

Republic of the Philippines
COMMISSION ON HUMAN RIGHTS
Quezon City

TERMS OF REFERENCE

INQUIRY INTO THE STATUS OF THE HUMAN RIGHT TO FREEDOM OF RELIGION OR BELIEF

1. The enjoyment of freedom of religion or belief globally, the nature and extent of violations and abuses of this right and the causes of those violations and abuse.

For the years 2015- 2016, the Commission on Human Rights has not received any complaints nor recorded/documented any incidents, regarding abuses of freedom of religion.

2. Actions taken by the governments, international organizations, national human rights institutions and non-government organizations to protect the freedom of religion or belief, promote religious tolerance and prevent violations or abuses of rights.

LEGAL FRAMEWORK

Philippine Constitution

The Philippines, as a state party to the International Covenant on Civil and Political Rights (ICCPR), respects and promotes the freedom of religion.

The right to freedom of religion and belief is enshrined and protected under **Article 3 Section 5 of the 1987 Philippine Constitution**, which provides that:

“No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.”

The Constitution further upholds, under **Article 2 Section 6** thereof the *principle of the separation of church and state, to wit:*

“The separation of Church and State shall be inviolable.”

Revised Penal Code of the Philippines

The Revised Penal Code of the Philippines criminalizes certain acts that violate religious freedom, viz:

“ART. 132 Interruption of Religious Worship - The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestations of any religion. If the crime shall have been committed with violence or threats, the penalty shall be prision correccional in its medium and maximum periods.

“ART. 133 Offending Against Religious Feelings - The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.”

LEGISLATURE

The 17th Congress of the Philippines, particularly the House of Representatives has several **pending bills** against religious discrimination¹, to wit:

- *HB00079 -AN ACT PROHIBITING RACIAL, ETHNIC, GENDER IDENTITY, SEXUAL ORIENTATION, AND RELIGIOUS DISCRIMINATION
Status: Pending with the Committee on HUMAN RIGHTS since 2016-07-26*
- *HB00491 - AN ACT PROHIBITING RACIAL, ETHNIC AND RELIGIOUS DISCRIMINATION
Status: Pending with the Committee on HUMAN RIGHTS since 2016-07-26*
- *HB00576
AN ACT PROHIBITING RACIAL, ETHNIC, AND RELIGIOUS DISCRIMINATION
Status: Pending with the Committee on HUMAN RIGHTS since 2016-07-27*
- *HB01556
AN ACT DECLARING DISCRIMINATION ON THE BASIS OF ETHNICITY, RACE, RELIGION OR BIBLE, SEX OR GENDER OR SEXUAL ORIENTATION, LANGUAGE, DISABILITY, EDUCATIONAL ATTAINMENT AND OTHER FORMS OF DISCRIMINATION AND PROVIDING PENALTIES FOR THE PURPOSE*

¹ HOUSE BILLS AND RESOLUTIONS, 17th Congress, House of Representatives<<http://www.congress.gov.ph/legisdocs/?v=billsresults#17>>.

Status: Pending with the Committee on HUMAN RIGHTS since 2016-08-02

- *HB03312*
AN ACT PROHIBITING DISCRIMINATION ON THE BASIS OF ETHNICITY, RACE, RELIGION OR BELIEF, SEX, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSIONS, LANGUAGE, DISABILITY, HIV STATUS, AND OTHER STATUS, AND PROVIDING PENALTIES THEREFOR
Status: Pending with the Committee on HUMAN RIGHTS since 2016-08-31
- *HB03468*
AN ACT PROHIBITING DISCRIMINATION ON THE BASIS OF RELIGIOUS AFFILIATION OR BELIEF AND PROVIDING PENALTIES THEREFOR
Status: Pending with the Committee on HUMAN RIGHTS since 2016-09-13
- *HB03541*
AN ACT PROHIBITING DISCRIMINATION ON THE BASIS OF ETHNICITY, RACE, RELIGION OR BELIEF, SEX, GENDER SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSIONS, LANGUAGE, DISABILITY, HIV STATUS, AND OTHER STATUS, AND PROVIDING PENALTIES THEREFOR
Status: Pending with the Committee on HUMAN RIGHTS since 2016-09-14

NATIONAL HUMAN RIGHTS INSTITUTION

THE COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES (CHRP)

The CHRP is mandated, among others, to investigate violations of civil and political rights,² which includes the violation of the right to religion.

For the year 2013 – up to the present, the CHRP has not received any complaints regarding abuses and violations of freedom of religion, except the complaint filed by the National Commission on Muslim Filipinos before the CHR against certain school prohibiting Muslim women from wearing headscarves. Accordingly, the CHRP, on August 8, 2013, has issued a particular *advisory* relating to the right to freely exercise one’s religion (hereto attached) on the right of Muslim women to wear headscarves, also known as “hijab”, “burka”, and “niqabs”, in schools and other learning institution. In the said Advisory, it stated that:

“Muslim women and girls cannot be prevented by government or private institutions wearing headscarves (hijabs) or face veils (niqabs) as it is part of their freedom from expression and freedom of religion which does not run counter to the national or private institutional needs of security and identification. A balanced in practice can be found, indeed, must be found and implemented in

² Art. XIII, Sec. 18 (1) 1987 Philippine Constitution

order to protect the fundamental freedoms of culture and religion that enrich Philippine society and life”.

In the same advisory, the CHRP called the attention and directed certain government agencies, such as the Presidential Human Rights Committee under the Office of the President, Civil Service Commission, Commission on Higher Education, Department of Labor and Employment and the University of Zamboanga, to craft and issue the necessary policy, guidelines, advisory to respect the Muslim women from the headscarves and nijabs.

CHRP has also been monitoring jails and detention facilities, pursuant to its visitorial power over jails, prisons, or detention facilities. During its regular conduct of jail visitation from the year 2013-present, there were no reported prohibitions in the free exercise of freedom of religion of the inmates and detainees.

3. The relationship between the freedom of religion or belief and other human rights, the implications of constraints on the freedom of religion or belief for the enjoyment of other universal human rights

Below are some of Philippine Courts’ (Supreme Court and lower court) Decisions, clarifying the relationships of freedom of religion and other human rights, as well as the implications of constraints on the freedom of religion or belief for the enjoyment of other universal human rights:

Supreme Court’s Decision

Limitation of Freedom of religious expression - Clear and Present Danger

- German v. Barangan (G.R. No. L-68828, March 27, 1985)

“For freedom of religious expression, the Constitution assures generous immunity, unless it can be shown that there is a clear and present danger of substantive evil which the state has the right to prevent.”

Fundamental right to lawful association vs. freedom of religion

- Victoriano vs. Elizalde Rope Workers Union (G.R. No.L-25246, September 12, 1974)

“It may not be amiss to point out here that the free exercise of religious profession or belief is superior to contract rights. In case of conflict, the latter must, therefore, yield to the former. xxx. Religious freedom, although not unlimited, is a fundamental personal right and liberty,

and has a preferred position in the hierarchy of values. Contractual rights, therefore, must yield to freedom of religion. It is only where unavoidably necessary to prevent an immediate and grave danger to the security and welfare of the community that infringement of religious freedom may be justified, and only to the smallest extent necessary to avoid the danger.”

Restraints on religious speech

- Iglesia ni Cristo vs. Court of Appeals (G.R. No. 119673. July 26, 1996)

This is a case filed by Petitioner Iglesia ni Cristo, a duly organized religious organization against respondent Board of Review for Motion Pictures and Television, on the ground that the latter rated “X” the TV Program Ang Iglesia ni Cristo as they offend and constitute an attack against other religions which, according to the board, is expressly prohibited by law.

“This ruling clearly suppresses petitioners freedom of speech and interferes with its right to free exercise of religion. The respondent Board may disagree with the criticisms of other religions by petitioner but that gives it no excuse to interdict such criticisms, however, unclean they may be. Under our constitutional scheme, it is not the task of the State to favor any religion by protecting it against an attack by another religion. Religious dogmas and beliefs are often at war and to preserve peace among their followers, especially the fanatics, the establishment clause of freedom of religion prohibits the State from leaning towards any religion. Vis-a-vis religious differences, the State enjoys no banquet of options. Neutrality alone is its fixed and immovable stance. In fine, respondent board cannot squelch the speech of petitioner Iglesia ni Cristo simply because it attacks other religions, even if said religion happens to be the most numerous church in our country. In a State where there ought to be no difference between the appearance and the reality of freedom of religion, the remedy against bad theology is better theology. The bedrock of freedom of religion is freedom of thought and it is best served by encouraging the marketplace of dueling ideas. When the luxury of time permits, the marketplace of ideas demands that speech should be met by more speech for it is the spark of opposite speech, the heat of colliding ideas that can fan the embers of truth.

“In x-rating the TV program of the petitioner, the respondents failed to apply the clear and present danger rule. In American Bible Society v. City of Manila, this Court held: The constitutional guaranty of free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of such right can be justified like other restraints on freedom of expression on the ground that there is a clear and present danger of any substantive evil which the State has the right to prevent.

“The records show that the decision of the respondent Board, affirmed by the respondent appellate court, is completely bereft of findings of facts to justify the conclusion that the subject video tapes constitute impermissible attacks against another religion. There is no

showing whatsoever of the type of harm the tapes will bring about especially the gravity and imminence of the threatened harm. Prior restraint on speech, including religious speech, cannot be justified by hypothetical fears but only by the showing of a substantive and imminent evil which has taken the life of a reality already on ground.

“It is also opined that it is inappropriate to apply the clear and present danger test to the case at bar because the issue involves the content of speech and not the time, place or manner of speech. Allegedly, unless the speech is first allowed, its impact cannot be measured, and the causal connection between the speech and the evil apprehended cannot be established. The contention overlooks the fact that the case at bar involves videotapes that are pre-taped and hence, their speech content is known and not an X quantity. Given the specific content of the speech, it is not unreasonable to assume that the respondent Board, with its expertise, can determine whether its sulphur will bring about the substantive evil feared by the law.”

Patriotism and Freedom of Religion

- Ebralinag vs. Cebu (G.R. NO. 95770 March 1, 1993)

“Religious freedom is a fundamental right which is entitled to the highest priority and the amplest protection among human rights, for it involves the relationship of man to his Creator.

“The right to religious profession and worship has a two-fold aspect, vis., freedom to believe and freedom to act on one's belief. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare.

“The sole justification for a prior restraint or limitation on the exercise of religious freedom is the existence of a grave and present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate public interest, that the State has a right (and duty) to prevent.

“We are not persuaded that by exempting the Jehovah's Witnesses from saluting the flag, singing the national anthem and reciting the patriotic pledge, this religious group which admittedly comprises a "small portion of the school population" will shake up our part of the globe and suddenly produce a nation "untaught and uninculcated in and unimbued with reverence for the flag, patriotism, love of country and admiration for national heroes" (Gerona vs. Sec. of Education, 106 Phil. 2, 24). After all, what the petitioners seek only is exemption from the flag ceremony, not exclusion from the public schools where they may study the Constitution, the democratic way of life and form of government, and learn not only the arts, sciences, Philippine history and culture but also receive training for a vocation

of profession and be taught the virtues of "patriotism, respect for human rights, appreciation for national heroes, the rights and duties of citizenship, and moral and spiritual values (Sec. 3[2], Art. XIV, 1987 Constitution) as part of the curricula."

Lower Court's Decision

On Freedom of Religion and Freedom of Speech

The Metropolitan Trial Court of Manila (MeTC), on January 2013, issued a Decision finding tour guide and reproductive health advocate, Carlos Celdran, guilty of *offending religious feelings under Art. 133 of the Revised Penal Code*, to wit:

Based on the ruling issued by MeTC Branch 4 Judge Juan Bermejo, Jr., Celdran is meted an indeterminate sentence of 2 months and 21 days of imprisonment to a maximum of one year, 1 month and 11 days of imprisonment.

The case against Celdran was filed by Monsignor Nestor Cerbo of Manila Cathedral. The latter complained the September 30, 2010 incident whereby Celdran, in costume dressed as Jose Rizal (National hero of the Philippines) and while holding a placard, with the word "Damaso" (Antagonist priest in the Filipino novel, *Noli Me Tangere*) written in the said placard, staged a protest inside the Manila Cathedral calling on the Catholic church to stop prying into the government affairs particularly in the issue of reproductive health.

Status: Accused Appeal, pending before the Supreme Court.