



Republika ng Pilipinas
Komisyon ng Karapatang Pantao
(Commission on Human Rights)

POSITION PAPER
on
House Bill No. 224
(Hon. Juan Miguel Zubiri)

**"AN ACT STRENGTHENING THE CONSTITUTIONAL
RIGHT TO SECURITY OF TENURE"**

1. It is the position of the Commission on Human Rights to fully support the early passage of this Bill for the following reasons;

- a. This act will further attest to the Philippines faithful adherence to international labor standards, particularly Article 23 of the Universal Declaration of Human Rights.
- b. It will add impetus and meaning for the realization of the constitutional guarantee to security of tenure.
- c. And consequently, creates an atmosphere of economic stability in every family whose subsistence depends largely on either one of the parents or sometimes on the children's employment.

2. Under the last paragraph of Article 106, the use of the conjunctive word AND is a welcome change for it narrowed down the parameters by which the employer passes on the liability of paying the workers to the intermediary, who might happen to be insolvent to whom he has a contract of performing his work by saying that the intermediary is an independent contractor and not merely engaged in "labor-only" contracting because the intermediary has substantial capital or if he has none, he has substantial investment in the forms of tools, equipment, machinery, work premises among others.

Likewise, for the same reason earlier stated, we are in accord with the incorporation of additional circumstance which are considered as act indicative of "labor-only" contracting thereby expanding the areas where the employer and the intermediary (contractor) can be jointly and severally liable. Thus said Article 106 now read among others,

xxx "where the principal employer has the right of control over means by which the purported agency or contractual employee performs the activities, notwithstanding the fact that the agency or contractor has substantial capital and/or investment in the from of tools, equipment, machinery's, work premises among others".

ebb

Ang Karapatang Pantao ay para sa lahat. Panindigan natin ito.

Commonwealth Avenue, U.P. Complex, Diliman, 1101, Quezon City, Philippines
Tel. Nos. 927-0172 • 928-2018

In such cases, the person or intermediary shall be considered merely an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by SUCH PRINCIPAL EMPLOYER.

Again we fully agree with the change from xxx *directly employed by him to directly employed by* **SUCH PRINCIPAL EMPLOYER** xxx. The idea is to eliminate any ambiguity that may arise by the use of the word "him".

3. We favor the insertion of the provisions in the penultimate paragraph and in the last paragraph of Article 106. The former establishes a presumption, and therefore liability attaches to the principal employer as if the workers of the subcontractor were directly employed by principal employer unless otherwise controverted. As to the latter, the imposition of higher amount of indemnification will deter scheming principal employer from violating or circumventing the provisions in this Article.

4. The introduction of the new provisions stated in the second paragraph of Section 3 of the proposed Bill is a welcome development in the field of labor. For long time seasonal and project employees always find themselves at a very disadvantageous situation or at a losing end. Employers motivated by personal gain, capitalized on their being seasonal and project employees and terminate their employment at will or when they saw it fit just to avoid payment of benefit that is due them by reasons of their continued employment. Now, employers cannot take advantage of this situation nor exploit these class of workers.

The same situation is obtaining with respect to casual employees. They are also the most exploited kind of workers. Employers terminate them before their casual employment end or after their casual employment so that their employer will not be obliged to pay the regular benefits should their employment is continued. Thus, this section on casual employment will put an end to the exploitation of casual employees.

5. Again, we favor the insertion of this provision contained in the 5th paragraph of Section 3 of the proposed bill. This provision will curtail the practice of unscrupulous employer of terminating the regular employment where a term or condition has been included in the contract of employment. Example is an employment that the continuity of work shall depend on the regular supply of raw materials. Employers terminate the employees even when this condition does not happen. The only exception to this rule that in case regular employment shall be subject to a term is provided in the two instances mentioned therein.

6. We are in accord for following term employment for Overseas Filipinos Workers. There is more advantage in allowing this kind of employment. For instance, term employment shall benefit OFW's who find their work unbearable or those whose employers are oppressive, or where the nature of their job place their life and limbs in danger or their health in peril.

Moreover, the employees who are considered regular regardless of the oral or written agreement to the contrary shall be considered part of the collective bargaining unit and may exercise the right to self-

2

EDB

organization and collective bargaining. Hence, we fully agree that this provision shall be inserted.

We, however note that the right to self-organization and collective bargaining is already covered by Article 243 of the Labor Code because said article states that *"all persons employed in commercial, industrial and agricultural enterprises.....without any qualification shall have the right to self organization and form, join, or assist labor organization of their own choosing for purposes of collective bargaining"*.

Notwithstanding this, we believe the insertion of paragraph seven (7) in Article 280 is material, since their membership in a labor organization is assured even against a discriminating labor organization which shall justify their refusal because of the nature of the employment of the employees applying for membership.


Accordingly, the last paragraph of Section 3 of the Proposed Bill should include penalties for violation of the right to self-organization by the labor union because article 246 of the Labor Code does not cover labor organization.

7. Lastly, the inclusion of paragraph (j) in article 248 in the Labor Code as another unfair labor practice of employees is a welcome development.

Quezon City, September 22, 2003.

Submitted by the Government Cooperation Office.


Indorsed by:


Emerico D. Buenaseda
Director IV - GCO

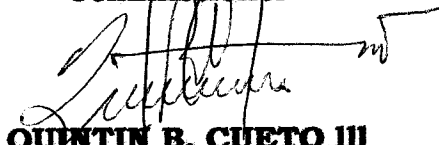
Approved by:

PURIFICACION C. VALERA QUISUMBING
Chairperson

ELIGIO P. MALLARI
Commissioner


WILHELM D. SORIANO
Commissioner

DOMINADOR N. CALAMBA II
Commissioner


QUINTIN B. CUETO III
Commissioner

Republika ng Pilipinas
Komisyon ng Karapatang Pantao
(Commission on Human Rights)

POSITION PAPER

on

HOUSE BILL NO. _____
In substitution to HOUSE BILL NO. 4110

**PROVIDING FOR REPRODUCTIVE HEALTH CARE STRUCTURES AND
APPROPRIATING FUNDS THEREFORE**

INTRODUCED BY HONORABLE BELLAFLOR J. ANGARA CASTILLO, DARLENE R. ANTONINO-CUSTODIO, CIELO KRISEL LAGMAN-LUISTRO, LORETTA ANN P. ROSALES, CARLOS M. PADILLA, GILBERT T. REMULLA, NERISSA CORAZON SOON-RUIZ, LIZA L. MAZA, J.R. NEREUS O. ACOSTA, JOSEFINA M. JOSON, EMILIO C. MACIAS II, FILOMENA S. SAN JUAN, GABRIELLE V. CALIZO, ROZZANO RUFINO B. BIAZON, CYNTHIA A. VILLAR, ANTONIO M. ABAYA, EDELMIRO A. AMANTE, AGAPITO A. AQUINO, ROSELLER L. BARINAGA, LUIS B. BERSAMIN, JR., FAYSAH MANIRI-RACMAN DUMARPA, MICHAEL JOHN R. DUAVIT, EDGAR ERICE, CONRADO M. ESTRELLA III, CELIA TAGANAS LAYUS, ARTHUR Y. PINGOY, JR., CRISPIN BELTRAN, EDWIN C. UY, JOSE CARLOS V. LACSON, MAURICIO G. DOMOGAN, BERTHOBAL R. ANCHETA, CONSUELO A. DY, NANETTE CASTELO-DAZA, IMEE R. MARCOS, EMMANUEL JOEL V. VILLANUEVA, DEL R. DE GUZMAN, ERNIE D. CLARETE, EILEEN ERMITA-BUHAIN, ZENaida G. CRUZ-DUCUT, LYNETTE A. PUNZALAN, CLAVEL A. MARTINEZ, CORAZON N. MALANYAUN, REYLINA G. NICOLAS, RUBEN D. TORRES, DANTON Q. BUESER, JOSEPH H. DURANO, LORNA C. SILVERIO, REYNALDO S. UY, SOLOMON R. CHUNGALAO, FAUSTINO "BOYET" DY, III, AND JOSE G. SOLIS

The right to reproductive health is a human right within the compartment of a broader right, that is, the right to health. The right to health, although a social right, springs from the first basic human right of a person – the right to life, which is within the context of civil rights.

The Philippines signed and ratified international human rights covenants which recognize and uphold the protection and promotion of the right to health of the human being, to include the right to reproductive health. In particular, the International Convention on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child. These Covenants have the force of law and are legally binding on the Philippines. The Philippines recognizes the Universal Declaration of Human Rights as an international manifesto of paramount moral authority which serves as the conscience of the world, and against which the attitudes of societies and Governments can be measured. And, pursuant to Article II, Section 2, of the 1987 Constitution, it adopts the generally accepted principles of international law as part of the law of the land xxx.

Be it noted, however, that the right to health, being a social right, is not a negative right. Thus, the need for legislative enactment implementative of the provisions of the human rights covenants, as well as that of the Philippine Constitution. This is also because international law builds and depends on municipal law. Therefore, the Commission on Human Rights hereby submits the following comments:

- **Section 2. Declaration of Principles.**—This section should consider the normative base of the right to health. That is, by reflecting on and/or mentioning the particular provisions of the international human rights instruments, as well as related provisions of the 1987 Constitution of the Philippines, as the basis for the passage of the herein legislation providing for reproductive health care structures.

Article 25, Universal Declaration of Human Rights:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same protection.

Article 12, International Covenant on Economic, Social and Cultural Rights:

1. The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the State parties to the present Covenant to achieve the full realization of this right shall include those for:

- (a) The provisions for the reduction of the stillbirth-rate and of infant mortality and for the health development of the child;
- (b) The improvement of all aspect of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

General Comment No. 14, Committee on Economic, Social and Cultural Rights (2000):

Paragraph number 11, of General Comment No. 14, CESCR, interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.

Article 8, Declaration on the Right to Development (DRTD):

1. 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. (underscoring supplied)

2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

Article 5(e)(iv), Convention on the Elimination of Racial Discrimination:

Article 5 of the Convention on the Elimination of Racial Discrimination provides that: "(I)n compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

xxx

(e) Economic, social and cultural rights, in particular:

xxx

(iv) The right to public health, medical care, social security and social services;

xxx."

Convention on the Elimination of All Forms of Discrimination Against Women:

Article 2 (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

Article 5 (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration.

Article 12, paragraph no. 1, States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

Paragraph number 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 14 (b) provides that, "To have access to adequate health care facilities, including information, counselling and services in family planning.

Article 16, 1(d) provides that "The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interest of the children shall be paramount;

Paragraph 1(e) provides that "The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

Article 24, Convention on the Rights of the Child:

1. States Parties recognize the right of the child to the enjoyment of the highest standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

- (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents.
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

The 1987 Constitution of the Philippines:

The introduction of the House Bill on Reproductive Rights is a welcoming move, as it is another step to the establishment of an avenue where people can attain the enjoyment of their right to life. This is also consistent and implementative of the Constitutional provisions: upholding the dignity and respect for human rights (Section 11, Article II); fundamental equality of women and men before the law (Section 14, Article II); obligation of the State to protect and promote the right to health of the people and instill health consciousness among them (Section 15, Article II); the obligation of the State to adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. xxx (Section 11, Article XIII); and the duty to strengthen and support the family as a basic autonomous social institution (Article II, Section 12; Sections 1 & 2, Article XV), to include protection of the life of the mother and the unborn from the moment of conception (Article II, Section 12).

Article 3 (1), The Child and Youth Welfare Code, as amended [P.D. 603]:

Recognizes and ensures protection of the right to dignity and worth of every child as a human being from the moment of conception xxx, to include the right of the unborn to be born well.

- **Section 2, f(6) - Elimination of violence against women.** – This subsection should explicitly mention of violence against women as including “physical, psychological, and sexual violence” against women.
- **Section 2, (g). Responsible parenthood.** – This subsection should consider not only the will and ability to respond, but also to prepare for responsible parenthood. Thus, should be read: “Responsible parenthood – is the will and the ability to prepare for and respond to the needs and aspirations of the family and children.”
- **Section 6 (a), on the formulation of an integrated national policy and program on reproductive health.** -- This subsection should consider a “comorehensive and integrated national policy and program on reproductive health”.

Section 7. Prohibited Acts.

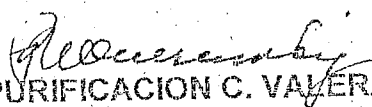
Section 7 (b), as is, puts a restriction on the banning of reproductive health care and services as a prohibited act. Are we correct to say that, the prohibited act / s under this subsection refers to both "restriction" or "banning" of reproductive health care and services?

The State is now unable to provide for the unwanted or neglected children who roam the streets of the metropolies and other cities and urban areas of the country. The State and the future of the Philippine society may well depend on a rights-based centered law on health, in general; and on reproductive health, in particular. This will, among others, guide individuals and couples to make the right decisions within the context of responsible parenthood, thereby upholding the best interest of the child.

The indivisible, interrelated and interdependent character of human rights presupposes that the full realization and enjoyment of the basic human rights to life and to dignity require an indispensable environment for the enjoyment of the right to health, to include the right to reproductive health, by all. The obligation to protect, as well as to facilitate and/or provide this right to the people, is, primarily, incumbent upon the State. In particular, legislative action along this aspect is a primary responsibility reposed on Congress.

WHEREFORE, the Commission on Human Rights strongly supports the passage of the House Bill (In substitution of H.B. No. 4110) into law, with the prayer that the foregoing comments / suggestions be considered by the Honorable Body.

Quezon City, Philippines, 28 April 2003.


PURIFICACION C. VALERA QUISUMBING
Chairperson

Fca/Inv.
HB/4110Subst.

Republika ng Pilipinas
Komisyon ng Karapatang Pantao
(Commission on Human Rights)

30 April 2003

HON. ANTONIO P. YAPHA, JR., M.D.
Chairman, Committee on Health
House of Representatives
Congress of the Philippines
Quezon City

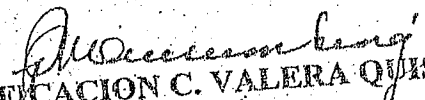
Dear Chairman Yapha:

Respectfully transmitting herewith, the position paper of the Commission on Human Rights on House Bill No. ____ (In substitution to House Bill No. 4110), otherwise known as "An Act Providing For Reproductive Health Care Structures, and Appropriating Funds Therefor".

We see the enactment of the proposed legislation as laying the groundwork, on the part of Government, for the establishment of the required environment where every person in the country, particularly women, will be able to attain and enjoy their right to life, in general. And, in particular, their right to reproductive health.

For the cause of justice and human rights, we remain

Very truly yours,


PURIFICACION C. VALERA QUISUMBING
Chairperson

Cc: Honorable Bellaflor J. Angara-Castillo
Honorable Loretta Ann P. Rosales

Ang Karapatang Pantao ay para sa lahat. Panindigan natin ito.
Commonwealth Avenue, U.P. Complex, Diliman, 1101, Quezon City, Philippines
Tel. Nos. 927-0172 • 928-2018

Ang Karapatang Pantao ay para sa lahat. Panindigan natin ito.
Commonwealth Avenue, U.P. Complex, Diliman, 1101, Quezon City, Philippines
Tel. Nos. 927-0172 • 928-2018