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**THE PHILIPPINES**

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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Cooperation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to life of the unborn, the right to freedom of thought, conscience, and religion, and the Philippines' efforts in promoting and defending these rights.

### (a) Right to Life

#### *Background*

3. The right to life, from conception until natural death, is expressly protected in the 1987 Constitution of the Republic of the Philippines (the Constitution). Article II of the Constitution states:

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

4. While Article II, Section 12 of the Constitution clearly affirms the right to life of the unborn from the moment of conception, the right to life is also protected in Article III, Section 1 of the Constitution:

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

5. Furthermore, the Preamble to the Constitutions refers to the Christian heritage and tradition of the Philippines, stating:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

6. Abortion is illegal in the Philippines. Under the Revised Penal Code of the Philippines (The Penal Code):

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 prison mayor if, without using violence, he shall act without the consent of the woman.
3. The penalty of prison correctional in its medium and maximum periods, if the woman shall have consented.

Art. 258. Abortion practiced by the woman herself or by her parents. — The penalty of prison correctional 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 dishonour, shall suffer the penalty of prison correctional 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 dishonour, the offenders shall suffer the penalty of prison correctional 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 skills, 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 arrest mayor and a fine not exceeding 1,000 pesos.

7. It has been argued that general criminal law principles of necessity under Article 11(4) of the Penal Code apply to the cases where continuing with the pregnancy would pose a risk to the life of the woman. As a result, abortion would be legally allowed and performed to save the pregnant woman's life.
8. Despite the clear protection of the right to life of the unborn and the express prohibition of abortion, the illegal practice of abortion continues, especially as a means of birth control.<sup>1</sup> The illegal practice of abortion is rarely prosecuted.
9. Because abortion is criminal, the exact statistics of illegal practice of abortion are not known. The maternal mortality ratio was high at 114 per 100,000 live births in 2015, having decreased from 127 in 2011. The adolescent pregnancy rate is increasing. A study conducted by Young Adult Fertility and Sexuality suggests that approximately 14% of all girls between 15 and 19 are pregnant or are already mothers.<sup>2</sup>
10. In 2009, the Philippines enacted the Magna Carta of Women (the MCW), incorporating provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It is one of the main women's reproductive health initiatives mandating comprehensive women's health services, health information, and education.

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<sup>1</sup> The Guttmacher Institute, Unintended Pregnancy and Unsafe Abortion in the Philippines: Context and Consequences, available at: <http://www.guttmacher.org/pubs/IB-unintended-pregnancy-philippines.html>.

<sup>2</sup> Ibid.

11. In 2012, the Philippines legislature passed the Act Providing a National Policy on Responsible Parenthood and Reproductive Health, RA 10354 (the RW Law) granting universal access to reproductive health services and information. The RW Law also addresses the management of the post abortion complications. This does not change the strict prohibition of abortion.
12. The Philippines is under pressure from civil societies<sup>3</sup> and Treaty Monitoring Bodies to decriminalize abortion.<sup>4</sup>

*Right to life in international law*

13. The Philippines ratified the International Covenant on Civil and Political Rights (ICCPR) on 23 October 1986 and the Convention on the Rights of the Child (CRC) on 21 August 1990.
14. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life.' Furthermore, Article 6(5) of the ICCPR states, 'Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and *shall not be carried out on pregnant women.*' The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*<sup>5</sup> of the ICCPR explicitly state, 'The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child.*'<sup>6</sup> Similarly, the Secretary General report of 1955 notes that the intention of the paragraph 'was inspired by humanitarian considerations and by *consideration for the interests of the unborn child.*'<sup>7</sup>
15. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states, '[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth.*' Article 1 of the CRC defines a child as 'every human being below the age of eighteen years.' This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of 'child' attaches.
16. Providing access to abortion means that more women suffer from abortion-related complications. There are numerous maternal risks associated with abortion. A major

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<sup>3</sup> Centre for Reproductive Rights, EnGendeRights, International Women's Rights Action Watch Asia Pacific, Women's Global Network for Reproductive Rights, Woman Health Philippines Inc., Supplementary information on the Philippines, scheduled for review by the Committee on the Elimination of Discrimination against Women during its Pre-Sessional Working Group, available at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=PHL&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=PHL&Lang=EN)

<sup>4</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/PHL/Q/7-8, 16.

<sup>5</sup> In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

<sup>6</sup> Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957. A/3764 § 18.

<sup>7</sup> Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955. A/2929, Chapter VI, §10.

study published in the *British Medical Journal* in 2015 concluded that States with 'less permissive' abortion laws 'exhibited consistently lower maternal mortality rates.'<sup>8</sup> Although the study explains these differences in terms of other independent factors rather than in terms of abortion legislation itself, it nevertheless concludes, 'No statistically independent effect was observed for abortion legislation, constitutional amendment or other covariates.'<sup>9</sup> Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women's health. Abortion is further associated with a high risk of haemorrhaging, developing sepsis, and developing injuries to internal organs, including intrauterine perforations.<sup>10</sup> Moreover, abortion can never be safe because it takes the life of the unborn child and harms the mother through the loss of her child. It has also been reported that women who have had abortions are more vulnerable to self-destructive tendencies, depression, and other unhealthy behaviour aggravated by the abortion experience.<sup>11</sup>

17. Therefore, the Philippines should continue protecting the right to life of the unborn and on helping women get through pregnancy and childbirth safely. In order to reduce maternal mortality and teen pregnancy, the Philippines also should provide women with access to knowledge-based education about their bodies, healthy behaviours, and responsible decision-making. The Philippines should redirect resources to improve maternal health and medical infrastructure to solve the problem of high maternal and infant mortality rates.

## **(b) Right to Freedom of Thought, Conscience, and Religion**

### *Background*

18. The right to freedom of thought, conscience, and religion, is protected under the Constitution. Section 5 of the Constitution states:

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.

19. Christianity is the dominant religion in the Philippines, constituting approximately 93% of the population.<sup>12</sup> The biggest minority religion, amounting to 5% of the population, is Islam.

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<sup>8</sup> Elard Koch, Monique Chireau, and Fernando Pliego et. al., *Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A Natural Experiment in 32 Mexican States*, *BMJ OPEN* 2015:5 e006013, doi:10.1136/bmjopen-2014-006013, 1.

<sup>9</sup> *Ibid.*

<sup>10</sup> Gunnell Lindell and Folke Flam, *Management of Uterine Perforations in Connection with Legal Abortions*, *ACTA OBSTET GYNECOL SCAND.* (1995) May 74(5):373-5, available at <http://onlinelibrary.wiley.com/doi/10.3109/00016349509024431>.

<sup>11</sup> David C. Reardon, Philip G. Ney, Fritz Scheuren, et al., *Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women*, *SOUTHERN MEDICAL JOURNAL*, (2002) August, 95(8):834-841.

<sup>12</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, Philippines 2012, *International Religious Freedom Report*, available at: <http://www.state.gov/documents/organization/208472.pdf>.

20. Although Christianity is the majority religion, Christians in the Philippines continue to be persecuted at the hands of Islamic extremists. In the last week of 2015 alone 23 Christians were killed by the Bangsamoro Islamic Freedom Fighters: 14 Christians were killed on Christmas Day 2015, and nine Christians were killed on Christmas Eve.<sup>13</sup>
21. The Bangsamoro Islamic Freedom Fighters are an Islamic extremist group that is active predominantly in the Southern Philippines.<sup>14</sup> In 2014, the group pledged their support to ISIS/Daesh.<sup>15</sup> It was reported that the group aims to establish an Islamic state for the Muslim minorities in the Philippines.<sup>16</sup>

#### *International Law*

22. The right to freedom of thought, conscience, and religion is affirmed in Article 18 of the ICCPR. The Human Rights Committee confirmed in its General Comment No.22:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.<sup>17</sup>

23. The Philippines must ensure that Christians and other religious minorities can freely exercise their right to freedom of thought, conscience, and religion, in their worship, observance, practice, and teaching. The Philippines must take steps to combat Islamic extremism, including the Bangsamoro Islamic Freedom Fighters group, and prevent associated persecutions. The Philippines must ensure that all such cases of persecution are duly investigated and prosecuted. The Philippines needs to dedicate more resources toward protecting Christians in areas where they are persecuted, such as in Mindanao.

#### **(c) Recommendations**

24. In view of the above, ADF International recommends the following:
  - Continue to follow national and international obligations to protect the right to life from conception to natural death;
  - Work to end the illegal practice of abortion;
  - Work to combat the high maternal mortality and teenage pregnancy rates;

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<sup>13</sup> Christian Headlines, Christian Persecution Increases in Philippines, available at: <http://www.christianheadlines.com/blog/christian-persecution-increases-in-philippines.html>

<sup>14</sup> Global Security, Bangsamoro Islamic Freedom Fighters, available at: <http://www.globalsecurity.org/military/world/para/biff.htm>.

<sup>15</sup> Stanford University, Mapping Militant Organizations, Bangsamoro Islamic Freedom Fighters, available at: <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/601>.

<sup>16</sup> Ibid.

<sup>17</sup> UN Human Rights Committee, CCPR General Comment No. 22. 1, available at: <http://www.refworld.org/docid/453883fb22.html>.

- Take steps to follow international obligations to protect the right to freedom of thought, conscience, and religion;
- Take steps to combat Islamic extremism.



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