



MISYON NG PILIPINAS SA MGA NAGKAKAISANG  
BANSANG AT IBA PANG SAMAHANG PANDAIGDIG

PHILIPPINE MISSION TO THE UNITED NATIONS  
AND OTHER INTERNATIONAL ORGANIZATIONS

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The Permanent Mission of the Republic of the Philippines to the United Nations Office and Other International Organizations in Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights (OHCHR) and, with reference to the advance unedited version of the Concluding Observations of the Committee on Migrant Workers and Members of Their Families on the Second Philippine Periodic Report dated 28 April 2014, has the honor to submit the enclosed comments and observations of the Philippine Government.

The Philippine Permanent Mission has the further honor to request the Office of the High Commissioner for Human Rights to upload the aforementioned Philippine comments and observations in the website of the Committee on Migrant Workers and Members of Their Families in order to afford the public a fuller appreciation of the Philippine Government's efforts to promote and protect migrant workers and members of their families.

The Permanent Mission of the Republic of the Philippines to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

02 May 2014

Geneva, Switzerland



## **PHILIPPINES**

### **COMMENTS AND OBSERVATIONS ON THE ADVANCE UNEDITED CONCLUDING OBSERVATIONS OF THE COMMITTEE ON MIGRANT WORKERS ON THE SECOND PERIODIC REPORT OF THE PHILIPPINES ON THE IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

The Philippine Government has taken note of the Concluding Observations of the Committee on Migrant Workers on the Second Periodic Report of the Philippines on the Convention on the Rights of Migrant Workers and Members of Their Families, and would like to take this opportunity to provide its comments and observations thereto, as follows:

1. The Concluding Observations fails to highlight one of the key achievements of the Philippines in the last five years, which was the implementation of response mechanisms during emergencies or crisis situations abroad. The Minister of Labor and Employment, in her Opening Statement (pp. 7-8), highlighted that the Department of Foreign Affairs (DFA) and/or Department of Labor and Employment (DOLE) have undertaken emergency repatriation of migrant workers in Libya, Syria, Yemen, and Egypt. Such Philippine crisis management efforts have been recognized by no less than the UN Special Representative of the Secretary-General for International Migration, Mr. Peter Sutherland, in the recent High-Level Dialogue on Migration held last October 2013 in New York City.
2. With respect to strengthening reintegration programs referred to in paragraph 8 of the Concluding Observations, paragraphs 80-84 of the Second Periodic Report mentioned that in 2011, Overseas Workers Welfare Administration (OWWA) and the Land Bank of the Philippines launched a 2 Billion Peso National Reintegration Program for Migrant Workers. The 2-B program is a special loan facility of the Overseas Workers Welfare Administration (OWWA) in partnership with the Land Bank of the Philippines (Land Bank) intended to support enterprise development among Overseas Filipino Workers (OFWs) and their families, providing them with steady income stream to support their needs and creating employment opportunities. It aims to provide OFWs with a sustainable alternative to overseas employment. Total loans thus far reached 648, with a loan value of P443.7 million, involving livelihood projects that generated 2,995 jobs.
3. The Committee expressed concern over Section 29 (a) (2) of the Immigration Act, specifically the exclusion from entry into or expulsion from the Philippines of an immigrant worker suffering from an infection or illness or is pregnant. The said provision, however, applies to persons afflicted with a loathsome or dangerous contagious disease, or epilepsy. The term "disease" is taken to mean infectious diseases or those which are contagious, or those which are likely to pose a threat to public health and safety. Pregnancy is not mentioned as it is not a disease. It bears stressing that the Philippine Immigration Act was enacted in 1940, during which time epilepsy, tuberculosis and the like are considered as dreadful diseases. Amendments have been proposed and are currently pending consideration by the Philippine Congress.

Further, said Section 29(a) (2) is implemented when so necessitated and only in extreme cases, usually in response to an alert of an impending epidemic. In any case, the implementation of the policy is always undertaken in compliance with the requirements of due process.

Finally, the immigration authority adheres to Republic Act No. 8504 which prohibits the commission of discriminatory acts against persons with AIDS/HIV. Under the law, the freedom of abode, lodging and travel of a person with HIV shall not be abridged, and that no person shall be quarantined, placed in isolation, or refused lawful entry into or deported from Philippine territory on account of his/her actual, perceived or suspected HIV status. HIV is not among the dangerous, loathsome or contagious diseases referred to in Section 29 (a) (2) of the Immigration Act.

4. On the review of the policy on household service workers (HSWs) under paragraph 13 of the Concluding Observations, the Philippine Government articulated during the revalida, in response to the question of the same nature, that the main strategy over the last 4 years is to tighten enforcement and focus on effective implementation of the HSW Reform Package, namely:

- USD400 minimum entry-level salary
- Minimum employable age of not less than 23 years old
- No placement fees
- National Certification 2 skills certification requirement

Aside from administrative recourse before the Philippine Overseas Employment Administration (POEA) and the National Labor Relations Commission (NLRC) for violation of the policy, the Philippine Government has engaged recruitment industry associations to implement the reform package. SHARP and ALRAS, recruitment industry associations for Hong Kong and Singapore, respectively, have declared adherence to the reform package, and are currently working with the government to address abusive practices.

It bears stressing that a total of 336 private recruitment agencies were cancelled from 2009 to 2013 for collection of excessive placement fees. 30% (100) of cancelled recruitment agencies were penalized for violations of the Household Service Worker Reform Package and found to be collecting placement fee or implementing salary deductions scheme which is strictly prohibited under the Reform Package.

Licensed agencies mostly deploying workers to Hong Kong, Malaysia, Singapore and Taiwan are the most frequent violators of the HSW Rules.

On the bilateral, regional, and multilateral fronts, the Philippines:

- a. aggressively pursues bilateral agreements and standard contracts with host countries or destinations, such as KSA, Jordan, Lebanon, Kuwait, Bahrain, UAE, and Qatar(paragraph 49, in relation to paragraph 68 of the Second Periodic Report);
- b. is at forefront in discussions on migrant worker through the draft Instrument to Implement the 2007 ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers (p. 13 of the Opening Statement);

- c. promotes ratification of ILO C189, and Chairs the Abu Dhabi Dialogue that crafted the Manila Communiqué on the Framework for Regional Collaboration between Sending and Receiving Member States, which includes protection of vulnerable workers (p. 12 of the Opening Statement).

5. On the issue of the existence of several departmental information systems which result in a lack of centralized disaggregated data as contained in paragraph 18 of the Concluding Observations, the Minister, in her Opening Statement (p. 10) and as contained in the Second Periodic Report (paragraphs 16 and 17), stated that incremental yet significant efforts have been undertaken to improve data collection and management, enhancing and complementing the Shared Government Information System (SGISM), a system that will allow free flow data exchanges and sharing among migration-related agencies. This was further elaborated in the response of the Philippine Government on a similar question during the revalida, stating that in 2011, the Overseas Filipino Information System (OFIS) was created under Executive Order 34 which established the Overseas Preparedness and Response Team. It was envisioned to be the core element of the SGISM. This project is a collaboration between the DFA, POEA, OWWA and the Bureau of Immigration (BI), with the technical assistance of the Advanced Science and Technology Institute (Department of Science and Technology), National Computer Center and the National Statistical Coordination Board.

The OFIS will generate a clear and accurate picture of the number of overseas Filipinos, their profile, whereabouts and movements in all destination countries at a given time. This requires the element of mapping which the Department (Ministry) of Foreign Affairs has been undertaking through Foreign Service posts and sending out teams to map out areas which are not covered by such posts. It will provide important decision-making information in situations of migrants in crises and for routine requests for consular services.

To date, the system contains data from the DFA, OWWA, POEA and BI. Replication servers are in place. It is slated for launch in the middle of this year. It includes an e-registration component that will allow for the online voluntary registration for overseas Filipinos.

7. On the issue of lack of legal assistance, paragraph 41 of the Second Periodic Report adequately stated the comprehensive legal services available for migrant workers at all stages of the migration process, from pre-departure to on-site, until return. The Philippines will seek to address the perceived lack of information on legal assistance of migrant workers to guarantee access to legal procedures and afford effective legal remedies.

With reference to the Committee's concern about limited access to the Legal Assistance Fund (LAF), the utilization of the LAF increased to 66% in 2013 from just 24% in 2009. This suggests expanded rather than limited access to the LAF. The expansion of the Legal Assistance Fund does not only cover the inclusion of labor cases, but also a commensurate increase in the financial assistance, including administrative costs, dues, and fees. New guidelines expanding the coverage of the LAF were issued in July 2013 to this effect. Moreover, in cases where the penalty that has been or will be meted out by the host government is capital punishment or death, the Philippine government extends legal assistance, through the LAF, even if there is an existing system in the host country for the provision of pro bono legal services to the accused Filipino migrant worker.

8. On the issue of obstacles to access to justice such as in the cases of abuse and exploitation by some foreign service, labor and welfare personnel as contained in paragraph 24 of the

Concluding Observations, the Minister of Labor and Employment and the Deputy Minister of Foreign Affairs had responded to the same question during the revalida by stating the updates and results in the investigation of the personnel involved and the reforms instituted to address the issue.

With regard to enhancing safeguards at the Migrant Workers and Overseas Filipinos Resource Centers in paragraph 25 (a) of the Concluding Observations, the Minister stressed the policy reforms in the management of the said centers.

9. On paragraph 30 of the Concluding Observations relating to the Committee's concern about insufficient consular staffing and lack of information on migrants with expulsion orders, the budget of the 20 top migrant-serving Posts, which includes earmarks for salaries of additional personnel, increased by P 383 million or 17.8% from 2009 to 2013. These 20 Posts have a combined staff of 792 people. The Philippines is providing resources where it matters. As for information on migrants with expulsion orders, the Philippines processed 5,927 Filipinos affected by 'Saudization' as of 04 November 2013. The Philippines has information where it matters.

10. The call for stronger bilateral engagements in paragraph 33 of the Concluding Observations fails to lay the basis for the Philippine efforts in this regard. In 2012-2013, the Philippine government successfully negotiated agreements with host countries and destinations such as Saudi Arabia, Jordan, Lebanon, and Kuwait, which identified specific rights and measures to strengthen protection of migrant workers (paragraph 49 of the Second Periodic Report). In particular, the agreements with Saudi Arabia and Jordan focused on protection of domestic workers, with recognized rights embodied in agreed Standard Employment Contracts pertaining to, among others, payment of wages, working hours, rest days and rest periods, and non-withholding of passports (p.6 of the Opening Statement of the Minister).

11. On the assistance to Filipinos in an irregular situation or who were subject to expulsion orders mentioned in paragraph 30 of the Concluding Observations, the draft fails to mention that, in the case of the recent crackdown on undocumented workers in Saudi Arabia, the Department of Foreign Affairs facilitated either their regularization or repatriation. As of 4 November 2013, repatriated Filipinos totaled 5,927, while regularized Filipinos amounted to 157,000.

12. On the issue of access to birth registration for Filipino migrant children abroad as stated in paragraph 34 of the Concluding Observations, the Second Periodic Report adequately mentions the efforts to register children of Filipino migrants born in destination countries. As stated in paragraph 52 of the said report, all Philippine Consuls serve as civil registrars in their respective jurisdictions. They are responsible for reporting all foreign vital events (births, marriages, deaths) that occur among Filipinos abroad, even if they are irregular migrants. They also conduct consular missions to places which are far from the embassies and consulates in order to, among other tasks, register Filipino children. In addition, representations are also being made with the host countries to allow registration of Filipino children born in the territories regardless of immigration status of Filipino parents.

13. On the issue of the right to vote as contained in paragraphs 38 and 39 of the Concluding Observations, the Opening Statement of the Minister and the Second Periodic Report mentioned that the Philippine Government also enacted Republic Act No. 10590 in 2013,

amending Republic Act No. 9189, otherwise known as "The Overseas Voting Act of 2003". The law and the amendment fast-track the registration of overseas absentee voters and provides for the setting-up of field and mobile registration centers, the automatic registration of voters, and alternative modes of voting. Moreover, the requirement for an "Affidavit of Return" as a requirement for registration for immigrants and permanent residents was repealed.

14. On the issue of strengthening regulation of private recruitment agencies, in relation to charging of excessive fees (paragraph 42 of the Concluding Observations), the Second Periodic Report (paragraphs 75-78) already provided for measures adopted to strengthen the licensing system. These include the institutionalization of continuing education program for private recruitment agencies as a requirement for extension or renewal of license. New applicants also undergo a pre-licensing orientation. The report also stressed that charging excessive fees is a serious offense and is dealt with administratively (with penalty of cancellation of license) and criminally (with penalty of imprisonment). Philippine private recruitment agencies are also jointly and severally liable with their foreign principals to fulfill contractual obligations and claims of workers. OFW money claims are satisfied from escrow accounts that the private recruitment agencies open as part of the licensing requirements. Regular inspection visits of licensed recruitment agencies are undertaken to determine their continued compliance with rules, regulations and applicable laws. Violation of recruitment rules may result in either suspension or cancellation of agency license. One hundred ten (110) licenses of private recruitment agencies were cancelled in 2012-2013.

15. On the enforcement of laws on charging of excessive fees in paragraphs 43 (b) and (d), the Minister emphasized in her opening statement (pp.9-10, in relation to paragraph 77 of the Second Periodic Report) the cancellation of licenses of 336 recruitment agencies for violating the one-month salary ceiling or "no placement fee" regulations in the case of domestic workers or workers destined for countries that prohibit such fee-charging.

In addition, the Philippine government provides incentives and awards to recruitment agencies that do not charge any placement fees to deployed workers. In 2009 and 2014, eighteen (18) such non-fee charging recruitment agencies have received the highest distinction from the President of the Philippines.

16. With respect to the issue on the measures taken to facilitate the resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country, as mentioned in paragraph 44 of the Concluding Observations, the Minister highlighted in her opening statement that the Philippines provides reintegration assistance to victims of trafficking through the Department of Social Welfare and Development and Department of Labor and Employment. The assistance consists of package of services to address psycho-social and economic needs of trafficked persons and their families. A one hundred million pesos annual budget has been allocated for the program

Paragraph 84 of the Second Periodic Report also mentioned that the State party reinforced its reintegration agenda with the guidelines for the implementation of Comprehensive Delivery of Reintegration Services for Deportees, Repatriates and Returned Irregular Overseas Filipino Workers and made it a regular programme of DSWD

On the issue to adopt a comprehensive strategy to promote and protect the rights of children and families of Filipino workers, as contained in paragraph 45 (b) of the Concluding

Observations, paragraph 34 (5) of the Second Periodic Report mentioned the initiative of the State on provision of venues for regular livelihood and entrepreneurial activities and trainings and family values formation and reorientation families and children left behind by migrant parent/s. This undertaking is in partnership with OFW Family Circles, religious organizations, NGOs and private institutions.

Moreover, in her opening statement (p. 11), the Minister emphasized that the Philippines provides care and protection to children left behind by migrant workers. They may avail of services provided by the Department of Social Welfare and Development, which includes a supplementary feeding program, temporary shelters, alternative parental care and psychosocial services. Children of OWWA members can avail of scholarship programs and can join the OFW Family Circles that serve as support groups.

17. The existing initiatives and measures of the Philippines closely reflect the recommendations the Committee advances to strengthen efforts to combat trafficking in persons as mentioned in the Concluding Observations (paragraph 47 and its sub-paragraphs). As the government shares the Committee's deep concern about ensuring the prevention of trafficking persons and the protection victims of trafficking through the prompt delivery of appropriate services and prosecution of their traffickers, the Philippines continues to enhance these measures by monitoring the implementation of the national strategic plan against trafficking as mentioned in paragraph 11 of the Second Periodic Report.

On the recommendation for referral mechanisms to improve assistance to victims of trafficking referred to in paragraph 47 (a) of the Concluding Observations, the IACAT has already established the National Referral System in 2009 as contained in paragraph 86 of the Second Periodic Report. The Department of Social Welfare and Development has been organizing referral networks across the country.

The call for stronger enforcement of anti-trafficking laws in paragraphs 46 and 47 of the Concluding Observations fails to consider the creation of joint law enforcement and prosecution task forces and the issuance of circulars from the Executive and Judiciary directing the speedy disposition of trafficking cases as mentioned by the Minister in her Opening Statement (pp. 8-9) in relation to paragraph 90 of the Second Periodic Report.

On ensuring availability of services and assistance to victims of trafficking, including at provincial and local levels mentioned in paragraph 47(c) of the Concluding Observations, the IACAT has established local committees in 17 regions, 48 provinces, 38 cities and 82 municipalities as described in paragraph 89 of the Second Periodic Report.

Finally, on paragraph 47 (f) of the Concluding Observations, specifically on collection of disaggregated data on trafficking, the IACAT has already set-up the Philippine Anti-Trafficking Database as mentioned in paragraph 85 of the Second Periodic Report.