

SENATE
S. B. No. 2087

14 JAN 27 P4 54

Introduced by Senator Maria Lourdes Nancy S. Binay

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EXPLANATORY NOTE

Article XIII, Section 17 (1) of the Philippine Constitution mandated the creation of an independent office called the Commission on Human Rights ("CHR").

Under Section 18 of Article XIII, the CHR shall have the following broad powers and functions:

1. Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
2. Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
3. Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;
4. Exercise visitatorial powers over jails, prisons, or detention facilities;
5. Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
6. Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
7. Monitor the Philippine Government's compliance with international treaty obligations on human rights;
8. Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
9. Request the assistance of any department, bureau, office, or agency in the performance of its functions;
10. Appoint its officers and employees in accordance with law; and
11. Perform such other duties and functions as may be provided by law.

The broad authority above mentioned was envisioned by the framers of the 1987 Constitution as safeguards against possible repetition abuses perpetrated during the era of dictatorship. However, in 1992, the landmark case of *Export Processing Zone Authority vs. Commission on Human Rights*, G.R. No. 101476 April 14, 1992 was promulgated by the Supreme Court En Banc. This case was perceived to have severely emasculated the CHR and subsequently rendered the constitutional office a "toothless tiger." Ruling on the issue of whether the CHR has injunctive powers to restrain human rights violations, the Supreme Court ruled in the negative, reasoning as follows:

"The constitutional provision directing the CHR to "provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection" may not be construed to confer jurisdiction on the Commission to issue a restraining order or writ of injunction for, if that were the intention, the Constitution would have expressly said so. "Jurisdiction is conferred only by the Constitution or by law" (Oroso, Jr. vs. Court of Appeals, G.R. Nos. 76828-32, 28 January 1991; Bacalso vs. Ramolete, G.R. No. L-22488, 26 October 1967, 21 SCRA 519). It is never derived by implication (Garcia, et al. vs. De Jesus, et al., G.R. No. 88158; Tobon Uy vs. Commission on Election, et al., G.R. Nos. 97108-09, March 4, 1992).


Evidently, the "preventive measures and legal aid services" mentioned in the Constitution refer to extrajudicial and judicial remedies (including a preliminary writ of injunction) which the CHR may seek from the proper courts on behalf of the victims of human rights violations. Not being a court of justice, the CHR itself has no jurisdiction to issue the writ, for a writ of preliminary injunction may only be issued "by the judge of any court in which the action is pending [within his district], or by a Justice of the Court of Appeals, or of the Supreme Court. It may also be granted by the judge of a Court of First Instance [now Regional Trial Court] in any action pending in an inferior court within his district." (Sec. 2, Rule 58, Rules of Court). A writ of preliminary injunction is an ancillary remedy. It is available only in a pending principal action, for the preservation or protection of the rights and interest of a party thereto, and for no other purpose"

Decades after the promulgation of the *EPZA Case*, there appears to be no efforts to correct this situation.

Two observations however may be noted from the Constitution and the *EPZA Case*, which could serve as strong basis to strengthen the CHR as an institution:

1. First, Article XIII, Section 18 of the Constitution contains express legal basis for the expansion of the powers of the CHR. Paragraph 11 of Section 18 provides that the CHR may "*Perform such other duties and functions as may be provided by law.*"
2. Second, the *EPZA Case* itself quoting a catena of cases on jurisdiction states that Jurisdiction is conferred only by the Constitution *or by law*.

In view of the foregoing, the passage of this bill is earnestly requested


MARIA LOURDES NANCY S. BINAY
Senator

Introduced by Senator Maria Lourdes Nancy S. Binay

RECEIVED BY: 

1 AN ACT STRENGTHENING THE POWERS AND FUNCTIONS OF THE COMMISSION
2 ON HUMAN RIGHTS
3

4 *Be it enacted by the Senate and House of Representatives of the Philippines in Congress*
5 *assembled:*
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7 **SECTION 1.** In addition to its powers under Article XIII, Section 18 of the Constitution, the
8 Commission on Human Rights is hereby empowered to:
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- 10 (a) Conduct preliminary investigations of all offenses involving violations of human
11 rights and upon determination of probable cause, file corresponding civil, criminal
12 and administrative complaints in the appropriate courts;
13
14 (b) Issue Cease and Desist Orders effective immediately, in aid of its investigative
15 powers, upon determination of probable cause that a violation of human rights has
16 been committed by an accused; and
17
18 (c) Cite for Direct Contempt any person for failure to comply with the Cease and
19 Desist Order.
20

21 **SECTION 2. *Implementing Rules and Regulations.*** The Commission on Human Rights shall
22 issue the necessary implementing rules and regulations within ninety (90) days from the
23 approval of this Act.
24

25 **SECTION 3. *Separability Clause.*** Should any part or provision of this Act be declared
26 unconstitutional or invalid, other parts or provisions hereof not otherwise affected thereby
27 shall remain in full force and effect.
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29 **SECTION 4. *Funds.*** To carry out the purpose of this Act, there is hereby appropriated, out of
30 any funds in the National Treasury not otherwise appropriated the sum of Twenty Million
31 Pesos (Php20,000,000.00) for the fiscal year of 2014. Hereafter, the necessary appropriations
32 shall be included in subsequent General Appropriations Act.
33

34 **SECTION 5. *Effectivity.*** This Act shall take effect fifteen (15) days after its publication in at
35 least two (2) newspapers of general circulation.
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37 Approved,