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TO BE BORN OR NOT TO BE BORN?

The paradox of the Catholic Church in the Philippines

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TO BE BORN OR NOT TO BE BORN? THE PARADOX OF THE CATHOLIC
CHURCH IN THE PHILIPPINES.

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*“The whole purpose of religion is to facilitate love and compassion, patience, tolerance,
humility, and forgiveness”*

Dalai Lama XIV.

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ACRONYMS

ASEAN	Association of Southeast Asian Nations
DOH	Department of Health
DSWD	Department of Social Welfare and Development
ECHR	European Court of Human Rights
FDA	Food and Drug Administration
GDP	Gross Domestic Product
HDI	Human Development Index
ICPD	International Conference on Population Development
ILO	International Labour Organisation
MDG	Millennium Development Goals
NSO	National Statistics Office
PCW	Philippine Commission on Women
PhilHealth	Philippine Health Insurance Corporation
UN	United Nations
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
WHO	World Health Organisation

ABBREVIATIONS

MMR	Maternal Mortality Ratio/Rate
NGOs	Non-Governmental Organisations
R.A.	Republic Act
RH Bill	Responsible Parenthood and Reproductive Health Act of 2012
RH-IRR	Reproductive Health Bill – Implementing Rules and Regulation
VAW	Violence Against Women
WBD	World Bank Data

ABSTRACT

While I was in the Philippines in 2012 (the 3rd Catholic Country in the world), I observed the fight of “pro-life” community, leaded by the Catholic Church, against the Reproductive Health Bill. This Bill was described as a major change for the country, allowing and promoting contraception for all Filipinos. The Bill was voted and passed into law in December 2012. With this thesis, I am trying to see the real impact of this law. More than just analysing the law, this thesis is going further by regarding the real impact that a “pro-life” activism can have on a population in a developing country, especially the ones that they want to protect: children.

By acting as a lobby against the right to contraception and abortion, is the Catholic Church really defending the supreme interest of the child? By using an interdisciplinary approach (employing law, sociology, psychology and political sociology), this thesis will prove that arguing against contraception is leading to an increase of poverty, itself leading to an increase of networks and so to child abuse, exploitation and trafficking. Also, lobbying against abortion puts life of women in danger, as they can be subject to many problems during pregnancy and they became stigmatised by the society and doctors. Finally, this thesis proves that “pro-life” community is more “pro-birth”, and protect the foetus more than the future child.

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INTRODUCTION

The Republic of the Philippines is an archipelago of around 7000 islands. With a population of around 99 million inhabitants the Philippines is the 6th most populated country in Asia, and the 13th in the world¹. It was colonised for at least 300 years by Spain, when Miguel Lopez Legaspi arrived there in 1565 (even if the islands were discovered by Ferdinand Magellan in 1521). This period of colonisation had a huge influence on the future of the country: Roman Catholic Missionaries were sent there, and they created churches, schools, universities... This is still visible in the life of Filipinos: most of the population is Catholic, as well as in terms of art and architecture. Some dialects spoken in the Philippines are very close (or similar) to Spanish. At the end of the 19th century, a rebellion occurred. Spain sold the Philippines to the United States of America (for 20 million US Dollars) with the Treaty of Paris of 1898².

Then followed the Philippine-American War, and the Moro Rebellion. To pacify the rebellion movements, the United States of America gave some autonomy to the Philippines, while granting them “commonwealth” status. But the Philippines had to wait until the end of World War II (and a short period of Japanese occupation) to become fully independent, on the 4th of July 1946. After a period of a dictatorial regime, the Philippines became a democratic regime (in 1986). It is now a constitutional regime, in which the constitution is similar to that of the United States, with a presidential system.

After three hundred years of Spanish colonisation, the Philippines became the third largest Catholic country in the world (just after the Brazil and Mexico), with almost 80% of Catholics (with a large majority practicing), and 15% belonging to other Christian movements³. Accordingly, the Roman Catholic Church has a huge influence in the country. Like everywhere else in the world, the Catholic Church is for the protection of all children and in that sense for the prohibition of contraception and

¹ The World Bank, Data Population (Total), 2012, <http://data.worldbank.org/indicator/SP.POP.TOTL> (consulted on 30 March 2014).

² TAN, 2011.

³ Central Intelligence Agency, The World Factbook, at <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html> (consulted on 30 March 2014) and Pew Research Centre, 2013.

abortion (i.e. they protect life). In the Philippines, the Catholic Church (often helped by the sectarian movements that are allowed there) can be considered as a lobby. They influence the government and act during the drafting process of the law. The religious influence can therefore be seen simply by reading the laws.

But the Roman Catholic Church is not the only church present in the Philippines. There is also a Philippine Catholic Church, and some sectarian movements such as “the Christ Church”, the Jesus Miracle Crusade International ministry, or the members of Church of God International. All these movements found the prohibition of abortion, or even contraception in the Bible, and this prohibition was confirmed in the encyclical written by Pope John Paul II on 25th March 1995, *Evangelium Vitae*: “[...] Certainly, from the moral point of view contraception and abortion are specifically different evils: the former contradicts the full truth of the sexual act as the proper expression of conjugal love, while the latter destroys the life of a human being; the former is opposed to the virtue of chastity in marriage, the latter is opposed to the virtue of justice and directly violates the divine commandment "You shall not kill" [...] Among all the crimes which can be committed against life, procured abortion has characteristics making it particularly serious and deplorable. The Second Vatican Council defines abortion, together with infanticide, as an "unspeakable crime"⁴”.

The interpretation of the Bible in this country is quite literal. For instance, at Easter, many prisoners reenact the crucifixion, as a way of absolving their sins. It has now become an attraction for the tourists, and although it is done under medical surveillance, it is still a dangerous practice (real nails are used in the hands and feet, and they are suspended on a wood cross), as well as another performance consisting in reproducing the Passion Play. For the people doing this, it is a way of praying for their family, and showing God their piety. The practice is not recognised by Filipino Bishops⁵.

⁴ “Abortus necnon infanticidium nefanda sunt crimina”, Pope Paul VI, *Pastoral Constitution on the Church in the Modern World - Gaudium et Spes*, Holy See, 7 December 1965, at: http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html (consulted on 9 July 2014).

⁵ *Le Nouvel Observateur*, “Philippines. Scènes de crucifixions pour le Vendredi Saint », 29 March 2013, at <http://tempsreel.nouvelobs.com/monde/20130329.OBS6190/philippines-scenes-de-crucifixion-pour-le-vendredi-saint.html> (consulted on 30 March 2014).

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In regard to Human Rights, the Philippines is a part of the Association of Southeast Asian Nations (ASEAN), and thus a party to the *ASEAN Human Rights Declaration*, since 2012. Together with Thailand, the country can be seen as a leader in the settlement of Human Rights in this area. However, they also defend “Asian Values” and seek to defend Human Rights in a different way to that of European countries. The death penalty is still applied in most of the Member States of the ASEAN as well as in the Philippines. But the death penalty is limited to the “most important crimes as defined by law”. Obviously this designation is biased, because it implies no control of the most important crimes as defined by law.

The Philippines were also the only country to insist on making the right to life begin with conception. They wanted to use the same formulation as in the *American Convention on Human Rights*: “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life” (Article 4, 1). But this formulation was not kept. It must be said that the Philippines relinquished the idea because the document is a “declaration”, and so not legally binding. The Philippines can continue to apply its own definition of the right to life, as is defined in their constitution. “[...] It shall equally protect the life of the mother and the life of the unborn from conception [...]”, State Policy, Section 12.

But the Philippines is not like other countries in the world. It is one of the best-known destinations for sexual tourism⁶. And as Thailand tries to erase its image in this respect (to be better viewed by the international community), sexual tourism in the Philippines is increasing. This practice is of course forbidden, and like the Republic Act (R.A.) 7610 published in 1992, Philippines’ laws repress rape, child exploitation and prostitution... The Philippines is also party to the *United Nations (UN) Convention on the Rights of the Child (CRC)* (1989)⁷.

⁶ ZAFFT, TIDBALL 2010. Paper 22.

⁷ Ratified on 21st August 1990, *UN Databases*, at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (consulted on 30 March 2014).

The special position of women in the Philippines has to be underlined. A high percentage of women work, which is unusual for a developing country, with almost 40% of women working⁸. Thus, women hold important positions: it is not rare to see women as headmistresses at school, and there are many women teachers. Also, the Philippines have had two women as President of the State: Corazon Aquino, from 1986 to 1992, and Gloria Macapagal-Arroyo from 2001 to 2010. This situation is interesting, when you consider that women have not accessed such positions in some European Countries (though regarded as leaders and examples in the field of Human Rights). Although women are no strangers to power in the Philippines, it must be observed that reproductive rights have not improved under women's presidencies. This situation can be explained by the huge influence of the Catholic Church, lobbying against all attempts by the government to improve women's access contraception.

By acting as a lobby against the right to contraception and abortion, is the Catholic Church really defending the supreme interest of the child? By using an interdisciplinary approach (combining law and political sciences – using political sociology to understand the relation between the Catholic Church and the government, ratio power and the Church propaganda), this thesis will demonstrate that lobbying against contraception (especially modern methods of family planning) and abortion, in a developing country where poverty is widespread and affects the lives of a major part of the population, has led to child exploitation and trafficking. The increase in the number of unwanted children can lead the family to making difficult choices: which children to feed? To send to school? Making these families a prime target for child traffickers. Thus, an increase of births in the same family can increase poverty, making them more ready to receive money from traffickers.

Proof of this will be demonstrated by a first analysis of the R.A. No. 10354, *An act providing for a national policy on responsible parenthood and reproductive health*, 21 December 2012, establishing the Philippine conception of contraception and abortion, and an analysis of the Supreme Court ruling on this, which goes deeper in regard to the type of contraceptive and abortion. Once the law has been analysed, a

⁸ The World Bank Data (WBD) (Gender, Philippines), at <http://datatopics.worldbank.org/gender/country/philippines> (consulted on 30 March 2014).

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comparative approach will be used, comparing the Philippines to other European Catholic countries (e.g. Ireland and Poland). The rest of the thesis will be based on data about poverty, prostitution, and trafficking, using a more sociological analysis of Philippine culture and child-raising. Finally, there will be a review of the official statement of the Catholic Church on the same issues, and the image they portray of women. This interdisciplinary approach is essential, as the law itself has to be implemented in a country with a culture and traditions.

The case of the Philippines is interesting because the main opposition to regulating birth comes from the openly stated position of the Catholic Church, and not, as in Ireland or Poland, from the “common opinion” of the population, as can be seen in the case of the *European Court of Human Rights (ECHR), Grand Chamber, A.B. and C. v. Ireland, 16 December 2010*: “The protection accorded under Irish domestic law to the right to life of the unborn and the restrictions on lawful abortion in Ireland were based on profound moral and ethical values to which the Convention afforded a significant margin of appreciation.” The Irish government does not found its position only or mainly on religion (even if this is what is implied by the word “moral”), or at least it is not mentioned. The case in the Philippines is different because the Catholic Church leads the demonstrations in the streets each time the government attempts to produce a law on this topic.

As such, the Catholic Church is truly involved in the law-making process, and has an influence on laws regarding the regulation of births. Thus, a correlation can be made between the activism of the Catholic Church and the problems resulting from the lack of laws in this area. Further, the current situation of women’s reproductive rights in the Philippines will be analysed regarding (I), contraception (A) and abortion (B), and showing the religious influence on laws. This will be followed by, an analysis of the situation of child exploitation in the Philippines (II), linking the increase of population density (A), caused by the lack of birth regulation, to child exploitation, and finally an analysis of the dogma of the Catholic Church regarding these issues (B).

I. WOMEN'S REPRODUCTIVE RIGHTS IN THE PHILIPPINES

On the 21st December 2012, President Benigno Aquino III signed the R.A. 10354. Also called the “RH Bill”, the “Republic Health Bill”, or in a longer form “The Responsible Parenthood and Reproductive Health Act of 2012”, this law being described by Philippine newspapers as “one of the most controversial measures handled by legislators”⁹. It took 13 years for the House of Representatives and the Senate to agree on this text.

This controversial law is seen as the major improvement of the Philippines in a matter of reproductive rights. It “guarantees universal access to medically-safe, non-abortionifacient, 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) and relevant information and education thereon according to the priority needs of women, children and other underprivileged sectors, giving preferential access to those identified through the National Household Targeting System for Poverty Reduction and other government measures of identifying marginalization, who shall be voluntary beneficiaries of reproductive health care, services and supplies for free”¹⁰.

The law is supposed to allow the implementation of reproductive health policies, notably to give to women a free access to contraception (A), and continue to condemn abortion (B).

A. THE RECENT FREE ACCESS TO CONTRACEPTION

“Reproductive freedom is critical to a whole range of issues. If we can't take charge of this most personal aspect of our lives, we can't take care of anything. It should

⁹ BONCOCAN Karen, « RH Bill finally signed into law », *Inquirer.net*, at <http://newsinfo.inquirer.net/331395/gonzales-aquino-signed-rh-bill-into-law> (consulted on 30 march 2014).

¹⁰ R.A. 10354, *an act providing for a national policy on responsible parenthood and reproductive health*, 21 December 2012, at: <http://www.gov.ph/2012/12/21/republic-act-no-10354/> (consulted on 9 July 2014).

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not be seen as a privilege or as a benefit, but a fundamental human right.” Faye Wattleton.

To better understand why this law was so controversial, it is necessary to present the general situation of the Philippines before this law (1), then to expose the measure contained in the law itself (2), and present what happened in the two years following its publication (3).

1. General situation and data: contraception in the Philippines before 2012 and Religious movements

According to the Philippine government “Various human development interventions were undertaken in the past years to enable all sectors of society to properly respond to available development opportunities. These were mostly in the form of direct interventions to increase access to basic social services and to improve delivery of services on education, health, nutrition, housing and community development, and social welfare, among other things¹¹.” The government also affirms that “the Philippines has progressed considerably in expanding coverage of contraceptive use. Data on trends in contraceptive prevalence rates for women aged 15-49 showed a steady increase in the use of contraceptives. From 40 % in 1993, contraceptive prevalence rate for women of childbearing age increased to 46.5 % in 1998. The percentage of married women of reproductive age using artificial methods of contraception increased from 24.9% in 1993 to 28.2% in 1998. In 1999, 49.3% of currently married women used at least one contraceptive method. Of this figure, 65.72% used modern methods, while 34.28% used traditional methods. Married women who graduated from college or at least reached the college level comprised the greatest percentage of contraceptive users”¹². Those numbers match the latest data of the World Bank, which evaluates that 49% of married women from 15 to 49 years old used contraceptive methods in 2011¹³.

¹¹ UN, International Covenant on Civil and Political Rights, Human Rights Committee, *Consideration of reports submitted by states parties under article 40 of the Covenant, Second Periodic Report, The Philippines*, 26 August 2002, p.11.

¹² *Idem*, p12.

¹³ “Contraceptive prevalence rate is the percentage of women who are practicing, or whose sexual partners are practicing, any form of contraception. It is usually measured for married women ages 15-49 only” (WBD).

The main problem with these studies is that they do not evaluate the contraception rate for unmarried women, the difference between rural and urban areas, or the type of contraception used. Especially the latter point, as there is a huge difference between modern contraceptive methods and traditional ones. From the Philippine Department of Health (DOH), it was estimated that one out of four women in the Philippines is still using a traditional method of contraception, such as periodical abstinence¹⁴. The problem with methods of this kind is that they are not entirely effective: a woman can become pregnant because of a miscalculation, or biologic change. Also, for a married woman who has to fulfil her “marital duty”, these methods can be hard to apply on a monthly basis. This is shown by a study, which stipulates that in 2008, 54% of pregnancies in the Philippines (around 2 million) were unintended, and 90% of these occurred while using traditional, ineffective or non-contraceptive methods¹⁵.

Concerning unmarried women who are sexually active, 70% of them who wanted to avoid pregnancy had an unmet need for a modern method¹⁶. This shows that it is more difficult for unmarried women to access modern methods of contraception than for married ones. “Among never married women age 15-24 years, four percent said they had sex in the 12th months preceding the survey and 14 percent of these women said they used a condoms at their last sexual intercourse. Overall, four percent of young women said they used a condom the first time they ever had sex. Condom use at first sex is more likely among those with higher educational attainment, those in higher wealth quintiles, and those residing in urban areas¹⁷”.

Here we can also talk about a kind of discrimination, or at least a difficult situation, with regard to unmarried women who have sex. For instance, women living in rural areas can be afraid of going to a pharmacy to buy modern means of contraception, because women have to face the pharmacist, who in rural areas, might know them, their

¹⁴ Philippines Department of Health, National Statistics Office (NSO) and U.S. Agency for International Development, *Fertility and family planning: 2011 family health survey*, 2012, at: <http://www.scribd.com/doc/98937655/Fertility-and-Family-Planning-2011-Family-HealthSurvey-for-2011> (consulted on 2nd April 2014).

¹⁵ Darroch JE et al., “Meeting women’s contraceptive needs in the Philippines”, *In Brief*, New York: Guttmacher Institute, 2009, No. 1.

¹⁶ NSO and ICF Macro, *Philippines National Demographic and Health Survey*, 2008, Calverton, MD, USA: NSO and ICF Macro, 2009.

¹⁷ See Note 14, p. xxii.

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family, or their name. This is not a good option for a young woman wanting to keep a relation secret, or to avoid parental disagreement. This is one of the reasons why some countries allow free and anonymous access to contraception for women who are minors (for instance in France). It is also difficult for women in *de facto* separation, as divorce¹⁸ is still forbidden in the Philippines.

A difference between rural and urban areas can also be observed: “Use of family planning varies by residence. Contraceptive methods are used by 53 percent of married women in urban areas, compared with 48 percent of those in rural areas. Contraceptive use ranges from a low of 15 percent of married women in ARMM¹⁹ to a high of 60 percent in Davao. Use of family planning varies very little by wealth quintile, except at the lowest quintile with only 41 percent of married women using any method of family planning. Thus, the data indicate that while family planning programs are reaching women of all economic levels, the access of the poorest group to these programs is still somewhat limited”²⁰. This is also a reason why the Philippine government introduced the RH Bill i.e. the big gap between the poorest group and the rest of the population. This gap is due to several things: a lack of information (in very small villages without electricity, water and media such as television, it is difficult to access information about contraception), a lack of education (regarding the fact that sexual education is not well established in schools, even if the elementary school is mandatory for all – even basic sexual education at this level could be a solution), a lack of means (not all villages in the Philippines have a pharmacy, and women may have to travel a long way to find the appropriate means of contraception)²¹. As proved by studies conducted by the Philippine government on pharmacy implementation (in a general field): “Ongoing reforms in health service delivery are aimed at improving the accessibility and

¹⁸ (Translated from French) The Philippines are the only country in the world, with the micro-State of the Vatican, to not allow the divorce, Tempsreel.nouvelobs.com , “Les Philippines catholiques se penchent sur une loi sur le divorce”, Tempsreel.nouvelobs.com, 05 May 2014, at <http://tempsreel.nouvelobs.com/societe/20140505.AFP6386/les-philippines-catholiques-se-penchent-sur-une-loi-sur-le-divorce.html> (consulted on 9 May 2014).

¹⁹ “Autonomous Region in Muslim Mindanao”

²⁰ See note 14, p. xx.

²¹ There is approximately one pharmacy per 10 000 inhabitants in the Philippines. See: International pharmaceutical federation, *2012 FIP Global Pharmacy Workforce Report*, 2012, p13, at: http://www.fip.org/files/members/library/FIP_workforce_Report_2012.pdf (consulted on 1st May 2014).

availability of basic and essential health care for all, particularly the poor. Public primary health facilities are perceived as being low quality, and are thus frequently bypassed. Clients are dissatisfied due to long waiting times; perceived inferior medicines and supplies; poor diagnosis, resulting in repeated visits; and the perceived lack of medical and people skills of the personnel available, especially in rural areas. The result is that secondary and tertiary facilities are inundated with patients needing primary health care. Since public primary facilities are more accessible to households and are mostly visited by the poor, improving the quality of those services particularly demanded by the poor would improve their health. Furthermore, referral mechanisms among different health facilities across local government units need to be strengthened”²². “A 2005 survey in the Philippines showed the availability of medicines in the public sector was only about 15% and the prices were excessive – anywhere from 6 to 15 times the cost of international reference prices”²³.

The RH Bill had been a project of the Philippine government since 1999²⁴, and each time the project was tabled in the legislative debates the Philippines faced numerous demonstrations held by religious movements, headed by the Catholic Church. As the third largest Catholic country in the world, the Philippines can be seen as a bastion of the Catholic Church, and one that they do not want to lose. The latest example is the demonstration lead by the Catholic Church during summer 2012. In July and August, thousands of people across the Philippines were out in the streets asking for the law not to be passed. The demonstrations were impressive in that religious people (nuns, priests, bishops...) were in the streets, as well as the population. There was also a sense of emergency, because the project was more likely to be passed in the following months: the country made efforts to conform to international community standards, women were also demonstrating for more rights, including contraception. The country was more “ready” to accept this law, thus it was a commitment by President Benigno

²² The World Health Organisation, Western Pacific Region, *Country Health Information Profiles (CHIPS)*, 2011 (Revision), “Philippines Country Profile”, pp.343-344 at: http://www.wpro.who.int/countries/phl/26PHLpro2011_finaldraft.pdf?ua=1 (consulted on 11 May 2014).

²³ The World Health Organisation and Health Action International, *Measuring medicine prices, availability, affordability and price components*, 2nd Edition, 2008, p. 207.

²⁴ *House Bill No. 8110*, “Integrated Population and Development Act of 1999”, 1999, at: <http://simbahayan.tripod.com/HB8110.html> (consulted on 9 July 2014).

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“Noynoy” Aquino, as testified by a statement of many NGOs present in the field on International Women’s Day in 2011: “Filipino women have no access to and control over economic resources in the same way that we continue to be deprived of control over our own bodies—our health and reproductive capacities. The traditional politicians in the legislature cannot stand up to the influential Catholic Church and has held hostage for a long time now a reproductive health bill that has been relegated in the back burner of Congress. President Noynoy Aquino (P-Noy) made a verbal commitment that he supports reproductive rights, as it is articulated in the Constitution, but as with his other pronouncements, he hasn’t undertaken a more concrete action to support the bill. He didn’t even include this bill in the list of the priority legislative agenda of his government”²⁵, “A day shy of the celebration of the international women’s day, hundreds of women members from Akbayan Party trooped to the House of Representatives today to ask for the passage of a law on reproductive rights and the impeachment of woman public servant whom they claimed is misrepresenting them. [...] Hontiveros said despite the strong opposition from the Catholic Church hierarchy, they are hopeful that Congress will pass the proposed legislative measure this year. “With the help of the women’s fervent advocacy, we are very confident that before the year ends, the reproductive health bill will be passed as one of the landmark victories of modern Filipino women fighting for reproductive health rights and the expansion of their freedom to choose”.²⁶

More generally, “the country has allowed the sale, dispensation and distribution of contraceptive drugs and devices”, with the R.A. No. 4729 (18 June 1966) entitled “An Act to Regulate the Sale, Dispensation, and/or Distribution of Contraceptive Drugs and Devices” (but they can be sold, distributed or dispensed only by a licensed drug store or

²⁵ Statement of several NGOs during the International Women’s Day, at <http://www.indymedia.org.uk/en/2011/03/475369.html> (consulted on 1st May 2014).

²⁶ Akbayan (Citizens Action Party), “Women urge Congress: Pass Reproductive Health Bill, impeach Ombudsman Merceditas Gutierrez”, at: <http://www.indybay.org/newsitems/2011/03/08/18674140.php> (consulted on 1st May 2014).

pharmaceutical company, and with the prescription of a qualified medical practitioner)²⁷.

Concerning the dispensation of abortifacients or anti-conceptional substances and devices the R.A. No. 5921 (21 June 1969) statutes that “no drug or chemical product or device capable of provoking abortion or prevention conception as classified by the Food and Drug Administration (FDA) shall be delivered or sold to any person without a proper prescription by a duly licensed physician”²⁸.

“On December 11, 1967, the Philippines, adhering to the *UN Declaration on Population*, which recognized that the population problem should be considered as the principal element for long-term economic development, enacted measure that promoted male vasectomy and tubal ligation to mitigate population growth. Among these measures included R.A. No. 6365, approved on August 16, 1971, entitled “An Act Establishing a National Policy on Population Creating the Commission on Population and for Other Purposes.” The law envisioned that “family planning will be made part of a broad educational program; safe and effective means will be provided to couples desiring to space or limit family size; mortality and morbidity rates will be further reduced”²⁹.

Also, President Ferdinand E. Marcos issued the Presidential Decree No. 79 (8 December 1972) which made “family planning a part of a broad educational program,” provided “family planning services as a part of overall health care,” and made “available all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies.”³⁰

As recognised by the Supreme Court of the Philippines, “through the years, however, the use of contraceptives and family planning methods evolved from being a component of demographic management, to one centered on the promotion of public health, particularly reproductive health. Under that policy, the country gave priority to

²⁷ Supreme Court of the Philippines, G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563, 8 April 2014, *James M. Imbong, et al. Vs. Hon. Paquito N. Ochoa, Jr., et al.*

²⁸ *Idem.*

²⁹ *Idem.*

³⁰ *Idem.*

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one's right to freely choose the method of family planning to be adopted, in conformity with its adherence to the commitments made in the International Conference on Population and Development. Thus, on August 14, 2009, the country enacted R.A. No. 9710 or "*The Magna Carta for Women*," which, among others, mandated the State to provide for comprehensive health services and programs for women, including family planning and sex education"³¹.



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The "RH Bill" finally passed the two national chambers, and President Benigno Aquino signed the bill into law on the 21st December 2012.

2. Contraception in the "RH Bill" (The Responsible Parenthood and Reproductive Health Act of 2012)

The Act contains definition, defining reproductive health rights and reproductive health as follows: Reproductive Health Rights are defined by the Act as "the rights of couples, individuals and women to decide freely and responsibly whether or not to have children; to determine the number, spacing and timing of their children; to make

³¹ Idem.

decisions concerning reproduction free of discrimination, coercion and violence; to have relevant information; and to attain the highest condition of sexual and reproductive health”, and reproductive health “refers to 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”.

While the RH Bill signifies a big improvement for the reproductive rights of women in the Philippines, it is also a document that reminds Filipinos of their Catholic vision of women, life and parenthood. Indeed, it begins by saying that “The State recognizes and guarantees the exercise of the universal basic human right to reproductive health by all persons, particularly of parents, couples and women, consistent with their religious convictions, cultural beliefs and the demands of responsible parenthood. Towards this end, there shall be no discrimination against any person on grounds of sex, age, religion, sexual orientation, political affiliation and ethnicity”³².

If this law recognises reproductive health as a human right (and this should be underlined, as this is not the case in every country, even those which have authorized contraception and/or abortion), the affirmation is diminished by the rest of the sentence. Because the exercise of this “human right” (which shall be granted to every human being – according to the definition of human right) is recognised and guaranteed “particularly” for “parents, couples and women”. First of all, such an affirmation creates a hierarchy between people: parents or at least couples are more entitled to the need for reproductive health because they already have children (and do not want to have any more), or because they are married: as having sex outside of marriage is a sin for the Catholic Church (which explains why single women should not need reproductive health). Next come the women, because even if sex outside marriage is a sin, a law has to be realistic. However, it may be construed as saying that women are the only ones who may need reproductive health, even if in fact, men also have a role to play. They can take responsibility for buying condoms, learn the importance of using them during sexual intercourse and learn how to use them (even if women must be told about this

³² See Note 10, Section 2.

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too). But the role of men is recognised in the “Definitions Section” with “male responsibility” which “refers to the involvement, commitment, accountability, and responsibility of males in relation to women in all areas of sexual and reproductive health as well as the protection and promotion of reproductive health concerns specific to men” (and is evoked as a reproduction health care means).

After mentioning the importance and protection of women’s rights, the “promotion of the welfare and rights of children”, the fact that the “State likewise guarantees universal access to medically safe, legal, affordable, effective and quality reproductive health care services, methods, devices, supplies and relevant information and education thereon even as it prioritizes the needs of women and children among other underprivileged sectors”³³, the bill continue with the “guiding principles”.

The first guiding principle of the act is “Freedom of choice”, which must be “fully guaranteed by the State”. The second guiding principle is the “Respect for, protection and fulfilment of reproductive health and rights seek to promote the rights and welfare of couples, adult individuals, women and adolescents”. And again a hierarchy is established by the act, placing reproductive rights as a priority for couples. Then the State seems to distinguish between adult individuals and women, a difference which is unclear because women are adult individuals. Then another difference is introduced: the difference between women and teenagers, even if almost 10 percent of teenage girls (aged 15 to 19 years old) had children or were currently pregnant in 2008³⁴, and there was an adolescent fertility rate of 47 in 2012³⁵, which proves that reproductive health is as essential for girls as for women³⁶.

³³ Idem.

³⁴ TheWBD, at: <http://data.worldbank.org/indicator/SP.MTR.1519.ZS?page=1> (consulted on 2nd May 2014).

³⁵ “The adolescent fertility rate is the number of birth per 1000 women aged 15-19”, The World Bank Data, at: <http://data.worldbank.org/indicator/SP.ADO.TFRT/countries/1W?display=default> (consulted on 2nd May 2014).

³⁶ Also see “country’s teen pregnancy rate, which increased by 65 percent from 2000-2010, according to the government’s most recent Family Health Survey. The survey attributed the increase to the lack of adolescent-friendly RH services and information”, “Philippines’ reproductive health law here - now what?”, *www.irinnews.org*, at: <http://www.irinnews.org/fr/report/97683/philippines-reproductive-health-law-here-now-what> (consulted on 9 May 2014).

The act also formulates that the “State shall promote, without bias, all effective natural and modern methods of family planning that are medically safe and legal; (f) the State shall promote programs that: (1) enable couples, individuals and women to have the number of children and reproductive spacing they desire with due consideration to the health of women and resources available to them” and that the utilisation of resources must be equitable, and in this aim, the state will act in partnership with the private sector (which is the leading supplier of medicines, especially regarding contraceptive methods, in the Philippines³⁷). In the same idea, another principle is to let “non-government, women’s, people’s, civil society organisation and communities” participate in order to implement reproductive health policies and programmes to “address the priority needs of the poor, especially women”. The main problem with the promotion of “natural” methods of family planning is that they are not reliable. However, as they are free (such as the withdrawal method) information about natural methods for the poorest families is still better than nothing. Thus, natural methods are those encouraged by the Catholic Church: “The Catholic Church promotes only natural family planning and is opposed to the use of artificial birth control methods such as condoms and birth-control pills, saying these could lead to promiscuity and a rise in abortion cases. However, RH advocates say natural family planning methods have not proven to be as reliable as artificial means of birth control”³⁸.

The problem, mentioned earlier (I.A.1), of women being discriminated against because they want or are using a means of contraception, is also considered by the government, as the laws mentions several times that people are allowed “to make decisions concerning reproduction free of discrimination, coercion and violence”, notably in the definition of reproductive health rights. Thus, the act prohibited discrimination under different forms. First of all, discrimination is prohibited for “healthcare providers” (“The following acts are prohibited: (a) Any healthcare service

³⁷ “[...] That public (government) facilities provide contraceptive methods to 46 percent of users, while 51 percent obtain their method from private medical sources, and 2 percent obtain their method from other sources (e.g., shops, friends)”. See: NSO Manila Philippines, *National Demographic and Health Survey 2008*, December 2009.

³⁸ ANDREO C. CALONZO, “RH bill authors agree to make sex education optional”, *GMA News*, 23 March 2011 at: <http://www.plcpd.com/rh-bill/rh-bill-authors-agree-to-make-sex-education-optional/> (consulted on 2nd May 2014).

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provider, whether public or private, who shall: [...] (3) Refuse to extend health care services and information on account of the person's marital status, gender, sexual orientation, age, religion, personal circumstances, or nature of work [...]), public officials (“(b) Any public official who, personally or through a subordinate, prohibits or restricts the delivery of legal and medically safe reproductive health care services, including family planning, or forces, coerces or induces any person to use such services”) or employers (“(c) Any employer or his representative who shall require an employee or applicant, as a condition for employment or continued employment to undergo sterilization or use or not use any family planning method, neither shall pregnancy be a ground for non-hiring termination of employment”), and such actions shall be penalized by “imprisonment ranging from one (1) month to six (6) months or a fine of Ten Thousand (P 10,000.00) to Fifty Thousand Pesos (P 50,000.00) or both such fine and imprisonment at the discretion of the competent court”, for public officials or employees “he or she shall suffer the accessory penalty of dismissal from the government service and forfeiture of retirement benefits”, for a judicial person “the penalty shall be imposed upon the president or any responsible officer”, and for aliens, after the service of sentence they “shall be deported immediately without further proceedings by the Bureau of Immigration”.

It proves that there is a fear regarding the attitude of people in positions of power (officials, employers...) towards the choice of family planning made by other people. And this law is there to protect them. However, as the Catholic Church still prohibits any method of family planning other than natural ones, the act also gives healthcare providers the possibility of using “conscientious objection” if they “immediately refer the person seeking such care and services to another healthcare service provider within the same facility or one which is conveniently accessible who is willing to provide the requisite information and services, Provided, further, that the person is not in an emergency condition or serious case as defined under R.A. 8344 otherwise known as “An Act Penalizing the Refusal of Hospitals and Medical Clinics to Administer Appropriate Initial Medical Treatment and Support in Emergency and Serious Cases”.

Also, the government inserts a particular stipulation in the section 20 of the law, the “Ideal Family Size”: “The State shall assist couples, parents and individuals to achieve their desire or family size within the context of responsible parenthood for sustainable development and encourage them to have two children as the ideal family size. Attaining the ideal family size is neither mandatory nor compulsory. No punitive action shall be imposed on parents having more than two children.” This stipulation destroys all the work done by the government earlier in the law to tell individuals that they have a “free choice” regarding family planning and reproductive health. Because even if there is no punitive action against parents having more than two children, what about people having less than two children? While it is understandable that in a poor country birth regulation can be a key to eliminating poverty, this does not have to come about by placing ideas or standards in people’s minds, but by empowering people and strengthening human rights. If regulating the number of children in a family, or not having a child is seen as a choice, then the non-use of family planning or having a large family must likewise be respected (especially regarding freedom of thought, conscience and religion). Plus, the Philippines signed the *UN Declaration on Population* (1966 – also known as the Cairo Declaration) and the 1969 *Declaration on Social Progress and Development* adopted by the United Nations General Assembly (UNGA) in resolution 2542 and providing that the State shall “respect and ensure, regardless of their overall demographic goals, the right of persons to determine, in a free, informed and responsible manner, the number and spacing of their children”³⁹; the word “Ideal” in the Article is implementing a standard to follow, which does not match the idea of “free choice”.

The Act also gives power to DOH and local authorities (as the Barangay) to implement the law and handle the budget. Even if this law is open to criticism, it has to be recognised that it is a great improvement for reproductive rights in the Philippines, especially because it provides non-discrimination rule, introduces the notion of free choice and proves a will to enlarge the access to contraception and women’s

³⁹ UN, Department of Economic and Social Affairs, Population Division, “Theme: Reproductive Rights”, at: <http://www.un.org/en/development/desa/population/theme/rights/index.shtml> (consulted on 15 May 2014).

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empowerment. The RH Bill also set up practical measures, such as increasing the number of midwives in rural areas, and emergency obstetric and neonatal care (respectively sections 5 and 6 – even if it is based on statistics of women of reproductive age and their actual need for such a service), helping access to reproductive health services (by covering them fully by the Philippine Health Insurance Corporation (PhilHealth) or government financial assistance) (Section 7), and setting up a “Mobile Health Care Service” (Section 15) to serve “coastal or mountainous areas”, in order to spread knowledge as well as deliver medicine. In addition, sexual education will be provided in schools (“Section 16: Mandatory Age-Appropriate Reproductive Health and Sexuality Education”) and Local Population Officers have a new duty to inform about “responsible parenthood, family planning, breastfeeding, infant nutrition and other relevant aspects of this Act to all applicants for marriage license” (Section 17), which can cover the knowledge of those who were not in school after the promulgation of the Act.

To conclude, this law is an improvement for women’s rights in the Philippines, even if it still contains religious references and government appraisal on how to live one’s life. Nevertheless, it is consistent with the “*The Magna Carta for Women*,⁴⁰” and the understanding for the State that economic and social development pass through human rights, health (including reproductive health) and the mitigation of population growth. The major provision of the Act is to promote reproductive health as a human right and oblige the State to take effective measure to open reproductive health care services to the poorest areas of the Philippines (with concrete measure such as the mandatory presence of midwives, a Mobile Health Care Service or educational trainings).

On March 18, 2013, “*Implementing Rules and Regulations of Republic Act No. 10354 (The Responsible Parenthood and Reproductive Health Act of 2012)*” was published, containing the principle and rules for implementing the RH Bill. The Guiding Principles for implementation are virtually the same as those contained in the

⁴⁰ R.A. No.9710, *The Magna Carta for Women*, 14 August 2009.

Bill (such as the free choice principle, access to reproductive health services for the poor, women and the marginalized...).

The RH Bill was enacted in December 2012, and was taken to the Constitutional Court of the Philippines by its opponents.

3. After the RH Bill: Supreme Court decision, missing policies and religious activism

Knowing that such a controversial measure would be taken to the Supreme Court of the Philippines (“Supreme Court”), Section 32 of the RH Bill institutes a “Separability Clause”, saying that “If any part or provision of this Act is held invalid or unconstitutional, other provisions not affected thereby shall remain in force and effect”⁴¹. Religious activism against reproductive rights in the Philippines took the form of many petitions (14 and 2 Petitions in Intervention) to the Supreme Court of the Philippines, to maintain the *status quo ante*, and declare the entire RH Bill as unconstitutional. They were signed by individuals and mainly religious (Catholic) associations (as the Alliance for the Family Foundation Philippines Inc., the Pro-Life Philippines Foundation Inc.).

The petitioners invoke a violation of the Right to Life of the unborn. They consider that the law would authorize the purchase of “hormonal contraceptives, intra-uterine devices and injectables which are abortives, in violation of Section 12, Article II of the Constitution which guarantees protection of both the life of the mother and the life of the unborn from conception”⁴².

Secondly they invoke a violation of the right to health (claiming that contraceptives are hazardous to health, causing cancer and other health problems) and of the right to religious freedom (for three reasons: first because it allows public funds for the procurement of contraceptives, second because it “threatens conscientious objectors of criminal prosecution, imprisonment and other forms of punishment”, by obliging health professionals to give full and correct information on reproductive health even if these are against their “religious beliefs and convictions”, and refers people to

⁴¹ See Note 10, Section 32.

⁴² See Note 27.

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other practitioners who are not conscientious objectors, and because “skilled health professionals who are public officers (such as, but not limited to, Provincial City, or Municipal Health Officers, medicals officers, medical specialists [...]) cannot be considered as conscientious objectors” according to Section 5.23 of the Implementing Rules and Regulation of the RH Law (RH-IRR), and third because “mandatory sex education in schools should not be allowed as it is an affront to their religious beliefs”).

Thirdly, they claim that the RH Bill violates constitutional provisions on involuntary servitude (as medical practitioners “accredited under the PhilHealth program are compelled to provide 48 hours of *pro bono* services for indigent women under the threat of criminal prosecution” and be “forced to render reproductive health services”), the right to equal protection of the law (as the RH Law “discriminates against the poor as it makes them the primary target of the government program that promotes contraceptive use”, in order – according to the petitioners – to reduce the number of the poor), the duty for the law to be intelligible (because of the fine for “any violation” which is judged as vague), the right to free speech (as it will be a duty to explain the “full range of family planning methods” even for religious groups, “still forced to refer their patients to another healthcare facility willing to perform the service or procedure”), the “zone of privacy of one’s family” (with the mandatory reproductive health education), the principle of non-delegation of legislative authority (by giving the FDA the power “to determine whether a product is non-abortifacient and to be included in the Emergency Drugs List (EDL)”), the “one subject/one bill” rule, the Natural Law, and the principle of “Autonomy of Local Governments Units (LGUs) and the [ARMM]” (as they are in charge of implementing the Act).

The Supreme Court began by recalling the aim of the RH Bill: “the RH Law was enacted to provide Filipinos, especially the poor and the marginalized, access and information to the full range of modern family planning methods, and to ensure that its objective to provide for the peoples’ right to reproductive health be achieved. To make it more effective, the RH Law made it mandatory for health providers to provide information on the full range of modern family planning methods, supplies and services, and for schools to provide reproductive health education. To put teeth to it, the RH Law

criminalizes certain acts of refusals to carry out its mandates. Stated differently, the RH Law is an enhancement measure to fortify and make effective the current laws on contraception, women's health and population control"⁴³.

Then, the Court analysed the applicant allegation related to a procedural aspect. First of all, the Court held that it had the power for a judicial review, that an actual case or controversy exists (because the Law was enacted and a risk exists for a public health officer to be prosecuted or imprisoned under the Act – if the Court said that there was not, it would be acting as “a branch of the government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people”), that there is a *Locus Standi* (“The rule prohibits one from challenging the constitutionality of the statute grounded on a violation of the rights of third persons not before the court”, but here the Court invoked a matter of “transcendental importance”, “considering that it is the right to life of the mother and the unborn which is primarily at issue, the Court need not wait for a life to be taken away before taking action” – and here can be seen the rejection against abortifacient methods), and to finish, on the claim that the Act does not respect the principle of “One subject / One rule”, the Court says that “the RH Law is not a birth or population control measure, and that the concepts of “responsible parenthood” and “reproductive health” are both interrelated as they are inseparable”. Thus the “Court agrees that the whole idea of contraception pervades the entire RH Law” and expresses that removing “the provisions that refer to contraception or are related to it and the RH Law loses its very foundation” because all the other ideas such as “skilled birth attendance, maternal care including pre- and post-natal services, prevention and management of reproductive tract infections including HIV/AIDS are already provided for in the *Magna Carte for Women*”.

The Court then analysed the different substantial claims. Regarding the right to life, the Court analysed the definitions, and retained the definition of the “beginning of life”. “It is a universally accepted principle that every human being enjoys the right to life. Even if not formally established, the right to life, being grounded on natural law, is inherent and, therefore, not a creation of, or dependent upon a particular law, custom or

⁴³ Idem.

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belief. It precedes and transcends any authority or the laws of men”. If the right to life can be universally accepted, the definition of this right depends on the laws of men, the evidence being that the beginning of life depends on the laws of men. For instance, in the Philippines, it is written in the Constitution that life begins at the moment of conception⁴⁴, but this is not the case in every country, as sometimes life is considered to begin at the moment when the foetus becomes a viable individual or sufficiently human⁴⁵. For the Court, this issue is “a scientific and medical issue that should not be decided, at this stage, without proper hearing and evidence” but “the *ponente*, is of the strong view that life begins at fertilization”. This is in accordance with the Constitution which “affords protection to the unborn from conception” this being “undisputable because before conception, there is no unborn to speak of”. Some of the opponents to the RH Law agree with this conception, but others maintain that “conception refers to the “implantation” of the fertilized ovum in the uterus”. Despite this conception, the “use of contraceptives and family planning in the Philippines is not of recent vintage [...] the country has long recognized the need to promote population control through the use of contraceptives in order to achieve long-term economic development”, thus it was not in the spirit of those who wrote the Constitution to ban all contraceptives, and (based on decision of the Court upon evidence) that contraceptives which take action “prior to fertilization should be deemed non-abortive, and thus, constitutionally permissible”. “The fact that not all contraceptives are prohibited by the 1987 Constitution is even admitted by petitioners during the oral arguments. There it was conceded that tubal ligation, vasectomy, even condoms are not classified as abortifacients”. The Court evokes the different medical conceptions, even that of the “viability of the foetus”, but this concept would allow the use of abortifacients methods, and be provocative, aggravating “religious-based divisiveness”.

⁴⁴ *The 1987 Constitution of the Republic of the Philippines*, Section 12, Article II, at: <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/> (consulted on 9 July 2014).

⁴⁵ Which allows some countries to legalize abortion, as the right to life applies to a “person”. See, European Court of Human Rights, Grand Chamber, 8 July 2004, *Vo v. France*, No. 53924/00: “84. At European level, the Court observes that there is no consensus on the nature and status of the embryo and/or foetus [...]. [...] Without making it a “person” with the “right to life” for the purposes of Article 2.”

Finally, as mentioned by the Court, the RH Law and the RH-IRR respect the Constitution of the Philippines with a definition of life beginning at the moment of the conception. Hopefully for the matter of this law, no measure of the Act will be declared unconstitutional under this argument, apart from Section 3.01(a) and 3.01(j) of the RH-IRR, because it added the “qualifier “primarily” in defining abortifacients and contraceptives, as they are ultra vires and, therefore, null and void for contravening Section 4(a) of the RH Law and violating Section 12, Article II of the Constitution” (because the Court finds that the contraceptive can have a secondary object to be abortifacient, and then still be used under the RH-IRR).

Regarding the right to health, it is protected by Section 15, Article II of the Constitution of the Philippines: “The State shall protect and promote the right to health of the people and instil health consciousness among them”, and Section 9, Article XVI provides that “The State shall protect consumers from trade malpractices and from substandard or hazardous products”, a measure that has to be considered as self-executory. The Court notes that the RH Law allows the purchase of contraceptives under the authority of the prescription of a licensed physician. Plus, the commercialisation of drugs and medicines is supervised by the FDA, and regulated by several laws already in place⁴⁶. In this way the Court adds that “it bears pointing out that not a single contraceptive has yet been submitted to the FDA pursuant to the RH Law. It behoves the Court to await its determination which drugs or devices are declared by the FDA as safe, it being the agency tasked to ensure that food and medicines available to the public are safe for public consumption. Consequently, the Court finds that at this point, the attack on the RH Law on this ground is premature”.

On this point, the Court pointed out that it is not the job of the government to decide if “contraceptives and intra-uterine devices are safe and non-abortifacient”, but

⁴⁶ See: R.A. No. 4729, An act to regulate the sale, dispensation, and/or distribution of contraceptive drugs and devices, 18 June 1966, at: http://www.chanrobles.com/republicacts/republicactno4729.html#.U72Hwvl_tEI (consulted on 9 July 2014).

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the FDA (which is actually mentioned in Section 7.01 of the RH-IRR⁴⁷). Finally, no unconstitutionality will be declared under this argument.

The allegation which would succeed in declaring part of the Act as unconstitutional is made under the claim of a violation of the Freedom of religion and the right to free speech. Regarding the Family planning seminars (Section 15 of the Act) for people who are getting married, the Court ruled that “those who receive any information during their attendance in the required seminars are not compelled to accept the information given to them, are completely free to reject the information they find unacceptable, and retain the freedom to decide on matters of family life without the intervention of the State”. These seminars will therefore be maintained, which guarantees better access to information about family planning and reproductive health for future married couples.

In the mind of the petitioners, the duty to refer the patient to another medical practitioner is a violation of the freedom of religion, because it requires the “conscientious objector to cooperate with the very thing he refuses to do without violating his/her beliefs”. On the other hand, the respondents argue that the RH Law does not impose a specific contraceptive method (natural or artificial). Plus, for them the RH Law serves the public interest (“by providing accessible, effective and quality reproductive health services to ensure maternal and child health, in line with the State’s duty to bring to reality the social justice health guarantees of the Constitution”). The law punishing those who deprive others of their right to reproductive health (here the government is placing reproductive health in a superior position as the right to free speech and the freedom of religion). They add that if only natural family planning were allowed, it would be against the non-believers’ constitutional right to religious freedom, the same right the petitioners invoked.

In the Constitution, it is written that the Filipino people are “imploring the aid of Almighty God⁴⁸” as a recognition of the “spirituality innate in [their] nature and

⁴⁷ “For the purpose of this Act, any product or supply included or to be included in the Essential Drugs List must have a certification from the FDA that said product and supply is made available on the condition that it is not to be used as an abortifacient”.

⁴⁸ See Note 44, Preamble.

consciousness as a people, shaped by tradition and historical experience”. It also means that the State recognises and respects the influence of religion, and respects the “purest principles of morality”. The contribution of religion to society is also recognised in diverse accommodating provisions towards religions (“tax exemption of church property, salary of religious officers in government institutions, and optional religious instruction in public schools”). But Section 6 of the Constitution also establishes that “the separation of Church and State shall be inviolable”. This works on mutual respect: on one hand the State cannot favour one religion or discriminate against another, and on the other hand, the church cannot “impose its belief and convictions on the State and the rest of the citizenry [...] even if it sincerely believes that they are food for the country”. The word “church” used in its generic sense (for all religions). The first one is called the “establishment clause” (Section 5 of the Philippines’ Constitution), and the second one being the “free exercise clause” (Section 29). The guarantee of religious freedom “is comprised of two parts: the freedom to believe, and the freedom to act on one’s belief”, the first part being absolute, the second part limited by the rights of others.

To decide on the matter the Court has to follow the theory of “benevolent neutrality” which “believes that with respect to these governmental actions, accommodation of religion may be allowed, not to promote the government’s favored form of religion, but to allow individuals and groups to exercise their religion without hindrance”. They also use the “compelling state interest test”, this being the notion that “free exercise is a fundamental right and that laws burdening it should be subject to strict scrutiny”.

The court position is finally that “while the Constitution prohibits abortion, laws were enacted allowing to use contraceptives. To some medical practitioners, however, the whole idea of using contraceptives is an anathema. Consistent with the principle of benevolent neutrality, their beliefs should be respected”. If the State cannot impose a particular religious belief, on the same principle believers cannot ask the State to follow their own beliefs. “Consequently, the petitioners are misguided in their supposition that the State cannot enhance its population control program through the RH Law simply because the promotion of contraceptive use is contrary to their religious beliefs”. The

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petitioners' request that contraceptives (especially the artificial ones) not be promoted or distributed, or for the State not to deliver information about them, was rejected.

But, there is one point where the Court found favour with the petitioner: the duty to refer. Indeed, as was said before, Section 7, Section 23(a)(1), Section 23(a)(3), Section 23(b) and Section 17 of the RH Law and corresponding measure of the RH-IRR (Section 5.24⁴⁹) “mandate that a hospital or a medical practitioner to immediately refer a person seeking health care and services under the law to another accessible healthcare provider despite their conscientious objections based on religious or ethical belief”, this being accompanied by sanctions. This was the role of respondents to demonstrate a “more compelling state interest”, as the petitioners made the Court remark that such measures made pro-life health providers “complicit in the performance of an act that they find morally repugnant or offensive” (the aggressiveness of the vocabulary employed here should be noted), because they are “indirectly” guilty (“they cannot, in conscience, do indirectly what they cannot do directly”). The government failed on this point, and would never demonstrate such a special state interest, even in the oral hearings, where they tend to remain silent on this point. As a basis for its arguments, the Court used case law from Scotland’s Inner House of the Court of Session, 24 April 2013, *Doogan and Wood v. NHS Greater Glasgow and Clyde Health Board*, in which it was found that midwives claiming to be conscientious objectors could not be involved in abortions, as “participation” has a double meaning, it could mean “directly” or “indirectly”. For the Court, the same rule applies to “non-maternity specialty hospitals and hospitals owned and operated by a religious group and health care service providers”. “Considering that Section 24 of the RH Law penalizes such institutions should they fail or refuse to comply with their duty to refer under Section 7 and Section 23(a)(3), the Court deems that it must be struck down for being violative of the freedom of religions. The same applies to Section 23(a)(1) and (a)(2) in relation to Section 24, considering that in the dissemination of information regarding programs and services

⁴⁹ Last Paragraph of Section 5.24 of the RH-IRR reads: “Provided, That, skilled health professional such as provincial city or municipal health officers, chiefs of hospital, head nurses, supervising midwives, among others, who by virtue of their office are specifically charged with the duty to implement the provisions of the RPRH Act and these Rules, cannot be considered as conscientious objectors”.

and in the performance of reproductive health procedures, the religious freedom of health care service providers should be respected". The Court recognised that a law without penalties tends to be "toothless and ineffectual", but here, such penalties are "a clear inhibition of a constitutional guarantee which the Court cannot allow". Concerning Section 5.24 of the RH-IRR, the disposition is declared as discriminatory, because the "protection accorded to other conscientious objectors should equally apply to all medical practitioners without distinction whether they belong to the public or private sector. After all, the freedom to believe is intrinsic in every individual and the protective robe that guarantees its free exercise is not taken off even if one acquires employment in the government". Thus, it is against some provisions of the RH Law itself, and the "law must prevail". This disposition became void for those two reasons.

Finally, the Court found an exception (the government having succeeded in proving a "compelling state interest" in this situation). Regarding the data of the World Health Organization, which reported that the Filipino maternal mortality rate (MMR) dropped to 48 percent from 1990 to 2008, "although there was still no RH Law at that time. Despite such revelation, the proponents still insist that such number of maternal deaths constitute a compelling state interest. Granting that there are still deficiencies and flaws in the delivery of social healthcare programs for Filipino women, they could not be solved by a measure that pits an unwarrantable stranglehold on religious beliefs in exchange for blind conformity". Accordingly, the exception will be found for "Life threatening cases" which require emergency procedures. "In these situations, the right to life of the mother should be given preference, considering that a referral by a medical practitioner would amount to a denial of service, resulting in unnecessarily placing the life of a mother in grave danger. Thus, during the oral arguments, Atty. Liban, representing CFC, manifested: "the forced referral clause that we are objecting on grounds of violation of freedom of religion does not contemplate an emergency". Accordingly, if it is necessary to save the life of a mother, procedures endangering the life of the child may be resorted to even if is against the religious sentiments of the medical practitioner. As quoted above, whatever burden imposed upon a medical practitioner, in this case would have been more than justified considering the life he would be able to save".

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For the others substantial claims, the Court agreed with the petitioners on the fact that the RH Law does not respect the provisions Constitution⁵⁰ on marital privacy and autonomy. Section 23(a)(2)(i) of the RH Law states that “Spousal consent in case of married persons: provided, that in case of disagreement, the decision of the one undergoing the procedure shall prevail”; for the court “The RH Law cannot be allowed to infringe upon this mutual decision-making. By giving absolute authority to the spouse who would undergo a procedure, and barring the other spouse from participating in the decision would drive a wedge between the husband and wife, possibly result in bitter animosity, and endanger the marriage and the family, all for the sake of reducing the population. Thus would be a marked departure from the policy of the State to protect marriage as an inviolable social institution” and that “At any rate, in case of conflict between the couple, the courts will decide”. Here, it must be recalled that divorce⁵¹ is still forbidden in the Philippines. Also, by such a statement, the Court bound decisions sometimes relative to one’s body, and one’s health, to the consent of the spouse. It is a limitation in one’s right in regard to his/her body, for a woman who (for instance) wants to take the pill as much as for a man willing to have a vasectomy. Literally, marriage is here making one out of two persons, which can be dangerous for physical integrity, and subject one of the spouses to the other (for instance in a relation of strength, and creates a dominating / dominated relationship).

On the same ground, Section 7 was also found void⁵², because it excluded parents from the decision making process of the minor, and “even if she is not yet emancipated, the parental authority is already cut off just because there is a need to tame population growth”. For the Court, it is in those situations that a minor most needs his/her parents’ “comfort, care, advice, and guidance”, and this is “an affront to the constitution mandate to protect and strengthen the family as an inviolable social institution”. Here again, the theory of the compelling state interest would be the foundation of two exceptions. The first one refers to the information received by minors. The Court made a distinction

⁵⁰ See Note 44, Article XV.

⁵¹ See note 18.

⁵² Section 7: Access to Family Planning, “No person shall be denied information and access to family planning services, whether natural or artificial: Provided, That minors will not be allowed access to modern methods of family planning without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage”.

between “the information about family planning service, on one hand, and access to the reproductive health procedures and modern family planning methods themselves, on the other”. The Court found no objection for a minor to receive information (“that would enable her to take proper care of her own body and that of her unborn child. After all, Section 12, Article II of the Constitution mandates the State to protect both the life of the mother as that of the unborn child”). Parents can always exercise their guidance and control over the minor while assisting her “in deciding whether to accept or reject the information received”. This is important because open information can lead to dialogue, better discussion and a change in mentalities. The second exception, as for conscientious objectors, relates to “life threatening cases”. “In such cases, the life of the minor who has already suffered a miscarriage and that of the spouse should not be put at grave risk simply for lack of consent. It should be emphasized that no person should be denied the appropriate medical care urgently needed to preserve the primordial right, that is, the right to life”. Limiting parental consent “only in elective surgical procedures⁵³” also denies the right of parents, other than the two exceptions mentioned previously. It should be noted that only the second sentence of Section 23(a)(2)(ii) was struck down, which is an improvement for minors who are victims of their own parents, because health practitioners will not have to get the consent of a parent who is an (“accused or convicted perpetrator).

Regarding academic freedom, the Court ruled that Section 24, setting up educational training on reproductive health, is not contrary to the Constitution. Indeed, those trainings will be set up according to the beliefs of the parent-teacher community associations and school officials. In that sense, it “supplements, rather than supplants, the right and duties of parents in the moral development of their children”. Thus, these trainings are not limited to reproductive health, and also include “self-protection against discrimination; sexual abuse and violence against women and children and other forms of gender based violence and teen pregnancy; physical, social and emotional changes in

⁵³ Section 23(a)(2)(ii) : « Parental consent or that of the person exercising authority in the case of abused minors, where the parent or the person exercising parental authority is the respondent, accused or convicted perpetrator as certified by the proper prosecutorial office of the court. In the case of minors, the written consent of parents or legal guardian or, in their absence, persons exercising parental authority or next-of-kin shall be required only in elective surgical procedures and in no case shall consent be required in emergency or serious cases as defined in Republic Act No.8344”.

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adolescents; women's rights and children's rights; responsible teenage behaviour; gender and development; and responsible parenthood"⁵⁴. The Court did not find any unconstitutionality under the claim of "due process", judging that the law is intelligible, and not vague (the difference between "reproductive health services" and "reproductive health methods" being easily understood, and not likely to lead to a misunderstanding about the behaviour to adopt for the people). In this section it should be noted that the Court made a remark on health care service providers' behaviour: "While health care service providers are not barred from expressing their own personal opinions regarding the programs and services on reproductive health, their right must be tempered with the need to provide public health and safety. The public deserves no less". This is to mention that health care service providers should not act with malice in order to "mislead or misrepresent the public as to the nature and effect of programs and services on reproductive health".

Regarding equal protection, and the claim that the RH Law is made to reduce the number of poor and not to provide them with access to reproductive health (discrimination), the Court mentioned that by acting in this way the government is actually applying the Philippine Constitution: "To provide that the poor are to be given priority I the government's reproductive health care program is not a violation of the equal protection clause. In fact, it is pursuant to Section 11, Article XIII of the Constitution which recognizes the distinct necessity to address the need of the underprivileged by providing that they be given priority in addressing the health development of the people". They also noted that Section 7 of the RH Law "prioritizes poor and marginalized couples *who are suffering from fertility issues and desire to have children*", proving that the aim of the law is not only to reduce the number of poor.

With reference to the claim that the HR Law installs an "involuntary servitude" for medical practitioners, the Court ruled that "the practice of medicine is undeniably imbued with public interest that it is both power and a duty of the State to control and regulate it in order to protect and promote the public welfare". Moreover, the notion of "involuntary servitude connotes the presence of force, threats, intimidation or other

⁵⁴ See also, Section 11.01 of the RH-IRR.

similar means of coercion and compulsion”, but the provision of the HR Law only “*encourages* private and non-government healthcare service providers to render *pro bono* service”. So the medical practitioners keep their free choice, and their freedom of religion. The fact that rendering *pro bono* services is a prerequisite to accreditation with PhilHealth is considered by the Court as a “necessary incentive imposed by Congress in the furtherance of a perceived legitimate state interest”, that an unreasonable burden (as claimed by the petitioners).

The Court did not see any unconstitutionality in delegating the application of the RH Law to the FDA, as the contraceptives have to be proven as safe before distribution. Also for delegation to the ARMM, as reproductive health concerns the general welfare of the population, there is no unconstitutionality in obliging them to apply the RH Law. Regarding “Natural Law”, the Court observed that “unless a natural right has been transformed into a written law, it cannot serve as a basis to strike down a law”.

Finally, the Court mostly abrogated the measure leading to the punishment of health care providers⁵⁵, on the basis of their freedom of religion. If the main core of the Act is still in place, this can also lead to some problems. Hoping that medical practitioners will give true and correct information is not valid data in the field of health care. In fact, even if the law is made in order to allow the poorest and most marginalized better access to reproductive health care services, access to information is a key for these people. Fortunately, the educational trainings in schools will be maintained, allowing a whole new generation of Filipinos to be well informed about the different methods of family planning. The Court reminded the petitioners that even if the RH Law had been recognised as entirely unconstitutional, “there will still be the Population Act (R.A. No. 6365), the Contraceptive Act (R.A. No. 4729) and the reproductive health for women or *The Magna Carta of Women* (R.A. No. 9710), sans the coercive provisions of the assailed legislation. All the same, the principle of “no abortion” and “non-coercion” in the adoption of any family planning method should be maintained”.

⁵⁵ “Indeed, at the present, the country has a population problem, but the State should not use coercive measures (like penal provisions of the RH Law against conscientious objectors) to solve it. Nonetheless, the policy of the Court is non-interference in the wisdom of a law”.

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This decision is a disappointment for the Catholic Church and all religious institutions who fought against the law for many years. It is also the sign that Philippine society is evolving, and slowly moving toward less strict religious practices. Even if concrete progress for women's rights is debatable, as the law just opens access to contraceptives that were already authorized (and facilitates access for the poorest, which deserves to be noted), progress is more theoretical. This law was in debate for more than 10 years, and finally came into being. For many NGOs and Associations in the field that play a major role in distributing contraceptives and delivering information about them, this is a big step. They are now awaiting the concrete application measure of the Act (now that the *status quo* is no longer applied). First of all, it will take time to repeal local ordinances which are contrary to the Act, such as one passed in Manila in 2000: "In Manila, the country's largest city with nearly two million residents, a local ordinance banning condoms, birth control pills and other forms of contraception was passed in 2000. Since then public health clinics have promoted only what is known as "natural" family planning, which calls for abstinence during a woman's peak days of fertility, and for avoiding any drugs or sterilization to prevent pregnancy"⁵⁶. Secondly, to observe if there is real, equal promotion and information about artificial methods compared to natural ones (mostly because natural methods of family planning are not efficient). "I think the first step is to go back to the communities and really educate the women about the RH law. They need to know what their rights are under this law," said Beth Angsioco, chairperson of the Democratic Socialist Women of the Philippines⁵⁷.

And while the future applications of the RH Law have to be observed, as neither the different petitioners nor the government decided to appeal the Court's decision⁵⁸, despite the behaviour of the Catholic Church and population, there is one thing that is not changing for the moment: the remaining prohibition of abortion.

⁵⁶ See Note 36.

⁵⁷ *Idem*.

⁵⁸ Paolo Romero and Mayen Jaymalin, "Pro-RH Groups won't appeal SC Ruling", *The Philippines Star*, 29 April 2014, at: <http://www.philstar.com/headlines/2014/04/29/1317303/pro-rh-groups-wont-appeal-sc-ruling> (consulted on 9 May 2014).

B. THE REMAINING PROHIBITION OF ABORTION

“No woman can call herself free until she can choose consciously whether she will or will not be a mother.” Margaret Sanger.

Seeing how difficult it was for the country to pass a law promoting contraception for all, careful about the words employed and full of compromises (the government still encourages natural methods of family planning), it hardly surprising that abortion is still prohibited in the Philippines. However, an unmet need for contraception could lead to undesirable pregnancies, and result in a choice: abortion.

Allowing abortion (and limiting it to some cases, like a danger to the mother) could be a great improvement for this country. To understand why, it is necessary to look at the general situation of the country regarding abortion (1), such as the number of illegal abortions or the MMR, and comparing it with other countries that can show a way for the Philippines to allow it (2), and finally see what results could follow such a legalisation (3).

1. General situation and data: criminalisation of abortion, high risk of illegal abortion and religious statements.

As mentioned earlier, the Philippine Constitution establishes that the protection of life begins at the moment of conception⁵⁹. With this kind of statement, it is difficult to imagine that the country would allow abortion. But as it also equally protects “the life of the mother and the life of the unborn”, there is a breach to allow abortion in “life threatening cases”, if the mother is in danger⁶⁰. But it is not yet envisaged by the country, because the population is not ready - or at least not expressed in law, even if it is also recognised by the Catholic Church⁶¹. The UN Department of Economic and

⁵⁹ Section 12, Article II, “It shall equally protect the life of the mother and the life of the unborn from conception”.

⁶⁰ “An exception must be made in life-threatening cases that require the performance in emergency procedures. In these situation, the right to life of the mother should be given preference, considering that a referral by a medical practitioner would amount to a denial of service, resulting to unnecessarily placing the life of a mother in grave danger”.

⁶¹ “If, for example, saving the life of the future mother, independently of her condition of pregnancy, urgently required a surgical procedure or another therapeutic application, which would have as an accessory consequence, in no way desired or intended, but inevitable, the death of the fetus, such an action could not be called a direct attack on the innocent life. **In these conditions, the operation can be**

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Social Affairs (UNDESA), in a report dated 2013 indicates this as a possible way to practice an abortion (and the only way)⁶². The RH Law can be seen as an improvement and opening up of mentalities in the country, and a new way to practice the religion. But even the Supreme Court is closed to this interpretation, and abortion remains strictly forbidden, as can be seen in the decision in the Act: “the Philippine national population program has always been grounded on two cornerstone principles: “principle of no-abortion” and the “principle of non-coercion”. As will be discussed later, these principles are not merely grounded on administrative policy, but rather, originate from the constitutional protection expressly provided to afford protection of life and guarantee religious freedom”. This also the position held by the government: “Position of the Respondents: for their part, the defenders of the RH Law point out that the intent of the Framers of the Constitution was simply the prohibition of abortion. They contend that the RH Law does not violate the Constitution since the said law emphasizes that only “non-abortifacient” reproductive health care services, methods, device products and supplies shall be made accessible to the public”⁶³.

This point is also included in the RH Law, in Section 3(i) (Guiding principles): “While this Act recognizes that abortion is illegal and punishable by law, the government shall ensure that all women needing care for post-abortion complications shall be treated and counselled in a humane, non-judgemental and compassionate manner”, in the Section 4(c) (“Definition of Terms”, “Reproductive health care”): “proscription of abortion and management of abortion complications” and in the Section 16(j) (“Mandatory Age-Appropriate Reproductive Health and Sexuality”): “proscription and hazards of abortion”. It should be noted that as for contraception, the government point out here the risk of discrimination for women seeking health care after an illegal abortion. That is why these women “shall be treated and counselled in a human [...] manner”. This stigmatisation has also been reported by NGOs, like The Center for Reproductive Rights, in the document *Facts on abortion in the Philippines: Criminalization and a general ban on abortion*, “The criminal abortion ban has

considered licit, [...]”, Pius XII, *Speech to the Fronte della Famiglia and the Associazione Famiglie numerose*, November 27, 1951.

⁶² UNDESA (Population Division), *World Population Policies*, 2013, p.416.

⁶³ See Note 27.

stigmatized the procedure in the medical community, so that women face tremendous barriers and significant abuse when they seek treatment for abortion complications. [...] Filipino women who have undergone unsafe abortions for health reasons report that healthcare workers have not been sympathetic to their situation, but instead continue to abuse and threaten them”⁶⁴. It is again the influence of the religious point of view on women who choose to have an abortion, and this is also an observation of The Center for Reproductive Rights: “The stigma surrounding abortion is perpetuated by the Government of the Philippines’ acquiescence to the demands of the Catholic hierarchy, including the Catholic Bishops Conference of the Philippines (CBCP)”⁶⁵. Thus abortion is still penalized by law, as can be noted in the RH Law: “Moreover, the RH Law recognizes that abortion is a crime under article 256 of the Revised Penal Code which penalizes the destruction or expulsion of the fertilized ovum⁶⁶”. Indeed, abortion is penalized by Section 2 (“Infanticide and abortion”), Articles 256 to 259 of the revised code of the Philippines. It is penalized if the abortion is accomplished with or without the consent of the mother, and by medical practitioners or not. Here are Articles 256 to 259:

⁶⁴ Center for Reproductive Rights, *Facts on abortion in the Philippines: Criminalization and a general ban on abortion*, 28 January 2010, at: http://reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_fac_philippines.pdf (consulted on 11 may 2014).

⁶⁵ *Idem*.

⁶⁶ See Note 42.

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Art. 256. Intentional abortion. — Any person who shall intentionally cause an abortion shall suffer:

1. The penalty of reclusion temporal, if he shall use any violence upon the person of the pregnant woman.
2. The penalty of prision mayor if, without using violence, he shall act without the consent of the woman.
3. The penalty of prision correccional in its medium and maximum periods, if the woman shall have consented.

Art. 257. Unintentional abortion. — The penalty of prision correccional in its minimum and medium period shall be imposed upon any person who shall cause an abortion by violence, but unintentionally.

Art. 258. Abortion practiced by the woman herself or by her parents. — The penalty of prision correccional in its medium and maximum periods shall be imposed upon a woman who shall practice abortion upon herself or shall consent that any other person should do so.

Any woman who shall commit this offense to conceal her dishonor, shall suffer the penalty of prision correccional in its minimum and medium periods.

If this crime be committed by the parents of the pregnant woman or either of them, and they act with the consent of said woman for the purpose of concealing her dishonor, the offenders shall suffer the penalty of prision correccional in its medium and maximum periods.

Art. 259. Abortion practiced by a physician or midwife and dispensing of abortives. — The penalties provided in Article 256 shall be imposed in its maximum period, respectively, upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same.

Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer *arresto mayor* and a fine not exceeding 1,000 pesos.

Abortion is such a crime that even imprisonment⁶⁷ is required for those who practice it. Such penalization does not help against the discrimination these women can endure, especially as the sentence is higher for women who practice abortion to conceal their “dishonour”⁶⁸. Worse, it makes the information public, especially for rural areas: a

⁶⁷ *Prision correccional*: i.e., imprisonment for from six months to six years.

⁶⁸ IRIN Asia, « Philippines: Illegal Abortions – the risks and the misery », *irinnews.org*, 21 April 2009, at: <http://www.irinnews.org/report/84021/philippines-illegal-abortions-the-risks-and-the-misery> (consulted on 11 May 2014).

person living in a village is visible. For women, abortion can be a difficult moment, moreover if they are doing it under pressure, or for economic reasons, sometimes going against their own belief for their welfare, or because it is impossible for them to raise a child; making it illegal tends to make this choice harder. Certainly, as it is prohibited, the choice should not be harder because it should not exist, but it has to be observed that even if abortion is prohibited and penalized, some women still resort to it.

In 2002, The International Planned Parenthood Federation reported estimates ranging from 155,000 to 750,000 induced abortions per year⁶⁹. According to other sources, this number is comprised between 400,000 and 500,000⁷⁰. “The World Health Organization estimate puts the figure at nearly 800,000, one of the highest rates of unsafe abortions in Asia”⁷². A 2008 study of the Guttmacher Institute estimated this number at 560,000 cases of “induced abortion per year”⁷³. More reliable data is the number of women being hospitalised for post-abortion care (because this can be observed in hospitals, and be recorded as official information, even if these post-abortion interventions are sometimes covered by medical practitioners. Thus the stated number may be lower than in reality⁷⁴), this number being around 90,000 women; and about 1,000 deaths a year in the country^{75,76}.

These abortions are not carried out in safe conditions, which is why the number of complications is high. Indeed, the most common practice is carried out by non-skilled persons “a local 'hilot' or masseuse, a woman with no formal medical training, who uses

⁶⁹ UN Department of Economic and Social Affairs, Population Division, *Abortion Policies, A Global Review*, 2002, “Philippines”, at: <http://www.un.org/esa/population/publications/abortion/doc/philippines.doc> (consulted on 10 May 2014).

⁷⁰ Carlos H. Conde, « Philippines Abortion Crisis », *New York Times*, 16 May 2005, at: http://www.nytimes.com/2005/05/15/world/asia/15iht-phils.html?pagewanted=all&_r=1& (consulted on 11 May 2014).

⁷¹ SINGH, 1997, pp. 100-107.

⁷² See Note 70.

⁷³ Guttmacher Institute, *Meeting Women’s Contraceptive Needs in the Philippines*, 2009 Series, No. 1, at: http://www.guttmacher.org/pubs/2009/04/15/IB_MWCNP.pdf (consulted on 11 May 2014).

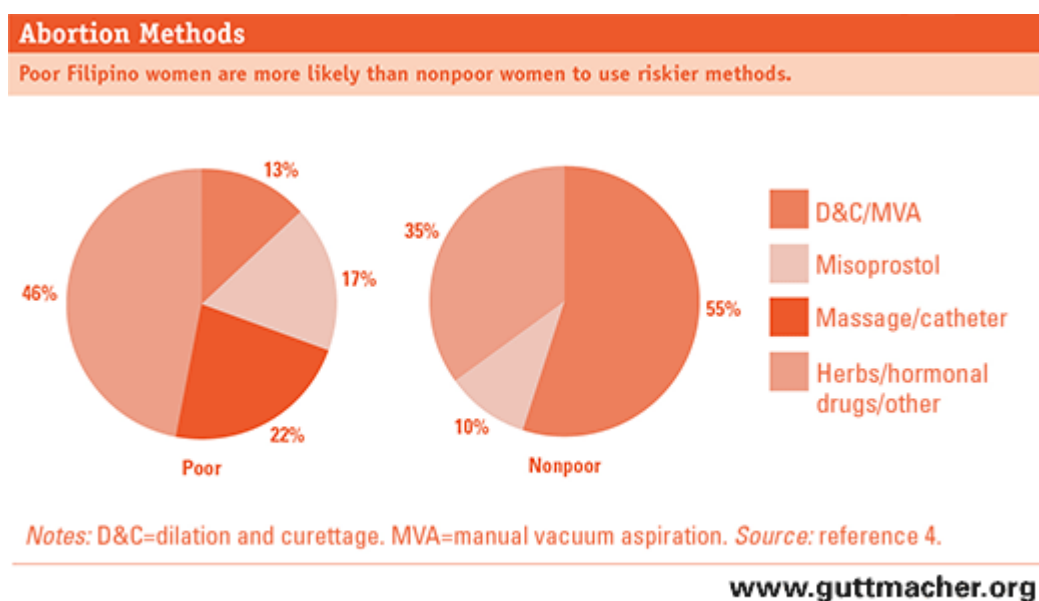
⁷⁴ See Note 68.

⁷⁵ Center for Reproductive Rights, “New Reports Links the Philippines Abortion Law to Human Rights Abuses”, 2 August 2010, at: <http://reproductiverights.org/en/press-room/new-report-links-philippines-abortion-law-to-human-rights-abuses> (consulted on 11 May 2014).

⁷⁶ See Note 68 “To avoid police intervention, health staff sometimes deliberately misclassify post-abortion cases as either medical or surgical, making post-abortion data difficult to find in health facilities”.

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intense massage on the abdominal area to induce abortion”, others drink “potions” that you can buy in the streets, and others drink “Cytotec, a drug used for the treatment and prevention of gastric ulcers. Relatively inexpensive, but available only on the black market, Cytotec softens the cervix and induces labour”⁷⁷. Interviewed for the *New York Times*⁷⁸, a “hilot” testified that she is aware of the risks of such practices for the women undertaking the procedure: ““They drink one tablet and I insert two more in the vagina. [...] I tell them they need to have money for hospitalisation. I also make it clear that I’m not going to be responsible for anything that happens in the event of complications.”⁷⁹



Not surprisingly, “Abortion-related complications are one of the top ten reasons for hospitalization of women in the country”⁸⁰. “The vast majority of maternal deaths are due to haemorrhage, hypertensive diseases, sepsis, obstructed labour and problems related to abortion, all conditions that are treatable if deliveries are attended by skilled health workers. They would also be less prevalent if mothers had only their desired

⁷⁷ See Note 70.

⁷⁸ Idem.

⁷⁹ The Guttmacher Institute, *Unintended Pregnancy and Unsafe Abortion in the Philippines: Context and Consequences*, July 2013, at: <http://www.guttmacher.org/pubs/IB-unintended-pregnancy-philippines.html> (consulted on 12 May 2014).

⁸⁰ See Note 75.

number of children, spaced by at least two years”⁸¹. “The Philippines is one of 55 countries accounting for 94% of all maternal deaths in the world and is statistically off-track for achievement of MDG 5 by 2015, with a MMR of 162 per 100 000 live births. Maternal deaths are closely linked with neonatal deaths”⁸². “Experts predict that the Philippines will not meet its Millennium Development Goal (MDG) to reduce the country’s MMR to 55 per 100,000 live births by 2015”⁸³.

Discrimination against women who have had an illegal abortion and seek medical post-abortion services is very common in the Philippines, “Junice Melgar, executive director of Likhaan, a women’s NGO that provides healthcare services and family planning counselling, said maltreatment of women seeking post-abortion care is common in government hospitals. “We’ve had cases where women were purposely made to wait while profusely bleeding. Others are treated without anaesthesia, or not cleaned as part of post-operation care. Verbal abuse is also common. Some doctors think that this will teach these women a lesson”⁸⁴. As mentioned previously, this is linked to the influence of the Catholic Church.

Here is the message sent by the Church to women who have had an abortion: “I would now like to say a special word to women who have had an abortion. The Church is aware of the many factors which may have influenced your decision, and she does not doubt that in many cases it was a painful and even shattering decision. The wound in your heart may not yet have healed. Certainly what happened was and remains terribly wrong. But do not give in to discouragement and do not lose hope. Try rather to understand what happened and face it honestly. If you have not already done so, give yourselves over with humility and trust to repentance. The Father of mercies is ready to give you his forgiveness and his peace in the Sacrament of Reconciliation. To the same Father and his mercy you can with sure hope entrust your child. With the friendly and expert help and advice of other people, and as a result of your own painful experience, you can be among the most eloquent defenders of everyone's right to life. Through your

⁸¹ See Note 22.

⁸² *Idem*.

⁸³ See Note 68.

⁸⁴ *Idem*.

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commitment to life, whether by accepting the birth of other children or by welcoming and caring for those most in need of someone to be close to them, you will become promoters of a new way of looking at human life”⁸⁵. The Church recognizes the “trauma” that might result from an abortion, but continue to remind women how wrong the act is, making them feel guilty (and trying to make them defenders of “pro-life” activism).

In the battle to blame these women, a Roman Catholic Bishop suggested that the typhoon which struck the Philippines in 2012 (Typhoon “Pablo” or “Bopha”), which caused around 1,047 deaths (693 identified), 2,662 injured, and 841 missing persons⁸⁶, was God’s way of saying that He is against the RH Law: “I don’t know if it’s just a coincidence or if the Lord is trying to send a message to us that whenever that (RH Bill) is being discussed heatedly, it seems that there’s a disaster that causes much suffering among us”⁸⁷.

These data show that the ban on abortion is a real problem in the Philippines, on the one hand, because criminalisation creates a place for fraud and unsafe practices for women, causing death in many case, and on the other hand because it does not help to eradicate discrimination process against these women. However, one solution for the country could be to adopt the same legislation as in Ireland or Poland, two mainly Catholic countries which managed to balance Catholic opinion and the safety of women.

2. *An (im)possible way: the example of Poland and Ireland*

As explained, there is one possibility for women to have an abortion: if the life of the mother is threatened. But, this is not expressly recognised⁸⁸ by the Supreme Court or

⁸⁵ Pope John Paul II, *Evangelium Vitae*, 25 March 1995.

⁸⁶ Official Gazette, *Situation report on the effects of typhoon Pablo (NDRRMC)*, 20 December 2012 (last update), at: <http://www.gov.ph/2012/12/20/situation-report-on-the-effects-of-typhoon-pablo-ndrrmc-as-of-december-20-2012-7-a-m/> (consulted on 11 May 2014).

⁸⁷ Michael Lim Ubac, “Palace chides Bishop Pabillo for linking tragedies to RH Bill push”, *Philippine Daily Inquirer*, 8 December 2012, at: <http://newsinfo.inquirer.net/320583/palace-chides-bishop-pabillo-for-linking-tragedies-to-rh-bill-push> (consulted on 11 May 2014).

⁸⁸ See Note 79: “In contrast to the liberalizing trend in contraceptive policy, the Philippines’ abortion law is among the strictest in the world. Abortion remains illegal in the Philippines under all circumstances and is highly stigmatized. While a liberal interpretation of the law could exempt abortion

the Law, and the surgical act carried out to practice this “abortion” is not recognised as an “abortion”. Passing a law allowing abortion in this special kind of case is what Ireland did, and it would be a major improvement in the Philippines: it can save mothers’ lives, and on the other hand while using the word “abortion” reduce the stigmatisation linked to this word. Plus, the medical interventions aiming at the protection of the woman’s life, even if they induce abortion as a second “effect” are “allowed” by the Catholic Church⁸⁹.

Article 40.3 of the Constitution of Ireland of the 1st July 1937 is written in this way: “The State acknowledges the right to life of the unborn and, with due regards to the equal right to the life of the mother, guarantees in its law to respect, and, as far as practicable, by its law to defend and vindicate that right. This subsection shall not limit freedom to travel between the State and another State. This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another State”. With the words “as far as practicable” regarding the protection of the unborn, Ireland’s Constitution is leaving a place to allow abortion when the mother’s health is in danger. The last two sentences were added in 1992, after a mediatised case: the “X case”⁹⁰, landmark of the Supreme Court of Ireland, where it was officially recognised that abortion can be practiced in the case of danger for women (including the risk of suicide). A fourteen year old girl, pregnant after having being raped by her neighbour was helped by her mother to travel to Britain to have an abortion, as she was talking about committing suicide if she had to keep the baby. The mother of the girl asked if she could keep a sample of the DNA of the baby as an evidence in the case of rape. Hearing what they intended to do, the Attorney General sought an injunction preventing her from having the procedure done.

Despite this, the law still criminalises abortion. Indeed, Articles 58 and 59 of the *Offences Against the Person Act of 1861*, as revised, is written as follows:

provision from criminal liability when done to save the woman’s life, there are no such explicit provisions”.

⁸⁹ See Note 61.

⁹⁰ Supreme Court of Ireland, *The attorney general (plaintiff) v. X. and others (defendant)*, 5 March 1992.

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Attempts to procure Abortion

58 Administering drugs or using instruments to procure abortion.

Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable . . . ^{F77} to be kept in penal servitude for life . . . ^{F78}

Annotations:

Amendments (Textual)

F77 Words repealed by Statute Law Revision (No. 2) Act 1893 (c. 54)

F78 Words repealed by Statute Law Revision Act 1892 (c. 19) and Statute Law Revision (No. 2) Act 1893 (c. 54)

Modifications etc. (not altering text)

C56 S. 58 explained by Abortion Act 1967 (c. 87), ss. 1, 5(2)

59 Procuring drugs, &c. to cause abortion.

Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanor, and being convicted thereof shall be liable . . . ^{F79} to be kept in penal servitude . . .

Annotations:

Amendments (Textual)

F79 Words repealed by Statute Law Revision Act 1892 (c. 19)

Modifications etc. (not altering text)

C57 S. 59 explained by Abortion Act 1967 (c. 87), ss. 1, 5(2)

The repetition of the word “unlawfully” shows that there is a lawful way to have an abortion: this is a reference to the provisions of the Constitution. But those provisions are still seen by NGOs in Ireland as unclear, and leading to misunderstanding, prohibiting abortion in cases where it should be allowed⁹¹. The influence of the ECHR should be noted, even if the Court refuses to take a position on

⁹¹ Video: Irish Family Planning Association, *Abortion in Ireland*, visible at: <https://www.youtube.com/watch?v=dWON0w3PlIc> (consulted on 11 May 2014).

the legal qualification of the foetus (in order to let the different States decide depending on their own “beliefs”)⁹². For instance, on the definition of “life threatening cases”, with case ECHR, 16 December 2010, *A.B.C. v. Ireland*, or on the delivering of complete and impartial information with case ECHR, 20 October 1992, *Open Door and Dublin Well Woman v. Ireland*.

An admission of this kind in the Philippines could actually save many women from the risks of unsafe abortions: it protects the life of the mother, allows the delivery of information, and still leaves a place for the Catholic “spirit”. This just has to be recognised by the Supreme Court in a more explicit way, as they are already giving preference to the life of the mother in life-threatening cases⁹³. But if the laws on abortion in Ireland are the most restrictive in Europe, another Catholic country has made improvements in this area, enlarging the cases where abortion is possible: Poland.

Article 38 of the Constitution of Poland (2 April 1997), protecting the right to life, is formulated in a broad sense and is open to different interpretations in time: “The Republic of Poland shall ensure the legal protection of the life of every human being”. The law regulating abortion in Poland is a law of 1993 on “Family Planning, Protection of Human Foetus and Conditions to Admit Interruption of Pregnancy”. According to this law, abortion is admissible in three cases: “1) when there is a threat to women’s health (as in Ireland), 2) when there is a medical presumption that the foetus is severely or irreversibly damaged due to genetic or other reasons or the foetus is incurably ill 3) or the pregnancy is a result of crime (incest or rape)”⁹⁴. There are certain assorted conditions, such as performing the abortion when the term is under twelve weeks, the need for two different medical certificates (delivered by a public hospital), a certificate issued by a prosecutor in case of pregnancy resulting from a crime, examination of the foetus revealing that it cannot be viable. “The Constitutional Tribunal delegatised in

⁹² See: European Court of Human Rights, Grand Chamber, 8 July 2004, *Vo v. France*, No. 53924/00.

⁹³ See Note 27: “In these situations, the right to life of the mother should be given preference, considering that a referral by a medical practitioner would amount to a denial of service, resulting to unnecessarily placing the life of a mother in grave danger”.

⁹⁴ Legislationonline.com, “Poland, Reproductive rights and access to health care system”, *Legislationonline.com*, at: <http://www.legislationonline.org/topics/subtopic/24/topic/7/country/10> (consulted on 11 May 2014).

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1997 the right to perform abortion on the basis of difficult personal conditions or bad economic situation introduced by the amended version of the Law on Family Planning of 1996”⁹⁵. The written consent of the woman is also needed, and of the “statutory representatives” (and from the Family Court or Custodian Court based on hearings) for minors under the age of 13, or incapacitated women.

In the case of an abortion which does not respect these provisions, the women will be subject to the penalty of deprivation of liberty for up to 3 years, and if she has been helped or persuaded by another person, this person is subject to the same penalty. If the foetus at the time of the abortion was capable of living outside the mother, the deprivation of liberty extends to a term of 6 to 8 years. If the abortion results in the death of the women, the penalty of deprivation of liberty goes up to ten years.

The different rules depending on the capacity of the foetus to live outside the mother ovum shows that Poland is making a distinction between two different foetuses, where one is able to live and the other is not. As the penalty is higher when the foetus is capable of surviving alone, it makes the abortion closer to murder. This is very different to the Philippines, where the life is protected at the moment of conception, with no distinctions of any kind.

But what could be done in the Philippines, would be to allow abortion in life threatening cases (expressly), and also in case of crime: rape and incest. Regarding life threatening cases, legislation is essential for medical practitioners and women to know when they can have an abortion or not. A lack of definition is always “against” women, as can be seen with the different cases brought in front of the ECHR where women had seen their abortion refused because medical practitioners did not know that they could practice it⁹⁶. In the other case, if the pregnancy is the result of a crime, this could be helpful in the Philippine case because there is a high rate of rape and incest. In the Philippines, according to a study conducted by The Philippine Commission on Women, “one in twenty five women age 15-49 who have ever had sex had experienced forced first sexual intercourse” and “one in ten women age 15-49 ever experienced sexual

⁹⁵ *Idem*.

⁹⁶ See cases ECHR, 20 March 2007, *Tysiack v. Poland*, and ECHR, 26 May 2011, *RR v. Poland*.

violence”⁹⁷. In 2012, 1030 rapes were reported to the police. But this study does not take into account the cases that were not reported to the police, even though they are aware of the “culture of silence” in the Philippines: “An even greater problem is the lack of concrete information to show the extent of Violence Against Women (VAW) in the country as many cases of violence against women often go unreported due to women victims’ “culture of silence.” Many of the victims are ashamed to relate their experiences while others tend to dismiss their ordeal as a result of their lack of faith in the country’s justice system caused by frustrations over the lack of results in filing complaints”⁹⁸. For instance, even if rape between spouses is forbidden by law, it is rare to see a case in a court of justice. Women are also stigmatised when they are victims of rape, as if it was their fault. Add the fact that many women are not aware of the mechanisms existing for their protection, or in case of incest, sometimes believe that it is the “normal way of life” (in rural areas, incest is quite common⁹⁹), and it is obvious that many cases are not reported. When a woman does not use a modern method of contraceptive, such as pills – which are still rare in the Philippines as was seen earlier, and she is a victim of rape, there is a risk of pregnancy. This pregnancy is for her the memory of the act she was a victim of. Psychologically, there is a trauma. The woman has two “solutions” in the current situation: having an illegal, unsafe abortion, or keeping the baby. But raising a baby in this condition is not always the best solution for the baby. For all these reasons, allowing abortion in these cases could offer a great improvement in women’s life and rights.

⁹⁷ Philippine Commission on Women, *Statistics on violence against Filipino women*, 18 April 2013, at: <http://www.pcw.gov.ph/statistics/201304/statistics-violence-against-filipino-women> (consulted on 12 May 2014).

⁹⁸ Philippine Commission on Women, “Violence Against Women (VAW)”, at: <http://www.pcw.gov.ph/focus-areas/violence-against-women> (consulted on 12 May 2014).

⁹⁹ “Incest cases are increasingly reported in the Philippines. Data from the Department of Social Work and Development (DSWD) reveals the prevalence of incest nationwide. From 1991 to 1996, the number of reported incest cases reached 1, 835 from 45 in 1991. For 1996 alone, the DSWD documented 624 cases of incest out of the 2, 621 reported cases of sexual abuse of children” and “The reported cases, however do not reflect the actual incidence of incest. The actual prevalence of incest may never be known primarily because of various factors that hinder its reporting [...] Little is known about the profile of incest victims, their abusers and the circumstances behind incest. A comprehensive research on incest in the Philippines is urgently needed”, Women’s Legal Bureau, Inc. for SIBOL, *Understanding Incest in the Philippines**, 2002, at: <http://philippineculture.ph/filer/Understanding-Incest-in-the-Philippines.pdf> (consulted on 12 May 2014).

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But the Philippines is a long way from envisaging this solution. Considering how hard it was to pass a law simply to promote contraception and provide access to it in rural areas, even if this was already allowed before, shows how difficult it would be for this country to pass a law on abortion. Nor is the government even ready for it: during the drafting of the *ASEAN Human Rights Declaration*, the Philippines insisted on making the right to life begin at the moment of conception, as in the *American Convention on Human Rights*, but without the word “in general” which allows abortion in some cases¹⁰⁰. This relentlessness is proof that things are not going to evolve in the next years. But, what can be expected if abortion is legalised?

3. What to expect if abortion is legalised?

First of all, some myths about abortion have to be destroyed in order to see improvement and a real implementation of the reproductive rights of women. For instance: “abortion is murder”. If for some people, such as Catholics, abortion can be compared to murder, this kind of sentence (which is strongly affirmative) does not take into account the freedom of religion and thoughts. It just helps to make women who consider an abortion feel bad, like a psychological threat. Everybody is entitled to his own view on abortion, without having to face the stigmatisation of others. Another myth: “abortion can lead to medical complications and risk your chances of having a child later”. Indeed, as in any medical procedure, abortion carries a risk. But this risk is lower when it is performed by medical practitioners who are trained and in safe conditions (sterilization...). “Anti-abortion extremists have tried to scare women about abortion by declaring that abortion is unsafe. One in three American women will have an abortion by the age of 45. Abortion is one of the most common and safest medical procedures provided in the United States today. Approximately 1.3 million women have an abortion per year, and 90% are in the first trimester of pregnancy. Less than 1% of abortions result in serious complications. Abortion is about 10 times safer than childbirth”¹⁰¹. Thus, it does not affect the chances for a woman to have a child later¹⁰².

¹⁰⁰ Inter-American Commission on Human Rights, 6 march 1981, *Baby Boy v. United States*, Resolution 23/81, Case 2141.

¹⁰¹ Women Health Specialists, “About Abortion – Abortion Myths”, *womenshealthspecialists.org*, at: <http://www.womenshealthspecialists.org/our-services/abortion/abortion-myths> (consulted on 9 June 2014).

“Abortion will be used as a contraceptive”: in fact, when there is an unmet need for contraception, abortion can be used more often. But it is always the last resort, and even if contraceptives are current, there will always be a need for abortion. In fact, the highest rate of abortion procedures are in Latin America and Africa, where these are strictly restricted¹⁰³, but where women have unintended pregnancies (also because of an unmet need for contraception). The world’s lowest rate of abortion is in Western Europe, with a rate of 12 abortions per 1000 Women¹⁰⁴, even if abortion is legal (and for some countries, available until 12 weeks of pregnancy, as in France). This shows that abortion is still needed, but does not mean that women will use it as a contraceptive because it is legalised. Women will use it because there is an unmet need for contraception, and a high rate of unwanted pregnancies. This is why allowing abortion must be associated with the development of access to modern methods of contraception and the right information on reproductive health. “Abortion will lead to inappropriate or amoral sexual behaviour”: as earlier, what is moral and what is not depends on one’s point of view, and there is no evidence that allowing contraception leads to “amoral” behaviour, as long as legalisation provides the right information about reproductive rights and sexuality. The same criticism is made about contraception, and again, there is no evidence to prove this, but the sexual practices become safer¹⁰⁵. “Abortion is always painful and stressing for women”: as soon as the practice is stigmatised, the decision to have an abortion is difficult. This is a very personal act, and one that is often criticised by society. In fact, abortion is not always painful, neither psychologically nor physically, it depends on the woman, her opinion, and how the decision was made (it is

¹⁰² “[...] Dr Guthrie, said that the risk of being left infertile is “very, very low”. [...] The risk of infection is also minimal”, Emma Barnett, Claire Newell, Holly Watt and Ben Bryant, “Abortion will make women child sex abusers’ Independent Clinic Warn”, *The Telegraph*, 10 February 2014, at: <http://www.telegraph.co.uk/women/womens-health/10621459/Abortion-will-make-women-child-sex-abusers.html> (consulted on 12 May 2014).

¹⁰³ With a rate of 32 abortions per 1000 Women in Latin America, and 29 abortions per 1000 women in Africa. See: (Video) The Guttmacher Institute, *Worldwide abortion: Legality, Incidence and Safety*, at: <http://www.guttmacher.org/media/presskits/abortion-WW/index.html> (consulted on 12 May 2014).

¹⁰⁴ *Idem*.

¹⁰⁵ “Sex education about abstinence and birth control was associated with healthier sexual behaviors and outcomes as compared to no instruction. The protective influence of sex education is not limited to if or when to have sex, but extend to issues of contraception, partner selection, and reproductive health outcomes”, DUBERSTEIN LINDBERG, 2012, pp. 332-338.

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always easier to deal with a fully informed choice). This is way an American girl filmed her own abortion in May 2014, to show that abortion is not always painful. This video became “viral”¹⁰⁶.

“Those who choose abortions are often minors or young women with insufficient life experience to understand fully what they are doing. Many have lifelong regrets afterwards”¹⁰⁷. This last myth has to be destroyed. It is proven that women who undertake abortion are often married and already have one or more children: “According to a national 2004 survey of women of reproductive age, individuals who have abortions are similar to Filipino women overall: They are typically Catholic, are married, are mothers and have at least a high school education.(4) The most common reason women identified for having an abortion—cited by nearly three in four—was the inability to afford the cost of raising a child or an additional child. More than half of those who had had an abortion said they underwent the procedure because they felt they already had enough children or that their pregnancy came too soon after their last birth. Nearly one-third of women felt that their pregnancy would endanger their health, and another third believed that their partner or another family member did not want or support the pregnancy. Perhaps most disturbingly, 13% of women who had had an abortion cited pregnancy as a result of forced sex as their reason for getting an abortion”¹⁰⁸.

These myths and their recurrence in the world debate on abortion prove that there is a lot of misrepresentation, misunderstanding and misinformation about abortion. The same is true in the Philippines, where these myths are disseminated by the Catholic Church and other religious movements. This can also be seen in the Court decision (by the use of special vocabulary, as seen before in “repugnant” practices) or in government

¹⁰⁶ Smriti Sinha, “One Women Destroyed the Biggest Pro-Life Myth by Filming Her Own Abortion”, *PolicyMic.com*, 6 May 2014, at: http://www.policymic.com/articles/88943/one-woman-destroyed-the-biggest-pro-life-myth-by-filming-her-own-abortion?utm_source=policymicFB&utm_medium=main&utm_campaign=social (consulted on 12 May 2014).

¹⁰⁷ Linda Lowen, “10 Abortion Arguments: 10 Arguments For Abortion, 10 Arguments Against Abortion, Abortion Arguments from Pro-Life and Pro-Choice Sides and Main Points of Debate”, *About.com*, at: <http://womensissues.about.com/od/reproductiverights/a/AbortionArgumen.htm> (consulted on 12 MAy 2014).

¹⁰⁸ See Note 79.

speeches. Finally, women are not informed about abortion, or about women who decide to have an abortion: “Among all the women interviewed, economic reasons and being unmarried or too young were cited as the most important reasons for why women obtain abortions, illustrating that many Filipino women who have not had an abortion understand why other women choose to have one”¹⁰⁹.

The major aim in legalising abortion is the safety of women. And this in two ways. The first one, which is the most obvious, is that allowing abortion, even in special cases, will reduce the number of maternal deaths and women’s injuries caused by unsafe abortions. Thus, it will lead to the disappearance of the clandestine network of abortion, reduce the number of dangerous medicines sold in the streets, and lead to abortion practiced in good hygiene conditions. If these measures are accompanied by a process of information for the population, like trainings and seminars, it will also show the real risk of having an unsafe abortion. The second reason, which is less obvious, is that providing a law on abortion will change (with time and proper information) the way people see abortion. When women are stigmatised in hospitals for post-abortion care, they do not receive care in a decent manner, and medical practitioners do not always want to help them: they feel as if, by helping the woman, they were also committing a crime (event if the law obliges them to protect the women and give her the necessary treatments). “In the Philippines, the stigma surrounding abortion is another factor that makes it difficult for a woman to seek post-abortion care. Some women report feeling shamed and intimidated by health care workers, and in some cases women are not provided with pain relievers and anaesthesia, or treatment is delayed or denied altogether. Others report being threatened that they would be turned in to the police. Doctors themselves report having a bias against post-abortion care patients, with some believing that these women have committed punishable crimes. Other health care providers may have difficulty properly managing complications when women conceal the cause of their medical emergency”¹¹⁰. Women will not be “afraid” about going to a hospital (afraid of the doctors’ reactions or behaviour) and doctors will be able to give the women the proper care.

¹⁰⁹ Idem.

¹¹⁰ Idem.

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In conclusion, allowing abortion has to go hand in hand with better access to contraception and information about reproductive rights¹¹¹. Even if abortion is prohibited, it will not stop women from undertaking this kind of procedure, but instead of doing it in safe conditions, there will undergo unsafe procedures, and sometimes try to do it themselves¹¹². While the Philippines has improved its legislation regarding contraception with the RH Law, it must be said that it is not sufficient. The effect of the law will be studied in the next few years, and even if there is improvement, it will not be significant unless the government promotes modern methods of family planning (the most common method is still “withdrawal”). For the moment, this information is provided more by NGOs in the field than by the government. With the promotion of natural methods of family planning, there is still a risk of unwanted pregnancies to occur and as such for women to undertake illegal abortion procedures.

But allowing abortion will not only be an improvement for women. In a country where it is not rare in rural areas to find families with more than 10 children, living in very difficult conditions (because of poverty), allowing women to choose how many children they want, by giving them access to contraception and sometimes to abortion, can also be a way of saving a child. This is what this thesis wants to prove in the second part.

II. THE FUTURE OF UNWANTED CHILDREN IN A DEVELOPING COUNTRY

“One in three births (36 percent) in the Philippines is either unwanted (16 percent) or mistimed (20 percent), according to the results of the 2008 National Demographic and Health Survey. Unplanned pregnancies are more likely to occur among older women than younger women. The survey data reveals that more than half (53 percent) of births to women age 40-44 in the 5 years preceding the survey were unplanned; the

¹¹¹ “We acknowledge the fact that abortions constitute a major public health concern for women all over the world. Since the use of family planning methods may prevent the prevalence of unplanned pregnancies, we call upon all national Governments to reduce the need for abortion by providing universal access to family planning information and services”, UN *Declaration on Population*, Cairo, 10 December 1966.

¹¹² See Note 103.

majority (84 percent) of such births were unwanted. Among women aged 15-19, 31 percent of births were unplanned, of which, only 21 percent were unwanted. These findings are based on the responses of women aged 15-49 years to the question as to whether each of their births in the five years preceding the survey was wanted at the time of birth, mistimed or wanted but a later time, or not wanted at all¹¹³.

In a developing country like the Philippines, regulating population density is a way to reach economic development. Indeed, this was the main reason for the Philippines passing the RH Law in 2012, and other laws related to reproductive rights and Family planning. But, as was seen in the first part of this thesis, improvements in this field have to be made, and the country, still opposed to abortion and not promoting moderns methods of family planning, needs to ask about the unwanted pregnancies occurring due to an unmet need for contraception or the prohibition of abortion. It needs to ask about the women who choose (even if it is not always a “choice”) to keep the baby, their state of mind regarding their child, and the life of this child once it is born. Because, if the life of the unborn matters more than anything to pro-life advocates, it is always seen as a “baby’s” life, and it is never (or at least not often) thought of as the life of a child who will grow up, contextualised in the country’s economic situation.

In fact, increasing population density increases poverty (A), leading to the expansion of networks of child prostitution (B). In this respect, the attitude of the Catholic Church, which is strictly opposed to any regulations related to reproductive rights, and which has a strong influence on the Philippine government (and by extension on Filipinos’ lives), can be seen as a lobbying, leading Filipinos, more or less directly, to poverty, and extreme solutions such as child prostitution.

A. INCREASING POPULATION DENSITY INCREASES POVERTY AND CHILD ABUSE, EXPLOITATION AND TRAFFICKING

“As for abortion procured in certain difficult and complex situations, the clear and precise teaching of Pope John Paul II applies: “It is true that the decision to have an abortion is often tragic and painful for the mother, insofar as the decision to rid herself

¹¹³ ERICTA, 2008, “One in three births in the Philippines is unplanned”.

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of the fruit of conception is not made for purely selfish reasons or out of convenience, but out of a desire to protect certain important values such as her own health or a decent standard of living for the other members of the family. **Sometimes it is feared that the child to be born would live in such conditions that it would be better if the birth did not take place.** Nevertheless, these reasons and others like them, however serious and tragic, can never justify the deliberate killing of an innocent human being”¹¹⁴.

If the aim of the RH Law is to give access to contraception for “the poorest, the marginalized and women”, it is because there is a need to regulate births in the country. It is not rare in the Philippines to find poor families with more than 10 children living with them. The general situation of the Philippines in regard to poverty has to be explained (1), to show how networks are growing more easily in this type of context (2), to see how the mother’s psychological state of mind towards unwanted pregnancies and children plays a role this global context (i.e. in child exploitation and child abuse) (3).

1. General situation and data: unwanted children, rural areas and poverty

The Philippines is a developing country according to the World Bank classification (“lower middle-income”)¹¹⁵. According to the World Bank Data, 25.2% of the population was living under the poverty line in 2012. This number has been slowly decreasing since 2006, when 26.6% of the population was living under the poverty line. In comparison, in 2006, 23.4% of the population was under the poverty line in Thailand, and 13.2% in 2012¹¹⁶.

According to the UN Development Programme (UNDP), “Philippines’ Human Development Index (HDI) value for 2012 is 0.654—in the medium human development category—positioning the country at 114 out of 187 countries and territories”. Related to the South East Asia Region, “Philippines’ 2012 HDI of 0.654 is above the average of

¹¹⁴ Congregation for the Doctrine of the Faith, Clarification on Procured Abortion, *L’Osservatore Romano*, 11 July 2009.

¹¹⁵ The WBD, Philippines, at: <http://data.worldbank.org/country/philippines> (consulted on 15 May 2014).

¹¹⁶ The WBD, *Poverty headcount ratio at national poverty line (% of population)*, at: <http://data.worldbank.org/indicator/SI.POV.NAHC/countries/PH-TH?display=graph> (Consulted on 15 May 2014).

0.64 for countries in the medium human development group and below the average of 0.683 for countries in East Asia and the Pacific. From East Asia and the Pacific, countries which are close to Philippines in 2012 HDI rank and population size are Thailand and Indonesia, which have HDIs ranked 103 and 121 respectively (see table B)¹¹⁷.

Table B: Philippines' HDI indicators for 2012 relative to selected countries and groups

	HDI value	HDI rank	Life expectancy at birth	Expected years of schooling	Mean years of schooling	GNI per capita (PPP US\$)
Philippines	0.654	114	69.0	11.7	8.9	3,752
Thailand	0.69	103	74.3	12.3	6.6	7,722
Indonesia	0.629	121	69.8	12.9	5.8	4,154
East Asia and the Pacific	0.683	—	72.7	11.8	7.2	6,874
Medium HDI	0.64	—	69.9	11.4	6.3	5,428

The Philippines is aware that the “population problem should be considered as the principal element for long-term economic-development”¹¹⁸ and that it must come with the promotion of methods of family planning, raising awareness about it, and the empowerment of women. This is why on December 1967, “the Philippines [adhered] to the UN Declaration on Population”¹¹⁹. In the decision about the RH Law, the Supreme Court ruled that “various provisions of the law show that both “reproductive health” and “responsible parenthood” are interrelated and germane to the overriding objective to control the population growth”. Thus, “the corpus of the RH law is geared towards the reduction of the country’s population? While it claims to save lives and keep our women and children healthy, it also promotes pregnancy-preventing products. As stated earlier, the RH Law emphasizes the need to provide Filipinos, especially the poor and the marginalized, with access to information on the full range of modern family planning products and methods. These family planning methods, natural or modern, however, are clearly geared towards the prevention of pregnancy. For said reason, the

¹¹⁷ UNDP, *Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World*, “Explanatory Note on 2013 HDR Composite Indices, Philippines, HDI Values and rank changes in the 2013 Human Development Report”, at: <http://hdr.undp.org/sites/default/files/Country-Profiles/PHL.pdf> (consulted on 15 May 2014).

¹¹⁸ See Note 27.

¹¹⁹ Idem.

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manifest underlying objective of the RH Law is to reduce the number of births in the country”¹²⁰.

This is also recognised by the UN: “At the 1994 International Conference on Population and Development (ICPD) in Cairo, 179 countries agreed that population and development are inextricably linked, and that empowering women and meeting people's needs for education and health, including reproductive health, are necessary for both individual advancement and balanced development. The conference adopted a 20-year Programme of Action, which focused on individuals' needs and rights, rather than on achieving demographic targets. Advancing gender equality, eliminating violence against women and ensuring women's ability to control their own fertility were acknowledged as cornerstones of population and development policies. Concrete goals of the ICPD centred on providing universal education; reducing infant, child and [MMR]; and ensuring universal access by 2015 to reproductive health care, including family planning, assisted childbirth and prevention of sexually transmitted infections including HIV/AIDS”¹²¹. In that sense, reproductive rights are part of the more general “right to development”, as stated in Article 8.1 of the *Declaration on the Right to Development* (1986): “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices”¹²². Indeed, the increase of the population being linked to economic development and poverty, the access to reproductive rights is part of the right to development, while raising awareness on family planning methods is a way to sustainable development and empowerment of women.

¹²⁰ Idem.

¹²¹ UNDP, *International Conference on Population and Development Programme for Action*, 13 September 1994 (Cairo), visible at: <http://www.unfpa.org/public/home/sitemap/icpd/International-Conference-on-Population-and-Development/ICPD-Summary> (consulted on 31 May 2014).

¹²² UNGA, *The right to development: resolution / adopted by the General Assembly*, 22 March 2013, A/RES/67/171, at: <http://www.refworld.org/docid/51e65d3e4.html> (consulted on 31 May 2014).

The problem of poverty in the Philippines concerns both rural areas and big cities, especially shanty towns, which are often subject to fires, floods etc. The construction in both is rudimentary (sheet metal or bamboo) so the people living there are the first to suffer from the numerous climatic catastrophes occurring in the region (tsunami, earthquakes and typhoon).



Picture: Traditional house made out of Bamboo, in Philippines' rural areas, near Bingawan (Western Visayas, Panay, Iloilo's Province). © Alexienne Fuhrmann.

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“One tenth of slum dwellers live in the capital Manila, in neighbourhoods like this one in the Tondo District. Tondo is one of the oldest areas of Manila, and dates back about 1,000 years. But the past has been erased by the present. Today it's one of the most densely populated places on earth. There are 80,000 people per square kilometre. The UN says many of them lack adequate water, housing, sanitation, education, health and employment”¹²³.

Another problem with poverty is the employment of children. Most working children in the Philippines are boys, living in rural areas (69.8%)¹²⁴. “Two in every three working children attended school, [...] while 31.1% of working children are engaged in gainful and other activities but not in schooling. School attendance was higher among working children living in the rural areas (67.0%) than the urban-based children (63.2%). Working children who studied at the same time comprised mostly of

¹²³ Emma Joseph (words and picture), “In pictures: Manila Slum life”, *BBC News*, at: http://news.bbc.co.uk/2/shared/spl/hi/picture_gallery/06/world_manila_slum_life/html/2.stm (consulted on 17 May 2014).

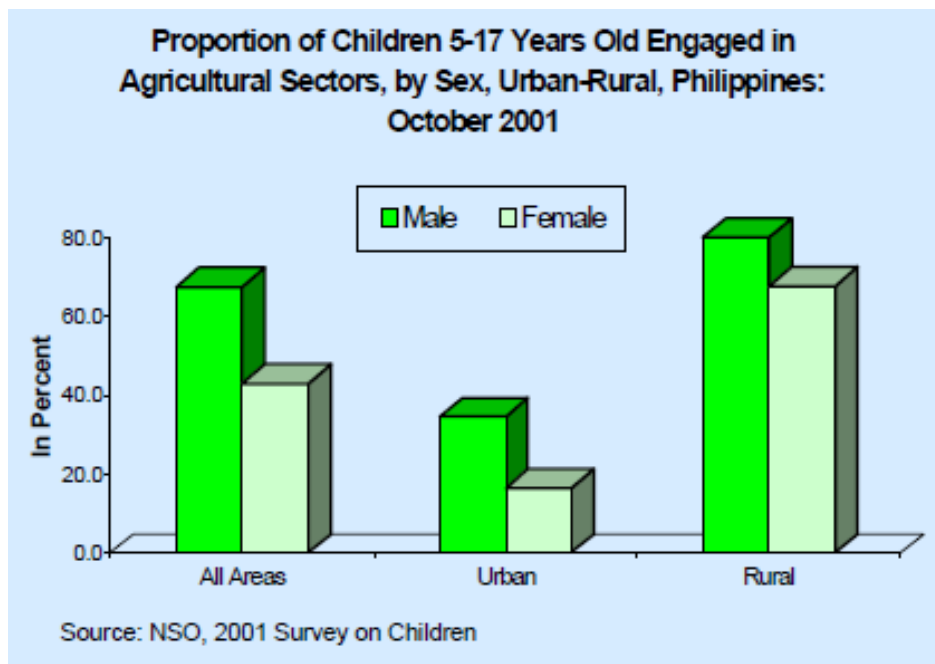
¹²⁴ Republic of the Philippines, Philippine Statistics Authority, NSO, *Children of the Philippines (2001 Factsheet)*, October 2001, at: http://www.census.gov.ph/old/data/sectordata/SOC_FactSheet.pdf (consulted on 17 May 2014).

male (59.6%) and with age between 10 and 14 years old (58.3%)”¹²⁵. It has to be noted here that the Philippines is not party to the International Labour Organisation (ILO) Convention No. 138 concerning minimum age for admission to employment, which fixed the minimum age for employment at 15 years old, for all types of work. Thus, the R.A. No. 7658, amended Article VIII, Section 12, of the R.A. No. 7610, by prohibiting children below 15 years of age from employment except when they work in a family-run company or when their participation in public entertainment is "essential". Moreover, under the Child and Youth Welfare Code, employers are required to submit periodic reports and maintain a register of child employees. But there is no inspector to control child employment.

According to the same study, 44.8% of working children who were going to school at the same time were reporting difficulties in working and attending school at the same time (and this for many reasons, like difficulties catching up lessons, the high cost of school supplies/books/transportation...). “Loss of interest in schooling and insufficient family/household income were the main reasons of school drop-outs”. Despite this, “more than 60 percent among the rural-based and 5-14 year old working children were unpaid during the reference period. In the same manner, female working children 5-17 years old recorded a higher percentage of unpaid workers than male working children (60.3% compared to 58.0%)”, mainly because they work to help their parents.

¹²⁵ Idem.

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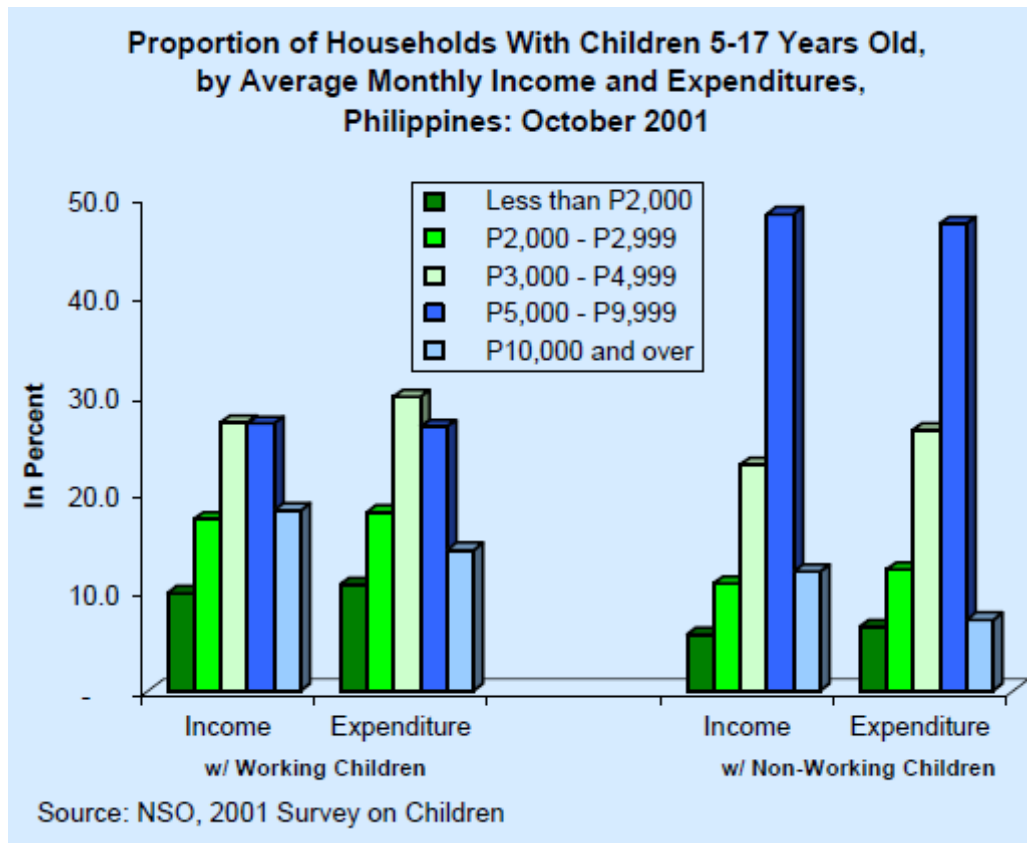


“Almost 40 percent of the 4.0 million¹²⁶ working children claimed that they wanted to help in their own household enterprise. Three in every 10 children revealed that they needed their job to supplement their family income and that it is important to their family well-being. Helping in their own household enterprise was more common among female (42.7%) than male (38.0%) working children. On the other hand, a greater proportion of male (32.0%) than female working children (25.9%) expressed their need to earn to augment their family income”. The study also enlightened the fact that many children are exposed to pesticides and hazardous environment, and that 20.6% of the children complain of risky or dangerous work. 23.4% of working children suffered from work-related injuries, the percentage being higher in rural than in urban areas. “Of the 4.0 million children 5-17 years old who worked during the reference period, about 2.7 million (68.2%) reported that they prefer to attend school than to work”. “A total of 93 thousand (54.7%) working children living away from home were

¹²⁶ Data from October 2001, according to the ILO, there were 5.49 Million children working in the Philippines in 2011, around 19% of the Filipino children; See: International Labor Organisation and Philippine Statistics Office, Presented by Carmelita N. Ericta, Administrator, NSO, *2011 Survey on Children: Child labour in the Philippines*, 26 June 2012, visible at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/meetingdocument/wcms_184097.pdf (consulted on 31 May 2014).

engaged in permanent jobs or businesses as unpaid family workers”, most of them live in Metro Manila, and are girls¹²⁷.

Poverty in the Philippines is thus a fact pushing children to work, and causes some of them to drop out of schooling. Surviving and buying food is more important than the fundamental right to education (especially for families with a lot of children, which is common in rural areas and for the poorest who don't have access to family planning methods and information)¹²⁸, “in general, households with working children came from the rural areas with an average size of 6 members”, as can be seen in the following two charts¹²⁹.



¹²⁷ See Note 124.

¹²⁸ “As with many threats to children's development and well-being, poverty is a root cause of child labor. Families struggle to make ends meet and face hard decisions when it comes to sending their children to work”. See: ChildFund International, *Unseen Workers: Child Labor in the Philippines*, 5 March 2013, visible at: <https://www.childfund.org/child-labor-in-the-philippines/> (consulted on 18 May 2014).

¹²⁹ See Note 124.

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Number of Households with Children 5-17 Years Old by Selected Characteristics: October 2001 (In Thousands)						
Selected Characteristics	Total Households with Children 5-17 Years Old		Households with Working Children 5-17 Years Old		Households with Non-Working Children 5-17 Years Old	
	No.	% to Total	No.	% to Total	No.	% to Total
PHILIPPINES						
Households with Children 5-17 years old	10,440	100.0	2,741	26.3	7,699	73.7
Households with Own-Operated Business/Enterprise	6,656	63.8	1,910	69.7	4,746	61.6
ECONOMIC CHARACTERISTICS						
Household Size						
Less than 3 members	10,440	100.0	2,741	100.0	7,699	100.0
Three members	127	1.2	28	1.0	99	1.3
Four members	764	7.3	157	5.7	607	7.9
Five members	1,758	16.8	316	11.5	1,442	18.7
Six Members	2,284	21.9	455	16.6	1,829	23.8
Seven Members	2,018	19.3	532	19.4	1,486	19.3
Eight Members	1,465	14.0	466	17.0	999	13.0
Nine Members	972	9.3	363	13.2	609	7.9
Ten members and over	497	4.8	199	7.3	298	3.9
	554	5.3	225	8.2	329	4.3
Major Industry Group ¹						
Agriculture	6,656	100.0	1,910	100.0	4,746	100.0
Industry	3,595	54.0	1,329	69.6	2,266	47.7
Services	394	5.9	73	3.8	321	6.8
	2,667	40.1	508	26.6	2,159	45.5
Average Monthly Income						
Less than P2,000	10,440	100.0	2,741	100.0	7,699	100.0
P2,000 - P2,999	711	6.8	270	9.9	441	5.7
P3,000 - P4,999	1,315	12.6	476	17.4	839	10.9
P5,000 - P9,999	2,512	24.1	748	27.3	1,764	22.9
P10,000 and over	4,471	42.8	745	27.2	3,726	48.4
	1,432	13.7	503	18.4	929	12.1

This is also why poverty is fertile ground for networks to grow and prosper.

2. Poverty, ground for networks to grow

Children often work to help their families, and according to an ILO survey from 2011, 55.1% of working children are engaged in “child labour”, which means hazardous child labour, long working hours or hours at night (not permissible work)¹³⁰. Added to that number, there is hidden work, which is not subject to official studies: children and young Filipinos involved as sex workers. According to NGOs present in the country, it is estimated that 400,000 young women are victims of trafficking, 60,000 to 100,000 of them are children¹³¹.

Stories of children and women who are saved show a pattern, common in all the regions where traffic takes place: someone is introduced in a family as a foreigner or a rich person, who can offer a job or education to a child of this family abroad. Often, children do not cross borders, but are simply sent to brothels in Manila, Cebu or Angeles. These cities are well known by foreigners and Filipinos for their “night-life”. Just type the name of Angeles into Google and pictures of bare women fill the page¹³²:

¹³⁰ See Note 126.

¹³¹ CNN Freedom Project Documentary, *The fighters, Traffickers prey on the most vulnerable*, 9 May 2013, “Human Trafficking in the Philippines”, visible at: <http://edition.cnn.com/2013/05/08/world/asia/freedom-fighters-stats/index.html> (consulted on 31 May 2014).

¹³² Screen Print for « Angeles Philippines » search on google, on 18 May 2014.

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The screenshot shows a Google search for "angeles philippines". The search bar contains the text "angeles philippines" and a search button. Below the search bar, there are several search suggestions: "angeles philippines", "angeles philippines prostitution", "angeles philippines hotel", and "angeles philippines bar". The search results are divided into three sections: "Images correspondant à angeles philippines" which shows a grid of images of women in bikinis; "Plus d'images pour angeles philippines"; and a "Knowledge Panel" for "Ángeles" which includes a map, a description of the city, and various statistics like area, weather, and population.

Websites explaining to foreigners in different languages how to “approach” a girl, or how to behave, reminding visitors that rape is strictly incriminated in the Philippines¹³³. But the fact that prostitution is also illegal is not mentioned. Despite this, prostitution (defined as “any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration¹³⁴”) is repressed by the R.A. No. 9208, also known as the “Anti-Trafficking in Persons Act of 2003¹³⁵”. For instance, this information is even referred to by the French Ministry of Foreign Affairs, in the page about “useful information”: the use of drugs is forbidden, as is rape, paedophilia and prostitution.

One of the first reasons why networks grow is the demand. There are men looking for boys, girls and women, travelling to the Philippines to have sex with them. They spend money in the town where they stay: bars, hotels, restaurants... They spend so much money that the ILO noted that in Southeast Asia, the “sex sector” contributes to

¹³³ Found on the French Wikipedia page about Angeles: <http://angelescity.weebly.com/english.html>.

¹³⁴ R.A. No. 9208, “Anti-Trafficking in Persons Act of 2003, 26 May 2003, visible at: http://www.lawphil.net/statutes/repacts/ra2003/ra_9208_2003.html (consulted on 31 May 2014).

¹³⁵ Idem.

the Gross Domestic Product (GDP)¹³⁶. “The profits of human trafficking are said to be \$32 billion worldwide. Sex vastly contributes to many national economies. Farr states that according to the International Labor Organisation, in Indonesia, Malaysia, the Philippines, and Thailand, it produces 2% and 14% of GDP”¹³⁷. It is helped by the corruption in these areas, but this will be seen later (B.2). The demand can be illustrated by the enquiry made by the NGO “Terre des Hommes” in 2013¹³⁸, with “Sweetie” a virtual Filipino girl of 10 years old. According to the NGO, around 20 000 “predators” entered into contact with Sweetie, from 71 different countries around the world¹³⁹. Also, more recently, the operation “Endeavour” was conducted in cooperation with the Police in Britain, the United States and Australia, leading to the arrest of 29 persons, the identification of 733 paedophiles, and the rescue of 15 children aged from 6 to 15 years old¹⁴⁰. The problem of cyber criminality is increasing in the Philippines with access to modern Internet connections, the demand and existing network, and online payment methods. Travellers risk high penalties if they are caught in the country, or even long jail sentences. Online, they can hide more easily, use different names and be less visible.

The first parameter helping networks to grow is poverty: it makes people vulnerable, especially children and women, but it should be noted that boys are also often trafficked or pushed into prostitution (like the “lady boys” in Thailand), because of the demand for them, and they are less well defended. Indeed, in the culture of the

¹³⁶ “Citing the expanding reach of the industry and its unrecognized contribution to the gross domestic product (GDP) of four countries in Southeast Asia, the ILO urges official recognition of what it terms “the sex sector”.”, Janice G. Raymond, “Legitimizing Prostitution as Sex Work: UN Labor Organisation (ILO) Calls for Recognition of the Sex Industry”, *Coalition Against Trafficking in Women (CATW)*, 12 July 1999, visible at: <http://www.catwinternational.org/Home/Article/61-legitimizing-prostitution-as-sex-work-un-labour-organization-ilo-calls-for-recognition-of-the-sex-industry> (consulted on 31 May 2014).

¹³⁷ DEARBORN, 2010, p. 18.

¹³⁸ Terre des Hommes, *Webcam Child Sex Tourism, Becoming Sweetie: a novel approach to stopping the global rise of Webcam Child Sex Tourism*, November 2013, visible at: <http://www.terredeshommes.org/wp-content/uploads/2013/11/Webcam-child-sex-tourism-terre-des-hommes-NL-nov-2013.pdf> (consulted on 31 May 2014).

¹³⁹ (In french only) LePoint.fr, “Plus de 20 000 “Prédateurs” contactent Sweetie, Petite Philippine Virtuelle”, LePoint.fr, 4 November 2013, visible at: http://www.lepoint.fr/monde/plus-de-20-000-predateurs-contactent-sweetie-petite-philippine-virtuelle-04-11-2013-1752080_24.php (consulted on 31 May 2014).

¹⁴⁰ (In french only) L’Express, By AFP, “Philippines: un réseau pédophile démantelé grâce à une enquête internationale », *L’express*, 16 January 2014, visible at: http://www.lexpress.fr/actualites/1/monde/philippines-les-polices-britannique-americaine-et-australienne-enquetent-sur-un-reseau-pedophile_1314620.html (consulted on 31 May 2014).

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Philippines, boys have to defend themselves, and are considered strong enough to do so, which is not the case for women¹⁴¹. “More specifically, there are a couple key economic elements that influence the rise and susceptibility to being trafficked: globalization, global inequality of economic status, and poverty’s affects on society”¹⁴². The hope for better income in foreign countries will push people to emigrate and take jobs abroad, leaving them alone and vulnerable. Regarding sex trafficking, “wealthy countries are mainly destination sites and poorer countries are primary source sites”¹⁴³. Also, where “tourism has expanded, so has sex tourism”¹⁴⁴.

The second factor is a lack of knowledge among the poorest populations. “Due to this desperation, “the solution for some poverty-stricken rural families is to sell their children to traffickers, whom they mistakenly believe are benefactors who will take their children to the city for educational and employment opportunities unavailable at home”¹⁴⁵. This is especially true in the Philippines, where there is popular admiration for the “Americans”, meaning all white skinned people arriving in the country. When I was there myself, I did an exercise with my students: I told them that I could take one child with me, and I offered money as compensation. I asked them who would let me take their brother or sister. Of the 12 students present that day, 3 said that they would like me to take their brother or sister with me. Most of the others didn’t answer because they knew that the way my question was formulated was a trap. When I asked them why they would let me take their brothers and sisters, they told me that it was because I was “white”, and European so obviously rich, and I had nice clothes. I was working with an NGO so I was a good person. They were surprised when I told them that I was not “rich”, and that I wouldn’t have the money to take care of a child, and send him/her to school back in Europe. This reflects the extent to which, in rural areas, people are not aware that most of the people coming to “buy a child” or “offer them an education” are in reality traffickers. Nor are they aware that children do not travel to other countries but mainly to Manila. Finally, they do not know that job opportunities such as “waitress” or

¹⁴¹ BAUTISTA, 2011, p. 8.

¹⁴² DEARBORN, 2010, p. 3.

¹⁴³ Idem, p. 4.

¹⁴⁴ Idem, p. 5.

¹⁴⁵ Idem, p. 6.

“domestic worker” (often located in Singapore) are in fact a way for traffickers to find vulnerable people. And the hope of finding a well-paid job that could help them to support the family is too big to question the offers¹⁴⁶.

The third factor is family violence and gender inequality. “A factor that overlaps literature is the impact of sexual abuse and domestic violence in homes and to individuals. The connection between experiencing abuse and an increased vulnerability to abuse, and the connection between witnessing abuse and an increased to abuse are found internationally”. Thus, physical assault in a relationship is a “global phenomenon”. In the Philippines, abuse is common and hidden, because many girls and women think that it is “normal” or because there are “ashamed”. When it happens in a family it is rare for the act to be reported to the Police, as can be seen in many testimonies given by NGOs in the field¹⁴⁷. “In 2011, DSWD recorded a total of 5,966 cases of child abuse with 2,131 males and 3,835 females. There was a slight decrease in 2012, with 5,554 reported cases, 1,897 males and 2,005 females. These are the victims served in the centers managed by DSWD and communities. The reported cases range from rape, incest acts of lasciviousness, prostitution, pornography, and trafficking”¹⁴⁸. Abused victims are the most likely to run away from their home, ending up in the hands of traffickers or in the streets, a common story also reported by NGOs in the field¹⁴⁹. Plus, “whether due to cultural avoidance of talking about sex, sexism that oppresses and silences women, or the silence of vulnerable women in new unfamiliar countries, sex trafficking thrives in the silence of being a largely underground industry. Women are often moved to countries they are unfamiliar with, language, customs, and laws, are all unfamiliar and fear of being arrested runs high. Traffickers use their often-greater power to control and overpower the women, making threats that keep her from leaving. Many law enforcement bodies have seen sex trafficking as a low priority”¹⁵⁰. I have also experienced this cultural “avoidance of talking about sex” in the Philippines. When I

¹⁴⁶ CNN Freedom Project Documentary, Leif Coorlim, *The Fighters*, 2013, visible at: <http://edition.cnn.com/ASIA/the-fighters/> (consulted on 31 May 2014).

¹⁴⁷ Chameleon Association Incorporation, *17 Success Stories* (paper only).

¹⁴⁸ DSWD, Search Result for “Prostitution”, visible at: <http://www.dswd.gov.ph/?s=prostitution&x=52&y=3#sthash.QTrwePn6.dpuf> (consulted on 31 May 2014).

¹⁴⁹ See Note 147.

¹⁵⁰ See Note 142.

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arrived there, most of my students didn't know what prostitution was (for many of them it was a shaming word used in school gossip, and some of them thought that it meant staying in a room with a man, without knowing the implication of this, e.g. sexual intercourse). The word "incest" was unknown to all of them (even if they were sponsored by a NGOs providing help to children who were victims of incest), and it was the same for many other acts of violence (for instance: lasciviousness and harassment).

Finally all these factors together increase the vulnerability to trafficking, making these people (Filipinos, in this case) a target for traffickers.



--Dearborn (2010)

To conclude, Filipinos children are extremely vulnerable to abuse, prostitution, sexual exploitation and child trafficking. This phenomenon is increased when the child is unwanted, because the parents are psychologically less attentive, because in case of rape or incest the child is a reminder of the abuse... That is why the psychological state of mind of a mother towards an unwanted child has to be studied.

3. Psychology of a mother: when the child is unwanted //The lack of structures and information: when the Catholic Church wants Filipinos to forgive

“A long-held belief among mental health practitioners is that being born unwanted carries a risk of negative psychosocial development and poor mental health in adulthood. The Prague Study was designed to test this hypothesis”¹⁵¹. The Prague Study followed the development of 220 children born from mothers who were refused abortion twice, and compared it to 220 children for whom the mother did not ask for

¹⁵¹ DAVID, 2006, Online.

abortion. Siblings were also included in the study. The Study controlled the “children” at different stage of their life, at the ages of 9, 14-16, 21-23, 28-31 and 32-35 years old. “It was found that differences in psychosocial development widened over time but lessened at around age 30. All the differences consistently disfavoured the unwanted pregnancy subjects, especially only children (no siblings). They became psychiatric patients (especially in-patients) more frequently than the accepted pregnancy controls and also more often than their siblings. The overall findings suggest that, in the aggregate, denial of abortion for unwanted pregnancy entails an increased risk for negative psychosocial development and mental well-being in adulthood”¹⁵².

This has also been noticed by NGOs, like the Family Planning Movement with the slogan ‘Every Child a Wanted Child’. “There is a substantial literature that documents the serious health, social, psychological, and economic consequences of unintended and unwanted childbearing. These consequences can include increased maternal and infant death and illness, unstable marriages, and the restriction of educational and occupational opportunities leading to poverty and limited roles for women. These adverse effects are not shared equally by all segments of society, and in the United States fall more heavily on those who are poor, young, or members of an ethnic minority group. Further, evidence suggests that even in advantageous social and economic circumstances, when a pregnancy is unwanted and the women requests an abortion, to deny it forces her to bear a child at risk for psychological problems that are long lasting. In this context, the watchword of the family planning movement - 'Every Child a Wanted Child' has particular meaning for health professionals”¹⁵³.

In a study on “neonaticide” (infanticide committed in the first 24 hours after the birth) Phillip J. Resnick noted that in 35 cases studied, 83% (29 cases) were committed because of unwanted pregnancies¹⁵⁴. He also noted that in 37 cases of neonaticide, 34 were committed by the mother, 80% of them were less than 25 years old. This proves that in case of unwanted pregnancies, the mother sees the child as intrusive, and that the “maternal instinct” is not a reality for every mother. For Darwin, the maternal instinct

¹⁵² Idem.

¹⁵³ RUSSO, DADID, 2002, Online.

¹⁵⁴ RESNICK, 1970, pp. 1414-1420.

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was a reality because it could be observed in the behaviour of many animals towards their offspring, and equally in the human family. Later, Elisabeth Badinter wrote that the maternal instinct was created by the cultural environment. Nowadays, many authors consider that the maternal instinct is a myth, set up by social construction (like gender), with the numbers of infanticides and abandonment as proof¹⁵⁵. A myth that is still defended by the Catholic Church, which describes its own action towards believers as “maternal”¹⁵⁶, and speaking about it in a message sent to Croatian women: “Women of Croatia, conscious of your lofty vocation as "wives" and "mothers", continue to see every person with the eyes of the heart. Continue to reach out to them and to stand beside them with the sensitivity born of your maternal instinct. Your presence is indispensable in the family, in society, and in the ecclesial community”¹⁵⁷.

Placed in the context of the Philippines, these data prove that having an unwanted child is dangerous for the child’s health later. Depression and mental health problems make these children more vulnerable and so, again, an easy target for child abusers, and traffickers. “Contextual and social systems likewise come into play. Socioeconomic variables like limited income, unemployment, large family size, unplanned parenthood, and single parenthood contribute to the expression of violent behaviour”¹⁵⁸. Providing access to contraception could help to avoid unwanted pregnancies, and abortion can be provided to women if they are in a psychological state showing that they could commit physical harm to their child (neonaticide) or to themselves (in France, therapeutic abortion can be provided to women showing this). A meeting with a psychologist or psychiatrist during different stages of the pregnancy can help solve this issue.

¹⁵⁵ (In French Only) DORTIER, 2003, p. 31.

¹⁵⁶ “The Church, in **her maternal concern**, tries to help them experience a conversion which will restore the joy of faith to their hearts and inspire a commitment to the Gospel”, Pope Francis, Apostolic Exhortation, *Evangelii Gaudium*, Rome, 24 November 2013, visible at: http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html (consulted on 31 May 2014).

¹⁵⁷ Pope John Paul II, *Apostolic Journey of his holiness John Paul II to Croatia, Beatification of Sister Marija Propetoga Isusa Petkovic, Dubrovnik*, 6 June 2003, visible at: http://www.vatican.va/holy_father/john_paul_ii/homilies/2003/documents/hf_jp-ii_hom_20030606_dubrovnik_en.html (consulted on 31 May 2014).

¹⁵⁸ See Note 141, p4.

Another problem which has not been evoked until now, is that of children born into brothels. Sex workers do not always use contraceptive methods, and can get pregnant. If these women are under the power of a pimp, the pimp becomes the “owner” of the child. If the child is a girl, there is a huge risk of her being engaged in prostitution in turn. This creates a vicious circle. Sometimes, when women are engaged in prostitution as a personal choice (not forced), they can also choose to put their children in the same situation, asking them to contribute to the income of the house. This is clearly shown by the documentary “Born into Brothels”¹⁵⁹, where it can be seen that children are taken out of school by their mothers, or that they have to run away from home to go to school.

In conclusion, children are vulnerable in the Philippines, and perfect targets for traffickers, child abuse and exploitation. This situation is even more dangerous for unwanted children, born in a poor environment. When abortion is denied to women, or access to contraception is limited, it increases the number of children in families, and hence poverty, where networks can grow easily. Psychological studies have proved that unwanted children born to mothers who saw their request for abortion denied are also subject to health problem (e.g. mental disorder). The regulation of births in the country could help to reduce this situation, and hinder the growth of networks. This has to come with the right information delivered to Filipino families, about family planning and the danger of sending their children with a stranger “to work”. The problem is that this information is obstructed and biased by that transmitted by the Catholic Church, acting as a real lobby in the Philippines and having a huge influence on laws, government actions and people.

B. THE LOBBYING OF THE CATHOLIC CHURCH: BETWEEN MISINFORMATION AND BLINDNESS

The influence of the Catholic Church in the Philippines is visible in the everyday life of Filipinos. Most are practicing, going to Church every Sunday, crossing themselves before eating or in transport, observing rituals (such as Lent or reenacting

¹⁵⁹ Briski, Zana, Ross Kaufman, *Born into brothels: Calcutta's Red Light Kids*, ThinkFilm in association with HBO Cinemax Documentary films, 17 January 2004, visible at: <https://www.youtube.com/watch?v=kyXFr2g1x8> (consulted on 31 May 2014).

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the crucifixion). This influence can be observed in the Constitution¹⁶⁰, even if State and Church are separate, and in many laws. It is also under the influence of the Church that the Philippines banished abortifacient contraceptives and continues to criminalise abortion.

A Lobby is defined by the *Oxford Dictionaries* as “a group of people seeking to influence legislators on a particular issue”. In that sense, the Catholic Church (Roman Catholic Church and other religious movement using the term “catholic”) is lobbying in the Philippines for the country to continue to observe the traditional view of the Church on life. It obviously includes the banishment of all forms of harm to life, even future ones, such as contraception and abortion.

But the Catholic Church lobbying against the exploitation of children and women is less “active” than the lobbying against contraception. In fact, the Church still disseminates an old vision of the role of women in the society, while the world has changed (1). In this same world, especially in the Philippines, the fight against child trafficking has to fight another enemy which is corruption, making the laws against trafficking and violence against women less effective or even ineffective (2). As has already been seen, allowing better access to contraception, information about family planning and abortion (even in a very few cases) could help to reduce the amount of child abuse, trafficking or exploitation. Despite this, the Catholic Church turns a blind eye to this solution, and prefers to try to help the children after the birth, and often after the abuse, by building orphanages or structures for young Filipinos living in the streets (3), which is itself a great gesture but will not help to reduce the number of young Filipinos suffering from abuse and violence.

1. *The Catholic Church’s attitude towards abortion, the exploitation of women and children, and women’s empowerment*

As was said earlier, the Catholic Church recalls its position towards contraception and abortion in the *Evangelicum Vitae*, which is still the canonical law nowadays. The Church “obstinately continues to teach the moral unlawfulness of contraception”, condemns the “contraceptive mentality”. Obstinate is effectively a good adjective for a

¹⁶⁰ See Note 44, Preamble: “Imploring the aid of Almighty God”.

Church which stills condemns condoms, even with the relatively “new” risk of infection by HIV/AIDS.

The Church still condemns women who decide to undertake an abortion, creating stigmatisation in many countries. They also condemn the family, the father (who did not succeed in preventing the woman from having an abortion or pushing her into it – and here we see something that what we will examine later: the woman is often or even always submissive), and doctors (who for Catholic ones, prevents them from practicing abortion). And even if abortion is made to “help” the child, the Church states: “Sometimes it is feared that the child to be born would live in such conditions that it would be better if the birth did not take place. Nevertheless, these reasons and others like them, however serious and tragic, can never justify the deliberate killing of an innocent human being”. And even if “the texts of Sacred Scripture never address the question of deliberate abortion and so do not directly and specifically condemn it. But they show such great respect for the human being in the mother's womb that they require as a logical consequence that God's commandment "You shall not kill" be extended to the unborn child as well” (and so, whether or not abortion is allowed is merely the product of man's interpretation), the Church continues to say that every life has to be lived, after the example of Jesus Christ¹⁶¹.

But the Church is not only giving out information against women's reproductive rights, it also gives an “old-fashioned” image of women and girls, who are submissive and weak. Indeed, in a meeting for the “liberation of women on the streets”, the persons present concluded that “Prostitution is a form of modern slavery”, and affirmed that “It is important to recognize that sexual exploitation, prostitution and trafficking of human beings are all acts of violence against women and as such constitute an offence to the dignity of women and are a grave violation of basic human rights. The number of women of the street has increased dramatically throughout the world for a variety of complex economic, social and cultural reasons. In some cases the women involved have experienced pathological violence or sexual abuse since childhood. Others have been

¹⁶¹ “Jesus lived this poverty throughout his life, until the culminating moment of the Cross: [...]. It is precisely by his death that Jesus reveals all the splendour and value of life, inasmuch as his self-oblation on the Cross becomes the source of new life for all people (cf. Jn 12:32).”

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driven into prostitution in order to have sufficient means of living for themselves or their families. Some search for a father figure or a loving relationship with a man. Others are trying to pay off unreasonable debts. Some leave situations of poverty in their country of origin, believing that the job being offered overseas will change their lives. It is clear that the sexual exploitation of women that pervades the world's social fabric is a consequence of many unjust systems"¹⁶². Of course, affirming that sexual exploitation is a violation of human rights is important. But while they recognise the "complex economic, social and cultural reasons", they do not recognise the influence of unplanned parenthood. And worst, they are claiming that "some [women prostitutes] search for a father figure or a loving relationship with a man", which can be proved and is not reported in cases of forced prostitution: women are exploited and in the street because of their pimp, not because they are looking for love.

Later, when they answer the question "who is the victim?" their answer is "She is [...]". The Catholic Church is forgetting all the boys that are also experiencing prostitution and trafficking; even if this is less current, they have to be reminded. They must not be forgotten and must be defended, as in the case of girls and women.

In the Catholic Church document the woman always appears as a "mother" or a "virgin", as a "wife", in fact as a woman subjected to a man. The Church recognises the new position of women in society, but still spreads the "cliché" of a woman as a mother with her place "at home": "**The active presence of the father is highly beneficial to their formation. The children, especially the younger among them, need the care of their mother at home. This domestic role of hers must be safely preserved,** though the legitimate social progress of women should not be underrated on that account"¹⁶³. The Church also affirms that "*The good example and leadership of parents is essential in strengthening the formation of young people in chastity. A mother who values her maternal vocation and her place in the home greatly helps develop the qualities of*

¹⁶² Pontifical Council for the Pastoral Care of the Migrants and Itinerant People, *I° International Meeting of Pastoral Care for the Liberation of Women of the Street, Final Document*, Rome, 20 June – 21 June 2005, at: http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents_1/rc_pc_migrants_doc_2021_0605_inc-past-don-strada-findoc_en.html (consulted on 9 July 2014).

¹⁶³ See Note 4.

femininity and motherhood in her daughters, and sets a clear, strong and noble example of womanhood for her sons. A father, whose behaviour is inspired by masculine dignity without "machismo", will be an attractive model for his sons, and **inspire respect, admiration and security in his daughters**"¹⁶⁴. Also, the Church does not take into account the theory about the social construction of gender, and considers that women have their "own nature" which is different from that of men¹⁶⁵.

Moreover, the major and only role that the church gives to women is the one of being a mother: "You women have always had as your lot the protection of the home, the love of beginnings and an understanding of cradles"¹⁶⁶. And it is not just "history", it also what the church expects from women: "This is the fundamental contribution [motherhood] which the Church and humanity expect from women. And it is the indispensable prerequisite for an authentic cultural change". This simplistic vision of women is also visible in the fact that women can still not access the highest rank of the Catholic Church hierarchy. They are still not allowed to become Pope or even bishop or priest.

Finally, besides the affirmation of the Church's recognition of women's empowerment and dignity, the Church still spreads an erroneous and negative image of women. It is difficult to imagine how, in a Catholic family, the woman can affirm her choices and her rights, when she is "obliged" to become a mother, and obliged to follow the Church's principles on reproductive rights and "way of life". Thus, when little girls learn this in catechism, it makes it difficult for them to trust themselves, and they allow themselves to be guided by men. Which is dangerous when those men are in fact traffickers (which is also why when they are abused, girls often think that it is their

¹⁶⁴ The Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality, Guidelines for Education within the Family*, Vatican City, 8 December 1995, at: http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_08121995_human-sexuality_en.html (consulted on 9 July 2014).

¹⁶⁵ See Note 164: "Women now work in almost all spheres. It is fitting that they are able to assume their proper role in accordance with their own nature. It will belong to all to acknowledge and favor the proper and necessary participation of women in the cultural life".

¹⁶⁶ Pope Paul VI, *Closing of the Second Vatican Ecumenical Council, Address of Pope Paul VI to Women*, 8 December 1965, at: http://www.vatican.va/holy_father/paul_vi/speeches/1965/documents/hf_p-vi_spe_19651208_epilogo-concilio-donne_en.html (consulted on 9 July 2014).

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fault¹⁶⁷). But women's empowerment is not the only "new" thing that the Catholic Church is not taking into account in its policies today.

2. *The Catholic Church failing to face new world challenges: corruption, HIV/AIDS and sexuality.*

Corruption is one of the factors of child trafficking and exploitation. "In addition to reports by NGOs such as International Justice Mission and Shared Hope International, various scholars affirm the reality of corrupt government and police officials perpetuating the problem"¹⁶⁸. Mostly because the control of trafficking is done by local authorities, like the police, and little groups of individuals¹⁶⁹. Taking into account the cultural implementation of corruption in the lower levels (it is sometimes easier to pay a policeman cash to avoid a fine), it is easy for traffickers to use this, as they often have more money than the rest of the population. The simple existence of cities like Angeles, where a lot of girls are under 18 years old, and the fact that there are no arrests and the sex industry is still flourishing proves that corruption rules and the law is not applied.

According to the *Corruption Perception Index of 2013*, drawn up by Transparency International¹⁷⁰, the influence of corruption has a wide scope: "from children denied an education, to elections decided by money not votes, public sector corruption comes in many forms. Bribes and backroom deals don't just steal resources from the most vulnerable – they undermine justice and economic development, and destroy public trust in leaders". Under this study, the Philippines is ranked 94 out of 175 countries, with a score of 36 (0 being "highly corrupt" and 100 "very clean"). The government is aware of the problem and President Aquino's administration has made a lot of efforts to improve the situation. And although the score is still in the low range of the table, it is

¹⁶⁷ See Note 141, p.22.

¹⁶⁸ See Note 137, p. 11.

¹⁶⁹ Idem.

¹⁷⁰ Transparency International, *Corruption Perceptions Index 2013*, 2013, p. .1, at: <http://cpi.transparency.org/cpi2013/results/> (consulted on 10 July 2014).

improving: in 2008, with the same evaluation, the Philippines was placed 141, with a score of 2.3 out of 10¹⁷¹.

Aside from the problem of the police turning a blind eye to the problem, another problem reported by NGOs in the Philippines concerns the inquiries, where complaints are not registered or investigations not lead, and trials that are long and sometimes ineffective. Regarding the police, the Philippines has tried to improve the system by allowing people to complain to many authorities: the local DSWD section, Barangay officials, the Police, and more important, school teachers, who are obliged to report every case they learn about (and who can be more approachable for children), plus, hiring women has been made a priority, and there are women in almost every police station. But for trials there are no such improvements or actions. Trials are long, traffickers can flee the country, and are often not sued¹⁷².

If corruption is not often mentioned in the Catholic statement about women's exploitation¹⁷³, the corruption of priests is not even evoked. But priests are at the centre of community life in villages, and if they are corrupt or open to receive bribes, it makes traffic easier. Scandals about Church corruption are not rare¹⁷⁴, and during the drafting of the RH Bill, a scandal appeared about a priest being bribed to not oppose it. Instead of being silent on those problems, the Catholic Church must react and pursue corrupted priest and bishops, and really work on its people on the field, and sanction them.

While corruption is not new, the Catholic Church has trouble adapting to this issue, which affects it to the core. But this is not the only issue that the Church has a problem adapting to. Indeed, there is a huge difference between the world and the Church conception of sexuality. The Catholic Church, as was seen earlier, is still against the use of modern methods of family planning, including condoms. They prefer to

¹⁷¹ Jovan Cerda, "Philippines Improves Rank in Corruption Perception Index", *Philstar.com*, 3 December 2013, at: <http://www.philstar.com/headlines/2013/12/03/1263753/philippines-improves-rank-corruption-perception-index> (consulted on 10 July 2014).

¹⁷² See (Video): (In french only) Guilaine Chenu, Jean-Marie Lequertier, Michel treillet, Emmanuel Charieras, « Pour le Sourire des Filles », *Envoyé special*, 2005 ; Elsa Margout, Sebastien Deurdilly, « 8 ans après : Pour le sourire des filles », *Envoyé Spécial*, 2010 ; See Note 132.

¹⁷³ E.g. in the "International Meeting of Pastoral Care for the Liberation of Women of the Streets".

¹⁷⁴ See for instance: Asia Sentinel, "Corruption Scandal weakens Philippines Church", *asiancorrespondent.com*, 12 July 2011, at: <http://asiancorrespondent.com/59757/corruption-scandal-weakens-philippines-church/> (consulted on 10 July 2014).

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promote natural methods, such as abstinence, for virgins of course, but also for married couples: “Nevertheless, the Lord's Redemption has made the positive practice of chastity into something that is really possible and a motive for joy, both for those who have the vocation to marriage (before, in the time of preparation, and afterwards, in the course of married life) as well as for those who have the gift of a special calling to the consecrated life”¹⁷⁵.

First of all this shows major ignorance on the part of the Catholic Church about a serious problem: rape between spouses. Even if it is hard to prove and often not reported, the phenomenon is quite common (and a lot of unwanted pregnancies of married women resulted from rape). Secondly, it shows that the Catholic Church has not changed its conception of sexuality since writing its “constitution”¹⁷⁶, in 1965. At this date, sexuality outside marriage was a sin, highly reprimanded by the Church. For instance, in Ireland, women who were rejected by their family (because the family was ashamed) for having being raped, or for pregnancies out of marriage, or even orphans who were pretty enough to attract boys, were placed in a convent, working hard to pay for their sins and gain a place in heaven. In those institutions, women were in reality exploited, working in laundries all day with no outside contact and no payment, their children were sold to the highest bidder, and they were forced to abandon their children with no chance of obtaining information about what became of them or where they were. In those convents, they were also reports of torture. The last convent in Ireland closed in 1996, and some women are still looking for their children around the world. The Catholic Church has never apologised for the suffering of these women, and is thus still spreading the old picture about women, which was seen earlier.

Moreover their vision of sexuality for men as for women is still allows sex between persons only if they are married, and in the purpose of reproduction. For the Church, the “true meaning of sexuality”¹⁷⁷ is procreation¹⁷⁸. “It is also necessary to put

¹⁷⁵ See Note 164.

¹⁷⁶ See Note 163.

¹⁷⁷ See Note 164.

¹⁷⁸ “Therefore, they should remind boys about God's gift, received in order to cooperate with him "to actualize in history the original blessing of the Creator — that of transmitting by procreation the divine image from person to person..."; and this will strengthen their awareness that, "Fecundity is the

before young people the consequences, which are always very serious, of separating sexuality from procreation when someone reaches the stage of practising sterilization and abortion or pursuing sexual activity dissociated from married love, before and outside of marriage”¹⁷⁹. Surprisingly, in the report of the Pontifical Council about sexuality, the word that most often recurs is “chastity” (which appears 74 times, compared to 63 times for sexuality). It also insists on the importance of “true love” in marriage, and the “moral dimension”. Regarding children’s sexual education, the Catholic Church distinguishes between boys and girls, and the different ages. For the council, “giving too many details to children is counterproductive” (for young children), “certainly, expressions of natural tenderness and sensitivity should not be discouraged among boys, nor should girls be excluded from vigorous physical activities. [...] The real differences between the two sexes should not be ignored or minimized, and in a healthy family environment children will learn that it is natural for a certain difference to exist between the usual family and domestic roles of men and women”, but if they learn about domestic roles, “sexual education”, like explaining how to have babies, comes after puberty, for young adults. This is dangerous because many young pregnancies can occur because of a lack of sexual education, thus leading to ignorance regarding sexual abuse, and weakness in young people who do not understand what is happening, or whether they should report it or not.

Finally the Catholic Church is still spreading a “bad” image of sexual relations and sexual practices (homosexuality and masturbation are still sins, as well as unmarried relations), even if they mention that “nor will they give the false impression that sex is something shameful or dirty, because it is a great gift of God who placed the ability to generate life in the human body, thereby sharing his creative power with us”. Still thinking that less information is the best way to protect people from having sex, while media and advertising are spreading a different image, leading to a misrepresentation and a dangerous lack of information among younger generations.

fruit and the sign of conjugal love, the living testimony of the full reciprocal self-giving of the spouses”, Idem §93.

¹⁷⁹ Idem.

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Nevertheless, a slight improvement should be noted. If the sexuality of women (and their representation in religion) is still a problematic point, Pope Francis, who was recently appointed, has made some historical modifications to the Old Catholic traditions (which had not changed for over 1000 years). These include more acceptance of differences (e.g. by reading the Koran during a Mass), and stating that “it is not dogma that clergyman must be celibate. In other words, it's OK to have sex. Francis spoke about priests abstaining from sex and said, "It is a rule of life that I appreciate very much, and I think it is a gift for the church. But since it is not a dogma, the door is always open". Therefore, there is room for discussion of the 1,000-year-old Catholic rule, which means that it could potentially change”¹⁸⁰. This is a major improvement in the Church’s vision of sexuality, even if it will take time for things to change. Little by little, there is hope that young people and women will see their situation change in the eyes of the Church, and thereby see their rights improving in many countries, including the Philippines.

3. *The Catholic Church’s attitude: building orphanages and turning a blind eye to the matter.*

The actions of the Roman Catholic Church in this area the field have to be recognised: they are building orphanages, schools, universities and family planning. For the latter, there is some ambiguity, in the sense that the Catholic Church still refuses to promote modern methods of contraception. Thus, seeing the kind of sexual education promoted by the Church (which consists in keeping silent about sex until the end of adolescence), the effectiveness of such action is questionable. While they have direct contact with the population, they can see the basis of the population problem in the Philippines, yet are still against all modern solutions to solve it. Thus, the pro-life movement in the Philippines advocates: “Would God create you if He knew there would not be enough food and resources to keep you alive? There’s plenty for everyone’s

¹⁸⁰ Jenna Kagel, “Pope Francis just made a Radical Statement That Could Transform the Catholic Church”, Mic.com, 28 May 2014, at: <http://www.policymic.com/articles/90123/pope-francis-just-made-a-radical-statement-that-could-transform-the-catholic-church> (consulted on 10 July 2014).

need, but not for everyone's greed"¹⁸¹, casting the problem on politics and corruption (and it must be said that corruption and policies can be part of the poverty issue), and totally forgetting that taking care of fifteen children can be too hard for a poor family.

As is often the case, the Catholic Church reacts once "the damage is done" and not before. Indeed, Catholic associations are common, and "sisters" are very active in the Philippines (e.g. Immaculate Mary Queen of Heaven Missionaries¹⁸²), to help women and children victims of forced prostitution or trafficking. But they never address the source of the problem: births and overpopulation. The Catholic Church has exactly the same reaction to the HIV/AIDS issue, and sexuality, HIV/AIDS and contraception/abortion are obviously linked. Indeed, "The Vatican estimates that Catholic Church-related organizations provide approximately 25% of all HIV treatment, care, and support throughout the world. In 2010, the Vatican reported that more than 5,000 hospitals, 18,000 dispensaries, and 9,000 orphanages, many involved in AIDS-related activities, were being supported by the Catholic Church"¹⁸³. Unfortunately, giving money does not cure people living with AIDS, nor make mothers love their unwanted children, or children to forget abuse and exploitation. These wounds are hard to forget, and it is difficult to move on. Condoms can avoid the wounds. But the Catholic Church is still strictly opposed to the use of condoms. With this attitude, the Catholic Church is not literally turning a blind eye to the matter, because the religion asks believers to help other people and to give, but they try to help without trying to erase or at least reduce the problem.

Other data that is not taken into account by the Church is the fact that contraceptives are not only used to avoid pregnancies. Indeed, contraceptives are also used as treatment for women with ovary problems (notably ovarian cancer, or

¹⁸¹ Porlyf Philippines, "Blog Entry from The Quirky Catholic: Some Question I Wish RH Fans Could Answer", *Prolife.org*, 8 January 2014, at: <http://www.prolife.org.ph/?p=5667> (consulted on 10 July 2014);

¹⁸² Chirstine Bordelon, "Filipino Sisters Seek to Rescue Women from Sex Trade", *Catholicnewsagency.com*, 20 February 2011, at: <http://www.catholicnewsagency.com/news/filipino-sisters-seek-to-rescue-women-from-sex-trade/> (consulted on 10 July 2014).

¹⁸³UNAIDS, "UNAIDS Requests Pope Benedict XVI for Support in Effort to Stop new HIV Infections in Children", *UNAIDS.org*, 11 April 2012, at: <http://www.unaids.org/en/resources/presscentre/featurestories/2012/april/20120411afaithbasedresponsetohiv/> (consulted on 10 July 2014).

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Polycystic ovary syndrome), and for these women, commercialisation (in rural and urban areas) and affordable prices are essential for their health. Regarding all matters related to sexuality and contraception, a position on this issue implies more than just a position about the life of the unborn.

Also regarding these different issues, the next step could be to stop stigmatising women who use contraception. Because condoms can protect them and their family from AIDS, because sometimes they are bought as medical prescription. The effects of discrimination were seen earlier: shame about going to the pharmacy, bad treatment in hospitals... Discrimination and the stigmatisation of women and couples who decide to use contraceptive is dangerous for them. Therefore, it should be seen as the decision of a person, in her private life, and should not be judged by others, as it relates to beliefs, sexuality and health.

CONCLUSION

Even if the Catholic Church is evolving with society, and has made recent changes in its dogma under the influence of Pope Francis, the way the Church is seeing women and sexuality has not evolved in centuries.

It can be observed from different surveys and data that lobbying against contraception and abortion is not always protecting the child. Indeed, in a developing country as the Philippines, it can lead to increased poverty, and accordingly help criminal networks to grow. As a result, children will suffer from this situation and their basic rights will not be fully respected (the Holy See is party to the *UN CRC* of 1989). Rights suffering from this development are, at first, the right to food and shelter, and later the right to education and the right to physical integrity¹⁸⁴. This proves that lobbying against contraception and abortion is not in the interest of the child, but rather in the interest of the foetus: here is the paradox. Then the slogan “pro-life” could be swapped for “pro-birth”. Once the child is born, lobbying measures against corruption, criminal networks, and exploitation are not sufficient to protect children. Even if the

¹⁸⁴ See: Articles 19, 24, 27, 31, 32, 34, 35, 37 of UNGA, *Convention on the Rights of the Child*, 20 November 1989, UN, Treaty Series, vol. 1577, p. 3, at: <http://www.refworld.org/docid/3ae6b38f0.html> (consulted on 10 July 2014).

Catholic Church is active with respect to those activities (see II.B.3), their actions always come as aftercare, and not at the source of the problem: increase of poverty. Reducing the number of poor and regulating the demographic increase is not a way to “kill the poor” or “make them disappear” as the Church and associations argue in front of the Philippines Supreme Court¹⁸⁵, but more a way for them to help people to raise their children in a good environment, where they can go to school, and enjoy their childhood.

The Catholic Church’s theory setting that each life worth to be lived is hypocrite. If abortion can be considered as murder, depending on personal beliefs, it is different from modern methods of family planning. The latter are just preventing women and couples from having children, especially when they know that they cannot pay for their children or that they just do not want children. It is the right of every family to decide about having children or not, and to have an informed opinion families and women need to receive the proper information. If the RH Bill is supposed to help people to receive a complete overview of family planning methods, the decision of the court to limit this disposition with the freedom of thought is dangerous. As the Church is sometimes managing family planning, it is the role of NGOs in the field and government entities to supply this kind of information.

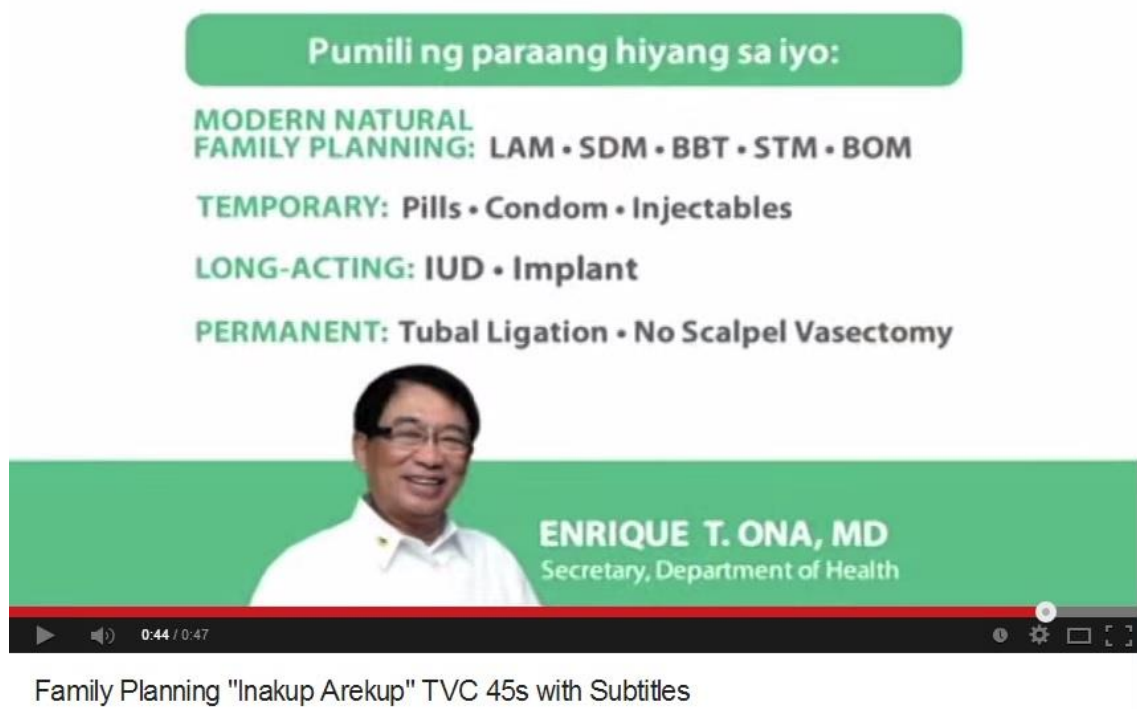
The work of the government on that last point has already begun. Lastly, an advertisement was released on television, leading to protest coming from Catholic associations¹⁸⁶. In this advertisement, the viewer is seeing a little girl explaining the different stages of her life, her family growing from 2 to more than 10 children, and her dad asking the girl to drop out of school because “there is no cash”. Even if the TV spot is striking and made in an entertaining way (the little girl is singing), it is still hard to see her asking to not drop out school and be fed instead of begging in the streets. This spot is not promoting any methods of family planning, but just telling parents that they can regulate their number of children if they want. After the song, a picture resuming

¹⁸⁵ See Note 27.

¹⁸⁶ Campaigns & Grey PH for the DOH, *Family Planning "Inakup Arekup" TVC 45s*, 25 May 2014, at: <https://www.youtube.com/watch?v=H9KaJBI93r8&feature=youtu.be> (consulted 11 July 2014).

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the different methods of family planning appears on the screen but only lasts for one second, which is not enough to read all the information. It has to be noticed that they are calling the natural family planning methods “modern natural”, which is ambiguous, because “SDM” is the acronym for Standard Days Method, a method subject to controversies, as it is not effective for all women – especially if they are affected with hormonal troubles Further, the video already has more than 87,000 views on Youtube (regarding the video in Tagalog without subtitles). It shows that the video is seen, and it is a great step in promoting family planning methods through the Philippines.



Pumili ng paraang hiyang sa iyo:

- MODERN NATURAL FAMILY PLANNING:** LAM • SDM • BBT • STM • BOM
- TEMPORARY:** Pills • Condom • Injectables
- LONG-ACTING:** IUD • Implant
- PERMANENT:** Tubal Ligation • No Scalpel Vasectomy

ENRIQUE T. ONA, MD
Secretary, Department of Health

0:44 / 0:47

Family Planning "Inakup Arekup" TVC 45s with Subtitles

As shown by this thesis, the richer part of the population and people with a higher education degree are the most aware of contraception methods (and also the part of the population which is using it most). Also, TV spots are not reaching every part of the population: the poorest are the less likely to have a TV or a computer with internet at home. If the government shows with this advertisement that they want to take further steps in respect to the access of people to reproductive rights, they now have to try and reach the poorest part of the population – as stated by the RH Bill, and possibly by using other ways than television and internet.

If the Catholic Church does not want to change its way of thinking, the Philippine's government will have to evolve without them in order to accomplish their aim regarding population and poverty, as well as women rights and empowerment. This has already started with the RH Bill in 2012. They also go further with TV advertisement. Also, this phenomenon is not only happening in the Philippines. It is a global movement, and all countries in the world have to choose between the Catholic dogma and breaking with it while they are promoting or allowing access to contraception (even more if they allow abortion). As it is already recognised by the Church that abortion can be practiced in order to save the life of the mother¹⁸⁷, the Church could take a step forward by recognising the right of women and couples to decide which method of family planning they want to use. This is supported by the fact that it was proved that unwanted children are more likely to be subject to depression and abandonment, and consequently to be sold to traffickers. In addition, the Church could begin to address information to the population informing on dangers for little girls to work abroad, and danger that can be represented by strangers. Instead of lobbying against contraception, they can lobby against child exploitation, and use the huge influence they have on the government to provoke a real change in the country – and by doing so really protect the life of already born children.

Nowadays, women's reproductive rights are always criticised around the world, and often called into question. It happens in countries with a Catholic tradition, as Spain or France recently, or the United States, even if women have fight to obtain those rights. Even in the community of human rights defenders, the question “are reproductive rights human rights?” is a classic. But the question is misplaced: it is a right for couples and women to decide if they want children or not, and to evaluate if they can take care of them, taking into account their personal though and religious beliefs. It must be remembered that growing up in a loving family is essential for the development of the child¹⁸⁸. Religious movements have to take into account the consequences of their lobbying against contraception on children once they are born. Every born child should

¹⁸⁷ See note 184.

¹⁸⁸ See note 184, Preamble: “Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”.

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live in a welcoming environment in order to benefit from a happy childhood, grow up in the best conditions, and finally help to build the world once they become adults.

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