

# Commentary on the Philippines Reproductive Health Bill

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## *Introduction*

This is a Bill about a range of matters to do with reproduction. It is very broad, and while it does contain good health messages such as the promotion of breastfeeding, gender equity, good infant and child nutrition, and the elimination of violence against women, it is also directed primarily and aggressively at population control. It is important to note that whereas the general tone of the Bill does appear to be positive and health-promoting in style, upon closer scrutiny it contains deeply problematic principles, impositions and subtexts. Legislation must always be considered on several levels, and ultimately this Bill must be examined with a view to testing its possible limits when applied in real world contexts.

The Bill is overtly about state intervention into people's private lives by strongly promoting contraception and its enforced provision, state run sex education with potential undermining of parental influence, and denying conscientious objection.

However, a critical subtext of the bill is that it has the strong potential to lay the ground for state sanctioned abortion, even though it appears to uphold the current illegal status of abortion. Other subtexts include targeting the poor for population control and promoting reproductive technology (which involves the routine destruction of human embryos).

It is fundamentally unjust that the state, in its promotion of its secular population control ideals, will be using the financial resources of the primarily religious community whose faith teaches clear opposition to those ideals. The Bill proposes a heavy handed approach to dissenters, and elements of the Bill appear to be totalitarian.

## *Key Aspects of the Bill and Their Implications*

**1.** This Bill is unnecessary. The matters it addresses are not all within the province of legislation, and the fact that much of the content of the Bill is being put forward at all should immediately ring alarm bells. In the Bill, the following are listed as elements of reproductive health care (a primary focus of the Bill):

- Maternal, infant and child health and nutrition;
- Promotion of breastfeeding;
- Family Planning information and services;
- Prevention of abortion and management of post-abortion complications;
- Adolescent and youth health;
- Prevention and management of reproductive tract infections (RTIs), HIV/AIDS and other sexually transmittable infections (STIs);
- Elimination of violence against women;

Education and counseling on sexuality and sexual and reproductive health;  
Treatment of breast and reproductive tract cancers and other gynecological conditions;  
Male involvement and participation in reproductive health;  
Prevention and treatment of infertility and sexual dysfunction; and  
Reproductive health education for the youth.

With the exception of abortion and infertility treatment, none of the above requires specific new legislation. Each is already managed through existing health, education and other legislation, or through already accepted health promotion programmes. For example, the promotion of breastfeeding, infant and child health and nutrition, and the treatment of cancer are health matters for which no legislation is needed. They are the subject matter of secondary health policy, not law.

**2.** This Bill, if passed, will exist alongside legislation that expressly makes abortion a criminal offence. Since the Bill uses the language of ‘reproductive rights’<sup>1</sup>, which is used in many other contexts as inclusive of legal abortion, any setting in which the Bill could be even vaguely construed as conflicting with existing abortion legislation would necessitate intervention of the courts for an interpretation. It is likely that if that were to occur, the existing proscriptive legislation on abortion would be weakened, as has repeatedly happened in other settings. The mere existence of legislation which is in spirit contrary to existing legislation will eventually lead to case law.

This argument is strengthened because the Bill also mandates the use of various forms of contraception which have abortifacient<sup>2</sup> effects. Hence the conflict with abortion legislation will be exacerbated, forcing interpretative legal judgements.

Whilst at first blush appearing quite benign, including in the Bill<sup>3</sup> the phrase “*The State upholds and promotes ... respect for life in conformity with universally recognized international human rights*”, could lead to the argument that since international law has been interpreted as *not* universally recognizing the right to life of the unborn, this Bill can be similarly interpreted. Given that there is a concerted effort to have a ‘reproductive’ right (inclusive of a right to abortion) recognised at the international level, the stage would then be set for the Philippines to follow suit.

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<sup>1</sup> The language of ‘reproductive rights’ is becoming pervasive at national and international levels. Proponents of widespread access to abortion on demand seldom talk about abortion *per se* because it is confronting and likely to receive a negative response. Rather they talk about reproductive rights, informed choice, sexual health and planned parenthood. By co-opting these terms they act subversively to gradually soften resistance to their concepts and slowly work towards their goal. Communities who unwittingly accept such concepts, which are usually coupled to incremental legislative changes, eventually find themselves cornered into acquiescence on abortion.

<sup>2</sup> A ‘contraceptive’ is abortifacient (literally ‘causing abortion’) when one of its modes of action is to precipitate the destruction of the developing embryo. For example, intrauterine devices prevent the implantation of the embryo in the uterine lining and hence cause its destruction.

<sup>3</sup> See in the Bill under ‘Declaration of Policy’

The Bill will also exist alongside Section 12, Article II of the constitution, which reads:

The State recognises the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government.

This Article is clearly designed to protect human life from conception, as well as to endorse the primacy of the family unit and the State's role in supporting the family. The Bill will weaken this Article by forcibly promoting abortifacient drugs and devices; using the language of reproductive rights to potentially subversively introduce a pro-abortion agenda; emphasising state run sex education (influenced by the population commission POPCOM) which will shift the emphasis from the family; allowing sterilisation without knowledge or consent of the spouse; and, ensuring minors can act in some circumstances without parental knowledge or consent.

Furthermore, on some of these grounds, Section 3(1) Article XV of the Constitution will also be threatened. It reads thus:

The State shall defend the right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood.

In particular, the religious convictions of the majority of Catholic citizens, protected by this Article, will be undermined by this Bill, which promotes and in some cases mandates some very anti-Catholic principles and practices.

**3.** The Bill proposes “no bias for either modern or natural methods of family planning”. By doing so it equates methods of birth control that are abortifacient with those that are not, thereby implicitly contradicting the spirit of the constitution.

**4.** The Bill makes it an offence punishable by 6 months imprisonment and/or a fine of P50,000 to “maliciously engage in disinformation about the intent or provisions of this Act”. Intent is very difficult to prove, and if some were to argue that a certain intent was apparent within the Bill, it would not be difficult for its proponents to argue simply deny it and seek prosecution. Someone saying some of the things in *this* commentary could therefore be prosecuted and potentially imprisoned for ‘maliciously engaging in disinformation about intent’. Such restrictions of free speech are more reminiscent of totalitarian states.

**5.** The Bill declares as essential medicines “hormonal contraceptives, intrauterine devices, injectables and other allied reproductive health products and supplies”. Not only is the last phrase open to wide interpretation, but the idea that contraceptives and devices are essential medicines is fundamentally flawed. Contraceptives (some with abortifacient effects), do not treat any medical condition. To construe them as such is simply dishonest.

6. The Bill forces all health care providers, public and private, to provide reproductive health care services. In the list of prohibited activities, to which are attached significant penalties, only one category permits conscientious objection. There is no conscientious objection permitted for any of the other categories. Hence, no conscientious objection is permitted for failure to provide reproductive health care services as mandated under the Act. Furthermore, no conscientious objection is permitted for refusal to perform tubal ligation or vasectomy on the grounds of lack of spousal consent. Moreover, no conscientious objection is permitted for failure to provide information on “programs and services on reproductive health including the right to informed choice and access to a full range of legal, medically-safe and effective family planning methods”. Even in the limited circumstances where conscientious objection is permitted, the conscientious objector could be prosecuted for not immediately referring the person to another health care provider in the same facility or nearby, thereby effectively denying the conscientious objection permitted.

These measures mean that some health care professionals could be forced to act contrary to their consciences, either by direct participation in acts they deem immoral, or by indirect participation in referral on to those who will carry out the acts. Such a restriction of the freedom of conscience is contradictory to internationally agreed human rights, contrary to agreed ethical principles and contrary to any decent and fair treatment of health care professionals in a democratic society. The way that matters of conscience are dealt with in this Bill would be more at home in a totalitarian state.

7. The Bill makes a recommendation for two children per family. The basis for making such a recommendation is population reduction, but in doing so the Bill begins to encroach upon the constitutional statement that *“The State shall defend the right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood.”* Whilst the Bill does not seek to enforce a two-child policy, the recommendation of a preferred number will provide license to agencies to apply pressure when and where they see fit. It may also set the stage for a later stronger application of the recommendation through legislative amendments.

8. The Bill makes it a requirement that couples who wish to marry have to obtain a Certificate of Compliance to prove that they have received “adequate instructions and information on family planning, responsible parenthood, breastfeeding and infant nutrition.” Whilst the obtaining of advice and information about breastfeeding and infant nutrition can only be a good thing, when it comes to advice and information about family planning and responsible parenthood, the nature of that advice and information is all important, especially given the widely differing perspectives that exist about such matters. To then mandate the provision of such information and advice and prohibit marriage without it, is an entirely unacceptable invasion and intrusion upon people’s personal lives on the part of the state which smacks of totalitarianism.

9. The Bill forces employers to provide reproductive health care services, supplies and devices to all workers, whether there exists a collective bargaining agreement or not. It may also be the case that in structuring a collective bargaining agreement, employers could exert pressure to adhere to a two-child policy because that would work to the employers advantage, as they would be able to retain

female workers longer and without the various concessions that employers would typically make for female employees with regard to pregnancy, childbirth and child-rearing.

**10.** On several occasions, the Bill makes it explicit that reproductive health care services will be targeted towards “the poor, needy and marginalized”. It is not clear that other health care services are targeted to these groups in this way. In fact, it is unlikely that these groups receive the special kind of attention that they do in this Bill. It therefore appears as if this Bill is attempting to specifically reduce reproduction amongst the poor and marginalised. If this can in fact be shown to be correct, depending upon the examination of other relevant legislation and practice, then it would constitute a eugenic intent.

*Conclusion:* The promotion of health, and in particular reproductive health properly understood, is a good thing. However, the means by which such a goal is achieved are all important, and are in part dependent upon the process of policy implementation that would follow if the Bill were to pass. Unfortunately, the Bill explicitly and implicitly promotes reproductive health in a potentially damaging way for individuals and the community. By far the majority of its content is unnecessary as law, and some of it may conflict with the constitution and other legislation. It also undermines freedom of conscience, emphasises the role of the State over that of parents with regard to their children’s education, promotes an overbearing heavy handedness with regard to disagreement, and potentially restricts freedom of speech.

It is very difficult, if not impossible to imagine the Bill would be redeemable via amendments. To protect the short and long term well-being of the people of the Philippines, it should be withdrawn without delay.

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