



REPUBLIC OF THE PHILIPPINES  
COMMISSION ON HUMAN RIGHTS

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**POSITION PAPER ON  
MAGNA CARTA ON RELIGIOUS FREEDOM**

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The right to religious freedom is enshrined both in international human rights laws and domestic laws. The Universal Declaration of Human Rights (UDHR) recognizes that “*everyone has the right to freedom of thought, conscience, and religion.*”<sup>1</sup> This was made concrete in Article 18 of the International Covenant on Civil and Political Rights (ICCPR),<sup>2</sup> to which the Philippines is a State Party, to wit:

- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
- 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
- 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

More than two decades later, the U.N. General Assembly adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, reiterating that “*discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity.*”<sup>3</sup> In 1993, the Human Rights Committee, in its General Comment No. 22,

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<sup>1</sup> The United Nations, 1948, Art. 18

<sup>2</sup> International Covenant on Civil and Political Rights article 18, signed October 23, 1986

<sup>3</sup> General Assembly Resolution 36/55

, Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, A/RES/35/55 (November 25, 1981)

**CHR: Dignity of all**

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affirmed that Article 18 of the ICCPR protects all forms of religion, even the “*right not to profess any religion or belief*.”<sup>4</sup>

Domestically, no less than the Constitution guards religious freedom. Section 5 of the Bill of Rights provides that “no law shall be made respecting an establishment of religion or prohibiting the exercise thereof.”<sup>5</sup> **It further states that the “free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.”**<sup>6</sup>

In furtherance of the freedom of thought, conscience and religion, the Commission on Human Rights (‘Commission’ for brevity) endorses the enactment of the proposed Magna Carta on Religious Freedom. Pursuant to its constitutional mandate to “*recommend to the Congress effective measures to promote human rights*,”<sup>7</sup> the Commission hereby submits this position paper to express its support to the measure and to recommend amendments in line with the attainment of the objectives of the bill.

### **On the Definition of Religious Belief, (Sec.3, h of the consolidated bill)**

The proposed measure defines religious belief<sup>8</sup> as referring to a particular belief or set of beliefs held by a particular religion, or an individual person. During the last deliberation by the House Committee on Human Rights, there was a discussion on whether to exclude “individual person” in its definition arguing that it is too broad and may be subject to different interpretations resulting in possible abuses that discriminate against other religions.

**The religious belief of an individual is the foundation of the right to religion** which the Constitution, through Section 5, Article III, seeks to protect and guarantee. This individual right is also recognized in international human rights treaties and instruments such as the UDHR,<sup>9</sup> and the ICCPR.

The Commission, thus, submits that the phrase “**individual person**” **be retained in the definition of religious belief**. An individual’s belief must be protected even if it does not conform to the teachings of an established religion as long as there is sincere belief in the precepts on which the individual’s faith relies. There is no justifiable reason to confine the protection of exercising religious belief to an organized group. The inclusion of “groups” and “individual person” will better serve the purpose of the law to protect and uphold the religious freedom of everyone.

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<sup>4</sup> UN Human Rights Committee (HRC) *General Comment No. 22*, Article 18, *Freedom of Thought, Conscience and Religion*, 30 July 1993, CCPR/C/GC/21, available at: <https://www.refworld.org/docid/453883fb22.html> [accessed 4 May 2021]

<sup>5</sup> PHIL. CONST., Art. III, S. 5.

<sup>6</sup> Id.

<sup>7</sup> PHIL. CONST., Art. XIII, S. 18 (6).

<sup>8</sup> Section 3, par. (h) (Unnumbered bill)

<sup>9</sup> Article 18. - Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

## **On the Absolute Protection on the Right to Religious Belief, Exceptions to Free Exercise of Belief (Sec. 4 in relation to Sec. 5 and 6)**

In 2017, the Supreme Court in *Almores vs. Achacoso*,<sup>10</sup> clarified the extent of the protection on the freedom of religion. Citing *Centeno v. Villalon-Pornillos*,<sup>11</sup> the Court discussed the two-fold nature of the free-exercise clause, thus:

*“[T]he constitution embraces two concepts, that is, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definitions to preserve the enforcement of that protection. In every case, the power to regulate must be so exercised, in attaining a permissible end, as not to unduly infringe on the protected freedom.”*

**It is only the freedom of an individual to act on religious belief that may be subjected to certain limitation.** When beliefs are translated into acts that affect and inflict harm on others, then regulations may come into play.<sup>12</sup> While the Constitution gives absolute guarantee to the freedom to believe, the freedom to act based on belief may be regulated when necessary to protect the rights of others and in the interest of public welfare.<sup>13</sup>

It is therefore recommended that Section 4 be amended to reflect that the rights of every individual to religious belief or even the absence thereof is absolute. It cannot be denied, burdened, regulated, or curtailed. What is not absolute and therefore subject to the exceptions provided in Section 6 is the overt act/s or manifestation or expression of belief, whenever it is necessary to protect the rights of others and in the interest of public welfare.

Section 5 may be deleted as it is redundant to safeguards already in place. Section 6 (a) and (b) already specify the instances when police power may take precedence over any other individual rights.

The enumeration in Section 6 (c)<sup>14</sup> of possible limitations “prescribed by existing laws” must be deleted. Following the canon of *ejusdem generis*, the list suggests that only limitations relating to marriages are allowable. As it is impossible to list down all limitations prescribed by law, the Commission deems it sufficient to provide a general statement on limitation.

Section 6 (d) is not a limitation but a special guideline or reminder that in burdening, regulating or curtailing expression of religious freedom or freedom of

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<sup>10</sup> G.R. 217453, July 19, 2017

<sup>11</sup> 306 Phil. 219 (1994)

<sup>12</sup> INC vs. MTRCB, GR No. 119673, July 26, 1996 (J. Panganiban, separate opinion)

<sup>13</sup> Ebralinag v. The Division Superintendent of Schools of Cebu 219 SCRA 256, 270 (1993).

<sup>14</sup> “such limitations are prescribed by existing laws such as prohibitions on same sex marriage, marriage of humans to animals and marriage to objects”

conscience in the circumstances above-mentioned, the State shall adopt the least restrictive means. It is recommended that this be made a separate paragraph in the same section.

### **On the Enumeration of Policies and Principles (Sec. 7 to 18)**

Sections 7 to 18 are enumerations of policies and principles that the proposed measure seeks to adopt in furtherance of the protection and promotion of religious freedom. The Commission recommends that these Sections be consolidated into one provision entitled “**Principles of Religious Rights and Freedoms**” for better appreciation.

### **On the right of Companies or Businesses to be Founded on Religious Belief (Sec. 16)**

The Commission notes that there are certain companies and businesses which are founded on a particular religion, i.e., corporations sole and religious organizations. Section 16 must be amended to clearly state that the provision applies only to corporations whose main operation is based solely on religious beliefs. Absent such classification, enterprises not based on religion are given unbridled discretion that may result in discrimination based on religion.

### **Vulnerable Sectors**

The Commission recommends the inclusion of the protection and promotion of Indigenous Peoples’ (IPs) rights to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies pursuant to Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Commission likewise recommends to further extend the protection of religious freedom and prohibit discrimination on the basis thereof to persons deprived of liberty (PDLs) and to service users confined to mental health institutions. These individuals, though their right to movement are limited and regulated by the State, are still entitled to certain rights including the exercise of their religious freedom.

### **On the penalties imposed (Section 19)**

The proposed measure imposes penalties for the commission of the prohibited acts provided therein. It is observed, however, that these penalties are higher than those already provided by the Revised Penal Code for similar offenses that offends or violates religious rights and freedom. While the Commission supports its underlying objectives, reference must however be made to Article III Sec. 19 (1) of the Constitution, which prohibits the imposition of excessive fines and penalties. While the protection of these rights and freedoms are of utmost

importance, **compelling reasons should be established to justify the imposition of stiffer penalties.**

Section 19 (f) of the proposed measure imposing higher penalties for “*religious acts committed against the dominant religion in a locality*” must be deleted. This suggests that there is a hierarchy of religions or a recognition that one belief is better than another. This goes against the very core of freedom of thought, conscience, and religion. This may also violate the “non-establishment of religion” clause of the Constitution which prohibits the State, in the absence of secular legislative purpose, to give preference or favor to one religion over another.

The Magna Carta on Religious Freedom is a welcome proposal that strengthens the mechanisms and legal framework to ensure the protection, promotion, and fulfillment of the freedom of thought, conscience and religion. The Commission reiterates its support for the measure, and applauds the effort to further protect religious rights as a fundamental aspect of a democratic society.

**ISSUED** this 14<sup>th</sup> day of June 2021, Quezon City, Philippines.




**JOSE LUIS MARTIN C. GASCON**  
Chairperson



**KAREN S. GOMEZ-DUMPIT**  
Commissioner

**GWENDOLYN LL. PIMENTEL-GANA**  
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**LEAH C. TANODRA-ARMAMENTO**  
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**ROBERTO EUGENIO T. CADIZ**  
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