of reconciliation under oath which shall include the following:
  - (1) the properties to be contributed anew to the restored regime;
  - (2) the properties to be retained as separate properties of each spouse;
  - (3) the names of all their known creditors, their addresses, and the amounts owing to each;
  - (4) the joint manifestation and verified plan of reconciliation shall be furnished to the creditors named therein;
  - (5) after due hearing, the court shall issue an order approving the joint manifestation and plan of reconciliation[,] which order shall include the protection of the interest of creditors;
  - (6) the order shall be registered in the proper registry of deeds; and
  - (7) the recording of the order in the proper registry of deeds shall not prejudice any creditor not listed or notified.<sup>117</sup>

Significantly, although a joint manifestation of reconciliation suffices to prove the fact of reconciliation, the court is enjoined to exercise due discretion when the divorce involves acts of violence against women and children or attempt on the life of the offended spouse, a common child, or a child of the offended spouse.<sup>118</sup>

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117. *Id.* §§ 21 (a)-(d).

118. *Id.* § 21 (b).

*Fifth*, the action for divorce is prescriptible within 10 years from the occurrence or discovery of the cause for divorce.<sup>119</sup> This period is longer than in legal separation or annulment of marriage, which is typically five years.<sup>120</sup>

*Finally*, the lower house version contains a provision for implementation of social welfare interventions like community-based pre-nuptial, reconciliatory phase or cooling off counseling, and post-matrimonial programs and activities that are aimed at strengthening the marital and family life of Filipinos<sup>121</sup> —

SEC. 25. *Community-Based Pre-Nuptial and Post-Matrimonial Programs and Activities.* — The National Government shall, through the DSWD, implement community-based pre-nuptial, reconciliatory phase or cooling-off counseling, and post-matrimonial programs and activities aimed at strengthening the marital and family life of Filipinos.

These social welfare interventions, which will protect the stability of Filipino families, shall be instituted by DSWD in provinces, cities[,] and clusters of municipalities in the entire country, while observing the local cultures and customs that are prevalent in each locality.<sup>122</sup>

In fine, the current divorce bills pending in Congress have evolved to incorporate measures meant to address common objections to divorce, particularly constitutionality-based ones. The proponents of Senate Bill No. 2443 and House Bill No. 9349 have aimed to ensure that even with the availability of divorce as an option for spouses, the mandate to protect marriage and family under Section 2, Article XV and Section 12, Article II of the Constitution is maintained.<sup>123</sup> This reflects the efforts of lawmakers to polish our divorce bills in the hopes of eventually reviving divorce in the country.

#### IV. PROSPECTS

It has been more than three decades since the first bill seeking the revival of divorce was filed in Congress.<sup>124</sup> Since then, many developments have been introduced in the subsequent bills to harmonize divorce with the constitutional mandate to protect marriage and family. Senate Bill No. 2443

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119. H.B. No. 9349, § 8.

120. FAMILY CODE, arts. 47 & 57.

121. *See* H.B. No. 9349, § 25.

122. *Id.*

123. *See* PHIL. CONST. art. XV, § 2 & art. II, § 12.

124. *See generally* H.B. No. 6456.

and House Bill No. 9349 contain provisions that ensure the observance of the constitutional provisions on marriage and family, including permitting divorce only under limited grounds and well-defined procedures; penalizing spouses who collude in filing the divorce; requiring a 60-day cooling off period; and adding provisions on social welfare interventions like community-based pre-nuptial, reconciliatory phase or cooling off counseling, and post matrimonial programs and activities, among others.<sup>125</sup>

Senate Bill No. 2443 and House Bill No. 9349 are now expected to be tackled for second reading. If the bills are approved for second reading, they will be taken up for third reading, and if respectively approved,<sup>126</sup> will be reconciled by a bicameral conference committee.<sup>127</sup> It will then be submitted to the president who may sign it into law, veto it, or not act upon it leading it to lapse into law.<sup>128</sup> Definitely, the fight still has a long way to go. Yet it cannot be denied that strides have been made, with good prospects for the future. With the current developments, and with the openness to divorce by more and more lawmakers, and even President Marcos,<sup>129</sup> it is not far off that the country may finally be able to pass a divorce law soon.

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125. See generally S.B. No. 2443 & H.B. No. 9349.

126. See PHIL. CONST. art. VI, § 26 (2).

127. See *Abakada Guro Party List v. Hon. Exec. Sec. Ermita*, 506 Phil. 1, 207 (2005).

128. See PHIL. CONST. art. VI, § 27 (1). See also House of Representatives, *Legislative Process — How a Bill Becomes a Law*, available at <https://www.congress.gov.ph/legisinfo/#PREPARE> (last accessed Jan. 31, 2024); Francesco Britanico, *A Lawyer Looks at the Divorce Bill in the Philippines*, RAPPLER, Oct. 2, 2023, available at <https://www.rappler.com/voices/imho/analysis-lawyer-looks-divorce-bill-philippines/> (last accessed Jan. 31, 2024) [<https://perma.cc/3H9Z-WW3E>]; & Cecille Suerte Felipe, *Senate Panel Oks Absolute Divorce Bill*, PHIL. STAR, Sept. 20, 2023, available at <https://www.philstar.com/headlines/2023/09/20/2297576/senate-panel-oks-absolute-divorce-bill> (last accessed Jan. 31, 2024) [<https://perma.cc/U62E-333D>].

129. Patag, *supra* note 82.