

**Philippine Migrants Rights Groups' Written Replies to the List of Issues Relating to the  
Consideration of the Initial Report of the Philippines**

**Submitted to the UN Migrant Workers Committee for its 10<sup>th</sup> Session in Geneva**

**March 2009, Philippines**

**Consolidated by the Center for Migrant Advocacy - Philippines, Inc. (CMA-Phils.)**

**Together with the Philippine NGO Working Group on the Alternative Report to the UN  
Migrant Workers Convention**

**[Batis Center for Women; Department of Women and Development Studies – CSWCD,  
University of the Philippines-Diliman; Kanlungan Center Foundation, Inc.; Geneva Forum  
for Philippine Concerns; Migrant Forum in Asia (MFA); Philippine Alliance of Human  
Rights Advocates (PAHRA); Philippine Human Rights Information (PHILRIGHTS);  
Philippine Migrants Rights Watch (PMRW); Unlad Kabayan Migrant Services  
Foundation; Women’s Legal Bureau (WLB)]**

**With contributions from 24 returned migrants, 4 national networks, 1 regional network, 24  
migrants rights advocacy groups, women organizations, trade unions and members of the  
academe that participated in the February 5-6, 2009 National Consultation on the  
Alternative Report and online from 3 migrants rights groups overseas and OFWs from  
Saudi Arabia, Lebanon, UAE\***

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\*Please see page for complete list of participating organizations and individuals

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## **List of Participating Organizations and Migrant Workers**

Apostleship of the Sea (AOS)

Batis Centre for Women

Bohol Initiatives on Migration and Community Development (BOHOLDEV), Bohol

Center for Migrant Advocacy Phils. Inc. (CMA Phils)

Center for Overseas Workers (COW)

UP Center for Women Studies Diliman (CWS)

UP College of Social Work and Development Studies Diliman (CSWCD)

Daughters of Charity

Episcopal Commission for the Pastoral Care of Migrants and Itinerant People (ECMI-CBCP)

Episcopal Diocese of North Central Philippines (EDNCP), Baguio City

Gender Watch Against Violence and Exploitation (GWAVE), Dumaguete City

Hope Workers Center, Taiwan

Ing Makababayang Aksyon Foundation (IMA Foundation), Angeles City

Institute for Migration and Development Issues (IMDI)

Kaagapay, Cotabato City

Kabalikat ng Migranteng Pilipino, Inc. (KAMPI)

Kanlungan Centre Foundation

Kasama Inc., Cebu City

Kasapi-Hellas, Athen, Greece

Kav La Oved Workers' Hotline, Israel

Labor Education and Research Network (LEARN)

Mariners' Association for Regional and International Networking (MARINO)

Merchant Marine Overseas Association (MMOA)

Migrant Forum in Asia (MFA)

Mindanao Migrants Center for Empowering Actions, Inc. (MMCEAI), Davao City

Overseas Filipino Workers from UAE, Israel, Saudi Arabia, Singapore, Taiwan, Hongkong, Lebanon

Overseas Filipino Workers Multi-Purpose Cooperative

Philippine Alliance of Human Rights Advocates (PAHRA)

Philippine Human Rights Information Center (PHILRIGHTS)

Philippine Migrant Rights Watch (PMRW)

Public Services Labor Independent Confederation (PSLINK)

Regional Center of Expertise on Education for Sustainable Development (RCE-Cebu), Cebu City

Samahan ng Migrante at Pamilya (SAMAPI), Tarlac City

Sentro ng Alternatibong Lingap Panligal (SALIGAN)

Scalabrini Center for People on the Move (SCPM)

Scalabrini Migration Center (SMC)

UP School of Urban and Regional Planning Diliman (UP SURP)

Silsilah Dialogue Movement, Zamboanga City

Unlad Kabayan Migrant Services

Union Network International Philippine Liaison Council (UNI-PLC)

Visayan Forum

Women and Gender Institute (WAGI)

Women in Development Foundation (WIDF)

Women's Legal Bureau (WLB)

## **I. List of Acronyms.**

AJG – Alfredo J. Ganapin

ATN – Assistance to Nationals

ASEAN – Association of Southeast Asian Nations

BI – Bureau of Immigration

BLA – Bilateral Labor Agreement

CCOFW – Consultative Council for OFWs

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

CESCR – Convention on Economic, Social and Cultural Rights

CFO – Commission on Filipinos Overseas

CMA – Center for Migrant Advocacy

COA – Commission on Audit

COMELEC – Commission on Elections

COWA – House of Representatives' Committee on Overseas Workers Affairs

CRC – Convention on the Rights of the Child

CSO – Civil Society Organization

DAWN – Development Action for Women Network

DFA – Department of Foreign Affairs

DFA OUMWA – DFA Office of the Undersecretary for Migrant Workers Affairs

DOH – Department of Health

DOJ – Department of Justice

DOLE – Department of Labor and Employment

DOT – Department of Tourism

DSWD – Department of Social Welfare and Development

EC – European Commission

EPAs – Economic Partnership Agreements

FDC – Freedom from Debt Coalition

FES – Friedrich Ebert Stiftung

FTA – Free Trade Agreement

FWRC – Migrant Workers and Other Overseas Filipinos Workers' Resource Center

GAD – Gender and Development

GATS – General Agreement on Trade in Services

GFMD – Global Forum on Migration and Development

GR 26 – General Recommendation 26 on Women Migrants adopted by the CEDAW Committee

HSW – Household Service Workers

IACAT - Inter-Agency Council Against Trafficking

ILO – International Labour Organization

IOM – International Organization for Migration  
JPEPA – Japan Philippines Economic Partnership Agreement  
JFC - Japanese – Filipino Children/Youth  
JSL - Joint and Solidary Liability  
KSA – Kingdom of Saudi Arabia  
LEARN – Labor Education and Research Network  
LAC - Latin America and Caribbean  
LAF - Legal Assistance Fund  
LGU – Local Government Unit  
MAIN – Migrant Assistance and Information Network  
MARINO – Mariners’ Association for Regional and International Networking  
MECO – Manila Economic and Cultural Office  
MFA – Migrant Forum in Asia  
MOU – Memorandum of Understanding  
MWC – Migrant Workers Convention  
MWLGF - Migrant Workers Loan Guarantee Fund  
NBI – National Bureau of Investigation  
NEDA - National Economic and Development Authority  
NLRC – National Labor Relations Commission  
NGO – Non Government Organization  
NRCO - National Reintegration Center for OFWs  
NSCB – National Statistics and Census Board  
NSO – National Statistics Office  
OAV – Overseas Absentee Voting  
OAVL – Overseas Absentee Voting Law  
OEC – Overseas Employment Certificate  
OF – Overseas Filipinos  
OFW – Overseas Filipino Workers  
OLAMWA - Office of the Legal Assistant for Migrant Workers' Affairs  
OPAs –Overseas Performing Artists  
OUMWA - Office of the Undersecretary for Migrant Workers Affairs  
OWWA – Overseas Workers Welfare Administration  
PAHRA – Philippine Alliance of Human Rights Advocates  
PDOS – Pre Departure Orientation Program  
PEOS – Pre Employment Orientation Seminar  
PhilHEALTH – Philippine Health Insurance  
PICC - Philippine International Convention Center  
PMRW – Philippine Migrants Rights Watch  
PNP – Philippine National Police

POEA – Philippine Overseas Employment Administration

POLO – Philippine Overseas Labor Office

RA 8042 – Republic Act 8042 also known as Migrant Workers and Overseas Filipinos Act of 1995

SAMAPI – Samahan ng Migrante at Pamilya Inc. Tarlac

SGISM – Shared Government Information System for Migration

SPA – Special Power of Attorney

UAE – United Arab Emirates

UN – United Nations

UN MWC – UN Migrant Workers Convention

WLB – Women's Legal Bureau

WTO – World Trade Organization

## *EXECUTIVE SUMMARY*

1. The Philippines is the world's third biggest source of migrant workers in the world, next to China and India<sup>1</sup> and overseas Filipinos which constitute 10% of the total Filipino population can be found in more than 193 countries and destinations<sup>2</sup>. Mass migration takes place in the Philippines primarily because of the failure of government to provide decent jobs and decent wages to its people

2. Filipino labour migration has a woman's face. Until 2007, Filipino women have outnumbered the men, dominating jobs that are stereotypically women's jobs –as domestic workers, nurses, caregivers and entertainers. The government attributed the shift in numbers in 2007 to the new policies of protection for domestic workers under the Household Service Workers Policy Reform which took effect in that year, but it should be noted that at the same time there was a slight increase (of 30,000) for the same year on the estimates of men and women migrants who were undocumented or in irregular status overseas<sup>3</sup>, hence the need for a more thorough assessment.

3. Adopted by President Marcos in 1974 ostensibly as a temporary solution to the country's unemployment problems and the balance of payments deficit, the overseas employment program is now more obviously an integral component of the government's development strategy. On December 4, 2008, in response to the global crisis, President Arroyo issued Administrative Order 247<sup>4</sup> which instructed the Philippine Overseas Employment Agency (POEA) to “execute a paradigm shift by refocusing its functions from regulation to full-blast markets development efforts, the exploration of frontier, fertile job markets for expatriate Filipino workers.” The AO further directed the POEA “to increase the countries currently hosting Filipinos and break through the 200-country barrier.”

4. The aforementioned slight increase in the number of undocumented or in irregular status migrant workers is only one among many concerns of Philippine labour migration. At the start of the migration cycle, there is already the experience of many migrants of bearing most of the fees and costs contingent to their deployment, including those which should be charged to the foreign employers. But the protection regime of the government stops short at the paperwork.

5. The Philippines is party to the core labour and human rights conventions of the United Nations (UN) and the International Labor Organization (ILO), and is also taking the lead in advocating for mechanisms for the protection and promotion of migrant workers in the ASEAN. It has also forged bilateral agreements with a few countries that host OFWs and have various national and local legislations to integrate and complement its agreements.

This report provides evidence to show that the Philippine government all but plays lip service to these commitments.

6. While “the important role of non-governmental organizations, as partners of government entities, in the implementation of the Convention is recognized by the Philippine Government,” and Section 2 (h) of the Republic Act No. 8042 or “The Migrant Workers and Filipino Act of 1995” explicitly provides that legitimate NGOs are State partners in protecting overseas Filipino

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<sup>1</sup> “RP among top migrant sending countries, says IOM study”, Inq7.net. June 22, 2005.

<sup>2</sup> “Filipino Labour Migration: Issues, Responses and Challenges”, Presentation of POEA Administrator Rosalinda Baldoz in the Forum, “Labor Migration: What Role for Congress?” March 12, 2008. Organized by the Center for Migrant Advocacy and Friedrich Ebert Stiftung

<sup>3</sup> POEA 2007 statistics, [www.poea.gov.ph](http://www.poea.gov.ph)

<sup>4</sup> [www.pia.gov.ph](http://www.pia.gov.ph)

workers (OFWs) and promoting their welfare, in fact, the State many times do not deal with NGOs in this spirit.

As a glaring example, participating CSOs in this report do not know of any NGO involved in preparing the State party's report that was submitted to the Committee in January 2008. The government also did not involve or seek the support of civil society in any efforts to disseminate and promote the Convention.

7. This report is presented following the format of the questions posed by the Committee on Migrant Workers. The questions seek information and observations regarding the following:
- a. government policy regarding overseas deployment:
  - b. the Office of the Legal Assistant for Migrant Workers Affairs (OLAMWA)
  - c. government compliance with protecting foreign workers' rights in the Philippines
  - d. government efforts to protect overseas Filipino workers' rights in the receiving countries, including but not limited to measures aimed at enabling consular services to respond more effectively to protection needs of Filipino migrant workers and members of their families
  - e. government measures to promote and prevent violation of overseas Filipino workers' rights starting with their recruitment up to their return and reintegration
  - f. government measures to combat trafficking

8. Under the present administration of President Gloria Macapagal-Arroyo, a million migrant workers is targeted for deployment every year in contravention of RA 8042 Section 2c which states that "...the State does not promote overseas employment as a means to sustain economic growth and achieve national development". Moreover, whereas the law (RA 8042) allows the deployment of OFWs supposedly only in countries where the rights of Filipino Migrant Workers are protected based on existing labour and social laws, agreements, declarations and resolutions, and other protective measures, there are more than 2 M OFWs in many of the Gulf countries where their rights are very difficult to protect.

As part of its labor export policy, the Government negotiates with labor receiving countries of Filipino workers, but at present has forged agreement with only 9% of the total 193 countries and territories. It was also only last December 2008 that human resource development cooperation became an important element of these bilateral labor agreements. But these BLAs deal more with operational arrangements and fall below protection requirements for overseas Filipino workers.

9. The Office of the Legal Assistant for Migrant Workers Affairs (OLAMWA) which was created by virtue of Republic Act 8042 to be primarily responsible for the provision and overall coordination of all legal assistance services to Filipino migrant workers as well as overseas Filipinos in distress was transformed into the Office of the Undersecretary for Migrant Workers' Affairs (OUMWA) of the Department of Foreign Affairs (DFA) with a mandate that covers not only legal assistance but all other concerns on the protection and promotion of the rights of migrant workers and overseas Filipinos. The OUMWA has "since expanded to cover almost anything"<sup>5</sup>

10. As a lead agency in the government's migrants' protection program, OUMWA has outdated and inefficient means and system of communications: no website nor efficient email address, no hotline service, and no one to pick up the phone during office hours. DFA has also not set up the Shared Government Information System for Migration (SGISM) which is mandated by RA 8042 Section 20. OUMWA is also observed to be slow and not proactive in the follow up and monitoring of cases of distressed migrants, has weak coordination and follow through with foreign postings re cases and inconsistent in upholding government policy, as in the case of a foreign service officer maltreating her own OFW domestic worker.

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<sup>5</sup> From presentation of DFA Undersecretary Jose Brillantes in the CMA-FES Forum on Onsite Protection for Migrant Filipinos, August 31, 2004, UP Asian Centre

11. As regards its compliance with the Convention on the treatment of foreign workers and their rights in the Philippines, first of all, most laws have not been revised or amended to reflect its legal obligations in international treaties. In the case of property rights for foreign workers in the Philippines, the ground for discrimination is based on the 1940 Immigration Law which has a strong nationalistic and protectionist spirit but contravenes the Convention. Foreign workers can also be detained and deported if they participate in rallies or demonstrations against the Philippine government.

Their right to engage in trade union activities, moreover, is subject to reciprocity; meaning, they are nationals of a country which grants the same or similar rights to Filipino workers. The reason for the law apparently is to compel other nations to afford the same protection to Filipino migrants. This violates the rights of migrant workers to self-organization and is incompatible with the provisions of the Convention. Foreign workers based in the Philippines should enjoy full trade union rights, without any condition.

12. As far as had been observed, the Convention is not discussed in the orientation seminars for migrant workers or relevant government officials. During the pre-departure orientation seminar (PDOS), the workers are not substantively advised of their rights under the Migrant Workers Act and not all are provided with brochures/leaflets about their country of destination. The COA audit team's observations include: shortened time allotment (2 hours), not country-specific, and large number of participants, all of which do not make learning conducive. "...it is impossible for the workers to be oriented and informed about on-site realities such as country profile, culture and tradition; common problems encountered by OFWs and coping up mechanisms..." There is also no mechanism to assess or measure what knowledge was learned by the participants.<sup>6</sup>

It had likewise been reported that even when diplomats, consular officials and embassy staff attend the PDOS, there are those who are still insensitive to the situation and needs of OFWs and are not knowledgeable about the legal/systemic remedies to address their problems. There is an acute lack of pro-active, sensitive, competent and able personnel onsite.

More effective consular services are also hampered by fund limitations and restrictions from host governments or as a matter of diplomatic reciprocity.<sup>7</sup>

13. Retention or confiscation of the passports of migrants and other identity documents by the employers/ employment agencies is another way to exercise and assert control over the migrant workers, particularly in terms of mobility. The Philippine government does not exert pro-active lobby with the governments in regard to this issue, although it did welcome the Qatari government's new legislation to overhaul the "sponsorship system", including declaring illegal the confiscation of passport by Qatari employers<sup>8</sup>. Such complacent, accepting attitude shows lack of confidence by Philippine representatives to negotiate with host governments for the interests of Filipino migrant workers; there is fear of having to handle more joblessness when migrant workers may be forced to come home.

14. Political participation must be made available even to Filipinos who are abroad. The Overseas Absentee Voting Law (OAVL) makes possible for overseas Filipinos to exercise their right to vote, though only for President, Vice-President, Senators and Party-list Representatives. In practice, however, the law disenfranchised the overseas Filipinos because of the conditionality

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<sup>6</sup> The Overseas Workers' Welfare Program of the Government. Management Services Report 2007-01. Sectoral Performance Audit. Commission on Audit. May 2008. p. 69-70

<sup>7</sup> Philippine missions cover more than just one jurisdiction.

<sup>8</sup> <http://www.arabianbusiness.com/548219-foreign-embassies-welcome-qatar-sponsorship-laws>, March 1, 2009.

that immigrants or permanent residents are disqualified unless they execute an affidavit to return and reside in the Philippines three years from registration and not to have an application for citizenship in a foreign country. The low registration and low voter turn out require legislative amendment and aggressive information campaign for registration and voting.

15. Government efforts to prevent violation of overseas Filipino workers' rights, especially with the recruitment process, are also found wanting. Existing laws and regulations to better regulate recruitment activities are not being fully implemented or monitored; illegal recruitment continues to victimize women and men especially from the rural areas. This is compounded by the lack of database on recruitment agencies, as well as the proper documentation of workers and employers by the pertinent authorities (Department of Labor and Employment, DFA, POEA, Overseas Workers' Welfare Association).

16. A major complaint among migrant workers is the issue of contract substitution and the exaction of 'exorbitant' placement fees charged on prospective migrants. The POEA supposedly has a package of reforms in response to these by providing stringent requirements which include among others the pre-qualification of employers (together with the foreign placement agency). Many cases, however, point to the failure of stricter regulations; high placement fees are even sometimes double-charged by agencies on both worker and prospective employer. OFWs and their families become resigned to illegal fees exaction because they think that's the cost they have to pay to find a job abroad or else suffer unemployment or underemployment and poverty in the Philippines.

In addition, the POEA's passive and long drawn out handling of cases filed by victims of illegal recruitment evidence the weaknesses and failures of the government's anti-illegal recruitment campaign especially if we measure success by illegal recruiters being found guilty and put behind bars, closure of the agency and just compensation for the victims in a speedy manner. In general, OFWs and their families assert that both prosecution and initial arrests take a long time and a lot of effort and resources on the part of victimized OFWs which they usually cannot afford.

17. Trafficking is another serious concern that continues to grow and expand. There are new modes of recruiting victims, like the use of spouse visa, and new ways of conniving with corrupt authorities, especially at the airport. It is, however, low on the list of government's budget priorities and hardly receives any direct funding; most government agencies rely heavily on the services and expertise of NGOs. There is also lack of cooperation and inter-operation with law enforcement and migration authorities in neighbouring countries.

18. With regard to measures for migrants' return and reintegration, past administrations have not designed or implemented effective reintegration programmes for returning migrants. Existing programs of DOLE, OWWA and POEA to facilitate the social and economic reintegration of returning OFWs have reached and assisted only a limited number of beneficiaries compared to those needing support.

19. An important factor in the government's failure, not only to regulate and punish illegal recruitment activities, but also in its whole effort to protect and promote migrant workers' rights is the lack of coordination among the different agencies involved, which in fact aggravate if not contribute to the problems that migrants face because of "turfing", disowning responsibilities and simple corruption. The same weak coordination has also been observed between home offices and postings. Combined with the deplorable lack of updated and consolidated data information on OFWs, this contributes largely to government inefficiency.

20. On the regional level, however, there are efforts to promote sound, equitable and humane migration conditions and the Philippines is taking the leadership in the ASEAN Committee on Migrant Workers for a collective rights-based response of ASEAN to migrants rights issues.

These efforts nonetheless may prove fruitless if the present trend of bilateral free trade agreements which promote the commodification of workers continues.

21. This report makes corresponding recommendations for issues and concerns raised.

22. It is the government's duty to protect its citizens' human rights wherever they may be found. The Philippine accession to the Convention and the plethora of laws and measures the State has enacted and adopted to support this is laudable but they do not guarantee the genuine protection and promotion of the rights of migrant workers and their families.

On the contrary, the government's labor export policy which promotes deployment of workers as part of its development strategy, but without the accompanying capability to monitor and ensure the protection of their human rights, as well as of their families, negates whatever success it has in dealing with the issues that confront overseas Filipino workers.

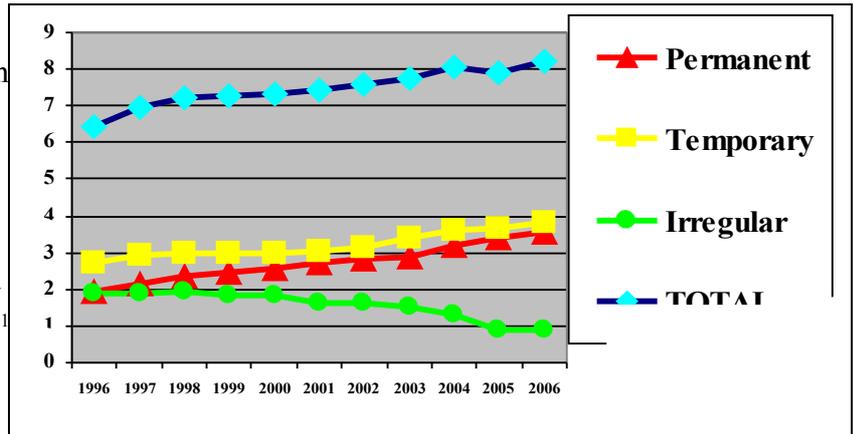
Its disregard moreover of the role that non-government and civil society organizations play in helping to address the challenges of labor migration shows an inherent arrogance that is proving fatal to the number of Filipino migrant workers who remain vulnerable and in need.

The government must be made accountable, not only to its treaty obligations, but especially to its primary obligation to respect, promote, protect and fulfill the human rights of its citizens, wherever they are.##

## Introduction

### The Context. Promotion of Labor Export Curtails Promotion and Protection of Rights

The Philippines is the world's third biggest source of migrant workers in the world, next to China and India.<sup>9</sup> For the last 5 years, deployment figures have increased by 3.6% on the average<sup>10</sup>. In January 2008, defying the global economic crisis, total deployment 165,000, upped by 25% compared to last year's figure.<sup>11</sup>



Overseas Filipinos constitute 10% of the total Filipino population. Their number by end of December 2007 was placed at 8.7M. They are found in more than 193 countries and destinations<sup>12</sup>.

The biggest proportion of migrants is deployed within Asia – notably in the Middle East at 45.3%, 20.8% in East and South East Asia. Deployment to Europe followed at 14.1%. With a ratio of 1 to 4 OFWs, Saudi Arabia is the single biggest country of destination of Filipino migrant workers.

### Government's Labor Export Policy as a “temporary solution” to the country's unemployment problems and balance of payments deficits...

“Our policy is not to export labor...”<sup>13</sup>

This statement by President Arroyo was the same statement of President Marcos almost 4 decades earlier. The two Presidents and those in between them all said the same –that labor migration will only be a temporary solution to the country's unemployment problems and balance of payments deficits. [See Annex of Labor Export Policy Pronouncements of various Philippine Administrations.]

To date, there is still no indication that a tipping point is forthcoming. The number of Filipino migrants continues to increase every year.

The government's labour export policy is further affirmed by POEA's program thrusts for 2008 which included the “facilitation of deployment of OFWs” through participation in high-level technical marketing missions; intensified market intelligence work abroad in order to locate high value employment opportunities and identify new/emerging markets, participation in forging bilateral agreements with host governments that can offer new and decent jobs to OFWS;

<sup>9</sup> “RP among top migrant sending countries, says IOM study”, Inq7.net. June 22, 2005.

<sup>10</sup>“Filipino Labor Migration: Issues, Responses and Challenges”, Presentation of POEA Administrator Rosalinda Baldoz in the Forum, “Labor Migration: What Role for Congress?”, March 12, 2008. Organized by the Center for Migrant Advocacy and Friedrich Ebert Stiftung.

<sup>11</sup> Migration up despite economic crisis. Agence France-Presse. First Posted 16:26:00 02/24/2009

<sup>12</sup>“Filipino Labor Migration: Issues, Responses and Challenges”, Presentation of POEA Administrator Rosalinda Baldoz in the Forum, “Labor Migration: What Role for Congress?”, March 12, 2008. Organized by the Center for Migrant Advocacy and Friedrich Ebert Stiftung

<sup>13</sup>President Gloria Macapagal-Arroyo, Media Launch of the 2<sup>nd</sup> Global Forum on Migration and Development. October 7, 2008.

encouraging visits of foreign governments and private employer delegation to the Philippines; strengthening linkages with education, training and medical fitness sectors to generate the right quality and quantity of contracts needed by the overseas markets; and, enhancing work with host government to plug irregular migration route and prevent circumvention of deployment requirements.<sup>14</sup>

Before the year ended, on December 4, 2008, in response to the global crisis, President Arroyo issued Administrative Order 247<sup>15</sup> which instructed the POEA to “execute a paradigm shift by refocusing its functions from regulation to full-blast markets development efforts, the exploration of frontier, fertile job markets for expatriate Filipino workers.” The AO further directed the POEA “to increase the countries currently hosting Filipinos and break through the 200-country barrier.”

### **Trends on Philippine Labor Migration:**

**Feminisation of Filipino Labour Migration.** Not only do women migrate as independent migrants. Since the mid 1980s, Filipino labour migration has a woman's face. For the last few years until 2006, the proportion of women always outpaced that of the male workers. It went as high as 74% in 2004. They dominate jobs that are stereotypically women's jobs – as nurses, caregivers, entertainers and domestic workers. Women migrants in domestic work and entertainment are particularly vulnerable to abuse and exploitation because these jobs are not recognized as formal work and are not covered by labour and social laws of many countries.<sup>16</sup>

In 2007, for the first time since the mid 1980s, the number of deployed women migrants was less than the male migrants at 48%. The government attributed this to the new policies of protection for domestic workers under the Household Service Workers Policy Reform<sup>17</sup> which took effect in 2007. Much earlier, since 2005, drastic reduction in the number of overseas performing artists has been noted due to Japan government's new plan of action to combat human trafficking into Japan which meant stricter requirements for entertainers to go to Japan.

The HSW Policy reform is a unilateral decision of the Philippine government. To implement the provisions, the support and cooperation of receiving governments is a must. However, several host governments stated they cannot oblige with the policy since they have their own policies<sup>18</sup>. Furthermore, no less than POEA said that since 2007, they have noted attempts of recruiters to circumvent the HSW policy by placing women migrants in domestic work category outside of a household setting or placement in jobs not commonly ventured before by women such as “sand blasters”.

The official figures may have indicated a reduction in the number of women migrants in domestic work and entertainment. However, there is a need to make a thorough assessment of the situation if indeed the policies to protect the migrants in these two vulnerable sectors are effective or have the women gone invisible through the “back door”.

Moreover, on the matter of migration policies and practices, it is imperative that these are gender-sensitive as they are rights-based.

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<sup>14</sup>POEA 2007 Annual Report. [www.poea.gov.ph](http://www.poea.gov.ph)

<sup>15</sup>[www.pia.gov.ph](http://www.pia.gov.ph)

<sup>16</sup>For example, the labor laws of Saudi Arabia and the UAE categorically excludes migrant domestic workers in the coverage of their labor laws. In Japan, entertainers are covered by immigration laws as guests and not as workers.

<sup>17</sup>HSW Reform Policy covers domestic workers in a household setting and includes no placement fees, minimum entry salary level of US\$400, minimum age of 25 years old, skills qualification certification and stricter verification process by POLO.

<sup>18</sup>Singapore and the Gulf countries issued statements that they cannot follow the minimum wage policy because they do not have minimum wage laws as they let the market forces decide on the salaries.

**Undocumented Filipinos Overseas:** In 2007, the estimates of undocumented Filipinos overseas or those in irregular status overseas was 900,023, slightly higher than the previous year at 870,000<sup>19</sup>. Undocumented migrants are the most vulnerable among migrants as they are practically denied of their basic human rights because of their irregular immigration status.

Filipino migrants become undocumented or in irregular status for many reasons. Some leave the country without the proper travel and working visas. However, there is a significant number who leave the country with proper documents but become undocumented in order to escape abusive employers and degrading situation<sup>20</sup>

Of lesser gravity in circumstance are those undocumented who did not pass through POEA prior to his/her departure for work overseas. These Filipino travellers and migrants are mainly those who leave the country either as tourists or direct hired workers. Interestingly, on many occasions, these categories of migrants are able to secure proper work permits and document themselves in the process in the receiving countries even as they remain undocumented in the Philippines. For Filipinos under this circumstance, all that is needed is for the Philippine government to aggressively invite these Filipinos to “document” themselves with the Philippine government.

However for all others onsite, it would need serious pursuit of bilateral negotiations with the receiving government on how to address the issue of irregular migration. In most of the Gulf countries, it could mean advocacy to review and reform the “kefala” or sponsorship system. It can also include mandatory orientation of employers—individuals and company managers -- to become responsible employers. In cases where receiving governments undertake programs to regularize undocumented migrants, the Philippine government should be able to extend full support to the undocumented workers in terms of expedite issuance of passports<sup>21</sup>.

**Migration Costs and Recruitment Agencies.** Migrants pay enormous amounts of money to be able to work overseas. As a general rule, contracting a job overseas in the Philippines is mainly through the licensed private recruitment agencies. Exceptions are those processed under the government-to-government arrangements<sup>22</sup> and name hires<sup>23</sup> as approved by the Labour Secretary. Article 18 of the Labour Code prohibits direct hiring of worker for placement overseas. Recruitment agencies are allowed to collect from the worker a placement fee<sup>24</sup> not exceeding the equivalent of one month salary<sup>25</sup>. They can collect also a service fee from the foreign employer<sup>26</sup>. Apart from the placement fees, migrant workers pay for the following costs: Passport, NBI/Police/ Barangay Clearance, Authentication, Birth Certificate, Philippine Medical

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<sup>19</sup>Table 30, POEA Annual Report 2007. [www.poea.gov.ph](http://www.poea.gov.ph)

<sup>20</sup>70% of Filipinos who leave the country for Israel are documented workers. After 3 months, about half become undocumented because they run away from their employers to escape an abusive and exploitative situation. Documented by Kav la Oved.

<sup>21</sup>During the regularization program for undocumented migrants in Greece, it was reported by Kasapi-Hellas, an organization of Filipino migrants in Greece, that the Philippine embassy was not as cooperative and supportive of Filipinos who come for them for passports.

<sup>22</sup>The Employment Permit System (EPS) is one such GO-GO arrangement between the Philippines and Korea

<sup>23</sup>Jobs are secured directly from foreign employers but processed through POEA.

<sup>24</sup>Domestic workers are now exempted from paying placement fees under the Household Service Workers Policy Reform

<sup>25</sup> POEA Rule V, Section 3. Rules and regulations governing the recruitment and employment of land-based overseas workers, May 2002.

<sup>26</sup>Ibid..Rule V, Section 1.

Monthly Automatic Deductions / Particulars	AMOUNT (NT\$)	REMARKS
		Gross Minimum Wage = NT\$17,280 Average Income of a worker in Taiwan is NT\$46,600 (2007 figures)
Food and Board	4,000	
Broker's Service Fee  (automatic deduction from monthly salaries)	1,800	1st yr = NT\$21,600 2nd yr = NT\$20,400 3rd yr = NT\$18,000  Total Deductions = NT\$60,000 (US\$1,700)
TAX	2,376	
Health Insurance	225	
Labor Insurance	215	
Total Deductions/month	NT\$8,616	Net monthly income = NT\$8,664 (US\$255)  Net Annual Income = NT\$103,968 (US\$3,060)
Placement Fee  (Philippines) (one time payment)	Between 70,000 to 90,000	Legal ceiling is NT\$28,000

Health Insurance (Philhealth), Trade test, if necessary, Inoculation, when required by host country and Medical Examination Fees.

On the other hand, the following items should be charged from the foreign employers: Visa Fee, Airfare, POEA Processing Fee and OWWA Contribution.

However, it has been the experience of many migrants that most of the fees and costs contingent to their deployment are borne by them. Worse, recruiters charge the workers with exorbitant placement fees.

Foreign brokers and manpower agencies in receiving countries also extract placements and service fees from the migrants as in the case of Hongkong, Israel and Taiwan to cite a few. This results to debt bondage for a lot of them.

**The Anatomy of Migrant Indebtedness: The case of a Filipino factory worker in Taiwan working for a 3 year contract<sup>27</sup>**

It takes 12 to 18 months for migrants in Taiwan to pay off their debts. Worse, in the case of many caregivers and domestic workers (who receive less wage at NT\$15,840), their contract are terminated prematurely at the end of their first year and they return home still saddled with debts with neither extra income nor savings.

**Poverty, Persistence of Unemployment and Underemployment, Low Wage Levels:** Mass migration takes place in the Philippines primarily because of the failure of government to provide decent jobs and decent wages to its people. According to the Social Weather Station, as of December 1, 2008, 27.9% of Filipino adult population or 11 million people are unemployed<sup>28</sup>. As observed by the UN Committee on Economic, Social, Cultural Rights during its examination of the Philippines' compliance with the ESCR Convention, "the lack of employment

<sup>27</sup>Hope Workers Center, Taiwan

<sup>28</sup>Migration up despite economic crisis. Agence France-Presse. First Posted 16:26:00 02/24/2009

opportunities...” in the country “has led much of the population of working age to emigrate.<sup>29</sup> The matter of low levels of minimum wage was another issue that push people to migrate overseas.<sup>30</sup> Another migration push factor is mass poverty despite the positive high macro economic indicators. In 2007, 36% of the population were below the poverty level<sup>31</sup>.

**Labour Export Policy Undercuts Protection of the Human Rights of OFWs and Overseas Filipinos and their Families.** The unsustainability of the labor export paradigm is underscored by the recent financial crisis. Many Filipino migrants have been forced out of their jobs and have no option except to go back to the Philippines to join the ranks of the 11 million unemployed. If they choose to stay, they will become undocumented or in irregular status, making their situation more vulnerable to abuse and exploitation. In Taiwan, the option is to accept shorter work schedule which means lower wages too or they go home. Paradoxically, however, it is the same global crisis that can result to more poverty and joblessness in the country and hence triggers more out-migration, in utter disregard to the gloomy economic prospects of their respective countries of destination. More than ever, the OFWs and their families’ economic plight and human rights are imperilled and trampled upon.

### A. Information of a General Nature

**Please describe the role, if any, of non-governmental organizations in the implementation of the Convention and in the preparation of the State party’s report (see the Committee’s provisional guidelines regarding the form and content of initial reports, paragraph 3 (d)).**

**Answer:** Participating CSOs do not know of any NGO involved in preparing the State party’s report that was submitted to the Committee in January 2008. There was only one occasion in September 2008 when a meeting was convened by the Presidential Committee on Human Rights to discuss the CMW vis a vis the National Human Rights Action Plan. In that meeting, very few migrant NGOs took part<sup>32</sup>. The information about the Philippines’ initial submission to the MWC was shared to migrant NGOs by Migrant Forum in Asia (MFA) in September 22, 2008.

The government did not involve or seek the support of the civil society in any efforts to disseminate and promote the Convention. The Philippine Migrants’ Rights Watch<sup>33</sup> (PMRW), on its own, spearheaded the campaign for the ratification of the Convention in 1995. This campaign was one of its *raison d’etre*. Since then up to the present, PMRW organizes events every December 18 to commemorate the anniversary of the UN MWC and disseminate information on and promote the Convention. It was also among the first networks to request the UN to declare December 18 as International Day of Solidarity with Migrant Workers. Eventually, December 18 was declared the International Migrants Day.

Upon the Convention’s entry into force in 2003, PMRW published “The Rights of Filipino Migrants,” a primer that included the Convention and the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act 8042 or RA 8042) published that same year. The Center for Migrant Advocacy Philippines, Inc. (CMA), on the other hand, published the Convention in its

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<sup>29</sup>Item 19, Concluding Observations on the Philippines by the UN Committee on Economic, Social and Cultural Rights, 41<sup>st</sup> Session, November 2008, Geneva.

<sup>30</sup>Item 22. Ibid.

<sup>31</sup>Item 28. Ibid.

<sup>32</sup>CMA attended the meeting. The usual network of migrant NGOs were not present.

<sup>33</sup>PMRW is a registered civil society network of twelve migrant organizations established in 1995 to encourage the recognition, protection and fulfilment of Filipino migrants’ rights - both in the Philippines and abroad during the entire migration process.

reference workbook “Preparing for the Treaty Reporting Process of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families” in 2008.

NGOs use the Convention as well as other UN Conventions (CEDAW, CERD, ESCR, CRC) including the Universal Declaration of Human Rights and ILO Conventions (ILO Constitution, C97 and 143 and the 8 core labor conventions) in its advocacy work for government policies to promote and protect Filipino migrants. This is done at the national government level, at the international level – bilateral and multilateral, as well as through the mass media<sup>34</sup>.

Migrant CSOs have always dealt with OFWs’ families together with the OFWs as defined by the Convention and upheld their rights and welfare, exposed and addressed the social costs of migration on the family through position papers, publications and forums.

These CSOs also uphold the dignity of undocumented migrant workers and recognize, promote and protect their rights, including their right to join trade unions, their right to vote as overseas absentee voters, and their right to participate in the political process of their home country - rights going beyond the Convention as in the case of the right to vote for undocumented migrant workers.<sup>35</sup>

“The important role of non-governmental organizations, as partners of government entities, in the implementation of the Convention is recognized by the Philippine Government.” and Section 2 (h) of the Republic Act No. 8042 or “The Migrant Workers and Filipino Act of 1995” explicitly provides that legitimate NGOs are State partners in protecting overseas Filipino workers (OFWs) and promoting their welfare, in fact, the State many times do not deal with NGOs in this spirit.

Contrary to government’s claim that it consulted various non-governmental organizations and civil society organizations, Migrant Forum in Asia, who is part of the NGO network that prepared this alternative report, denies participated in any government consultation in the preparation of the State report.

**Please provide information on how the various government agencies dealing with overseas employment and the protection of Filipino migrant workers coordinate their activities.**

**Answer:** There are two main agencies of government that deal with labor migration – Department of Labor and Employment (DOLE) and the Department of Foreign Affairs (DFA). Under each department are several offices that deal with specific concerns on migration. The same arrangement holds true for other concerns. For example, the Department of Justice, specifically the Bureau of Immigration, is on board for immigration concerns and the Department of Health, for accreditation of medical clinics for purposes of medical tests for departing migrant Filipinos. There is also the Office of the President that goes on board, if and when the situation so requires.

From time to time, or as the need arises, inter-agency bodies are constituted.

It has been observed on many instances however that these agencies actually do not coordinate as much, and in fact aggravate, if not contribute, to the problems that migrants face because of “turfing”, disowning responsibilities and simple corruption. [see case studies of Gamca Decking System for Medical Tests; Sentosa 27; Deployment Ban to Nigeria, EO 548 vis POEA's AIR]

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<sup>34</sup>CMA used the MWC in its Congressional lobby to pass the Overseas Absentee Voting Law for Filipinos overseas regardless of immigration status; It also cites the MWC in the advocacy for the rights of families of migrants left behind and in advocating for host countries to relax policies on family reunification.

<sup>35</sup> CMA together with other member organizations of MFA supported the Migrant Trade Union (MTU) composed mostly of undocumented migrant workers in Korea. CMA and other Migrants CSO undertake campaigns in support of the rights of undocumented migrant workers.

What is more, weak coordination does take place too within Departments as in the case of DFA Manila and the posts overseas over cases of distressed migrants and specific policy issues.

In the case of the deployment ban policy to Nigeria, the post in Abuja made repeated recommendations to the Department of Labor through the DFA to impose a selective deployment ban and exempt OFWs who have active work permits as well as those with permanent residency status in Nigeria. The recommendations of the post were strongly supported by the OFWs in Nigeria, many of whom have been living and working there since the 1970s. However, the DFA affirmed its recommendation to DOLE to maintain the total ban on deployment to Nigeria. There was a similar incident in the case of the deployment ban in Lebanon after the war in 2006. At some point the embassy proposed to DFA to impose a selective ban policy to no avail. It is evident that the actions of the posts who should have better appraisal of the situation onsite may not necessarily be adopted by the DFA Manila for some unknown reasons.

Insufficient coordination has also been observed between POEA and POLO. The POLOs do not report to POEA employers and job orders verified at the posts. Conversely, POEA does not inform POLOs on OFWs deployed within their areas of responsibility. Thus, POLO was not properly guided in monitoring OFWs onsite.<sup>36</sup>

Information or database on OFWs is basic to coordination between government agencies but the shared government information system for migration (SGISM) provided for by Section 20 of R.A. 8042 since 1995 when it was passed into law has not been set up. Thus, there is no central database on OFWs to date. Philippine posts submit reports to DFA which in turn submits them to Congress. Each agencies maintains its own migration database. What is lacking though is a central electronically linked database that contains not only information on departing migrants but migrants on site as well as those who have returned.

### **Recommendations:**

1. State party should establish clear mechanism for coordination and communications between and among agencies of government
2. The oversight function of Congress over the executive agencies can also be further enhanced if politicking and political patronage is taken out of the way
3. State party should bring on board the Commission on Human Rights, being an independent body, to look into the rights issues of migrants
4. State party should bring on board migrant rights NGOs in consultative bodies and take their participation seriously
5. State party should establish a shared and/or central database and information system on labor migration
6. State party should ensure that agencies charged with the mandate to report, collate information act on complaints, etc. be rigorously followed/abide by the provisions of law and the CMW

## **B. Information in relation to each of the articles of the Convention**

### **(a) General principles**

**Please clarify which laws are not applicable to migrant workers and explain why migrant workers do not have the right to own real property in the Philippines (para.76 of the report).**

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<sup>36</sup>The Overseas Workers' Welfare Program of the Government. Management Services Report 2007-01. Sectoral Performance Audit. Commission on Audit..

**Answer:** The equal protection clause under the Philippine Constitution, national laws as well as applicable international law apply with equal force to foreign migrant workers in the Philippines subject to limitations provided by law. Migrant workers in the Philippines are not allowed to take part in the political process of the country. There are also certain limitations imposed by law on the rights of foreign workers in the Philippines with respect to political rights, immigration rights, trade union rights, property rights and economic rights, among others.

Section 7 of Article XII of the 1987 Philippine Constitution<sup>37</sup> prohibits foreigners from owning private land in the Philippines except through hereditary succession. Corporations and associations at least 60% of the capital of which is owned by Filipino citizens are also allowed to own land.<sup>38</sup> Former Filipino citizens are also allowed to own land subject to limitations provided by law. However, foreigners are allowed to own condominium units in the Philippines.

The rationale behind the restriction on foreign ownership of private land in the Philippines is rooted in the nationalist provisions of the Constitution. It is believed that allowing foreigners to own land will further deny land ownership to majority of poor and landless Filipinos.

**Please provide more information on the activities of the Legal Assistant for Migrant Workers Affairs under Section 24 of the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042). In particular, how many Filipino migrant workers have benefited from legal assistance (para.83 of the report)? Please provide more information on when the Legal Assistance Fund was established and how it has been used in practice (pars. 85 and 86). How many Filipino migrant workers have received disbursements from the Fund and for what legal services in which countries?**

**Answer.** The Office of the Legal Assistant for Migrant Workers Affairs (OLAMWA) under the Department of Foreign Affairs was created by virtue of RA 8042 Sec. 24 which states that OLAMWA shall be primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers as well as overseas Filipinos in distress.

Since 2003, OUMWA has attended to 68,535 assistance- to- nationals cases and 5,000 legal assistance cases for OFWs in distress.<sup>39</sup>

**From OLAMWA to OUMWA.** The Department of Foreign Affairs transformed OLAMWA into OUMWA to broaden its mandate to cover not only legal assistance but all other concerns on the protection and promotion of the rights of migrant workers and overseas Filipinos. The OUMWA has “since expanded to cover almost anything<sup>40</sup>”

**Legal Assistance Fund (LAF) and Assistance to Nationals (ATN) Funds.** OUMWA takes charge of the LAF and the ATN Funds. Currently, the annual budget for LAF is P15 million

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<sup>37</sup> “SEC. 7. Save in cases of hereditary successions, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.”

<sup>38</sup> Section 2, Par. 1, Art. XII, 1987 Constitution

<sup>39</sup>DFA Press Release. October 2, 2008. <http://dfa.gov.ph/news/pr/pr2008/oct/pr573.htm>

<sup>40</sup>From presentation of DFA Undersecretary Jose Brillantes in the CMA-FES Forum on Onsite Protection for Migrant Filipinos, August 31, 2004, UP Asian Centre

while that of the ATN is P45 million<sup>41</sup>. There is no set allocation per post of these funds. They are on a per need basis with the LAF subject to LAF Guidelines.

**OUMWA Personnel Complement:** OUMWA has 50 personnel in the DFA in Manila. They are clustered by regions, namely Asia and the Pacific, Middle East and Africa, Americas and Europe. Daily, OUMWA receives and follows up on 200 cases of distressed migrants. This includes some 50 walk-ins while the rest are cases on file from DFA regional and overseas posts<sup>42</sup>. Overseas, OUMWA has 85 personnel complement.<sup>43</sup> Last year, in its report to Congress for the period January to June 2008, DFA reported some 28,757 cases of distressed migrants from various posts overseas. In terms of breakdown, there were some 4,777 in detention for various offences, 15,827 were attended to for repatriation and some 8,158 were mostly runaways and in distress.<sup>44</sup>

OUMWA Manila's main task is to facilitate communications and coordinate most effectively, efficiently and promptly with the posts on cases of distressed migrants and overseas Filipinos since almost all cases involve on-site intervention. Field work and direct intervention on the cases are done by personnel in the posts –be it consular, labour and welfare cases. Specific to OUMWA is the availment of the LAF which is subject to approval of the Undersecretary for Migrant Workers Affairs. OUMWA is also mobilised during ATN missions overseas. OUMWA is also expected to maintain its database of all cases on their file categorised per country, by region, indicating the needs and status of each case.

Critical to OUMWA's work is an efficient and effective communications system and database of cases. The staff's attitude, sensitivity to the plight of OFWs and professional work ethics count too.

**Lead Agency with Outdated and Inefficient Means and System of Communication.** OUMWA does not have a website nor an efficient email address (email: [oumwa@dfa.gov.ph](mailto:oumwa@dfa.gov.ph)). Oftentimes, messages sent to OUMWA's email address bounce back. OUMWA does not have its own 24-hour hotline service. Worse, it is very difficult to connect to the OUMWA office, principally because their telephone just keeps on ringing with no one picking it up even during office hours<sup>45</sup>.

**No Shared Government Information System for Migration (SGISM).** RA 8042 Section 20 mandates the establishment of a Shared Government Information System for Migration. An inter-agency committee chaired by the Department of Foreign Affairs and composed of the following agencies: the Commission on Filipinos Overseas (CFO), the Department of Labour and Employment, the Philippine Overseas Employment Administration, the Overseas Workers Welfare Administration, the Department of Tourism, the Department of Justice, the Bureau of Immigration, the National Bureau of Investigation, and the National Statistics Office shall be established to implement a shared government information system for migration. The inter-agency committee shall initially make available to itself the information contained in existing data bases/files. The second phase shall involve networking of computer facilities in order to allow free-flow data exchanges and sharing among concerned agencies.

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<sup>41</sup>In 2005 and 2006, ATN allocations were P69M and P68M respectively. LAF was allocated P17M in 2006. Sectoral Performance Audit Report on The Overseas Workers Welfare Program of the Government. CY 2005-2006. Management Services Report No. 2007-01. Sectoral Performance Audit. Commission on Audit.

<sup>42</sup>Based on Presentation of Atty. Estrella Roman, Special Assistant to Undersecretary for Migrant Workers Affairs. CMA-FES Dr. Alfredo J. Ganapin Advocacy Forum Series 3 on The Philippines: A Global Model on Labor Migration? September 19, 2008. Manila

<sup>43</sup>Sectoral Performance Audit Report on The Overseas Workers Welfare Program of the Government. Commission on Audit CY 2005-2006.

<sup>44</sup>CMA tally of cases from DFA's Report to Congress January-June 2008.

<sup>45</sup>Various NGOs raised these concerns in several forums and meetings with DFA OUMWA.

A Secretariat which shall provide administrative and support services to the inter-agency committee shall be based in the DFA. An initial P10M was allocated for this purpose to start off the process.

To date however, after almost 14 years, the various agencies of government continue to maintain their own respective databases, online and offline. Initial meetings of the inter-agency committee were convened by DFA OUMWA. Initial hardware and software requirements were also put in place but because of prolonged delays, these became outdated and would require installation of a new set of hardware and software again<sup>46</sup>.

#### **Additional Observations:**

**A. Not Pro-active, Slow Follow Up and Monitoring of Cases of Distressed Migrants.** CMA and partner NGOs observe that OUMWA staff is not pro-active in monitoring and following up the cases. We believe there is still a big room for improvement in the conduct of work by the OUMWA. Since their main job is to follow up the post and keep tab of the status of the case, one crucial value added of their work is the pro-active follow up and monitoring of the case. Updating the family and next of kin and NGOs on the status of the case they lodged with OUMWA should also be done pro-actively.

- The Case of Blood Money for Heirs of Deceased OFW Leonardo Lising, Saudi Arabia. 1993-CMA has a case with OUMWA that remains unsolved to date after 16 years. It involves the facilitation of the release of the blood money to the heirs of an OFW who died in a vehicular accident in Saudi Arabia in September 1993. The blood money was made available to the family immediately after the death of the OFW but it would require a court administrative procedure for its release. The family issued a Special Power of Attorney (SPA) to then Philippine Consul General Bahnarim Guinomla<sup>47</sup> in Jeddah to represent the family in the court for this purpose. The case dragged because there was no pro-active action from the post. Worse, the post even made the mistake of switching the case with the case of another OFW. The Lising case has been under the charge of 4 Undersecretaries of OLAMWA and now OUMWA. [see profile of the case of OFW Leonardo Lising]

It is noteworthy to report too that each time a new undersecretary took over, CMA had to provide a new set of documents related to the case. We wonder what happened to the case on file from previous personnel.

- The Case of OFW Rodelio Lanuza, on Death Sentence in Saudi Arabia, 2000. OFW Rodelio Lanuza was sentenced to death by beheading for the death of a Saudi National in 2000. He has been in detention in Dammam Reformatory Center since August 2000. The execution of his sentence is suspended until the minor child of the deceased reaches the age of majority, which is 7 years more from 2009. In the meantime, efforts are exerted to seek the forgiveness of the bereaved family. One of the ways to do it was for the family of the OFW to write a personal letter of appeal on behalf of the OFW. The mother of Lanuza who was based in the US wrote such letter when she was on vacation in Manila. It was coursed through the OUMWA which in turn would course it through the Philippine embassy in Saudi Arabia. Upon verification with the post in Riyadh, the said letter was not received at all. CMA informed the OUMWA about the missing letter. To

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<sup>46</sup>Update on the status of SGISM was provided by OUMWA during CMA's meeting with them on May 30, 2008 at DFA OUMWA.

<sup>47</sup>Consul General Guinomla later became the Philippine Ambassador to Saudi Arabia. Before he assumed his post, CMA made a courtesy call to him while he was assigned in DFA Regional Office in Davao City, Mindanao, Philippines to make a special appeal to prioritize the Lising case when he goes back to Saudi Arabia. He said yes. Again, in December 2004, during the eulogy for an OFW advocate, held in the Philippine embassy in Riyadh, Ambassador Guinomla committed to resolve the case before the expiration of his tour of duty in Saudi Arabia. Again no to avail. He is now posted in Turkey as the Philippine Ambassador.

date, there was no response from OUMWA as to what happened to the letter. Fortunately, CMA had a spare original copy which we furnished the post directly. The post delivered the other copy of the letter. (see case profile of OFW Rodelio Lanuza).

- Three male OFWs detained in a Saudi jail served a jail sentence longer than court sentence. OFWs Camat, Fabregas and Ramos were sentenced to 1.5 years imprisonment. They ended up serving 4 years in detention because there was nobody following up on their release. Their case was discovered by a Saudi national who was visiting the detention center at that time. It was CMA who prompted OUMWA and the post about it. It was only then that proper and urgent attention was given to the case. The three were eventually repatriated under “mysterious circumstance” as they were not listed in the passenger manifest of the airline. (see case profile of the 3 OFWs-Camat, Fabregas and Ramos).

**Weak Coordination, Monitoring and Follow Through with the Post.** Key to effective and responsive delivery of OUMWA on the cases is its close coordination and effective communication with the posts.

In one of the cases of CMA, we sought OUMWA's intervention to advise post to allow an interpreter to accompany an OFW during its court hearing. OUMWA approved the request and directed the post to provide an interpreter on the case. The OFW reported however that no interpreter from the embassy accompanied him to the hearing. CMA relayed the information to OUMWA who again committed to advise the post. The OFW reported again that he was alone in the hearing. CMA again conveyed the message to OUMWA who again confirmed to advise strongly the Post. The OFW reported that on the third and final hearing an interpreter did accompany him. He lamented though that the interpreter could have been present earlier during the more critical stage of the case where in the OFW had to defend himself. CMA relayed the feedback from the OFW and the OUMWA apologised to the OFW. (see case of Dubai OFW Edmund Cena.)

A distressed woman OFW in Dubai was staying in the shelter for one year and a half because she had a case in court in Dubai. She was the complainant and was provided counsel by the Dubai Emirates. She later found out that she was also granted LAF for a counsel. The post though did not inform her about it until she herself found out. Had the OFW known about the LAF earlier on, she would not have stayed longed in the shelter as she could have been repatriated sooner. [see case of OFW Jean Pundar]

**Consistency and Coherence in Policy:** Philippine foreign policy pursues three major objectives, namely: national security, economic diplomacy and promotion of the welfare of overseas Filipinos<sup>48</sup>. The third objective is carried out by the 88 foreign service posts in general and the OUMWA in particular. Furthermore, “...with the country team approach, the dichotomy of services rendered by both DFA and DOLE was removed, with the Ambassador or Consul heading the team in assisting OFWs”<sup>49</sup> Under RA 8042 Section 28 on the Country-Team Approach, “...the ambassador may recommend to the Secretary of the Department of Foreign Affairs the recall of officers, representatives and personnel of the Philippine government posted abroad for acts inimical to the national interest such as, but not limited, to failure to provide necessary services to protect the rights of overseas Filipinos.”

Unfortunately, right in the DFA, this was not observed at all in the case of foreign service personnel being charged of maltreatment by their own OFW domestic workers.

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<sup>48</sup> The Annual Philippine Foreign Policy Review for the Diplomatic Corps. 17 January 2002. <http://www.dfa.gov.ph/archive/fpo2002.htm>

<sup>49</sup>DFA Undersecretary Jose Brillantes in the CMA-FES Forum on Onsite Protection for Migrant Filipinos, August 31, 2004, UP Asian Centre

In the case of OFW Dinia Baliton versus Foreign Service Officer Teresa Paran from the Philippine Permanent Mission in Geneva, the Geneva Labour Court found the respondent guilty of maltreatment of OFW Baliton. When CMA called the attention of OUMWA on the case, OUMWA told CMA that the case is not on their file because there was no complaint submitted to them. However, DFA already moved to have her transferred to another post – first to Sweden and eventually to Manila. This prompted the Geneva Court to issue a warrant for her arrest with validity until 2011. CMA was advised then to lodge the case before the DFA Board of Inquiry and Human Resources Department. To date, no written response was issued by DFA or OUMWA on the case involving FSO Paran. [Refer to case file of OFW Dinia Baliton]

A similar case involved the Philippine Ambassador to the World Trade Organization (WTO) Ambassador Claudio Teehankee. He was also judged guilty of non-payment of wages of his Filipino domestic worker. To date, he has not settled the matter because he has diplomatic immunity. [refer to case of DW employed by Ambassador Teehankee]

### **Recommendations:**

1. Conduct in-depth OFW sensitivity training for all DFA personnel, especially those from OUMWA; invite NGOs in these trainings as resource persons
2. Implement the SGISM; the SGISM Inter-agency Committee chaired by DFA can also serve as the platform for closer and tighter coordination and cooperation between and amongst the agencies of government on migration
3. OUMWA should have its own 24-hour hotline number, webpage (or website), reliable working telephones and staff who answer the telephones; This could serve as the counterpart information and assistance center for the FWRCs as mandated by RA 8042
4. Conduct regular performance audit of personnel
5. Conduct regular case conferences to keep track and monitor pro-actively the status of the cases; may involve again the NGOs especially the ones who have programs to assist distressed migrants
6. Conduct periodic command conference for OUMWA and personnel overseas to standardize and harmonize the policies and manual of operations; this can also enhance the country-team approach
7. Increase the budget allocation for OUMWA and posts overseas

**In relation to the State party's claim that it will only deploy Filipino migrant workers to countries where their rights are protected (para. 89 of the report), please explain how this commitment is implemented in practice.**

**Answer.** It has been noted by the Commission on Audit in its performance evaluation that the provisions of RA 8042 on selective deployment was not strictly observed. “This partly contributed to reported problems encountered by OFWs which included contract violations, long work hours, non-payment of wages, physical, verbal and sexual abuse and growing repatriation cases.”<sup>50</sup>

The Philippines currently imposes a deployment ban on the following countries: Iraq, Afghanistan, Lebanon, Nigeria and Jordan. These countries have been assessed by the posts and the DFA to be risky and unsafe to Filipino migrants. In the case of Jordan, the current ban is for the deployment of domestic workers because of high incidence of abuses against domestic workers.

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<sup>50</sup>The Overseas Workers' Welfare Program of the Government. Management Services Report 2007-01. Sectoral Performance Audit. Commission on Audit. May 2008.

The policy however is unilateral and can only be effective through massive education and information campaign among migrants and travellers alike in order to dissuade them from going to these destinations for purposes of work. Unfortunately, because of unavailability of jobs that can pay decent wages in the country, many continue to be victimized by unscrupulous agencies and individuals and find themselves in these destination countries undocumented and vulnerable to abuses.

The December issuance of Executive Order 247 by the President renders much of the State's commitment to uphold and promote the rights of migrant workers void and rhetorical. The State itself violates the policies with a justification that all of these will only be temporary. But is almost 40 years of labor export policy still temporary? When will the time come when migration will only be a career option for Filipinos? <sup>51</sup>.

Also critical to deployment ban policies is the State Party's close and periodic monitoring of the situation of the place/s declared "unsafe" or "risky" to Filipinos in order not to jeopardise the right to travel of its citizens.

### **Recommendations.**

1. The State Party should undertake careful and serious assessment of the situation of the country in question before imposing a deployment ban policy. Once a ban is justified, mechanism for its effective implementation must be put in place.

2. The State Party should sustain dialogues and negotiations at the bilateral and multilateral forums to advocate for the protection of migrants human rights

## **(b) Part III of the Convention**

### **Article 11**

**Please provide further information on:**

#### **(a) Measures adopted to combat the practice of mail-order brides and their impact (para. 69 of the report)**

**Answer.** In June 1990, the Philippine legislature passed Republic Act No. 6955 declaring illegal the "mail-order-bride" system. With the implementation of this law, paid advertisements in newspapers for foreigners seeking Filipina spouses practically disappeared. With the advent of the internet however, match-making, pornography and cyber-sex involving Filipina women became prevalent up to the present.

Of particular interest is the case of Japan, a top destination of Filipina entertainers and "mail-order-brides". Since the revised Immigration policies took effect March 15, 2005, there has been a significant decline in the number of Filipina entertainers deployed to Japan (70,628 in 2004, 38,533 in 2005, 6,672 in 2006, and 4,592 in 2007). Despite the significant reduction in the number of Filipino entertainers deployed to Japan, the annual foreign exchange remittances from Filipinos in Japan still ranked 7<sup>th</sup> in terms of country source of migrant workers' remittances. This despite the fact that the drastic reduction in the number of deployed OFWs to Japan resulted in Japan dropping out of the top 10 destination countries for 2007.

It has been observed that the reduction in the number of Filipino workers in Japan is being offset by migration through a variant of the "mail-order-bride" system. Relatives of some Filipino

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<sup>51</sup> President Arroyo in her keynote address to the second Global Forum on Migration and Development in Manila, October 29, 2008.

women (former entertainment workers) married to Japanese men invite their young female relatives to go to Japan; the end goal really for most is to work as an entertainer and in order to do this, they marry Japanese men. Aside from relatives, these former entertainers who are married to Japanese men also recruit mostly young Filipino women to marry Japanese men, again with the end goal of working as entertainers. The women end up in exploitative situations and end up as victims of trafficking. Entering Japan through “false” marriages has been used as a channel by traffickers to bring Filipino women to Japan for exploitative work conditions in bars and clubs.<sup>52</sup>

It is significant to note that data from the Commission on Filipinos Overseas (CFO) reveal that Filipino spouses and other partners of Japanese from 2000 to 2004 averaged 5,317 annually. It jumped up to 7,102 per year from 2005-2007.<sup>53</sup>

It should also be noted that, unlike the NGOs, instead of immediately supporting the Japan government’s policy development that was on the drawing board for years before, the government was still caught flat-footed and lobbied with the recruitment agencies for Japan to delay the implementation of the new rules.

**(b) Measures adopted to ensure that women recruited abroad, in particular in Japan, as “entertainers” or “overseas performing artists” do not become involved in forced prostitution (para. 53 ).**

With some 500 trainee nurses and caregivers to start being deployed to Japan summer of 2009 under the Japan-Philippines Economic Partnership Agreement (JPEPA), NGOs are bracing themselves for complaints and cases involving trainees failing to make the grade. They may opt to become undocumented entertainers and/or be forced into prostitution rather than come home after three to four years of working as trainees and nothing to come back to in the Philippines, given the difficult examinations they are required to pass to get license recognized in Japan.

According to a COA audit report, “actions for illegal recruitment activities may not be considered adequate” e.g. surveillance operations decreased from 215 in 2005 to only 78 in 2006 which was way below POEA’s target of 300 yearly. “This provided additional opportunities to unscrupulous recruitment agencies not subjected to surveillance to operate and victimize OFWs.” This arose from the decrease in the number of operatives from 10-12 in previous years to only 3 in 2005 and 2006; insufficient logistics – only one vehicle for entrapment, surveillance and closure of establishments; no clear delineation between POEA and the CFO-Task Force Against Illegal Recruitment and shift to entrapment operations, arrests and delivery of suspected illegal recruiters as the new DOLE thrust. It should be noted that, despite the shift, while 50 were reported entrapped in 2006, only 4 were entrapped in 2005.

DOLE needs to put more resources into PEOS and other anti-illegal recruitment activities in the context of the MoUs forged by POEA with local government units, especially in the case of LGUs with low income levels to reach more potential OFWs who would be vulnerable to unscrupulous recruiters, especially in the provinces.

It is public knowledge that few report suspicious recruitment activities because the worsening employment situation blinds many to the attractive recruitment-talk of these unscrupulous persons. Even among those victimized themselves, many choose to look for

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<sup>52</sup> Batis February 2007

<sup>53</sup> CFO. Number of Filipino Spouses and Other Partners of Foreign Nationals by Major Country 1989-2007 <http://www.cfo.gov.ph/Emigrant8107.pdf>

other job opportunities especially abroad than go through the time- and resource-consuming process of reporting.

The DOLE has supposedly boosted its ongoing drive against illegal recruitment, in cooperation with the National Bureau of Investigation (NBI), the Philippine National Police (PNP), as well as the Local Government Units (LGUs) but in the case of OFW Norma Langan, her family had to pay the NBI to entrap the agency that illegally recruited her sister from Trinidad, Benguet to Jordan<sup>54</sup>.

The President's Executive Order No. 548-A clearly defining and strengthening the role of the Government in the fight against illegal recruitment and guiding POEA's agreements with LGUs against illegal recruitment can be effective only if POEA's support is not limited to information materials alone. In addition, PEOS which has not been institutionalized may be safely assumed not regularly evaluated as the mandatory PDOS.

The COA audit team has found the 33 POLOs unable to sufficiently assist and serve OFWs onsite. To correct, there are not only 1.2 million OFWs but a total of 4.1 million OFWs as of 2007, each of whom deserves government services. 2 million are concentrated in West Asia alone. The posts abroad are also supposed to assist, serve and protect its undocumented or irregular citizens who are estimated to be 900,000. 380,000 are in Asia, 128,000 of whom in Malaysia, particularly Sabah.<sup>55</sup>

#### Article 16

**With regard to the information contained in paragraph 208 of the report that “at the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason of the arrest, *if any*” (emphasis added), please clarify whether migrant workers and members of their families can be arrested without any reason. Please provide data on foreigners in detention in the Philippines. Please clarify whether and how their right to the free assistance of an interpreter is guaranteed in practice.**

**Answer.** There is unfair restriction for foreigners to participate in rally or demonstration against the Philippine government. Detention and deportation are envisioned as possible punishment for such violation.<sup>56</sup>

#### **Recommendation:**

State Party should amend its immigration law to conform with the standards set forth by the MWC.

#### Article 21

**Please explain the measures the State party has taken to prevent the retention of identity documents by the employers/employment agencies of migrant workers.**

**Answer.** Retention or confiscation of the passports of migrants and other identity documents by the employers/ employment agencies is another way for employers and agencies to exercise and assert control over the migrant workers, particularly in terms of mobility. This is a common practice in many Gulf countries. In Saudi Arabia, despite the existence of a Royal decree that prohibits employers hiring skilled/professional migrant workers to confiscate/ retain the latter's

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<sup>54</sup>CMA-FES Third Dr. Alfredo Ganapin Advocacy Forum, A Call to Action: Know Your Rights, No to Illegal Recruitment and Trafficking. September 14, 2007, Baguio City.

<sup>55</sup> Stock Estimate of Overseas Filipinos as of December 2007. CFO Statistics. <http://www.cfo.gov.ph/Stock%202007.pdf>

<sup>56</sup> Online Input from migrant NGOs

passports and other identity documents, still the majority of Saudi employers keep their employees passports.<sup>57</sup>

Last March 1, 2009, the Qatari government announced a new legislation to overhaul the “sponsorship system”. It includes declaring illegal the confiscation of passport by Qatari employers<sup>58</sup>. The move was welcomed by labor sending governments including the Philippines. The POLO said this policy will make it easier for the post to repatriate the workers should the need arises. The law will also address the question of who has the right to keep the passport.<sup>59</sup>

The Philippine government does not exert pro-active lobby with the host government in regard to this issue. It has de facto accepted this reality and would even justify it by arguing that it discourages migrants from running away from their employers notwithstanding if the employer is bad and abusive towards the migrants. This complacent, accepting attitude of the government may be attributed to the seeming lack of confidence by Philippine representatives to negotiate with host governments to enforce their own policies of non-confiscation of passports. But this accepting attitude of Philippine government may also be attributed to their own regard of the practice –whether it violates the rights of individuals or whether they believe otherwise –that it is only for “safekeeping”.

### **Recommendations:**

1. The Philippine government should sustain its lobby with the host government in regard to the passport issue. It should assert in words and in deed that confiscation of passports and other identity documents is illegal and violates the civil rights of the individuals.
2. The prohibition to confiscate passports and other personal identity documents can be incorporated in the standard contract.

### **Article 26**

**Please clarify whether and how migrant workers, including irregular migrant workers, can exercise their right to engage in trade union activities, and explain why such exercise is subject to reciprocity (para.179 of the report). How is this requirement applied in practice? Furthermore, please explain the rationale behind article 272 of Presidential Decree 442 providing that foreign nationals violating article 269 of the same Decree on trade union activities are immediately deported and permanently barred from re-entering the country, and comment on its compatibility with article 26 of the Convention (para. 181 ).**

**Answer.** Article 269 of the Labor Code (LC) of the Philippines states: “ARTICLE 269. *Prohibition against aliens; exceptions.* - All aliens, natural or juridical, as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, That aliens working in the country with valid permits issued by the Department of Labor and Employment, may exercise the right to self-organization and join or assist labor organizations of their own choosing for purposes of collective bargaining: Provided, further, That that said aliens are nationals of a country which grants the same or similar rights to Filipino workers. *(As amended by Section 29, Republic Act No. 6715, March 21, 1989).*”

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<sup>57</sup>Feedback from OFWs in Saudi Arabia. March 2009.

<sup>58</sup> <http://www.arabianbusiness.com/548219-foreign-embassies-welcome-qatar-sponsorship-laws>

<sup>59</sup>Ibid.

In accordance with Art. 269, a foreigner working in the Philippines with a valid work permit and whose country allows Filipinos to join unions can exercise limited labor rights: the right to self-organization and join or assist labor organizations for the purpose of collective bargaining. Irregular foreign workers in the Philippines have no labor rights at all.

Any migrant worker should be subject to the same labour laws that apply to local workers in the host country. Presumably, these domestic laws are in accord with the pertinent core labour standards of the ILO: freedom of association, and the right to self organization and collective bargaining. Thus, a Filipina migrant worker should be able to join the organization she prefers and at the same time exercise through the union the right to collective bargaining. Similarly, foreign workers based in the Philippines should enjoy full trade union rights, without any condition.

POEA also came out with sample contracts which state that engaging in trade union activities is justifiable cause for the termination of employment contracts. POEA promised to come out with a circular to revoke the sample, but until now the circular has not been issued;

Bilateral treaties also do not mention core labor standards, especially trade unionism but a good practice is the Philippine treaty with Bahrain on the exchange of health workers. It includes ethical recruitment standards, especially the right to organize.

Art. 272 of the Labor Code provides penalties for the violation of Title VIII (Strikes and Lockouts and Foreign Involvement in Trade Union Activities) of the Labour Code. A foreigner who engages in prohibited trade union activities could be deported and prosecuted in accordance with law. *(As amended by Section 16, Batas Pambansa Bilang 130 and Section 7, Batas Pambansa Bilang 227).*

The immediate deportation and permanent barring from re-entry of foreign nationals violating Art. 269 is violative of Article 26 of the Convention. Foreigners working in the Philippines without a permit or who are from countries that do not recognize trade union rights of migrant Filipinos in their country should not be deported. They should in fact be accorded trade union rights, even in the absence of a work permit and even if their country does not recognize trade union rights of Filipinos.

### **Recommendation.**

The Philippines, as a member of the ILO and having ratified the core labor conventions, should uphold the right of migrant workers to form and/or join trade unions. This fundamental workers' rights can be included in the standard work contract and bilateral and multilateral agreements for migration purposes.

### **Article 29**

**Please provide information on measures adopted to encourage and facilitate the registration of children born abroad to Filipino migrant workers, in particular women migrant workers returning from abroad with their children, irrespective of whether they are documented or not (paras.265-268 of the report).**

**Answer.** The migration of Filipino women migrant workers to Japan in over three decades has resulted in the emergence of a new generation of Japanese – Filipino children. They are offsprings from the numerous intercultural relationships and marriages that have taken place between Filipina entertainers in Japan and their Japanese customers. Due to unfamiliarity with Japan's Nationality Law, thousands of Japanese – Filipino children lose their right to acquire their father's nationality because they are not registered before being born (for children born in

Japan and whose parents may or may not be married) or within three months after birth (for children whose parents are married but are born outside of Japan).

Due to cultural difference and varying expectations from the relationships or marriages, quite a number do not last more than a few years, at best. This results in the Filipino women and their Japanese – Filipino children ending up being abandoned and the latter deprived of the right to their father's nationality and their father's parental responsibility (especially for Filipino women and their Japanese – Filipino children who returned to the Philippines and were eventually abandoned). For Filipino women who stay on in Japan and who become undocumented because they were unable to acquire the necessary visa for their continued stay in the country either from their Japanese husbands or the acquisition of their Japanese – Filipino children of Japanese nationality, they and their children are deprived of their access to social services such as national health insurance system and livelihood assistance.

In June 4, 2008, the Japan Supreme Court announced a landmark decision which granted Japanese nationality to 10 Japanese – Filipino children residing in Japan. The plaintiffs in the case are children of Filipino mothers and Japanese fathers who were not married at the time of their birth and were recognized by their fathers only after their birth. The Japan Supreme Court decision now paves the way for Japanese – Filipino children who would like to exercise their rightful claim to acquire their father's nationality with the legal basis to do so.<sup>60</sup>

It has been reported that many children of OFWs born in Sabah are not registered with the Philippine embassy that is located in faraway Kuala Lumpur. CSOs have suggested to the DFA that there should be something like a MECO in Sabah to attend to the needs of Filipinos there but this has fallen on deaf ears. Technically, they become stateless children because they are not legally registered in the birth registry for Filipinos and they are overseas where they are also not recognized as nationals.

### Article 33

**Please specify what information on the rights protected by the Convention is provided to migrant workers during the Pre-Departure Orientation Seminar (PDOS). In particular, what information are migrant workers given on the administrative and judicial remedies that are available to them in the event of a violation of their rights, e.g. a list of contact numbers, especially that of embassies or consular offices and non-governmental organizations (para. 299 of the report). Please provide information on the number of migrant workers benefiting from the PDOS and their country of destination.**

**Answer.** The COA audit team observed the PDOS at the OWWA Satellite Office at the POEA in July 10 and July 12 2007 and found that the sessions have participants leaving for the Americas, Europe and Asia and the Pacific with their varied culture and traditions. Even those leaving for Middle East were accommodated. The OWWA Cebu City PDOS, on the other hand, was attended by 101 workers going to 18 different destinations.

Despite the limited time, attendance was not taken seriously either by the participants or the providers. Participants were accepted after the PDOS has long started and some were allowed to leave the training premises for some time. While government agencies like OWWA discussed their programs during the PDOS, they did not give away leaflets for participants to fully understand the mechanics of availment. Up to 106 participants per session is also not conducive to learning. There was also no mechanism to assess or measure what knowledge was learned by the participants.<sup>61</sup> NGOs added that OWWA discusses its programs but not its Omnibus Policy which limits its services only to active members. As a result, OFWs have problems in accessing its services.

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<sup>60</sup> Batis February 2009

<sup>61</sup> COA audit, p. 69-70

Given the PDOS to be as short as 2 hours, not country-specific and participants reaching up to 106, it is impossible for the workers to be oriented and informed about the “on-site realities such as country profile, culture and tradition; common problems encountered by OFWs and coping up mechanisms...”

The 42,108 migrant workers who attended PDOS conducted by the POEA Workers Education Division (WED) from September 2007 to December 2008 is only 4% of the OFW deployment of the period since the average deployment is around 3,000 a day. Most of the rest of the OFWs went to 196 accredited providers nationwide as of July 2007. COA audit reported however that these providers were not submitting reports to OWWA. Their performance is also not regularly evaluated by government. Only 24 providers were monitored/facilities inspected in 2005-2006 but no monitoring reports submitted. This led COA to conclude that “the effectiveness of PDOS in providing the necessary educational information to prepare OFWs for deployment was not being assessed...there was no assurance that OFWs deployed were adequately informed and technically and emotionally ready to handle overseas problems. This condition could have contributed in recurring problems encountered by the OFWs.”<sup>62</sup>

With regards this PDOS given in-house by most recruitment agencies – participants could reach up to 177 in one seating which is not conducive to learning. OFWs comment that it has become highly commercialized – a venue for free advertisements of banks and insurance companies to sell their products and services aimed at their remittances. As a result, it leaves limited if any time to discuss OFWs’ rights. Contrary to being one-day long as required to cover the essentials, it has been reduced to a half-day or 3-hour session. The COA audit reported that OFWs they interviewed at the OWWA halfway home considered 2 hours- to one day-long PDOS gives very limited time “to provide comprehensive education and for the OFWs to absorb the same.”<sup>63</sup> Providers sometimes just provide telephone numbers and e-mail addresses as contacts for OFWs.<sup>64</sup> This was confirmed by accredited NGO trainers trained by OWWA in a series of consultations who mentioned the time is too short, the psychological and mental state of the migrant workers are not there and therefore no matter how beautiful the module and materials, they will not be effective.<sup>65</sup>

Many migrants likewise feedback that PDOS comes late when “OFWs should already have the knowledge and information at hand before they go to the agency so that they are sure of their decision and are prepared for overseas work...PDOS should be 3-5 days...PEOS is still the key solution...”<sup>66</sup>

NGOs complain that since government allowed private recruitment agencies to give PDOS, they send less and less OFWs to accredited NGO providers which discuss employment contracts, correct procedures and OFWs’ rights.<sup>67</sup> They reported that agencies do not discuss the contract, recruitment and employment violations. NGOs analyze that this is because it is in conflict with their interest – why would they inform the OFW for example re Joint Solidary Liability as provided for in RA 8042 when that promotes the responsibility of the recruitment agency to the OFW when he/she encounters problems with his/her foreign employer.

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<sup>62</sup> COA audit p. 69-71

<sup>63</sup> Ibid.

<sup>64</sup> Sana, Dr. Erllyn and Melflor Atienza. Interim Presentation: “Revisiting the Pre-Employment and Pre-Departure Orientation Seminars,” Fourth AJG Advocacy Series 2007

<sup>65</sup> Benilda Tayag, UP College of Social Work and Community Development, Fourth AJG Advocacy Series 2007

<sup>66</sup> Lito Soriano, OFW kn KSA for 6 years now in the recruitment agency LBS e-Recruitment Solutions Corp. Fourth AJG Advocacy Forum Series 2007

<sup>67</sup> Ma.Fe Santiago, PDOS Program Manager, People’s Reform Initiative for Social Mobilization Foundation Inc. (PRISM), Fourth AJG Advocacy Forum Series 2007

Being mandatory and given the more common poor quality, irrelevant PDOS, OFWs tend to regard it as just the prerequisite to secure a PDOS certificate rather than as an important information source for their use and benefit. Returned domestic workers in Tarlac City said for PDOS to be effective, resource persons should be more committed and dedicated and should give examination to test what is learned, whether they are ready for the “battle” abroad because PDOS can be their weapon when leaving the Philippines to work in another country.<sup>68</sup>

During the PDOS, the workers are not substantively advised of their rights under the Migrant Workers Act and not all are provided with brochures/leaflets of their country of destination as confirmed by Ginalyn, a returnee from Taiwan. Unlike her who was provided a brochure on Taiwan by the Commission on Overseas Workers, her co-OFWs in her workplace were not given a brochure and so she served as the information source. A seafarer for 9 years added that PDOS does not give much focus to fundamental, employment and social rights: “In my experience with PDOS...the manning agencies teach us...never speak or go against the captain...(he) is always right... and can send you home from any convenient port.”<sup>69</sup> Illegal recruitment victims in La Union province said they were not informed at POEA regarding illegal recruitment and contract violations. POEA misled them that the minimum wage for household service workers is no longer \$200 because that was still the basis used when they made their claims.<sup>70</sup> A number of OFWs feedbacked that they hoped for more truthful information from PDOS and better methodology.

CMA’s 2007 evaluative study of the PEOS and PDOS that covered 275 respondents also found these seminars, while guided by POEA/OWWA Memo Circulars, vary in topics, duration, cost, depth of coverage, facilitators and...take-home instructional materials; and did not have clear and standardized learning objectives, topics, assessment features and qualifications of trainers, depending on which accredited organization is conducting the seminars. While the study concluded that the PDOS and PEOS are perceived with ambivalence, surveyed respondents and RTD discussants remarked that there is plenty of room to improve the validity and relevance of the seminars by making them country and job specific and the materials should be supplemented by appropriate and adequate explanations to match learning needs.<sup>71</sup>

Only in December 2008 did OWWA come out with a new PDOS module for training and pilot testing. While the content is better, the question is how the government will monitor and ensure the providers follow it. Of all countries, OWWA chose Canada for piloting instead of other countries with numerous migrant rights’ violations when IOM is already giving PDOS under contract with the Canadian embassy to ensure it is of high quality.

As early as 1992 and 1997, Scalabrini Migration Center evaluated PDOS and found that it “appeared competing with OFWs’ pre-departure concerns, forfeiting its purpose of being a pre-orientation while PEOS was identified to be timely and relevant. Previous studies of Kanlungan Center Foundation in 2001 and 2003 identified PDOS and PEOS as particularly not being helpful in teaching them basic information and how to cope with their work abroad.”<sup>72</sup>

## **Recommendations:**

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<sup>68</sup> Samahan ng mga Pilipinong Migrante (SAMAPI) Tarlac City

<sup>69</sup> Roger Cordero, Marine Merchants Organization, MARINO and Labor Education and Research Network (LEARN), Fourth AJG Advocacy Forum Series 2007

<sup>70</sup> Kanlungan

<sup>71</sup> Evaluative study commissioned by CMA with the support of the Friedrich Ebert Stiftung (FES)

<sup>72</sup> Asis MMB (2005). Preparing to Work Abroad: Filipino Migrants’ Experiences Prior to Deployment

1. PDOS should be country specific.
2. Content should be focused on the rights of migrants and access to justice in the host country under their justice, labor and social laws and policies; the role of Philippine embassies, consulates and labor offices, bilateral and multilateral agreements and treaties including socio-cultural norms and practices
3. Provide information on migration issues before, during and upon return to the Philippines. Maximize free komiks/ illustrated materials
4. Strengthen and ensure a standardized rights-based PDOS module for both OWWA and providers. It should include discussion on labor contract, occupational health and safety, reproductive health and rights, values, anti-illegal recruitment, how to file cases, survival kits
5. Give PDOS as early as during recruitment stage to avoid illegal recruitment, excessive placement fees and undocumentation
6. Maximize ex-OFWs in giving PDOS but provide honorarium
7. Disallow recruitment agencies from giving PDOS because they do not discuss recruitment violations. Maximize NGOs to give PDOS but ensure they are not “fly by night” NGOs by screening and monitoring and evaluation
8. Conduct regular Pre-Employment Orientation Seminars (PEOS) in the communities around the country; Encourage and mobilise civic groups and NGOs to conduct PEOS

### (c) Part IV of the Convention

#### Article 41

**Please provide information on the level of participation of Filipino migrant workers living abroad in elections held in the Philippines and on any measures taken by the State party to facilitate such participation in practice (paras.325-330 of the report). Please clarify whether Filipino migrant workers can exercise their right to vote only if they commit themselves to return to and live in the Philippines within the three years following their registration as voters.**

**Answer.** Literally, the national legislation (on overseas voting) is equal to Art. 41 of the MWC because Art. 41(1) of the MWC itself provides that the right of migrant worker to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, shall be in accordance with its (state) legislation. In substance however, the national law providing for the exercise of the right to vote of Filipino migrant workers is below international standards. "Migrant worker" is defined under Article 2(1) of the MWC Convention as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national."

A Filipino immigrant/permanent resident in a foreign country falls within the definition of a migrant worker under the MWC provided that he/she is not one of those excluded under Article 3 of the MWC (ex. with investor's visa).

Under Republic Act No. 9189, Filipino migrant workers can now exercise their right to vote for President, Vice President, Senators and Party-List representatives. However, they cannot vote in national plebiscites and referenda nor can they vote for members of the House of Representatives (lower house of Congress except party list representatives) and for local elective positions.

A Filipino who possesses dual citizenship or who has reacquired Filipino citizenship under Republic Act No. 9225 may exercise the right to vote under R. A. 9189.

Filipino migrant workers who have acquired a permanent resident or immigrant status in another country, and is recognized as such in the host country, is not allowed to register and vote under Section 5(d) of R. A. 9189 unless he/she executes a sworn affidavit stating that he/she shall

resume actual physical and permanent residence in the Philippines not later than three (3) years from the approval of his/her registration as a voter. Violation of this law is penalized with imprisonment for not less than one year, disqualification from voting and stamping of his/her Philippine passport with the phrase “not allowed to vote”.

But the definition of permanent resident or immigrant per satisfactory fulfillment of the requirements imposed by host governments which is clear in the US is not clear in other countries where residency is actually tied to the job e.g. Nigeria, Singapore, HK, UAE. Thus R. A. 9189 can disenfranchise more Filipino migrant workers classified by receiving countries as residents.

The registration turn out during the first implementation of overseas absentee voting was 364,000+, a third of the estimated 900,000 overseas Filipinos realistic target, primarily because of the limitations of the law, in particular the requirements to personally appear in the embassy and, in the case of immigrants and permanent residents abroad, to submit the above affidavit of intent to return. Of the 364,000+ registrants, 64% turned out to vote, mainly from KSA and HK. The low registration *vis a vis* target and the failure to vote of almost 40% of those who registered is due to the above limitations of the law.

While the right of qualified Filipino citizens abroad to absentee voting is guaranteed by the Philippine Constitution and the declared policy of RA 9189 to “ensure(s) equal opportunity to all qualified citizens of the Philippines abroad in the exercise of this fundamental right”, significant segments of W Filipino migrant workers (some 3.19 M Filipino immigrants or permanent residents abroad majority of whom may be found in the USA) were disenfranchised in 2004 elections – the principal reason for the low turn-out of registrants.

Section 5(d) of R. A. 9189 is an anachronism to the declared policy of the law to enfranchise all qualified Filipino citizens abroad. Section 5(d) of R. A. 9189 also disqualifies Filipino migrants who have pending applications for citizenship in another country from voting. This should not be a disqualifying ground because it is a mere declaration of intention until approved. It is also anachronistic to the right of Filipinos with dual citizenship including those who reacquired Filipino citizenship under RA 9225. The latter are allowed to vote while abovementioned immigrants and permanent residents who remain to be Filipino citizens are deprived by mere reason of such application.

Migrant workers are also required to comply with the residency requirement within the Philippines as required by all elective positions. This effectively disqualifies them from running for and being elected, except for party-list positions. Those who have acquired a permanent residence or immigrant status in a foreign country are specifically disqualified from running for a local elective post in the Philippines.

Despite the increased registration to 500,000+ in 2007, only 16% turned out during the elections. In addition to the abovementioned problems, there were implementation weaknesses. The expansion of registration via POEA and the airport and the expansion of voting via the postal system without sufficient information campaign disenfranchised both new and old registrants. Government, both inside and outside the country, was also less active in implementing OAV particularly in terms not only of information dissemination but also of reaching out to Filipino organizations and communities to actively participate compared with 2004 elections.

Migrant workers are also required to comply with the residency requirement within the Philippines as required by all elective positions. This effectively disqualifies them from running for and being elected. Those who have acquired a permanent residence or immigrant status in a foreign country are specifically disqualified from running for a local elective post in the Philippines.

CMA, NGO partners and Filipino migrants, together with the executive agencies of government (DFA and COMELEC) with support from other members of Congress join hands in advocating for the repeal of the discriminatory provisions against Filipino immigrants and permanent residents. We also join hands in advocating Congress to give the option of voting in person or voting by mail to the migrant voters. For widest enfranchisement of overseas voters, there is strong support for full automation of the voting exercise provided it will not compromise the security and sanctity of the voting exercise.

#### **Recommendations:**

1. State party should the repeal residency requirement in Sec 5, RA 9189
2. Though logistically, it is difficult to include election of local officials by absentee voters, the State party should exert effort to do something about it (OFW having a voice in local government policy)
3. Study/explore other other modes of registration to voting of OAV to make it more accessible to voters (e.g. automation)

#### **Article 46**

**Please indicate whether Filipino migrant workers enjoy exemption from import duties and taxes in respect of their personal and household effects upon their final return.**

**Answer.** Section 105 of the Tariff and Customs Code of the Philippines, as amended by Executive Order no. 206, provides duty and tax free privileges to returning residents, overseas Filipino workers and former Filipinos. As amended by Executive Order No. 206, Sec. 105, it is not at par par to the Convention Article 46 in terms of amount and duration restrictions. It is outdated. It is also loosely implemented because it is subjective – it leaves the determination of duration and whether it is of commercial quality to the customs officer and this is a source of corruption.

#### **Recommendation**

State party should amend the law to ensure compliance with the standard set forth by Article 46 of the MWC.

#### **Article 47**

**Please provide information on any measures adopted to facilitate transfers of migrant workers' earnings and savings to the Philippines, including any agreement to reduce the cost of such transactions for migrant workers (paras.296-298 of the report). Please clarify whether article 22 of the Labour Code in relation to Executive Order No. 857 requires that Filipino migrant workers remit 50-70 per cent of their earnings in foreign currency to their families in the Philippines. Are any taxes levied on incoming remittances?**

**Answer.** There are no taxes on incoming remittances but Art. 22 of the Labor Code makes it mandatory for migrant workers to remit a portion of their earnings in foreign currency to their families. Sec 2 of the IRR of the Labor Code makes it mandatory to remit their earnings through the banking system.

However, in the 1980s, OFWs themselves campaigned hard against the implementation of the mandatory remittance provision. They argued that while they were cognizant of their duty to provide for their families, they consider it their right to decide how their hard-earned pay should be spent. This led to the 1984 EO 935 that repealed the penalty provision. Thus, there is no

enforcement mechanism to ensure compliance by all companies and MWs.that aims to achieve a balance between the rights of workers and of their families.<sup>73</sup>

### **Recommendations.**

1. Address the needs of abandoned families who are entitled to OFW's support, including counseling/mediation for families to prevent/minimize social disintegration but there should be no mandatory remittance.
2. State party should regulate bank income on bank charges.
3. State party should ensure lower cost of remittance by lowering either the fees and/or the taxes. The best is no or low charges like other countries because these deduct from the OFWs' remittance

## **(d) Part VI of the Convention**

### **Article 64**

**Please indicate whether further bilateral agreements and memoranda of understanding are under negotiation with countries and regions hosting substantial numbers of Filipino migrant workers and provide information on the content of such agreements, particularly regarding the protection of migrant rights (paras.263 and 338 of the report).**

**Answer.** Further bilateral negotiations are ongoing to forge bilateral and social security agreements. In the final stage of negotiations is the social security agreement with Israel. Ongoing is negotiations with Greece for social security agreement. These two negotiationbilaterals are meant to make social security portable for migrant Filipinos. One observation though, migrant Filipinos themselves are not being consulted on the matter. In the case of the social security agreement with Korea, the migrants themselves opposed the Social Security agreement with Korea because they say it will terminate the immediate granting of lump-sum refund benefits covering the period of sojourn of a migrant worker in Korea. Moreover, the migrants asserted that they were not consulted at all in this regard.. [seeSee statement of Filipinos in Korea opposing the Pension Scheme]

### **Recommendations:**

1. State party and NGOs should conduct a review of past and current bilateral labor and social security agreements including MOAs and MOUs to assess whether they are consistent with the intent to promote and protect the rights of migrant workers and their families at all stages of the migration cycle.
2. State Party should sustain efforts to negotiate for bilateral agreements on migrants rights with emphasis on the full human development of migrant workers and their families
3. State party must conduct adequate consultations with the migrant constituencies

**Please provide information on the regional efforts to promote sound, equitable and humane migration conditions initiated, pursued and supported by the State party.**

**Answer.** In the ASEAN, last September 2008, the Asean Committee on Migrant Workers (ACWC) finally met for the first time. The ACWC was formed to monitor compliance of the 10 ASEAN countries to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (refer to here as Declaration) which was adopted by the ASEAN heads of States during their Summit in Cebu City. Last March 26-27 March 2009, the ACWC met again in a workshop in Manila to agree on the scope and coverage of migrants rights as stipulated in

<sup>73</sup> Atty. Henry Rojas, CMA Legal Counsel, during the 4<sup>th</sup> AJG Advocacy Series 2006 entitled Family Issues surrounding Abandonment and Migration held Dec. 15, 2006 at the University Hotel, UP Diliman, Quezon City

the Declaration. Another positive development is the involvement of National Human Rights Institutions in the ASEAN countries in the crafting of programmes for migrant workers rights protection. At the national level, the DOLE through the POEA, has initiated consultations with civil society organizations on the content of the Declaration and related documents such as the ASEAN Socio Cultural Blueprint that contains items in relation to migrant workers issues. During a consultation meeting between CMA and POEA<sup>74</sup>, the former stressed the importance for the Philippines to take the leadership in the ACWC for a collective rights-based response of ASEAN to migrants rights issues. The matter of crackdowns by Malaysian government against undocumented migrants and the ASEAN response to the global crisis vis a vis migrants rights was also brought to the attention of the POEA. The POEA and DOLE welcome the participation of NGOs in the ASEAN platform.

The “Colombo Process” is another platform of migrant- sending and receiving governments in Southeast and South Asia as well as in the Gulf region. It started as a process exclusively for governments. There was a breakthrough however for CSO participation during its meeting in January 2008 in Abu Dhabi. The meeting was followed by a Gulf Forum on Temporary Migration where CSOs were invited to participate. CMA under the auspices of MFA participated in the meeting. It was one example of productive collaboration between the Philippine government agencies in attendance (primarily DOLE) and CSO (CMA in this case). Come April 2-3, a follow up meeting of the Colombo Process will take place in Sri Lanka. Again, CSOs are invited to participate. CMA and a few other members of the MFA from South Asia are also invited.

On the other hand, CSOs are gravely concerned on the inclusion of GATS Mode 4 arrangements in bilateral talks on Free Trade and Economic Partnership Agreements that commodify migrant workers and are put on the same “basket” as the other goods that are for export and trade. This is exemplified by the provisions in Chapter 9 of the JPEPA. Currently, talks are ongoing at the national level on the ASEAN-EC Free Trade Agreement. civil society organizations who have been engaging the World Trade Organisations only. Trade unions and CSOs know too well that trade agreements are usually not agreements between equals and partners. Losers are always the undedeveloped and developing countries.

### **Recommendations.**

1. State party should observe faithfully the public disclosure policy in any regional/ bilateral and/or multilateral talks and processes
2. State party should conduct adequate consultation with CSOs, NGOs and OFWs on matters that impact on them

### **Article 65**

**Please provide information on the impact of the Migrant Advisory and Information Network (MAIN). What services does it currently provide? In which countries are Migrant Advisory and Information centres currently located? (para.69 of the report)**

**Answer.** MAIN is not for overseas. It is meant for local government units around the country.

**Please indicate what measures have been taken to enable consular services to respond more quickly and effectively to the protection needs of Filipino migrant workers and members of their families, and, in particular, to provide assistance to those suffering from the hands of abusive employers and victims of trafficking. What assistance do migrant workers receive to file complaints? Please also specify what assistance is offered to Filipino migrant workers who are the victims of a system of “sponsorship” designed to give the sponsor control over them for the duration of their stay in the State of employment, and sometimes even to prevent them from returning to the Philippines. Please specify how migrant workers and members of their families have benefited from the services provided by the**

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<sup>74</sup>CMA-POEA consultation on the Declaration, March 25, 2009 at CMA office.

**Migrant Workers and Other Overseas Filipinos Resource Centers and report on their impact (para.350 of the report). How many of these Resource Centres have been open and in which countries? What are the main challenges/obstacles to their effective functioning?**

**Please indicate what measures have been taken to enable consular services to respond more quickly and effectively to the protection needs of Filipino migrant workers and members of their families, and, in particular, to provide assistance to those suffering from the hands of abusive employers and victims of trafficking. What assistance do migrant workers receive to file complaints? Please also specify what assistance is offered to Filipino migrant workers who are the victims of a system of “sponsorship” designed to give the sponsor control over them for the duration of their stay in the State of employment, and sometimes even to prevent them from returning to the Philippines. Please specify how migrant workers and members of their families have benefited from the services provided by the Migrant Workers and Other Overseas Filipinos Resource Centers and report on their impact (para.350 of the report). How many of these Resource Centres have been open and in which countries? What are the main challenges/obstacles to their effective functioning?**

**Answer. Policy Commitment to Promote and Uphold the Dignity of Filipinos overseas and OFWs.** RA 8042 Sec 2a affirms the duty of the State to uphold, at all times, the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular<sup>75</sup>. It shall shall provide adequate and timely social, economic and legal services to Filipino migrant workers<sup>76</sup>.The protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino citizen abroad, in general, shall be the highest priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service Posts.<sup>77</sup>

**Overseas Posts and Personnel.** The country's 88<sup>78</sup> embassies, consulates and other Philippine missions, 3 Offices of Manila Economic and Cultural Office in Taiwan, 37 Philippine Overseas Labor Offices (POLOs)<sup>79</sup> and 20 Filipino Workers Resource Centers (FWRCs)<sup>80</sup> are the primary institutional mechanisms overseas to carry out these policies. In terms of personnel complement overseas, OWWA (Overseas Workers Welfare Administration) has 39, DOLE-POLO (Department of Labor and Employment- Philippine Overseas Labor Office) has 230 and DFA OUMWA has 85<sup>81</sup>. For DFA, as of February 2009, total number of DFA personnel deployed in foreign service posts was 1,169 including those from the OUMWA<sup>82</sup>. [see Annex of List of POLOS, FWRCs, Embassies and Consulates]

**Mandate of Overseas Posts.** They attend to the welfare and consular needs of overseas Filipinos and the OFWs. They receive the complaints, facilitate, intervene, and represent overseas Filipinos in distress in the resolution of their cases. On top of these tasks, these same agencies, agencies are also deputized by the Commission on Elections to oversee the conduct of

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<sup>75</sup>RA 8042 Section 2a.

<sup>76</sup>Ibid. Section 2b.

<sup>77</sup>Ibid. Section 27.

<sup>78</sup>Referenced from DFA Report to Congress January-June 2008. DFA recently opened 6 additional posts in Macau, Oslo, Barcelona, Chong Qing, Damascus and Frankfurt. (see newspaper report on OAV registration updates)

<sup>79</sup>11 in Asia (37%); 14 in Middle East (49%), 12 in Europe (10%) and Americas (4%) combined

<sup>80</sup>Mandated by RA 8042 in places where there are more than 20,000 Filipino migrants.

<sup>81</sup>Sectoral Performance Audit Report on The Overseas Workers Welfare Program of the Government. CY 2005-2006. Management Services Report No. 2007-01. Sectoral Performance Audit. Commission on Audit. Page 27.

<sup>82</sup>Based on CMA interview with a DFA administrative personnel. March 12, 2009.

OAV. This additional task, which happens every three years during the holding of national elections, does not have its particular personnel complement.

### **Issues and Concerns.**

**Government's Labor export policy emasculates its own protection policy and mechanism.** The government's labor export policy<sup>83</sup> as a response to persistent high unemployment problem, results to mass migration of Filipinos. Every year, the government targets to send a million OFWs. Since 2006, the actual deployment has been more than a million OFWs. However, the fast rapid rate of outmigration far outpaces the capacity of the State to respond to the needs of OFWs who are currently spread out in 193<sup>84</sup> countries and destinations around the globe.

In the November 2008 concluding observations of UN ESCR on the performance of government to protect OFWs, the Committee noted that OFWs “continue to face discriminatory treatment and abuse in many countries of destination. This is especially true in the case of women migrant workers and undocumented migrants. It was the Committee's recommendation that the Philippine State Party implement effective policies to protect OFWs, inter alia by: (a) OUMWA; (b) forging bilateral agreements and © consular and legal assistance.<sup>85</sup>

**Limited Number of Representative Offices.** Due to fund limitations, coupled sometimes with restrictions from host governments or a matter of diplomatic reciprocity, the Philippine government is unable to put up additional missions where they are needed. A good number of Philippine missions cover more than just one jurisdiction. The Philippine embassy in Riyadh, Saudi Arabia which takes care of some 750,000 Filipinos in Riyadh and Al Khobar, also takes care of Yemen where we also have a significant number of Filipinos. The embassy in Athens includes Cyprus in the area of jurisdiction. Cyprus is in the top ten countries that host Filipino domestic workers. In the case of the estimated 6,000 to 8,000 Filipinos in Iraq, the Philippine embassy to Baghdad was moved to Amman, Jordan following the troops pull out in 2004.

**Acute Lack of Personnel Overseas.** Efficient, prompt and adequate delivery of quality on-site service to OFWs, particularly to those in distress, overseas is severely hampered by the acute lack of embassy personnel. In 2006, there was only one ratio of a POLO/OWWA staff for every 5,712 OFWs in one location, but it was worst in some destination countries where the ratio of POLO/OWWA staff was one for every personnel to OFW ranges 1:5,712 to 1:100,000 OFWs. In terms of welfare cases, the number attended by each POLO/OWWA. Conversely, the ratio of POLO/OWWA personnel ranged from a low of to welfare cases is 1:84 to 1: to a high of 6,524<sup>86</sup> The lack absence of a standard ratio on the number of POLO-OWWA personnel to per OFWs certainly affects the quality of service to the OFW delivery.

**Wanted Pro-active, Sensitive, Competent and Able Personnel onsite:** DOLE POLO, OWWA and DFA require their personnel who are about to be deployed overseas to attend PDOS to equip and prepare them for the tasks overseas. Still, many OFWs, especially those who encountered

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<sup>83</sup>The long-term goal of the Philippines is to bring back our overseas worker to an industrialized Philippines where employment opportunities abound. On a short-term basis, the Philippines is working towards effective delivery of consular services to the increasing number of Filipino nationals living and working abroad. <http://www.dfa.gov.ph/archive/fpo2002.htm>. The Annual Philippine Foreign Policy Review for the Diplomatic Corps. 17 January 2002

<sup>84</sup>Stock Estimate of Overseas Filipinos as of Dec. 2007. CFO Statistics. <http://www.cfo.gov.ph/Stock%202007.pdf>

<sup>85</sup>Item 21. Concluding Observations. UN Committee on Economic, Social and Cultural Rights. 41<sup>st</sup> Session. November 2008. Geneva.

<sup>86</sup>Sectoral Performance Audit Report on The Overseas Workers Welfare Program of the Government. CY 2005-2006. Management Services Report No. 2007-01. Sectoral Performance Audit. Commission on Audit. Page 83.

problems on site, expressed disappointment and frustration over the quality of service they received from Philippine Embassy staff. The migrants claim that the people at the post are arrogant and are to blame for some of their misfortunes.<sup>87</sup> In order to meet its objectives, the PDOS for Philippine embassy staff needs to be reviewed and restructured in a process that should be continued, improved in terms of content and duration and could involve the participation of NGOs. To date, many OFWs, especially those who became distressed, expressed disappointment and frustration with personnel overseas. The migrants claimed the people at the post were arrogant and their attitude was to blame the workers for their misfortunes.<sup>88</sup>

Apart from complaints on the insensitivity and high handed manner of Philippine embassy staff, there were also concerns raised on their level of competence. On some occasions, migrants felt that the personnel at the posts were not aware of the applicable laws and procedures in the host countries. This results to their migrants' disenfranchisement, failure to access remedies that would have been otherwise available to them, or to utilize and simply defaulting on the rights of migrants to redress mechanisms in the host country or destination.

Some OFWs who are victims of "sponsorship system"<sup>89</sup> do not receive sufficient assistance. With almost 50% of annual total deployment to the Gulf countries where sponsorship system as well as absconding law is operative, the Philippine government is very remiss in not taking this up with the Gulf governments. This sponsorship system gives rise to a very oppressive situation specifically for women migrant domestic workers where they are forced to forego wages/benefits, suffer violations (long working hours, no day off, no private space, unpaid overtime, etc.). Embassies in the Gulf where sponsorship prevails are helpless. A domestic worker molested or even impregnated by her employer or one who runs away to the post still has to depend on her employer for the exit visa because of the sponsorship/ absconding laws and therefore the greater urgency to negotiate this. When an OFW in distress and whose situation is hopeless contact them, their common, immediate advice is to run away, take a taxi and go to the embassy so they can help her. This puts the OFW at greater risk and vulnerability. In many occasions, repatriation is possible only with the consent of/exit visa from the employer.

The sponsorship system and the Absconding Law also result in detainees who are for release who continue to languish in jails and many runaways to languish in the FWRCs because they have to wait for their exit visas.

**Verification System by POLO and monitoring of host country's laws and policies.** Instances are mentioned when POLOs default on their job to verify thoroughly the prospective employers/ foreign agencies of OFWs. This was the case of Al Nassbah in Saudi Arabia, which led to the miserable plight of OFWs they have recruited. [See annex documents of Al Nassbah]

Poor monitoring of host government's labor and social laws may also curtail the labor and human rights of OFWs. In Taiwan, CMA partner organization Hope Workers Center, called the attention of POEA<sup>90</sup> on the outdated provisions in the Philippine Standard contract for workers in Taiwan where the provisions are far inferior than what is provided for by Taiwan laws. The Philippine Standard Contract still says that getting pregnant is a ground for termination when the Taiwan Gender Equality Law says otherwise.

**Harmonizing the Standard Contracts:** POEA rules that all migrants processed and deployed abide by the POEA prescribed standard work contracts. However, some countries also rule that their own standard work contracts apply to migrants entering their countries. This is the case for

<sup>87</sup>Sharing by OFWs in distress during the February national consultation on the Alternative report.

<sup>88</sup>Sharing by OFWs in distress during the February national consultation on the Alternative report.

<sup>89</sup> Designed to give the sponsor control over them for the duration of their stay in the State of employment and sometimes even to prevent them from returning to the Philippines

<sup>90</sup>Hope Workers Center Meeting with POEA in Manila

migrants in Jordan and Singapore. In the case of Lebanon, the Philippines is still in the process of negotiations. It is imperative that the work contracts are followed hence the need for periodic monitoring of employers onsite by POLOs. It is also incumbent on the Philippines to persevere in bilateral negotiations in this regard or else, it should not deploy workers in these countries. Also critical for the protection of the rights of OFWs is the on-site periodic monitoring of compliance by employers to contracts.

**Gains and Gaps in Bilateral Negotiations:** Credit goes to the Philippine government for securing bilateral, albeit informal, arrangements with several countries in the Gulf for the custody of workers in distress. This is the case in the UAE, Saudi Arabia, Jordan, and Lebanon, Kuwait. There remains however major gaps in terms of forging formal arrangements and agreements that will institutionalise protection and promotion of the rights of migrant workers in many receiving countries. It is a given the receiving countries may oppose and resist such agreements. However, it is the observation of CMA and other groups in the Philippines that a major problem lies on the attitude of Philippine negotiators themselves.

**Mendicant Attitude in Negotiations.** “We are not on equal footing with them.” “We are the ones sending the migrants...” These lines are almost the standard reply, albeit “un-official and informal”, to CMA and other Philippine-based NGOs when we ask our government officials on the status of bilateral negotiations to improve the situation of our migrant workers onsite. This was the case of the Japan-Philippine Economic Partnership Agreement (JPEPA). CMA and other migrant rights groups join the multisectoral groups in opposing the ratification of JPEPA, particularly on Chapter 9, because the terms of reference are lopsided and not to the interests of the Filipino people and migrant workers. In the same vein, when the Hongkong government proposed wage cuts to foreign domestic workers during the Asian financial crisis, then DFA Secretary Domingo Siazon was quoted saying it (the wage cut) is better than coming back home where they (OFWs) will be jobless. Incidentally, it was also Domingo Siazon, now Ambassador to Japan, who was quite aggressive in the lobby to the Philippines for the ratification of JPEPA.

In negotiations with receiving governments, particularly in the Gulf, Philippine officials seem to lack the confidence to negotiate major agreements for the protection of women domestic workers because they say the other party threatens to pull out all Filipino migrants in which case it will be a bigger headache for the Philippines if the migrants come back to the Philippines in droves and become jobless. We even heard arguments from government that we cannot afford a hardhard line position because our oil supply might be cut off!

**Philippine officials without moral highhigh ground vis a vis other Governments (and Foreign Employers).** Another problematic area is the fact that several government officials overseas are also found guilty of maltreating their own Filipino domestic workers. This was the case of an FSO in the Philippine Permanent Mission in Geneva, the Philippine Ambassador to the World Trade Organization, the Consul in the US and another UN representative to cite recent cases. In the Geneva case, the Geneva Labor courts judged them guilty of non-payment of wages wages of their own Filipino migrant domestic workers. To date, both have ignored the order of the court. In both cases, the foreign service personnel involved invoked immunity from civil and criminal prosecution because of their status as diplomats under the Vienna Convention on Diplomatic Relations of 1961. In the case of the FSO Officer, the Department of Foreign Affairs transferred her to another post and ultimately back in Manila Office. [See Cases of Dinia Baliton and Maria]

In another case, the State of New Jersey found the mother-in-law of a Philippine Consul to America guilty of exploiting and abusing their Filipino domestic rworker. The Consul was the official employer of the migrant worker. [see Mandap Case]

In previous years, rights advocates have evoked ILO Convention 97 in demanding fairer treatment for Filipino migrant workers in Hongkong and Israel because their governments are

parties to this Convention. Ironically however, the Philippine government has yet to ratify the same Convention.

**The Filipino Workers Resource Center (FWRC).** The FWRCs are multi-purpose centers of the embassy. They function with much flexibility depending on the needs of the migrants. For the most part though, the FWRCs in the Middle East are used as shelters and half-way/ safe houses for women migrants only who are in distress. To date, there are 20 FWRCs. (see annex for list)

Many runaways in the shelter were urged strongly to find part time jobs to save money to raise their fares for repatriation as well as to remit to their families. This exposes them to dangers because they are already tagged as absconding migrants. So as to remove escape responsibility for the distressed migrants, POLO personnel in the shelter would require the migrants to sign a waiver that they are going to do part time jobs on their own. This is practiced in Bahay Kalinga in Riyadh, Saudi Arabia, Dubai and Abu Dhabi as shared by women migrants who had been there.<sup>91</sup> In the first place, repatriation should be provided by the employer or the agency under the Joint and Solidary Liability provision of the RA 8042. There is also a provision in RA 8042 and affirmed by POEA rules and regulations where OWWA can advance the repatriation ticket in case of delay.

While the main challenge to their effective functioning is the continuing labor export policy of the government, OFWs and NGOs observe that other challenges and obstacles to their effective functioning are the a) lack of human and financial resources from the government particularly sufficient budget allocation from the national government for the administration and supervision of FWRCs. The budget for welfare officers on the other hand are taken from the OWWA funds. FWRCs in countries like Saudi Arabia, UAE, Kuwait and Lebanon especially where there are historically many runaways have very limited space.

Some post officers or personnel lack the correct attitude and/or sensitivity e.g. The Ambassador to Jordan proposed to abolish the FWRC because it is a magnet for domestic workers to run away.<sup>92</sup>

Per RA 8042 Section 19, FWRCs should be set up in places where there are at least 20,000 migrants. It should be open 24-hours, 7 days a week, including weekends and holidays. The DFA in Manila is mandated to have a 24-hour counterpart information and assistance center to ensure a continuous network and coordinative mechanism at the home office.

To date, the DFA does not have a counterpart for FWRC. (see reply to LOI on OUMWA)

### **Recommendations:**

1. Mandatory pre-departure orientation seminar that are rights-based and gender-sensitive for all government personnel to be posted overseas to sensitize and orient them on migrant issues and concerns; Involved NGOs in command conferences and PDOS
2. Periodic performance appraisal of all personnel overseas; Have clear qualification criteria for personnel to be posted overseas
3. Set up more FWRCs and POLOs in the Gulf region with adequate personnel based on the population of migrants to be served; Set up a consular office in Al Khobar
4. Persevere in pursuing bilateral and multilateral agreements on the protection and promotion of migrants rights – in terms of standardizing/ harmonizing the work

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<sup>91</sup> Case study on runaways in Bahay Kalinga and based on actual sharings of women migrants who stayed in the shelters. February 5-6, 2009 national consultation on the alternative report.

<sup>92</sup> Ambassador to Jordan Julius Torres was quoted on television.

- contracts; recognition of work as domestic work; promote pro-actively gender-sensitive policies and practices on migration
5. Specific to the Gulf and other countries that have sponsorship system or “kefala” system – For the State Party to continue its lobby and advocacy work for the review and reform of the sponsorship system that binds the workers to their employers, for better or for worse.
  6. Pro-actively reach out and network with Filipino community organizations onsite
  7. Conduct periodic capacity building, sensitivity and legal education and training for personnel overseas in order to make them more effective, sensitive and responsive to the needs of migrants, especially those who are in distress.
  8. Deploy additional diplomatic and consular personnel to the posts every election period and/or mobilise and deputize Filipino community members for the same purpose; Provide adequate financial and human resources.
  9. The State Party should think of ways to provide temporary shelter to distressed male migrants; This may entail negotiations also with host governments.

### **Article 66**

**In the light of article 66, please indicate what efforts have been undertaken to better regulate recruitment activities within the State party. In particular, please provide information on:**

**Answer.** In sum, government efforts undertaken to regulate recruitment practices were insufficient and ineffective. Rules and regulations were not fully implemented, monitored or assessed thus are ineffective. As a result, illegal recruitment continues to victimize many women and men, especially in the countryside. It has resulted in many OFWs in distress, runaways and undocumented or irregular, mostly women. The government's own Commission on Audit (COA), in its 2005-2006 Sectoral Performance Audit report, concluded that “the government may not be considered effective in regulating overseas recruitment agencies and providing sufficient responsive services to OFWs in view of a number of ineffective policies and lapses in the implementation of its (Overseas Workers' Welfare) Program.”<sup>93</sup> In particular,

a) Joint and Solidary Liability of RA 8042 can only be used to run after a recruitment agency for illegal recruitment, excessive placement fees, contract violations etc. if an OFW has a recruitment agency. But only some 40% of the annual deployment goes through an agency. No placement fee policy is the call of only a few select countries like Canada and UK not the Philippine government which institutionalized payment of placement fee equivalent to one-month salary.

b) POEA and the posts have been found not effectively registering foreign employers nor effectively documenting OFWs.

c) POEA's stricter regulations for administrative offenses and penalties for recruitment violations by agencies and employers have not sufficiently addressed the collection of “exorbitant” placement fees. It has been observed to be passive re this exaction.

d) The “(POEA) Inspection Division was not maintaining a database of recruitment agencies subjected to inspection...(those) not inspected and examined for quite a time could not readily be ascertained and their violations not at once detected” because inspection results e.g. non-compliance with existing rules and regulations were not computerized.<sup>94</sup>

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<sup>93</sup>p. 5 of the COA report (Its Management Services assessed selected programs and services including recruitment regulation implemented by the Department and its attached agencies such as the Philippine Overseas Employment Agency (POEA) and National Labor Relations Commission (NLRC) during CYs 2005 and 2006. It forwarded its report to the Department of Labor and Employment (DOLE) in February 14, 2008 for comments but did not receive any.)

e) “The provisions of RA 8042 and RA 9422 requiring the destination countries (to have existing labor and social laws protecting the rights of migrant workers; be a signatory to multilateral conventions, declarations or resolutions relating to their protection, have concluded a bilateral agreement or arrangement with the Philippine Government for their protection - resulting in OFWs to concentrate in and continue to be deployed to countries that do not have the necessary law and jurisprudence prescribing minimum employment standards) were not strictly enforced.” Government also continues to allow sending OFWs to countries covered by bilateral labor agreements that deal only with deployment not worker protection.<sup>95</sup>

f) POEA’s E-link for OFWs is not yet linked with DOLE<sup>96</sup> and OUMWA and do not cover the objectives of the RA 8042-provided Shared Government Information System on Migration.

g) Government has not assessed the Household Service Workers reform package already on its third year of implementation.

h) The Anti-Illegal Recruitment Branch disclosed that the decreased number of operatives, insufficient logistics (e.g. only one vehicle for entrapment, surveillance and closure of establishments), no clear delineation of functions between the POEA and the CFO Task Force Against Illegal Recruitment and concentration of the Branch on entrapment operations, arrests and delivery of suspected illegal recruiters weakened its surveillance operations.<sup>97</sup>

i) “The existing policy of lifting suspension upon payment of fines ranging from P20,000 to P190,000 in lieu of serving suspension from 2 to 19 months may not be effective in deterring commission of recruitment violations as such amounts could easily be recovered from prospective applicants...manifested in the recorded repeated commission of violations (by almost the same recruitment agencies).<sup>98</sup>

j) “The required P1 million escrow deposit was no longer sufficient to address the claims of OFWs” and that “processing of transactions of several recruitment agencies with expired/suspended/ cancelled licenses or de-listed due to non-compliance with escrow and capitalization requirements were...allowed under the pipeline account scheme.”

k) Major preventive measures to address illegal recruitment, the PDOS and the PEOS since 1983, were not timely and comprehensively assessed, evaluated and improved upon by government and therefore they did not meet the needs of OFWs.

l) POEA does not follow the 90 days proscribed period to promote speedy and timely case disposition.

The 20,172 victims of erring licensed recruitment agencies and 3,592 illegal recruitment victims assisted by POEA’s LAD, the 1,545 illegal recruitment cases involving 2,673 victims received by POEA’s Prosecution Division and 1,123 cases filed to Prosecutors’ Offices for preliminary investigation<sup>99</sup> are evidence of the weaknesses and problems of the government’s anti-illegal recruitment campaign and an indictment of its systematic recruitment network which

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<sup>94</sup> Ibid. p. 47

<sup>95</sup> Ibid. p. 49

<sup>96</sup> Ibid p. 58

<sup>97</sup> COA audit report p. 45

<sup>98</sup> Ibid p. 33

<sup>99</sup> Written replies by the Government of the Philippines concerning the list of issues received by the Committee on the Protection of the Rights of All Migrant Workers... Par. 176 p. 48 Article 66 CMW.C.PHL.Q.1.Add.1 <http://www2.ohchr.org/english/bodies/cmw/cmws10.htm>

government promotes as best practice. More victims are not documented for they do not bother to complain.

Those who do complain often find the legal process too slow, too expensive, and at times corrupted by the influence of money and connections and not providing redress. This is in a situation where they need to recover their placement fees to repay their loan and to find alternative sources of income for their families while pursuing their case.

Government's recruitment regulation has resulted in a million deployed yearly or around 3,000 daily since 2006, with women making up more than half. On the side, it also created the insatiable illegal recruitment industry which involve not only illegal recruiters but also legal ones and some government personnel e.g. at the airports and immigration providing escort service.

Government's Joint and Solidary Liability Policy (JSL) cannot be resorted to by rehires who usually negotiate contract renewal directly with their employer - no longer through an agency. Therefore, JSL can no longer be applied. When the recruiter is the Government Placement Facility of the POEA, JSL can also not be applied because an OFW cannot sue the government. Placement through the government is often thought of as fool-proof and closely monitored. Yet, Rodrigo Zulueta of United OFWs suffered contract substitution under this government facility.<sup>100</sup>

In addition, POEA has made documentation mandatory, this in practice means simply being processed by POEA: to be able to leave the country after renewing contract with employer, the renewed and even the balikbayan OFW is required to go to POEA for processing/ documentation for which he/she pays processing fees as well as membership fee to OWWA in exchange for the Overseas Employment Certificate and Balik Manggagawa benefits (no travel tax). But this "documentation" loses much of its value because of the lack of coordination between POEA and POLO. What's left is the income it generates for POEA or the government.

### **Recommendations:**

1. POEA documentation of rehires should not be limited to plain documentary processing rather it should ensure contract compliance with minimum labor standards.
2. Improve and strengthen POEA and POLO coordination to ensure that the worker is properly documented, his/her contract complies with minimum labor standards and he/she is sufficiently protected onsite. Set up the SGISM.
3. Abolish placement fees. The employer should shoulder this. Amend rules and regulations to enable POEA and strictly and aggressively implement them to seriously deal with agencies charging excessive placement fees.
4. Strictly and regularly monitor/document and ensure immediate correction of failures of all recruitment agencies. Strengthen POEA's capacity to monitor and regulate these agencies and make its personnel transparent and accountable. Ensure they are conscientized regarding migrant rights in their trainings. Reduce the recruitment agencies to those which protect migrant rights and those that POEA can monitor and regulate.
5. Implement the RA 8042 requirements for destination requirements to sufficiently protect OFWs (BLAs or MoUs, etc.).
6. Immediately assess the Household Service Workers Reform Package to ensure it actually improves their wages and benefits and prevents contract violations.

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<sup>100</sup>Open Forum during A Public Forum on the UN Migrant Workers' Convention: The Philippine Compliance, Asian Center, UP Diliman, Quezon City, December 18, 2008

7. Strengthen the Anti-Illegal Recruitment campaign and mechanisms of government. Track as well departing and arriving Filipinos with visit or tourist or no visas to monitor and document those who do not return as potential undocumented/irregular OFWs. Ensure POEA has the capacity, material and human, to do its job and is transparent and made accountable for its weaknesses and failures.
8. Amend POEA Rules and Regulations to ensure that they do prevent illegal recruitment instead of agencies going around the rules like the one pertaining to suspension and fines. Increase and implement penalties sufficient to make agencies mend their ways or stop operations.
9. Aggressively push the PEOS nationwide down to the barangay level and improve the PDOS to inform the people to be able to avoid illegal recruitment. Provide the LGU mandate for anti-illegal recruitment campaign.
10. Strictly follow the 90 day proscribed case disposition to prevent further recruitment violations.

**Measures adopted to address violations such as contract substitution or exaction of "exorbitant" placement fees charged on prospective migrants;**

Contracts violated usually involve low skilled workers and domestic workers. While they are the usual victims of contract violations (delayed payment, underpayment of salary and other benefits, job description and overtime pay), the Sentosa 27 nurses case shows that high-skilled and professional workers suffer from contract violations as well. The New York State Appellate Division concluded that the nurses signed employment contracts with individual nursing home facilities but found themselves agency nurses when they arrived in the US. Sentosa Services became their employer. Therefore, their contracts were breached and their employment was at-will (They could resign anytime).<sup>101</sup>

Contract violation is common among Filipina caregivers in Israel. Kav La Oved<sup>102</sup> in their 2006 survey covering 100 Filipino caregivers found that "Most workers surveyed (87.8%) received a contract in the Philippines stating their employment terms in Israel but 65.4% did not receive the promised terms in Israel. (They) reported that they signed a contract promising them a salary of \$700-750 per month plus expenses but once in Israel, this dropped by about \$200."<sup>103</sup> The Philippine Embassy in Tel Aviv was given a copy of this study and CMA gave a copy to POEA. However, contract violations go on.

So many Filipinos in distress in the past and up to the present counter POEA's claim that ALL workers deployed overseas are amply protected and their interest, well-being and welfare are promoted. The COA audit report exposed "Focus on the welfare and protection of the OFW" as best practice in theory but not in practice. This and POLO's prequalification of employers and foreign agencies can be good practice if the government does not push so many of its people to go abroad and if it seriously attends to their rights and welfare by allocating enough resources and human personnel to attend to them especially onsite.

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<sup>101</sup>Opinion and Judgment of the Supreme Court of the State of New York Appellate Division Second Judicial Department submitted June 9, 2008 in the matter of Felix Vinluan, et.a., petitioners, v. Robert W. Doyle, etc., et.al., respondents. Please refer to CMA cases in Appendix.

<sup>102</sup> Kav LaOved (Worker's Hotline) is a nonprofit non governmental organization committed to protecting the rights of disadvantaged workers employed in Israel and by Israelis in the Occupied Territories, including Palestinians, migrant workers, subcontracted workers and new immigrants.

<sup>103</sup> Kav La Oved. Collection of job broker's fees from Filipino migrant workers. May 9, 2006  
[http://www.kavlaoved.org.il/media-view\\_eng.asp?id=291](http://www.kavlaoved.org.il/media-view_eng.asp?id=291)

Government has forged bilateral labor agreements and arrangements only with a few countries that mostly deal only with deployment and not worker protection. Without a protective agreement, it is difficult to assert OFWs' rights. The government also continues to deploy OFWs to some countries that do not have the necessary law and jurisprudence prescribing minimum employment standards so no wonder the contract signed in the Philippines is not honored. The COA audit team found that out of the 988,615 and 1,062,567 OFWs deployed in 2005 and 2006 respectively, 16,500 to 99,212 OFWs were deployed to nine countries not covered by a bilateral agreement and where their rights were not protected under their prevailing laws.<sup>104</sup>

Under the Household Service Worker (HSW) Reform Package, the Philippine government's unilateral imposition of the \$400 minimum wage for HSWs and the ban has not raised for those who continue to stay in Lebanon their wages of no more than \$200. (As of 2007, the post in Lebanon estimates some 22,000 OFWs there, mostly HSWs.<sup>105</sup>) There are also agencies that contract women as beauticians for example in Brunei so they are not bound to this \$400 minimum wage reform even if they intended to work as HSWs. Such arrangement puts the Filipina at risk: if her contract states an occupation different from what she actually does, she is actually working irregularly. The reform package is already on its third year but the government has not assessed its implementation and impact.

POEA and the posts have been found not effectively registering foreign employers nor effectively documenting OFWs. This documentation of workers and employers has been exposed by the COA audit as best practice only in theory and not in practice because "coordination between POLOs and POEA is weak." POLOs did not provide POEA with reports on documents (contracts) they verified to guide the latter in processing OFWs for deployment as required by DOLE Order No. 17-02 dated Feb. 1, 2002. On the other hand, POEA did not furnish POLOs reports on OFWs deployed within their jurisdiction. Nor did POLOs maintain an Index Profile of Employers verified required under Joint Circular No. 3-99 dated Sept. 23, 1999. So POLOs could not at once monitor deployed OFWs and verify compliance by foreign principals on the provisions of employment contracts. COA reported that some POLOs claimed it is "virtually impossible to monitor all OFWs covered in all contracts verified and authenticated at posts." It is worse in countries with big OFW population especially when dispersed in a huge geographic area e.g. KSA, Malaysia, etc. COA asserted that "In the absence of complete information on deployment, the POLOs could not effectively monitor and protect the interest and welfare of OFWs. This may have contributed to the increasing number of OFWs running to FWRCs for assistance."<sup>106</sup>

POEA's stricter regulations for administrative offenses and penalties for malpractices by agencies and employers for recruitment violations do not sufficiently respond to the collection of "exorbitant" placement fees. Originally, the employer paid recruitment agencies for the recruitment of OFWs. But POEA Memo Circular 14 s. 1999 on Placement Fee Ceiling institutionalized the payment of recruitment fees to recruitment agencies equivalent to no more than a month's salary. In effect, the recruitment agency is paid by both the employer and the applicant for its facilitation work.

For example, Domingo Legario, an OFW who now works in Australia, complained of exorbitant fees. His recruitment agency, Joblane Manpower, charged each of them (numbering some 100 workers.) P218,000 but its partner in Australia, HR Partnership Sydney, also charged their employer.<sup>107</sup> Only eight recruitment agencies have a thorough-going "No placement fee" policy.

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<sup>104</sup> COA audit report p. 50

<sup>105</sup> CFO statistics 2007 <http://www.cfo.gov.ph/Stock%202007.pdf>

<sup>106</sup> COA audit report p. 57

<sup>107</sup> Complaint e-mailed to CMA: Domingo Legario excessive placement fee case. Please refer to CMA cases in Appendix.

Except for a few countries that impose this “No placement fee” policy like Canada, most recruitment agencies charge placement fees, in many cases at exorbitant rates instead of the equivalent of one month wage or salary allowed by government without issuing official receipts. [see Case of Domingo Legario]

POEA has been observed to be passive re the exaction of “exorbitant” placement fees. POEA said there are few complainants. Kav La Oved's above 2006 survey found that Filipina caregivers paid on the average \$4,000-5,000 placement fee. It rose in the updated 2007-2008 follow up research to an average \$4,250-5,500. Israel law allows only US\$751.16 that should already cover fees paid in the Philippines.<sup>108</sup> (CMA has an ongoing case where the caregiver was told she owes the recruiter \$9,000.) Borrowing for placement fees and fly now pay later schemes have resulted in indentured/slave labor. The above survey found that a caregiver generally has to work around 7 months to finish paying her placement fee and finally be able to remit her wages to her family left in the Philippines. NGOs have not heard of steps taken to combat this. This has resulted in a subculture where OFWs and their families regard excessive placement fees as a necessary evil. In the case of the caregiver who was told by the recruiter to loan the placement fee and issue postdated checks in advance payment from a financing firm that seems to be in cahoots with the recruiter, the husband Tatay Ven Fuentes who is left behind said they agreed since that is the cost they have to pay for his wife to be able to work in Israel anyway she will earn in dollars.<sup>109</sup> The lack of job generation by the government and promotion of overseas work make many OFWs and their families resigned to illegal fees exaction because they think it is worth it to find a job abroad or else suffer unemployment or underemployment and poverty in the Philippines.

On the other hand, there were cases where workers are illegally recruited and charged excessive placement fees as trainees for Japan and are already exploited even while still in the Philippines during the required pre-departure training and did not even make it to Japan at all.<sup>110</sup>

Prior to the 2002 POEA Rules that increased the previous penalty, 75 per cent of the cases resolved involved agencies that charged fees in excess of the allowed rate. Despite the increased penalty from two months license suspension to license cancellation starting 2002, exorbitant placement fees continue to be collected, with 41 recruitment agencies' licenses cancelled on the ground of collection of excessive placement fees [violation of Section 2 (b), Rule I. Part VI of the 2002 POEA Rules and Regulations]. This shows the lack of efficacy of the increased penalty.<sup>111</sup>

COA observed that anti-illegal recruitment actions “may not be considered adequate... surveillance operations conducted decreased from 215 in CY 2005 to only 78 in CY 2006...way below the targeted 300 surveillance operations yearly...” It noted that such decrease provided additional opportunities to for unscrupulous recruitment agencies who were not under surveillance surveilled to operate and victimize OFWs. Although 50 suspected illegal recruiters were nabbed in *flagrante delicto* in 2006, only four were nabbed in 2005.”<sup>112</sup>

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<sup>108</sup>Daniel Safran. Illegal brokerage fees for legal work: 2007-2008 November 23, 2008 [http://www.kavlaoved.org.il/publication\\_eng.asp?pid=93&page=1&id=](http://www.kavlaoved.org.il/publication_eng.asp?pid=93&page=1&id=)

<sup>109</sup> Vivencio Fuentes speaking during CMA's Round Table Discussion on Ethical Conduct and Good Practices of Recruitment Agencies. July 31, 2007

<sup>110</sup> Kanlungan Cases No. 4, Criminal case no. 54-792-04 Please refer to Appendix.

<sup>111</sup> Written replies by the Government of the Philippines concerning the list of issues received by the Committee on the Protection of the Rights of All Migrant Workers... Par. 169 Article 66 CMW.C.PHL.Q.1.Add.1 <http://www2.ohchr.org/english/bodies/cmw/cmws10.htm>

<sup>112</sup> COA audit report. P 45

COA also observed that “the Inspection Division was not maintaining a database of recruitment agencies subjected to inspection...(those) not inspected and examined for quite a time could not readily be ascertained and their violations not at once detected” because inspection results e.g. non-compliance with existing rules and regulations were not computerized.

Government should prevent illegal recruitment and should protect victims and ensure redress. In terms of prevention, the case of 18 OFWs illegally recruited through a job fair in Irosin, Sorsogon<sup>113</sup> illustrates the failure either of the concerned Philippine Employment Service Office<sup>114</sup> or the POEA, the DOLE or the appropriate local government unit” in supervising overseas recruitment done outside an agency’s registered business address.<sup>115</sup> On the other hand, the case of seven fishermen in Taiwan whose illegal recruitment case has still not been resolved 3-4 years after it was reported to the MECO by the Hope Center illustrates gross inefficiency on the part of government agencies. Hope wrote the POEA about this case thrice but their letters did not merit even a single reply.

The two criminal cases against Patricia “Pat” Alonto and Elvira “Beth” Bondoc<sup>116</sup> highlight how slow (from 3-5 years) POEA issues certification regarding whether a person/entity is licensed or authorized to recruit for overseas. This certification would facilitate filing and hearing of the cases. It also illustrates that Alternative Dispute Resolution and/or settlement of the civil case tend to compromise the criminal case against the illegal recruiters. POEA personnel seem to favor settlement over pursuing cases and their annual reports brag of the amounts involved in these settlements without taking note that OFWs tend to settle for much less than wait for the slow administrative process.

“The existing policy of lifting suspension upon payment of fines ranging from P20,000 to P190,000 in lieu of serving suspension from 2 to 19 months may not be effective in deterring commission of recruitment violations as such amounts could easily be recovered from prospective applicants. This is manifested in the recorded repeated commission of violations (by almost the same recruitment agencies). Under this condition, the OFWs were not fully protected.” The report cited Al Hirsch Manpower Services Inc. with 23 pending cases, DMJ Intl Resources Inc with 11 pending cases, etc.<sup>117</sup>

COA also observed that “the required P1 million escrow deposit was no longer sufficient to address the claims of OFWs” and that “processing of transactions of several recruitment agencies with expired/suspended/cancelled licenses or de-listed due to non-compliance with escrow and capitalization requirements were...allowed under the pipeline account scheme. Thus, approved claims of...452 OFWs from 49 recruitment agencies approved from January 2006 to June 2007 alone, ranging from P2,501.49 to as much as P5,343,454.33, were unsatisfied due to insufficient escrow deposit balances.” It noted that the pipeline account scheme did not “compel recruitment agencies to uphold existing rules and regulations and may eventually affect the chance of the OFW to be fully compensated from their claims against these agencies...and runs counter to the principle of immediately suspending or canceling licenses of unscrupulous agencies to avoid further exploitation of a great number of OFWs.” It cited “the Beedjade Service Contractors Corp., Centrepoint Interworld Manpower Services, Inc. and VGE International Manpower Services with unsatisfied obligations of P157,500, P73,592 and P367,000, respectively, during

<sup>113</sup> Kanlungan Case No. 6. Criminal Case No. I.S. No. 2006-987 People of the Philippines vs Amy Dopeno, Vangie Escalderon, Isa Talumpa. Please refer to Appendix

<sup>114</sup> a national facilitation service network institutionalized in every province, key city and other strategic areas throughout the country

<sup>115</sup> POEA’s Primer on the June 2002 Revised Rules and Regulations Governing Overseas Employment of Landbased Workers <http://www.poea.gov.ph/rules/primerrules.PDF>

<sup>116</sup> Kanlungan Cases No. 1 and 2, Criminal case no. 99-172451 and no. 99-172452 Please refer to Appendix.

<sup>117</sup> COA audit report. p 33

the period May 24 to August 31, 2006 alone, (who) were among those whose transactions in the pipeline were processed. Considering...that the total claims for the period January 2006 to June 2007 alone from each recruitment agency already ranged from P5,000 to P6,088,500, the escrow deposit to P1,000,000 was no longer sufficient to ensure full recovery of OFWs' claims from the concerned recruitment agencies.”<sup>118</sup>

### **The handling by the Philippine Overseas Employment Agency (POEA) of cases filed by victims of illegal recruitment;**

In general, OFWs and their families assert that both prosecution and initial arrests take a long time and a lot of effort and resources on the part of victimized OFWs that they usually cannot afford. The different agencies involved tend not to facilitate the process because of red tape and are not proactive. Simple issuance of certification by the POEA that a person is not licensed or authorized to recruit for jobs abroad takes 3-5 years!

The Sentosa 27 nurses (and one physical therapist) filed administrative cases against the Sentosa Recruitment Agency for violations of recruitment rules and regulations before the POEA, labor claims against the petitioning employers before the NLRC and illegal recruitment before the DoJ in April 2006. While POEA suspended the Sentosa agency May 24, 2006, POEA lifted this upon intercession by a politician two weeks after on the basis that there are more than two thousand job orders pending with the agency “whose chance to get their US immigrant visas may be jeopardized”. While the Supreme Court of the State of New York Appellate Division issued a Writ of Prohibition Against Prosecution of Nurses, Lawyer last June 2008 (on the ground that prosecuting the nurses for exercising their right to resign and their lawyer for giving them legal advice violates their constitutional rights), POEA, NLRC and DoJ (for trafficking in persons) dismissed the cases the nurses filed. Sentosa committed misrepresentation in the recruitment process. The POEA should have made the same findings as they received the same evidentiary documents. In addition, POEA is taking its time to date in acting on three subsequent complaints filed by more nurses newly victimized by Sentosa. Atty. Felix Vinluan said that Case No. 06-11-2379, entitled "San Jose et al. vs. SRA et al., is a pending motion for the issuance of an order of preventive suspension because when the POEA rescinded the order of preventive suspension in the case of the 27 nurses ("Jacinto et al. vs. SRA"), it based its decision on there being no other complainants against SRA. The motion of this second batch (as well as the third and fourth batches) was filed to prove that there are indeed other complainants and that if POEA was true to its own reasoning, it should have no choice but to issue the order of preventive suspension. (The second batch would be entitled Cinco et al. vs SRA et al.) In a media interview, DOLE Secretary Roque said he would wait for these three cases on appeal before he decides.<sup>119</sup>

Out of 745 POEA decisions from January 2005 to May 2007 canceling licenses of 48 agencies, 90% was processed on the average 233 days beyond 90 days proscribed period. 35 other good standing agencies has 3-17 cases pending for as long as 864 days as of May 2007 which allowed these agencies to operate without serving penalties at OFWs' expense<sup>120</sup>.

Those rehires who can no longer avail of JSL and want to file a case against their employer and cannot run after any agency have to pursue their case onsite where the odds are against them. Counsel and litigation are very expensive so how will they survive there while pursuing their case. It is also not automatic that they can avail of counsel under the Legal Assistance Fund (LAF) because such is subject to a screening process. Another issue is whether the country will let them stay and/or work while pursuing their case.

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<sup>118</sup> Ibid. p. 43

<sup>119</sup> Atty. Vinluan e-mailed letter to CMA when the Appellate Division's opinion and judgment came out in the media dated January 20, 2009

<sup>120</sup> COA audit report p. 74

## **The number of successful prosecutions for illegal recruitment**

Successful prosecution of illegal recruitment is measured by illegal recruiters being found guilty and put behind bars, closure of the agency and just compensation for the victims in a speedy manner. In general, OFWs and their families assert that few illegal recruiters are prosecuted and arrested. RTC conviction for illegal recruitment in seven (7) POEA-endorsed cases in 2008 and receipt of 1,545 illegal recruitment cases, of which 1, 123 cases were filed before the Prosecution Offices for preliminary investigation are meagre. It is important to determine what happened to the 1,123 cases filed with the Prosecution Office for preliminary investigation, what happened to the remaining 423 cases that have not yet been filed and how long the process is taking for victims to obtain redress<sup>121</sup>.

The COA audit confirmed questions such as the above with its report that “Out of 745 decisions issued by POEA from January 2005 to May 2007 cancelling licenses of 48 agencies, 670 or 90% were issued only after 233 days on the average, way beyond the prescribed period of 90 days. 35 other agencies considered in good standing have 3 to 17 pending cases for as long as 864 days as of May 31, 2007. The delayed disposition of cases provided an opportunity to recruitment agencies to continue its operation without serving penalties at the expense of OFWs.”<sup>122</sup>

## **The plans for the Supreme Court to designate special courts to hear and decide illegal recruitment cases.**

A major concern is that OFWs do not want to file cases against their abusers for lack of trust in the justice system and overriding concern to find gainful employment. The 70 cleaners who paid excessive fees to and did not get official receipt from the MHHR Manpower Recruitment and Placement Agency Corporation said they would file a case if they will be guaranteed to leave for Qatar first. They said they number around 300 in Qatar.<sup>123</sup> The same applies to caregivers to Israel who pay excessive fees to recruitment agencies in the Philippines or intermediaries in Israel. 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 while some resurrect with a different name.

In the 2004 large scale illegal recruitment case against Ben Lim who raped and prostituted three Filipinas he recruited to work as waitresses in Malaysia (two of whom paid P45,000 each to get out of the job), it took a long time to get him arrested. When he finally got arrested, because one of the women settled and submitted affidavit of desistance to the court, he was allowed bail even if large scale illegal recruitment is a non-bailable offense. The case has dragged at the Pasay RTC since then. It was reported that he has jumped bail.<sup>124</sup>

In La Union, the situation is not different, being the fifth of the country's top ten sending provinces. There are at present 22 recruitment agencies in La Union, more than the other three provinces of Region 1. A total of 116 IR cases were filed in the area from January 2006 to February 2008. Of this number, only 19 cases have been resolved.

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<sup>121</sup> Written replies by the Government of the Philippines concerning the list of issues... Par. 176 p. 48 Article 66 CMW.C.PHL.Q.1.Add.1 <http://www2.ohchr.org/english/bodies/cmw/cmws10.htm>

<sup>122</sup> COA audit report p. 74

<sup>123</sup> Complaint sent to CMA via SMS Dec. 2008

<sup>124</sup> Kanlungan Case No. 9, Criminal case no. 03-2131-CFM Please refer to Appendix

## Article 67

**Please provide information on the number of returning Filipino migrant workers and the measures adopted to facilitate the return of these migrant workers, when they decide to return, to facilitate their durable social and cultural reintegration. What types of reintegration programmes are available to returning migrants? Please clarify whether these services are provided to returning Filipino migrant workers.**

**Answer.** First, there is no central database on the number of returning Filipino migrant workers. No effective measures have been adopted to facilitate their return when they decide to and their durable social and cultural reintegration. The past administrations have not designed or implemented effective reintegration programmes for returning migrants.

Existing programmes of DOLE, OWWA and POEA to facilitate the social and economic reintegration of returning OFWs have reached and assisted only a limited number of beneficiaries compared to those needing support. For example, OWWA's report on its Reintegration Program for 2007 was very meagre, mentioning only its Groceria Project, livelihood training classes and National Reintegration Center for OFWs (NRCO). It was supposed to have assisted 2,262 organizations with 45,607 members but details only on 224 Groceria Projects benefiting 37,866 members of OFW Family Circles worth P41 million (amounting to only P1,082 per member) and 1,868 training classes for 31,824 OFWs here and abroad. The NRCO launched in 2007 on the other hand is only a "gateway of Reintegration Services that guides and connects OFWs to reintegration service providers" which, to date, has not been allocated any budget.

More often than not, returning OFWs who opened their business in the past and at present are burdened with high corporate taxes which are the highest in the region at 35%.

Hope Workers' Center in Taiwan also did not observe any visible or viable reintegration program for returning workers. This has recently come to a head with the return of OFWs due to lay-offs arising from the current recession. When the global economic crisis was felt in early November, it was like an earthquake that no one predicted.

It was only last December 4, 2008 that the President issued Administrative Order 248 that ordered a program "...to help those who might return home from their host countries..."; DOLE and OWWA to lead such a government payback program...the setting up of a Livelihood Support Fund amounting to P250 million to be financed by OWWA and supported by government lending institutions." It should be noted that OWWA is 100% contributions from OFWs meaning that therefore, it is the OFWs themselves who are financing this government's payback program - no government counterpart.

The AO also ordered full government support in helping the returning expatriate FWs find remunerative jobs to include POEA carrying out a marketing blitz to expand the market for these expat FWs when there are ongoing lay offs in countries such as Taiwan, Singapore and US and foreign workers are among the first to be laid off in such cases.

The number of those assisted/repatriated by the DFA is less than a third of those assisted by the DSWD. The government report should have described the services it rendered these trafficked victims to determine if they complied with the law.

Establishment of the Migrant Workers Loan Guarantee Fund as envisaged by section 21 of Republic Act 8042

At the local level, it was noted that the GAD Budget so far seem not to have been used (if they can be) to help in the reintegration of returned migrant women, including trafficked women.

At the national level, the Migrant Workers Loan Guarantee Fund (MWLGF)<sup>125</sup> is supposed to foster the socio-economic development of the OFWs and their families by providing them with development services such as technology transfer, market linkages, business management skills, and provision of project information with high economic return and positive impact to the OFWs; and to provide credit facility to OFWs for their livelihood and enterprise ventures. This Fund however is not maximized in the reintegration of returned migrants and access to it has not been facilitated. The government did not report on availment of this fund. More basic, of course, is how to make OWWA given its Omnibus Policies reintegration-friendly not only to active members but also to previous members who spent their best work years abroad.

### **Recommendations:**

1. POEA documentation of rehires should not be limited to plain documentary processing rather it should ensure contract compliance with minimum labor standards.
2. Improve and strengthen POEA and POLO coordination to ensure that the worker is properly documented, his/her contract complies with minimum labor standards and he/she is sufficiently protected onsite.
3. Abolish placement fees. The employer should shoulder this. Amend rules and regulations to enable POEA and strictly and aggressively implement them to seriously deal with agencies charging excessive placement fees.
4. Strictly and regularly monitor/document and ensure immediate correction of failures of all recruitment agencies. Strengthen POEA's capacity to monitor and regulate these agencies and make its personnel transparent and accountable. Ensure they are conscientized regarding migrant rights in their trainings. Reduce the recruitment agencies to those which protect migrant rights and those that POEA can monitor and regulate.
5. Implement the RA 8042 requirements for destination requirements to sufficiently protect OFWs (BLAs or MoUs, etc.).
6. Set up the SGISM.
7. Immediately assess the Household Service Workers Reform Package to ensure it actually improves their wages and benefits and prevents contract violations.
8. Strengthen the Anti-Illegal Recruitment campaign and mechanisms of government. Track as well departing and arriving Filipinos with visit or tourist or no visas to monitor and document those who do not return as potential undocumented/irregular OFWs. Ensure POEA has the capacity, material and human, to do its job and is transparent and made accountable for its weaknesses and failures.
9. Amend POEA Rules and Regulations to ensure that they do prevent illegal recruitment instead of agencies going around the rules like the one pertaining to suspension and fines. Increase and implement penalties sufficient to make agencies mend their ways or stop operations.
10. Aggressively push the PEOS nationwide down to the barangay level and improve the PDOS to inform the people to be able to avoid illegal recruitment. Provide the LGU mandate for anti-illegal recruitment campaign.

### **Article 68**

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<sup>125</sup>Section 21, RA8024

**In the context of the State party's obligations under article 68, please provide further information on the activities of the Inter-Agency Council Against Trafficking (IACAT) and their impact (para.163 of the report). Please also provide further information on:**

**The scale of the phenomenon of trafficking of persons in, through and from the State party's territory;**

**The establishment of the Migrant Workers Loan Guarantee Fund as envisaged by section 21 of Anti-Trafficking in Persons Act of 2003 (RA 9208) and its practical application (para. 366 );**

**The number of victims of trafficking who have benefited from the protection afforded by section 44 of the Anti-Trafficking in Persons Act of 2003 (RA 9208) and for how long (para. 164 );**

**The status of the cases which the IACAT has assisted in filing since it was created in 2003, including data on prosecutions, convictions and sanctions;**

**The measures which have been adopted to improve the low rates of prosecution and conviction of traffickers under the Anti-Trafficking in Persons Act of 2003 (RA 9208);**

**The status of the cases reported to embassies and consulates abroad;**

**The level of assistance provided to victims of trafficking whose cases are reported to embassies and consulates abroad.**

**Please clarify whether these services are also available to victims of trafficking who do not wish to testify against their traffickers.**

**Answer.** The Philippine government recognizes the alarming incidence of trafficking within and across borders. But there is a lack of available sex-disaggregated database on trafficking, including but not limited to the monitoring of specific services afforded to victims.

From 2001 to 2006, there were 97 Filipino victims of human trafficking in Japan, making up the second largest number of victims next to Thailand.<sup>126</sup> The visa category "entertainer visa" has been criticized for facilitating human trafficking to Japan but trafficking victims are also among Japan's undocumented foreign workers.<sup>127</sup>

The Philippine post estimates close to a hundred thousand undocumented Filipinos in Malaysia, mostly in Sabah. A total of 7,191 Filipinos were deported, 97% from Sabah, averaging 1,167 a month, an increase from the 762 average in end 2006.<sup>128</sup> In 2006, the embassy reported 46 cases of human trafficking, 78% in Sabah<sup>129</sup>.

In Angeles City, Pampanga, there have been 26 cases filed under R.A. 9208 for trafficking in persons in from 2006 to 2008. However, this figure does not take into account the number of trafficking survivors who do not wish to pursue cases against their traffickers.<sup>130</sup>

<sup>126</sup> National Police Agency of Japan

<sup>127</sup> OAS Rapid Assessment Report: Trafficking in Persons from the Latin American and Caribbean (LAC) Region to Japan. [http://www.oas.org/atip/PDFs/Rapid%20Assessment%20\(English\).pdf](http://www.oas.org/atip/PDFs/Rapid%20Assessment%20(English).pdf) 2004

<sup>128</sup> 2008 Semi-annual report of foreign service posts on assistance to nationals submitted to OUMWA/DFA

<sup>129</sup> July-December 2006 semi-annual report of foreign service posts on assistance to nationals submitted to OUMWA/DFA

<sup>130</sup> IMA February 2009

While the Task Force should be lauded for the 91 undocumented passengers intercepted and five complaints filed against suspect immigration officers, what has happened to the recruiters of these passengers and, most important, these 91 victims. The same applies to the 36 persons rescued in Maharlika Village. “Since the Anti-Trafficking Act was passed in 2003, only 12 convictions have been handed down.”<sup>131</sup>

With regards to status of trafficking cases reported to embassies and consulates abroad, most government-run reception centers do not report the exact number of runaways and/or trafficked. In terms of the level of assistance provided to these trafficking victims, NGOs lament the lack of effective rescue operations by Philippine posts, especially on reported cases of rape in holding facilities and hotline calls of victims of forced labor. Some victims have also complained about insufficient food offered in these centers.

While a National Recovery and Reintegration Database has been set up to record services provided to victims, this web facility has yet to become operational and the central database has yet to be made available. On the other hand, the shared government information system for migration that is supposed to be established under RA 8042 and that this National Recovery and Reintegration Database is supposed to complement with data on cases of trafficking in persons, as per Sec 21 of RA 9208, has not yet been set up to date.

Given the number of victims that have been assisted by the DSWD, as of last update.

Year	Sex		Total # of Victims
	Male	Female	
2003	6	116	122
2004	23	141	164
2005	154	320	474
2006	69	120	189
NCR 2003-2006	22	478	500
2007	25	334	359
<b>Total</b>	<b>299</b>	<b>1,509</b>	<b>1, 808</b>

The number of those assisted/repatriated by the DFA are less than a third of those assisted by the DSWD. The government report should have described the services it rendered these trafficked victims to determine if they complied with the law.

New trends are notable and relevant: Despite new restrictions, syndicates connive with airport authorities to escort Filipinas out of the country. Also, new modes of recruiting victims include the use of spouse visa. This indicates some weaknesses in CFO’s pre-marriage, on-site and pre-departure counselling program on intermarriages.

A way Filipinos enter Japan is as “trainees” who are paid only an allowance and are not covered by Japan’s Labor Standards Law but do the work of regular workers.<sup>132</sup> There was the case of 23 young women in the TESDA JITCO Case who ended up illegally recruited and trafficked. They were recruited as trainees in late 2003 for a leading LCD company lured to earn Y70,000 monthly allowance. Instead, they worked mainly as janitors, gardeners and domestic workers (in

<sup>131</sup> Susan Ople. Blas F. Ople Policy Center <http://mail.google.com/mail/?shva=1#search/ople/12045d8296c4eab0>

<sup>132</sup> BATIS Jan 26, 2009

the company canteen and as laundry women) and only sometimes did factory work but menial work like checking chips and LCDs for scratches with their bare eyes. They did the factory for more than eight hour up to 12 hour work periods or else they will be sanctioned and repatriated at the cost of pre-terminating their contract. Exactly one year after arrival, they were deported for having worked overtime. This is not allowed under the trainee system but it was forced overtime. They filed 4 separate cases for illegal recruitment and qualified trafficking in Calamba and Makati but all cases as well as the motions for reconsideration were dismissed in 2005. A petition for review is pending at the DoJ to date.<sup>133</sup>

Trafficking continues to grow and expand in the Philippines because of critical factors other than those directly related to poverty. For example, it is relatively easy to obtain fake documents such as birth certificates, “baklas” passport and work permits. Recent reports of faked PDOS certifications are also observed.<sup>134</sup> The tourist/visit visa is used pervasively to enter another country e.g. to UAE and Bahrain to circumvent the need to apply for working visa and permits. Filipinos are also known to buy visit visa to some Gulf countries like the UAE to work there. The no-visa requirement in the ASEAN further facilitates entry to ASEAN countries like Malaysia and Singapore.

The Inter-Agency Council against Trafficking (IACAT), in consultation with NGOs, has developed a National Strategic Plan of Action for 2004-2010. However, the implementation of this blueprint for action is stalled by government’s budgetary constraints despite RA 9028’s Sec 28 Funding provision that is supposed to be included in the annual General Appropriations Act. Trafficking is low on the list of government’s budget priorities. “The Inter-Agency Council Against Trafficking (IACAT) does not have a permanent secretariat and a specific budget appropriation. Every year, it seeks an annual budget from the Department of Budget and Management. Every year, their request is turned down...”<sup>135</sup>

As a result, national and local formations of the IACAT continue to rely heavily on NGOs and international organizations to provide their expertise and services to victims. For example, Batis is currently handling around 200 victims of trafficking from Japan, Malaysia, Taiwan, Hongkong, Singapore, Kuwait, etc. From 2001-2007, the Visayan Forum has intercepted and sheltered more than 33,000 victims of trafficking as they are slipped through local seaports and airports within the Philippines; about 90% of them are women, and 60% are minors. It manages halfway houses in ports and airports nationwide.

The legal adviser of IMA Foundation said that despite having filed 17 anti-trafficking cases, she has yet to meet an anti-trafficking prosecutor. She said that while there is good NGO-GO networking to assist trafficked persons, the big gap is in the legal aspect. CATWAP facilitated the formation of and capacitated “bantay bugaw” (pimp-watch) at the barangay level. There is also lack of cooperation and inter-operation with law enforcement and migration authorities in neighboring countries. For example, in Japan, most trafficking victims are treated as illegal migrants, detained and immediately deported.<sup>136</sup>

In relation to trafficking, the MWLGF as a preventive measure against trafficking by increasing access to formal sources of non-collateralized financing of pre-departure loan and family assistance loan by providing a guarantee cover against the risk of default is limited by OWWA’s

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<sup>133</sup> Kanlungan case no. 5 People of the Philippines vs Isao Tomikawa, Juri Koga, Rowena Basa and Celso Arciaga for large scale illegal recruitment and qualified trafficking (Makati and Calamba)

<sup>134</sup> Visayan Forum cases at NAIA

<sup>135</sup> Former Undersecretary of Labor Susan Ople. The Blas F. Ople Policy Center. Our women, their slaves. March 26, 2009 <http://mail.google.com/mail/?shva=1#search/ople/12045d8296c4eab0>

<sup>136</sup> [http://www.oas.org/atip/PDFs/Rapid%20Assessment%20\(English\).pdf](http://www.oas.org/atip/PDFs/Rapid%20Assessment%20(English).pdf)

Omnibus Policies that limits beneficiaries to active member OFWs only. But even if an OFW does get access to such a loan, it does not address the perils of illegal recruitment and trafficking.

“Reintegration of trafficking victims is virtually non-existent. After the usual media splash surrounding their arrival where every agency is represented by a talking head, the victims find themselves all alone at the end of a long and weary day<sup>137</sup>.” Again, it was also noted that the GAD Budget so far seem not to have been used (if they can be) to help and reintegrate trafficked persons and other migrant women.

*Cases filed by the DOJ Task Force Against Trafficking*

143. Given DoJ’s and its regional offices’ reported status of disposition of these cases as of 30 April 2008:

<i>Status of Cases</i>	<i>No. of Cases</i>
Filed in Court for violation of R.A. 9208	203
Filed in Court for violation of Other Penal Laws	20
Pending Resolution	196
Dismissed, dropped or withdrawn	120
Provisionally dismissed	1
Archived	2
Acquitted	1
Conviction under R.A. 9208	11
<b>TOTAL</b>	<b>554</b>

It should be noted why only 40% of 554 cases were filed for law violation at the DoJ and its regional offices and only 39% were filed for violation of RA 9208. More alarming is only 1% were convicted while 21% were dismissed, dropped or withdrawn and 35% are still pending resolution. That is very low conviction and high rate of dismissal of cases. One reason is that trafficking complaints are easily downgraded to illegal recruitment due to poor evidence available. The poor prosecution score can be attributed to the lack of training of frontline personnel on gathering evidentiary documents other than victims’ testimonies, lack of awareness among judges and prosecutors on the special provisions of the anti-trafficking law.

In the case of IMA Foundation in Angeles City (outside the National Capital Region), only six of sixteen trafficking cases it has handled since 2003 are ongoing, four were archived while the remaining are still at the initial counselling level. Archiving resulted from lack of interest in the case or lack of witnesses. Its legal adviser sees the need for better enforcement e.g. while there is good networking between government agencies and NGOs there, the big gap is the legal aspect. She has never met a single anti-trafficking prosecutor.

The lack of protection services to victims who fear retaliation and intimidation from perpetrators contributed to dismissal, dropping, withdrawal as well as non-filing of cases. There were also reported incidents of victims being forced into filing cases after having been investigated by the authorities;

IACAT projects like capacity building is necessary but its success or impact has no measure e.g. by the output of prosecutors and law enforcers. The government report re its anti-trafficking work enumerated training, training manuals, modules, setting up of task forces and inter-agency committees, conferences and public awareness campaign but it is short of their impact e.g. how has the training of prosecutors and judges facilitated investigations and prosecution of trafficking cases? What has the inter-agency committees against trafficking at the different levels translated

<sup>137</sup> Susan Ople. Blas F. Ople Policy Centre. <http://mail.google.com/mail/?shva=1#search/ople/12045d8296c4eab0>

into action plans, operationalization of these plans, prevented trafficking, protected victims and prosecuted traffickers.

In the concluding observations of the UN CEDAW during the examination of the Philippines as a States party in its 36<sup>th</sup> Session in August 2006 in New York, the Committee expressed concern that trafficking continue to thrive because of the low rate of prosecution and conviction of traffickers<sup>138</sup>. This was echoed by the UN ESCR Committee in its examination of the Philippine government in its 41<sup>st</sup> Session in November 2008. The ESCR Committee observed that there is a high number of women and children who continue to be trafficked. The Committee recommended to the Philippines to intensify efforts to combat trafficking<sup>139</sup>.

### **Recommendations**

1. Towards ensuring access to justice standards, the Philippine government needs to: make available to concerned agencies due diligence report on status of cases
2. State Party should set up monitoring mechanism to follow-up on cases and services offered.
3. State Party should pursue judicial reforms such as awareness-raising and training of prosecutors and judges on the special provisions of the anti-trafficking law, including gathering evidentiary documents other than victims' testimonies
4. Towards realizing full implementation of the law, the State Party should:
  - a) Provide sufficient budget/personnel complement allocation for its full implementation including anti-trafficking prosecutors
  - b).Set up sex-disaggregated database on trafficking of Filipinos, services afforded them etc.
  - c. Crack down on unscrupulous immigration and airport officers and personnel providing escort service.
  - d. Abolish the "trainee system" which can be used to traffic people.
  - e. Decisively address the proliferation of fake documents.
  - f. Sufficiently provide for the socio-economic reintegration needs of trafficking survivors. At the local level, the GAD budget can be explored for this purpose.
5. Improve the implementation of the witness protection program to address fear of trafficking survivors and other potential witnesses. Forcing survivors to testify aggravates the situation.##

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<sup>138</sup>UN CEDAW during the examination of the Philippines as a States party in its 36<sup>th</sup> Session in August 2006 in New York. August 2006. Item 19.

<sup>139</sup>Concluding Observations. UN ESCR Committee in its examination of the Philippine government in its 41<sup>st</sup> Session in November 2008. Item 26.