

**Statement of the Center for Migrant Advocacy¹
to the NGO meeting of the UN Committee on the Migrant Workers Convention
United Nations, Geneva, Switzerland
November 25, 2008**

Thanks and Appreciation to the Committee

The Center for Migrants Advocacy expresses its appreciation to the UN MWC for convening this NGO briefing. We thank the Committee for the invitation and the opportunity to contribute to the initial submission of the Philippine government with the end in view of making the Philippines, as a party to the MWC, more effective and responsive in fulfilling its obligations under the treaty.

The Philippine Context: An overview of Filipino Labor Migration

The Philippines ranks third as a top labour-sending country.² Currently, about 10% of the country's population are overseas. By the end of December 2007, there are 8.7 M Filipinos overseas, 4.1M of whom are temporary workers, while 0.9M are considered undocumented or in irregular situations and the rest are permanent residents or immigrants. Overseas Filipinos are living and working in some 193 countries and destinations worldwide. Every day, close to 3,000 Filipino men and women leave the country to become migrant workers.

Constantly increasing overseas deployment figures manifest the worsening employment, unemployment, underemployment, contractualisation and consequent poverty in the Philippines. The government was short of the annual target of 1.6 million jobs in the country, with new jobs created declining from 700,000 in 2005 to 599,000 of 1.6 M target jobs in 2007.³ On the other hand, overseas deployment averaged 2,952 daily by 2007, 17% more than five years before and 30% more than ten years before.⁴ The number of officially deployed Overseas Filipino Workers (OFWs) in 2007, 1,077,623, was 21% more than those deployed 5 years before and 44% more than 10 years earlier. The trend continues, with the Philippine Overseas Employment Administration (POEA) reporting that for the first six months of 2008, it has already met 64% of the year's 1 M target. Data shows that 640,401 OFWs left, a 33.5% increase in deployed documented OFWs over the same period in 2007.⁵

Undocumented or irregular OFWs. Undocumented/irregular workers are a major concern because their status in the host countries makes them vulnerable to human and workers' rights' violations. The Commission on Filipinos Overseas (CFO) estimated irregular OFs to number 1,607,170 in 2002; in 2007, the estimates have dropped by 44%. However, in 2007, there were increases in countries like Qatar, Oman, as well as in United Arab Emirates (UAE) by 15,000 and in Singapore by 18,000. Moreover, their sheer number in countries like Kuwait (10,000), Saudi Arabia (KSA) (20,000), UAE (35,000), Singapore (56,000) and Malaysia (128,000) are worrisome, given the complaints of abuses in these countries, including the continuing deportation in Malaysia,. Undocumented OFWs are mostly women and unskilled/ domestic workers and thus, more vulnerable to abuses. There are also concerns concerning the effects of the new EU Return Directives in the immediate future.

Undocumented migrants are not criminals hence criminalization of migrants in irregular situation should be stopped. In many cases, migrants become undocumented or irregular because the

1 Delivered by Atty. Cecilia Jimenez of the Geneva Forum for Philippine Concerns, on behalf of its partner, Center for Migrants Advocacy Philippines

2 International Organization for Migration.

3 Research paper coordinated by Focus on the Global South and presented during the July 13 Development Round Table Series forum at SOLAIR, UP Diliman, Quezon City

4 Ibid.

5 Doris C. Dumlaog. Remittances surged to \$1.5 B in June. Philippine Daily Inquirer August 18,2008

channels for legal migration are so restrictive even if there is clear evidence of shortage of workers. In other instances, migrants have run away from abusive employers and thus they become undocumented.

Feminization of Filipino migration. The 1998-2002 NSO Survey of Overseas Filipinos found there were more men than women OFWs, averaging 110:100.⁶ In terms of occupation, one notes that when POEA summarizes its report on skills, Overseas Performing Artists (OPAs) are in the professional and technical category while domestic workers are in the service category. What makes feminization of Philippine migration a problem is that more and more women OFWs have been going into **domestic work**. In 1997, the figure of women OFWs going into domestic work was at 21% (62,000 on the average); in 2005 and 2006, this has reached 30% (at 91,412). Up to 98% in this category are women. Caregivers, just a thin line removed from domestic workers, averaged 17,000 from 2003 to 2006 and 20,394 in 2007.

The nature of their job demands that the women usually stay in their employers' households, with caregivers sleeping in the room of the person they are caring after. The fact that domestic work is not recognized as work in many host countries puts them in a position vulnerable to human, worker and women's rights' violations, including sexual harassment and rape.

The Dominant Role of Private Recruitment Agencies. Migrant workers are hired from the Philippines in two ways – through the POEA's Government Placement Board or through private recruitment agencies, currently numbering 1,300. There is a prohibition for direct hiring which is, however, strictly observed ONLY during the first time deployment of migrant workers. Therefore, succeeding work contracts, either for the same employer or for another, entered into by the worker onsite becomes strictly a matter between the worker and the employer. In this case, the proviso for joint and solidary liability of the recruiter with the employer eventually becomes superficial.

The POEA is expressly mandated to regulate the recruiters and monitor their activities. However, many Filipinos still fall prey to unscrupulous recruiters because, perceiving that there is not much hope for a better future in the Philippines; they would like a chance instead overseas. Their determination to leave makes them vulnerable to abuse and exploitation.

Issues and Concerns of Filipino Migrant Workers

Migrant workers and their families are besieged with problems every step of the migration process - before departure, as they prepare to leave for work abroad, upon arrival and on-the-job site and eventually upon return to the Philippines.

I. ISSUE: THE DE FACTO GOVERNMENT POLICY OF PROMOTING LABOUR MIGRATION DEPLOYMENT

Republic Act (RA) 8042 says “...the State does not promote overseas employment as a means to sustain economic growth and achieve national development...”⁷ However, every year, POEA targets to deploy one million migrant workers. Since 2006, POEA has surpassed the 1 million target. In 2007, the POEA deployed 1,077,623, an increase of 1.42%⁸ from 2006 deployment figure. The number of migrants every year, for the last 4 decades, has been increasing⁹, with rehires constituting more than 50% of the deployment

6 Ibid.

7 RA 8042 Section 2c.

8 POEA Stats2007

9 Deployed Land based migrant workers: 1998: 831,643; 1999: 837,020; 2000: 841,628; 2001: 867,599; 2002: 891,908; 2003: 867,969; 2004: 933,588; 2005: 988,615; 2006: 1,062,657; 2007: 1,077,623 (POEA stats2007)

2. Part III: Human Rights of All Migrant Workers and Members of Their Families, Article 16, (7) & (9) and Article 23

II. ISSUE: ON-SITE PROTECTION, ACCESS TO PHILIPPINE CONSULAR AND OVERSEAS LABOUR OFFICES, PROGRAMMES AND SERVICES

POEA 2007 statistics record that Overseas Filipino migrant workers currently number about 4.1 M and 0.9 million undocumented migrants in some 193¹⁰ countries and destinations around the globe. In terms of the presence of Philippine representative offices, the Philippines has 84 embassies and consulates, 37 Philippine Overseas Labour Offices (POLOs)¹¹ and 20 Filipino Workers Resource Centers (FWRCs)¹². There are destinations of Filipinos that do not have Philippine representative offices and are simply included in the jurisdiction of certain posts. For example, Cyprus, where there is a big number of Filipino domestic workers, is under the jurisdiction of the embassy in Athens.¹³ In the case of Iraq, where there is an estimated 6,000 to 8,000 Filipinos, the Philippine embassy to Baghdad was moved to Amman, Jordan following the troops pull out in 2004.

Among CMA's documented cases, 89 OFWs suffered neglect by the embassy/consulate either by giving poor advice¹⁴ or not assisting them.¹⁵ Some of these cases are:

1. Teresita Santos, a sewer who was gang raped in August 2005 by five Saudi nationals, accused Philippine consulate personnel in Jeddah of depriving her of proper legal advice and blocking the hearings that almost caused her to lose claim for her private rights. In her letter-complaint submitted to the Department of Foreign Affairs, she said it was only through the help of fellow OFWs from the SOS SMS Team¹⁶ in Riyadh that after two years, she was able to file her claim against her perpetrators in 2007.¹⁷

2. Julian Camat, Hermilo Ramos and Napoleon Fabregas, cargo handlers, were sentenced by a Saudi court to one and a half years of imprisonment for stealing computers in January, 2003. They ended up serving four years and four months in detention, three years longer than the 1.5 year sentence. They blamed the Philippine consulate in Jeddah for their fate¹⁸.

3. More than 150 OFWs were languishing in jails in Al Malaz and Al Hair in KSA despite having served their sentence and/or are not being sufficiently assisted by the post.¹⁹

4. Esnaira Angin accused the assistant labor attaché of denying her help and shelter at the Philippine Overseas Labor Office in Dubai, allegedly for lack of money to pay for necessary fees. She was one of four OFWs in Dubai whose house was broken into by three Emirati and an Omani national in November 2005 and was stabbed on her chest and back while trying to resist their attackers²⁰.

5. D, a nurse charged for not calling police concerning a dead baby left in the hospital toilet, sought the embassy's help to appeal unfair verdict because she was not on duty at the time. The embassy advised: "*Desisyon mo yan... Tanggapin mo na lang yan total napakasimpleng parusa lang yan. Bawat hearing, nandon naman ang embassy a. If you file, tataas ang sentensya.*" (It's your

10 POEA Stats2007

11 11 in Asia (37%); 14 in Middle East (49%), 12 in Europe (10%) and Americas (4%) combined

12 Mandated by RA 8042 in places where there are more than 20,000 Filipino migrants.

13 A few years ago, it was under the jurisdiction of the Philippine embassy in Tel Aviv.

14 Some of the deployed staff have been perceived as not knowledgeable of the rules and laws of the host country.

15 23 cases documented so far.

16 CMA OFW partner group on SOS SMS Helpline system in Riyadh, Saudi Arabia

17 CMA case file 2008

18 CMA Case file 2007

19 E-mail report from V Team, Riyadh, KSA

20 CMA case File 2007

decision. Just accept the verdict anyway it's only a small punishment. Each hearing, the embassy is there. If you file an appeal, the sentence will go up.)

6. C, a heavy equipment mechanic, met an accident at work in Riyadh and suffered spinal injury that forced him to stop working. His company did not attend to his disability pay worth 120,000 SR nor did the embassy assist or visit him since October 2006. The SOS SMS Team assisted him instead to claim this in January 2008.

7. When the 10 Thadiq hospital nurses consulted POLO/OWWA about not being allowed to go home despite their not renewing contracts, they were told "*Kelangan makatakas sila. Dito punta sa embassy para don daw sila kayang tulungan...Kung hindi sila punta don, kahit 10 years sila dito, hindi sila makakaalis dito.*" (They should run away to the embassy so they can get assistance. If they don't run away, they will not be able to go home even in ten years.) A doctor in Riyadh who reported this said "*POLO/OWWA Riyadh is rather slow in moving (the case did not move for three months)... Why do they need an NGO to help them when that is why they are receiving their salary for? Who will answer for the incompetenc(ies) of these government people assigned to help OFWs?*"²¹

At the government's worst, there are even cases where Philippine diplomatic personnel themselves abuse Filipina domestic workers e.g. a staff of the Philippine permanent mission to the UN in Geneva was charged guilty in Swiss courts with abusing her domestic worker who is even a cousin. The Geneva court ordered her to pay damages as far back as January 2000; to date, she has not paid any money to the OFW and despite a warrant of arrest, the DFA continues to employ her in the home office.²²

A major concern too is that OFWs simply do not want to file cases against their abusers for lack of trust in the justice system. Two of the following cases illustrate this:

8. Cleaners who paid excessive fees to their agency said they would file a case if they will be guaranteed to leave for Qatar first. They have since complained about their long work hours, delayed meals and low salaries. They said they number around 300 OFWs.

9. Caregivers to Israel who had paid excessive fees to recruitment agencies in the Philippines or intermediaries in Israel have not filed cases.

Moreover, other OFWs complain that some of those who win their cases in the National Labor Relations Commission (NLRC) in fact win only paper victories for the errant agency has closed or has disappeared.

Based on 2005 and 2006 reports, top countries in terms of runaways were Kuwait, KSA, Lebanon, UAE, Brunei and Japan. Top countries in terms of repatriation were KSA, Kuwait, Singapore, Japan and Jordan. In terms of welfare/labor cases were Hong Kong, Singapore, Taiwan, Kuwait, UAE and Qatar. Most cases of detainees and detention were in KSA, Qatar and Bahrain

In total, POLOs handled 187,269 welfare/labor cases in 2004 and 167,466 in 2005, ranging from conciliation/mediation, legal assistance, repatriation services, visits to hospitals and jails, etc. OFWs sought mostly counseling, including psychosocial stress debriefing for distressed ones, conciliation/mediation services for OFWs' claims for unpaid/back wages and maltreatment, custody of the Filipinos Workers' Resource Centers (shelters) (13,625 in 2004 and 12,907 in 2005) and repatriation assistance (8,173 in 2004 and 9,237 in 2005).

21 CMA case file 2008

22 *ibid.*

III. ISSUES: DISCRIMINATION AND PROTECTION

a. The POEA policies on Household Service Workers (HSW)

In March 2007, the POEA started to implement a new set of policy reforms meant to improve and uplift the working and living conditions of domestic workers and caregivers, also referred to as Household Service Workers (HSW).²³ The policy sets the minimum age for HSW at 25 years old, while the standard minimum age for all other migrant workers is 18 years old. The POEA rationale for this is “to improve preparedness and maturity of the HSW and in light of reports of unabated abuses and maltreatments against HSWs.” The POEA resolution also falls short of identifying concrete programs that will help “improve the preparedness and maturity of the HSW”. This provision is discriminatory against those between the age of 18 and 25 years old.

CMA, in its statement submitted to the POEA, questioned the stated rationale and argued that the primary cause of the abuses is not so much the biological age but the non-recognition of domestic work as work and the lack of adequate protection. CMA also questioned how POEA intended to implement the policies since these were promulgated without the benefit of consultations among migrants and migrant rights advocates²⁴ as well as with receiving governments.

At end of 2007, the POEA reports that less women migrants were deployed at 48% against male migrants at 52%. One factor for the decrease in women migrant deployment was attributed to the new policy reforms. However, POEA has yet to make an assessment of its first year implementation of the HSW policies.

b. The OWWA (Overseas Workers Welfare Agency)

The OWWA is a national government agency created by law²⁵ whose primary mandate is to provide welfare services to the OFWs and their families. In September 2003, the OWWA Board of Trustees promulgated an Omnibus Policies (OP) resolution²⁶ which transformed the welfare agency into a membership based organization where its programs and services can only be availed of by members. To become a member, one must pay the US\$25 contribution, contrary to another law.²⁷ Moreover, the OP resolution was promulgated without consultations with the OFWs, NGOs and other stakeholders. In addition, the land-based OFW representative in the OWWA board did not sign the promulgation. CMA's network, the PMRW, challenged the OWWA Board in court and moved for the deletion of provisions in the OP that are contrary to the mission and mandate of OWWA. The case questioned the authority of the Board to enact the OP, as this was a legislative task.

c. Political claims on Sabah imposes ambiguity on the status of Filipinos in Sabah, Thus ensuring protection gap

Estimates of Filipinos in Sabah, Malaysia are between 300,000 to 500,000. From the Malaysian perspective, many of these Filipinos are undocumented Filipinos who are therefore subject to regular crackdowns and deportations conducted by the Malaysian government. In the past, there had been strong recommendations from concerned stakeholders for the Philippine government to set up an office in Sabah to monitor the status of Filipinos there and to extend to them protection. However, the Philippines, to this date, has not heeded the call.

23 In October 2006, the POEA Governing Board adopted Resolutions nos. 4-12.

24 NGOs, duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect. --RA 8042 Section 2h on Declaration of Policies.

25 Letter of Instruction No. 537, Presidential Decree No. 1694, as amended by Presidential Decree No. 1809, Executive Order No. 195 and Republic Act No 8042.

26 OWWA Omnibus Policies (OP) Resolution 038 which practically amended the existing laws on OWWA.

27 Letter of Instruction No. 537 prohibits the mandatory collection of OWWA fees.

In the meantime, in addition to the vulnerability of undocumented Filipinos already living in Sabah, thousands of Filipino children born in Sabah become stateless because of non-registration. This continuing situation results from the fact that Philippine registration of their birth can only be done in the Philippine Embassy in Kuala Lumpur, a trip which most of the Filipino parents, mostly undocumented under Malaysia law, do not undertake. The right of these children to a nationality is therefore violated. Moreover, these children come to part of the collective risk to raids, arrests and detention.²⁸

Arrest, detention and deportation of undocumented Filipino workers continue in Malaysia. The Philippine embassy reported that at end 2006, there were 1,600 Filipinos detained mostly on immigration-related problems in three detention centers and regular prisons in Kota Kinabalu, Tawau and Sandakan at any given time. Some 9,277 Filipinos were deported, over 98% from Sabah, averaging 762 deportees a month in 2006.²⁹ In 2007, 11,729 were reported deported and in 2007, 8,205 up to August³⁰. Mujeres, a women's organization in Zamboanga City, further observed perhaps twenty times more Filipino deportees landing in the Zamboanga pier. From 2007 until April 15, 2008, the Malaysian RELA³¹ was reported to have conducted 7,213 raid operations and arrested 42,946 undocumented migrant workers).³² In addition, 46 cases of human trafficking, 78% in Sabah, were reported by the Philippine Embassy. Such trafficking cases are monitored mostly in Labuan, Sabah and Sarawak, where victimized Filipinos could not seek shelter and protection from the Philippine Embassy in faraway Kuala Lumpur.

The apparent reason behind the Philippine government reluctance to set up an office in Sabah is the long-standing Philippine claim to Sabah as part of Philippine territory. If this were the case, then the status and welfare of Filipinos in Sabah will not be covered by the Convention. While the Philippines is not yielding on its claims to Sabah, Philippines is at the same time in joint meetings with Malaysia on the status of Filipinos in Sabah. At the end of the day, what matters most is for those Filipinos in Sabah, particularly the undocumented Filipinos, to be able to access and avail of programs and services including mechanisms for redress.

IV. ISSUES: THE RIGHT TO FAMILY REUNIFICATION AND FAMILY LIFE

The rights to family reunification and to family life have been in constant peril with the increasing deployment of Overseas Filipino Workers and the increasing reliance of Filipino families on remittances sent back. Based on 2000 data, UNICEF estimates that around 56% of migrants are married based. If there are 1 million each of female and male OFWs abroad who are married and assuming an average of three children per household, six million children are left behind and are at risk from the social costs of migration.³³

Many researches have documented the social costs of migration especially on the children. A recent research also found that migration risks Filipino adolescents aged 13 to 16 to become "worse off" in

28 CMA and Mujeres. A report on irregular migration and human trafficking. 2007

29 Semi-annual report of foreign service posts on assistance to nationals July-Dec 2006

30 DSWD service delivery report sent to CMA in August 2008

31 Rela is a civil volunteer corps formed by the Malaysian government whose main duty is to check the travel documents and immigration permits of foreigners in Malaysia to reduce the illegal immigrants. It is authorized to deal with situations like policemen e.g. raiding suspected places e.g. streets, factories, restaurants and even hotels, interrogating and even detaining people who forgot to bring their passports and/or working permits. Wikipedia http://en.wikipedia.org/wiki/RELA_Corps

32 Home Affairs Minister answer to YB Khalid Abdul Samad on May 5, 2008; Press release. July 25, 2008. Migrant Care. Indonesia

33 United Nations Children's Fund (Unicef)-Philippine Institute for Development Studies (PIDS) Seminar Series on Public Policies and the Rights of Children.

life.³⁴ With less time provided by the overseas parents for their adolescents aged 13 to 16, these adolescents are more “susceptible to being engaged in unwarranted acts, such as premarital sex that results in teenage pregnancies and subjects them to abuse, whether sexual or physical; or they go into drugs.”³⁵

Children in detention because of their immigrant status are particularly are subject to separation from their families. In Sabah, as of January 2007, the Immigration Department Enforcement Unit in Putrajaya revealed that of 1,943 Filipinos in detention, 231 were children. No special conditions for the children have been provided in their detention cells. One expects that their detention conditions would be the same as those of the 14 and 16 year old among the 36 fishermen jailed Filipino fishermen to earn money to go back to school. Their detention center is described below.³⁶

Another related matter of concern is the recently adopted legislative text of the European Union Directive that allows undocumented migrants, including children, to be held in custody between 6 and 18 months.³⁷

V. ISSUE: OFW PLACEMENT FEES

a. Collection of placement fees – the legal basis

The Philippines has not ratified ILO Convention 181 on “no fee charging” by private recruitment agencies. There is strong opposition from the majority of the recruitment agencies³⁸ and the POEA itself has actually institutionalised the collection of placement fees by recruiters³⁹. In fact, the POEA also allows the agencies to charge a service fee from the principals or employers “to cover services rendered in the recruitment, documentation and placement of workers.” At the end of the day, the recruiter therefore collects twice as much for the same service of recruitment of worker. Moreover, some receiving States have allowed the setting up and engagement of their own placement agencies or brokers or manpower agencies and also permits legal collection of placement fees. At the end of the day, the migrant worker pays two entities –again, for the same service.

b. Collection of exorbitant Fees:

Despite efforts by the POEA to monitor exaction of exorbitant fees and illegal recruitment activities, there is still a notable number of complaints against recruitment agencies. The number of complainants shows the prevalence of illegal recruitment and collection of excessive placement fees, in addition to feedback from the ground that many more do not report and just look for other opportunities to work abroad. Of 301 cases involving 805 victims endorsed by POEA to the different local prosecution offices for preliminary investigation, 20 were simple illegal recruitment (IR), 166 were simple IR and estafa, 35 were large scale IR and estafa, 41 were syndicated IR and estafa while 34 were large scale/syndicated IR and estafa.⁴⁰ Recruitment violation cases were reported to have declined from 3,811 in 2006 to 3,316 in 2007. In relation to this, recruitment and disciplinary action cases received in 2007 were 3,642 more pending cases at the beginning of 2,375. Of these, POEA reported that 3,087 were resolved. The number of cases handled by POEA in 2006 and 2007, however, also shows both the cynicism of OFWs towards government agencies as well as

34 Presented at the UNICEF-Philippine Institute for Development Studies (PIDS) Seminar Series on Public Policies and the Rights of Children 2008.

35 Rosemarie Edillon. “The Effects of Parent’s Migration on the Rights of Children Left Behind”

36 CMA case file 2008

37 Veronica Uy. New EU rules may affect 94,000 irregular OFWs in Europe. *Inquirer.net* 6/20/08

<http://globalnation.inquirer.net/news/breakingnews/view/20080620-143800/New-EU-rules-may-affect-94000-irregular-OFWs-in-Europe>

38 We said “majority” because there is a small group of recruitment agencies who do not charge placement fees from the workers.

39 Rule V on Fees, Costs and Contributions, Section 3 on Fees/ Costs Chargeable to the Workers.

40 Ibid.

their tendency to try their luck for alternative job placement abroad.

Despite the law allowing the charging of only a month's salary's worth of placement fee, potential OFWs are driven by desperation to pay excessive fees to recruitment agencies and brokers. There are many different schemes, a number of them irregular. So far, POEA has not sufficiently addressed this problem. Some examples follow:

1. To be a domestic worker in Greece, placement fee ranges from 2,500 to 8,000 euros or P167,500 to 536,000, depending on the speed one wants to go to there. She pays a lower rate if she wants a work visa that takes 8-10 months processing and a higher rate if she wants to enter as a student or a tourist.
2. To be a caregiver in Israel, on the average, OFWs have paid up to six times higher the amount permitted by law. Loans to pay these fees are charged an average monthly interest rate of 8%.⁴¹
3. There have been cases of caregivers paying \$5,000 to an agency that "exports" them on student visa to England via the Philippines.⁴²
4. For Singapore, domestic workers have paid \$930-2,200 or P41,000-100,000 that may taken be as salary deductions. The domestic worker may go on a "fly now pay later" scheme and sign a salary deduction loan upon arrival of up to 94% of their salary (minimum US\$205, undocumented ones receiving only US\$165-176) for the first six to nine months, with no day offs.⁴³
5. For Taiwan, victims of erring agencies paid as much as \$2,666 or about P120,000, six times bigger than the fees paid by OFWs hired under the special hiring program for Taiwan (SHPT)⁴⁴.

A major problem is that victims do not want to file a case or even just report it. One example involved a group of 70 women cleaners recruited for Qatar who reported to the CMA in February 2008 that their recruitment agency charged them P40,000 while their expected salary was only \$200. However, they did not want to complain to the POEA unless CMA will guarantee that they can still go ahead to Qatar. They eventually went ahead with their plans to leave the Philippines.⁴⁵

VI. ISSUE: NON-PORTABILITY OF SOCIAL SECURITY

Unlike local workers, migrants do not automatically enjoy the benefits of social security while employed overseas. Foreign employers are not necessarily willing to co-fund with OFWs a social security insurance for the latter. The Social Security System program of the Philippines is made available to OFWs on voluntary basis under the self-employed category.

In those countries where migrants can avail of the social security system of the host country, the problem is the portability of the benefits when the migrant decides to go home to the Philippines for good or after retirement. It usually needs a bilateral social security agreement to enable migrants to enjoy their social security upon retirement in the Philippines. To date, the Philippines has bilateral social security agreements with only 8 countries.⁴⁶

VII. ISSUE: RIGHT TO INFORMATION OF MIGRANT WORKERS

All deployed OFWs take up the Pre Deployment Orientation Seminar (PDOS), which are generally

41 Kav La Oved. Brokerage fees paid by Philippine workers in Israel. 2007

42 Orlea Aichel. Kav LaOved. Letter to the Philippine Embassy in Tel Aviv, March 25, 2008

43 Philippine Embassy in Singapore report to Congress, Jan-June 2006

44 Warning up vs agencies collecting excessive fees. Article posted January 08, 2008

45 In August, one requested our assistance for her repatriation who reported their sad situation.

46 Philippine Bilateral Labor Agreements, International Labor Affairs Service, Department of Labor and Employment. December 2006. Moreover, our bilateral Social Security agreement with Spain was signed in 1988 and expired in November 2002. The agreement was renewed in 2002 but not yet ratified to date. The agreement with Quebec entered into force in November 1998, not 1989

for a whole day for first-timers and a half-day or less for rehires. CMA's evaluation study found that while the PDOS are guided generally by the POEA/OWWA Memorandum Circulars, providers conduct PDOS that vary in topics, duration, cost, depth of coverage and actual take-home instructional materials. Moreover, the PDOS do not have clear and standardized learning objectives, topics, assessment features and qualifications of trainers. Respondents and RTD discussants in the CMA survey, while appreciating the PDOS in general, remarked it could be improved to be more valid and relevant by making them country- and job-specific. Materials should also be supplemented by appropriate and adequate explanations. Finally, needs of rehires and those approaching reintegration should likewise be considered.

Another study⁴⁷ concluded that the "OFWs' frame of mind at the time of completing the seminar was already set on their imminent departure... appeared as competing with their pre-departure concerns and forfeited the purpose of being a pre-orientation." Other studies⁴⁸ likewise identified PDOS as "particularly not being helpful in teaching them basic information and how to cope with their work abroad" such as their rights as OFWs, the do's and don't's, where to file cases, etc.

In addition, the OWWA conducts for free country-specific language and culture courses to departing OFWs, e.g. to Israel, China, Korea, etc. On the other hand, some recruitment agencies still require applicants, mostly domestic workers and caregivers, to undergo expensive private training for assessment purposes prior to attending the OWWA courses.

In relation to general information on labor migration, executive agencies have only just started consulting on the legislated Shared Government Information System on OFWs. However, the agencies are currently bogged down on the problems related to both hardware and software. While the posts are submitting semestral reports on the situation of overseas Filipinos to the Department of Foreign Affairs, which submits them to Congress, these efforts need to be systematized and summarized for easy retrieval and reference for policy studies and recommendations.

The Philippine Government Response to Protect Filipino Migrant Workers

The Philippine government is touted as a global model on labor migration because of its adherence to international human and workers' rights conventions that promote and protect the human rights of migrant workers. The Philippines is a party to numerous UN and ILO conventions and treaties, noteworthy of which are the following: ICCPR, ICESCR, CRC, CEDAW, Optional Protocol on Trafficking, CERD, CAT, CSTP and the Migrant Workers Conventions as well as ILO Core Conventions including ILO Convention 143 and 97 on migrant workers. At the national level, the Philippine Congress has enacted the following laws: Republic Act (RA) 8042 (Migrant Workers and Overseas Filipinos Act of 1995), RA9189 (Overseas Absentee Voting Law); Anti-trafficking Law; Citizenship Retention and Reacquisition Act of 2003, Comprehensive Tax Reform Law (1997). At the sub-region, the Philippines was a leading party to the ASEAN adoption of a declaration on the promotion and protection of migrant workers. In terms of bilateral labour and social security agreements, the Philippines has forged agreements with 56 countries in the span of 38 years. Most of these bilateral labour agreements are on seafarers.

In terms of structures of government mandated to implement the provisions of the laws, the Philippine government has set up agencies with specific mandates:

1. DOLE (Department of Labor and Employment), under which are two attached agencies – Philippine Overseas Employment Administration (POEA) tasked to regulate deployment and

47 Scalabrini Migration Center's 1992 and 1997.

48 Kanlungan Centre Foundation 2001 and 2003.

- recruitment of workers; and the OWWA (Overseas Workers Welfare Administration) tasked to take care of the welfare needs of the migrants and their families,
2. National Labor Relations Commission (NLRC) takes care of money claims of migrants;
 3. TESDA (Technical Education and Skills Development Authority) takes charge of skills training and competency requirements of migrants;
 4. Department of Foreign Affairs Office of the Undersecretary for Migrant Workers Affairs (OUMWA), Consular Affairs and Assistance to National Program
 5. Commission on Elections for the Overseas Absentee Voting.

Overseas, the Philippines has 84 embassies and consulates, 37 POLOs (Philippine Overseas Labour Offices) and 20 Filipino Workers Resource Centers to take care of 8.7 Million Filipinos located in more than 193 countries and destinations. Per estimate, one DFA personnel takes care of about 3,000 Filipinos overseas.

Following the enactment of the Overseas Absentee Voting Law in 2003, the DFA created an Overseas Absentee Voting Secretariat and COMELEC has deputized the DFA personnel overseas to become election officers during election time which takes place every 3 years. For the longest time, DFA personnel overseas have not been beefed up with additional staff.

Promotion of Rights or Promotion of Overseas Employment?

In her keynote address to the second Global Forum on Migration and Development, President Gloria Macapagal-Arroyo said “We long for the day when going abroad for a job is a career option, not the only choice, for a Filipino worker. Our economic plans are designed to allow the Philippines to break out of this cycle...”

But how do we break out of this cycle exactly when the people remain poor, unemployed, underemployed or their wages do not suffice to make decent living? How do we break out of this cycle when the country's development strategy remains strongly framed on neo-liberal economics, rather than the right to development? How do we break out of this cycle when the country is saddled with more than a trillion-peso foreign debt, which it has to pay of instead of stimulating development at home? How do we break out of this cycle when government is not credible to its people, its integrity tainted, its structures ridden with corruption? How indeed do we break out of this cycle when this very same government sets an annual target of 1 million OFW deployment? How do we break out of this cycle now in the midst of the financial crisis which has already started to bring home to the Philippines terminated overseas Filipino workers?

Unless we are able to address these concerns responsively and effectively, all our efforts amidst laws and commitments to national and international human rights standards to promote, protect and fulfil the rights of the Filipino migrant workers and their families will not always be enough. Promotion of overseas migration, de facto or otherwise, will always undercut the promotion of all human rights of all migrant workers and members of their families.

On behalf of the Centre for Migrant Advocacy Philippines, I thank you for your kind attention.