



Republic of the Philippines  
**COMMISSION ON HUMAN RIGHTS**  
Quezon City

**IN RE: Senate S.B. NO. 1972 [An Act Establishing A Whistleblower Bill of Rights], sponsored by Sen. Miriam Defensor Santiago; and Senate S.B. NO. 2040 [An Act Providing for Protection, Security and Benefits of Whistleblowers And For Other Purposes], sponsored by Senator Panfilo M. Lacson.**

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## **POSITION PAPER**

The Commission on Human Rights, pursuant to its monitoring function, hereby submits its position on the proposed legislation establishing a Whistleblower Bill of Rights (S.B. No. 1972) and Providing for Protection, Security and Benefits of Whistleblowers (S.B. No. 2040), sponsored by Senator Miriam Defensor Santiago and Senator Panfilo M. Lacson, respectively.

The legislative move taken by the sponsors of the two Senate Bills is in line with the State policy to promote a high standard of ethics, maintain honesty and integrity, observe transparency and accountability in the service. This include, therefore, the State obligation to take positive and effective measures against graft and corruption, as well as to put in place a system that will ensure protection and security of workers who turn as witnesses or whistleblowers to any wrong doing in connection with governance and public service, particularly from retaliation and/or ostracism. A Bill of Rights of Whistleblowers will reinforce and further preserve the ideals of liberty, equality and security against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles,<sup>1</sup> hence, will serve as a basic guarantee for the respect and protection of the human rights of witnesses / whistleblowers – to life, dignity, security, livelihood, freedom of expression and participation, freedom from fear, among others.

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<sup>1</sup> PBM Employees Organization v. Philippping Blooming Mills, 51 SCRA 189.

The litmus test for such reforms is the government's treatment of whistleblowers.<sup>2</sup> A rewards and benefits system is necessary to ensure the livelihood and welfare of these whistleblowers.<sup>3</sup>

The proposed legislation finds support in international and domestic laws human rights instruments, in particular, the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the 1987 Philippine Constitution, and related jurisprudence, thus:

**The Universal Declaration of Human Rights**, adopted by the United Nations on December 10, 1948, which has developed into a customary law, is a proclamation of a common standard of human rights. The following provisions of said U.N. Declaration are of relevance to Senate Bill No. 1972 and Senate Bill No. 2040. --

Article 7 of the Universal Declaration of Human Rights states, that:

*"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination."*

Art. 17 (2) provides that: *"No one shall be arbitrarily deprived of his property."*

Art. 23 declares that:

*"Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."*

**The International Convention on Civil and Political Rights (ICCPR)**, to which the Philippines is a State party, advocates the following State obligations and principles in relation to the rights of workers.

The Preamble of ICCPR, consistent with the Universal Declaration of Human Rights, proclaims "the ideal of free human beings enjoying civil and political freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."

Art. 2, #3(a) of the abovementioned Covenant mandates, thus:

*"To ensure that any person whose rights or freedom as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."*

Art. 2, #3(b) of the same Covenant provides, that:

*"To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities or by competent authority provided for by the legal system of the State."*

Art. 6 (1) mandates that:

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<sup>2</sup> Senate Bill No. 1972, "An Act Establishing A Whistleblower Bill of Rights", Explanatory Note, 2008

<sup>3</sup> Senate Bill 2040, "An Act Providing for Protection, Security and Benefits of Whistleblowers and for Other Purposes, Explanatory Note, 2008.

*“The State Parties to the present covenant recognize the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard it.”*

Art. 7 provides that:

*“The State Parties to the present covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure in particular equal opportunity for everyone to be promoted to his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.”*

With respect to freedom from fear of ostracism and public humiliation, Art 17, (1) of the same Covenant guarantees, that:

*“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor or reputation.”*

Art. 17 (2) further reads:

*“Everyone has the right to protection of the law against such interference or attack.”*

### **The 1987 Constitution –**

Article II, Section 5 declares as a matter of policy/principle that:

*“The maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.”*

Article II, Section 18 declares that:

*“The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.”*

Art. III, Sec. 1 mandates that:

*“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.”*

Article XIII, Section 3 provides, among others, that:

*“The State shall afford full protection to labor, xxx, and promote full employment and equality of employment opportunities for all.*

*“xxx. They shall be entitled to security of tenure, humane conditions of work xxx.”*

### **The Labor Code of the Philippines –**

Article 3 advances the State policy that:

*“Declaration of basic policy. - The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.”*

Evidently, both international instruments on human rights and the Philippine Constitution calls upon the State to protect the rights of workers and promote their welfare. The proposed legislation on the protection of whistleblowers definitely find support in these laws.

The rights of workers to protection and security of tenure have been further bolstered by Philippine jurisprudence holding that “one’s employment can come under the right of ownership and be the subject of contract. It represents more that the things a person owns; it includes the right to secure, use and dispose of them. Thus, one’s employment is a property right.”<sup>4</sup> (Underscoring supplied) “One’s employment, profession, trade or calling is a property right, and the wrongful interference therewith is an actionable wrong.” The right is considered to be property within the protection of the Constitutional guarantee of due process of law.<sup>5</sup>

Obviously, protection to labor does not indicate promotion of employment alone. Under the welfare and social justice provisions of the Constitution, the promotion of full employment while desirable, cannot take a backseat to the government’s constitutional duty to provide mechanisms for the protection of our workforce, local or overseas.<sup>6</sup>

Security of tenure is both a Constitutional<sup>7</sup> and a statutory right<sup>8</sup>. While this is so, experience have taught us that existing protection machinery do cover and ensure utmost guarantee of protection and security to whistleblowers. Tenure in employment means the right to continue in employment until the same is terminated under conditions required by law. Indubitably, the Constitution guarantees to workers security of tenure.<sup>9</sup>

The two (2) proposed legislation clearly recognize the urgency for a new institutional mechanism for integrity and accountability to avoid scandals and restore credibility in the public service; and seek to encourage witnesses to incidents of graft and corrupt practices to be whistleblowers and perform their indispensable role in putting an end to graft and corruption and other malpractices in the government service.

In view hereof, Commission on Human Rights strongly supports the passage into law of the proposed legislation which seek to ensure stronger protection and security of whistleblowers, subject to the following recommendations:

1. With regard to Senate Bill 1972, the protection on health care workers and on the protection of the environment be the subject of a different legislation entirely.
2. The term “reasonably believes” in Paragraph (a) of Section 3 of Senate Bill 1972 be qualified and consider personal knowledge or circumstances known to the whistleblower, so as to avoid arbitrary and/or malicious accusations.
3. The two Senate Bills should be consolidated into one Bill. This will ensure a comprehensive protection measures on the rights of whistleblowers.

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<sup>4</sup> Toracco v. Thompson, 263 U.S. 197.

<sup>5</sup> Crespo v. Provincial Board, 160 SCRA 66, citing Callanta v. Carnation Phil. 145 268, citing Fernando, Constitution of the Philippines, 2<sup>nd</sup> ed., 512-513.

<sup>6</sup> JMM P.

<sup>7</sup> The 1987 Constitution, Article XIII, Section 3.

<sup>8</sup> The Labor Code of the Philippines, Book VI, Art. \_\_

<sup>9</sup> Palmeria v. NLRC, 247 SCRA 57.

4. The Bills should specify the agency/body which will handle the funds pertaining to monetary rewards for whistleblowers.
5. The testimony of the whistleblower in the criminal, civil or administrative aspect of the case be made an indispensable requirement so as not to run counter to the Constitutional right of the accused to the meet witnesses against him face to face.

RESPECTFULLY SUBMITTED.

04 June 2008, Quezon City, Philippines.

FOR THE COMMISSION:

**LEILA M. DE LIMA**  
Chairperson