



PHILIPPINE
MIGRANTS
R I G H T S
W A T C H

Philippine Migration: Challenges to Hurdle

An Alternative Report

Manila, May 2004

Introduction

The Philippine Migrants Rights Watch (PMRW) is a registered civil society network that was established in 1995 to encourage the recognition, protection and fulfillment of Filipino migrants' rights - both in the Philippines and abroad during the entire migration process. The objectives of PMRW are the following:

- To carry out education, lobbying, and monitoring activities toward the recognition, protection, and fulfillment of the rights of all Filipino migrants and members of their families before departure, during migration, and upon return.
- To monitor respect for and expose abuses of Filipino migrants' rights toward the pursuit of justice.
- To disseminate information among migrant workers and their associations, and in dialogue with them.

PMRW encourages the recognition, protection and fulfillment of Filipino migrants' rights, both in the Philippines and abroad during the entire migration process.

In our years of serving Filipino migrant workers and their families, we have seen and known better their situation and their needs that must be addressed based on present migration policies, trends and challenges, both in the Philippines and in their countries of destination.

PMRW's advocacy is geared towards creating more awareness and understanding about these issues in the hope that concrete action and genuine reforms are made by the sectors involved - the government, private groups and the civil society, including migrants themselves.

PMRW is aware about of the many official and unofficial reports on Philippine migration, which have been presented in recent times at different levels. Nevertheless, it seems that some important issues have not been adequately discussed and they are representing nowadays challenges to hurdle. Therefore, PMRW have compiled an alternative report on Filipino labor migration, based on studies which our member groups have made and on actual experiences which we have personally seen and/or shared by the migrants we serve.

The issues discussed in this report and many others will constitute the main concern of the World Conference of Overseas Filipino Workers organized by PMRW in December 2004. Such Conference entitled, *Shaping the Future of Filipino Labour Migration* will be held on December 16-18, 2004 at the Bayview Park Hotel, Manila, Philippines.

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1. The Philippine Government's Policies on Labor Migration

1.1. *Migrants in the Labor Market*

Perspective: Labor migration is a development strategy to generate employment. It is not a temporary measure as asserted by past and present governments. Unfortunately, migrants in the context of globalization, have become mere commodities in the global market where in the receiving countries there is a growing shortage of workers due to its graying population. There is also a growing deficit in care-giving and reproductive work as more and more of their women join the labor market this paving the way for increased demand in domestic workers and caregivers. At the same time, in the sending countries like the Philippines, work that pays decent and living wages is becoming more and more scarce as the economy continues to go down. What is left is a scenario of Filipinos, regardless of educational and professional training and background, all scampering for whatever jobs they may find abroad. Migration has become a forced and first option for many Filipinos. One survey says that 1 in 4 Filipinos would want to go abroad to work and live there permanently if they will be given the opportunity. The desperate situation provides an environment for abuse and exploitation of migrants.

Recommendation: The Philippines must focus on reviving its domestic economy in order to create more jobs that pay decent and living wages for Filipinos so that migration will become only one of the options. Good governance, transparency and accountability of people in public service must be upheld and promoted. The OWWA restructuring can be a good starting point.

1.2. *Migration, Development and Poverty Reduction*

Perspective: Migrant workers are called modern-day heroes because their remittances have kept the Philippine economy afloat for many years now. For many of them, migration has become a way of life already for the long years of stay in their countries of destination where they have shared and gained learning. And for many of them, there is always this dream of coming home for good sooner or later.

Recommendation: The Philippines must be able to identify legal and practical mechanisms with which to optimize for the benefit of the country the rich learning and resources of migrants that they have accumulated while they are still abroad and upon return. Trade and investments' incentives must be extended to migrants and returning migrants.

1.3. *Migration and Human Rights*

a) *State Policy: RA 8042*

RA8042 or the Magna Carta for Migrant Workers and Overseas Filipinos was passed in 1995 to set higher standards of protection for migrant Filipinos. However, the law is riddled with contradictions, reflecting the State's own confusion on how to address labor migration vis a vis its obligation and commitment to protect and uphold the human rights of Filipinos in the country and abroad.

On the one hand, it denies promoting overseas employment as a means to sustain economic growth and achieve national development.... Nonetheless, the deployment of Filipino overseas workers shall be encouraged..." To date, POEA has marketing divisions to promote and expand overseas employment.

Section 27 affirms that "...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...." However, contained in the same law, sections 29 and 30 pave the way for a policy of deregulation whereby the migration of workers becomes strictly a matter between the worker and his foreign employer and that the POEA shall phase out its regulatory functions. On deployment policy, Section 4 is just as confused. "...The State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected..." If this section were taken seriously to heart by the State, then we

would not have had overseas Filipinos in more than 200 countries and destinations around the globe because many countries of destinations do not have (yet) policies on migrant workers, much less on the human rights of migrant workers nor are they signatories to multilateral and/or regional agreements and conventions promotive of the human rights of migrants. Currently, the Philippines has existing bilateral labor agreements only with 12 countries.

Policy Recommendations:

- For the Philippine Congress and the Executive to certify as urgent the passage of an omnibus amendatory bill to RA8042 to make it responsive to the sector it purportedly seeks to serve: the migrant sector. Provisions that are migrant-friendly must be strengthened and those that are not must be amended and/or repealed. A Corollary is the passage of an amendatory law to the Foreign Service Act of 1991 (Republic Act no. 7157)
- Specifically, Congress must repeal sections 29 and 30 on deregulation and instead strengthen State's obligation to protect and uphold the rights and dignity of migrant Filipinos. In the 12th Congress, the Senate failed to pass a law parallel to the House of Representatives' version that sought to repeal these objectionable provisions. Section 4d must also be repealed to strengthen the State's resolve to deploy workers only in destinations where their rights are secured. Likewise, the law must be firm and categorical in its commitment NOT to promote labor migration as a development strategy and instead to commit itself to promoting the genuine development of our domestic economy.
- Provisions and concrete mechanisms to stop illegal recruitment and trafficking in human beings must be clearly defined, strengthened, supported with appropriate funding and implemented.

b) State Policy: OWWA Omnibus Policies

On September 19, 2004 the OWWA Board of Trustees (BOT) promulgated Resolution 038 otherwise known as the OWWA Omnibus Policies. According to the BOT this must be done because OWWA does not have a set of policies to guide its programs and operations. Good intentions. However,, the Omnibus Policies would achieve so much more than what the BOT declared in its rationale.

The Omnibus Policies institutionalize the concept of membership to OWWA and the illegal collection of US\$25 from the migrants as membership contribution. Ergo, OWWA limits access of its programs and services ONLY to OWWA members". These radical changes in the OWWA violate the provisions of the laws that created OWWA and are detrimental to the interests of the migrants. Section 5b of the Implementing rules and regulations of the Letter of Instruction 537 mandating DOLE to create a Welfare and Training Fund for Overseas Workers, categorically states that "...in no way shall the above fees be charged or collected from the worker. ..." (emphasis supplied). This policy of non-collection from the workers for the welfare fund was re-affirmed Presidential Decree 1694 that amended LOI 537.

OWWA is the only national government agency that does not have budget allocation from the Annual General Appropriations Act. Its operations are sustained by the OWWA funds collected from the migrant workers.

Procedurally, OWWA failed to conduct broad consultations with the migrants and migrant advocates on the Omnibus Policies. Civil society organizations got hold of the information on the Omnibus document from the OWWA employees themselves. This was bad faith because dialogues had been ongoing between OWWA and civil society groups in regard to the sudden suspension of some major programs and services of OWWA and the controversial proposal to transfer the OWWA Medicare programs and funds to Philhealth.

Policy Recommendations:

- For the OWWA BOT to Repeal OWWA BOT Resolution 038 and Scrap the OWWA Omnibus Policies. If policies are needed in OWWA, draft one in consultation with all stakeholders

- For Congress and the Executive to certify as urgent the passage of an amendatory law on OWWA to address concerns on organization, structures, appropriations and sustainability, beneficiaries, programs and services.
- On the transfer of Medicare programs and funds to Philhealth: For Philhealth and OWWA to conduct the negotiations in a transparent manner; To involve in the process all stakeholders particularly the migrants and their families.

1.4. Migrants in Society

Perspective: Migrants contribute to the socio-cultural political and economic well being of both the labor sending and receiving countries. As such, they must be given due recognition and protection in terms of legal, socio-cultural and economic-political policies and programs.

Migrant integration based on equal opportunities and non-discrimination policies and practices for both citizens and migrants is laudable and paves the way for tension-free harmonious multi-cultural society.

Policy Recommendation: Strengthen and regularize Pre-departure and Post-arrival comprehensive briefing and orientation of migrants from the country of origin and destination respectively to facilitate adjustment, acculturation and re-integration of migrants.

1.5. National, Regional and International Governance

State Policy: Political Empowerment of the Migrant Sector: Right of Suffrage and Representation in Government

The Overseas Absentee Voting (OAV) Act of 2003 (RA9189): On February 13, 2003, President Macapagal-Arroyo signed into law RA9189 fulfilling the 1987 Constitutional mandate to enable qualified Filipinos overseas to participate in Philippine national elections. The May 2004 elections was the first time implementation of the law. Voter turn out was about 60% of the 358,000 registered OAV voters.

The low turn out may be attributed to major flaws in the law, namely: (a) requirement for personal appearance for registration and voting except in three countries that will conduct the voting by mail (Japan, United Kingdom and Canada) when we only have 81 embassies and consulates and 3 cultural offices in Taiwan. We have situations like the post in Stockholm that includes in its consular jurisdiction Sweden, Norway, Finland, Denmark, Iceland, Lithuania and other Baltic states. In the case of Saudi Arabia host to the most number of Filipino migrant workers, and whose size is seven times bigger than the Philippines, there were only three registration and voting centers (Riyadh, Jeddah and Al-Khobar).

The situation of Filipinos on board ships is just as unfortunate and many failed to vote even if they were registered voters.

In the case of immigrants and permanent residents, the law requires them to execute an affidavit of intent to return in three years' time or they will forfeit their right of suffrage.

Policy Recommendations:

- For the new Congress and the Executive to certify as urgent the passage of an amendatory law to RA9189 to make suffrage an effective right of Filipinos overseas. In addition, the exercise of suffrage must be ensured and guaranteed continuity of exercise even under a possible shift to a parliamentary form of government before the next national elections in 2007. Specifically, the following provisions must be considered for adoption:
 - Registration and voting by mail must be allowed
 - There should be a continuing system of registration as mandated by RA8189
 - Repeal of affidavit requirement for immigrants and permanent residents as this is discriminatory

- Simplify registration and voting process
- Identify clear and practical mechanism for registration and voting for sea-based Filipinos abroad
- To include participation in national referendums and plebiscites.
- Creation of a regular committee in Congress for migrant workers and overseas Filipinos
- Amend and strengthen the party-list law to enable the migrant sector to elect their own representatives in Congress.

2. Illegal Recruitment

The Philippine Government has set in place for some years now, a regulatory scheme whereby its migratory phenomenon should be controlled and properly monitored: the Philippine Overseas Employment Administration (POEA). This government scheme is considered by other Asian countries a model of government concern, regulation and protection of its people in the migratory experience.

Though the scheme is laudable, unfortunately, the government has allowed the proliferation of many Recruitment Agencies (ap.1200) which are conducting recruitment of Filipinos for overseas work not only within the legal boundaries but also through illegal and abusive practices in connivance with foreign job-placers and government personnel, solely guided by profit.

In this we express our concern and strong objection to the rampant practice of the registered and non-registered recruiters to charge exorbitant placement fees to applicants wishing to work abroad.

The POEA rule is that the “placement fee” for an abroad job-seeking Filipino must be the equivalent of one month salary. In this regard:

Concern:

- We condemn the practice all too common now by registered recruiters to charge twice or three times the expected placement fee under different excuses;
- We wish to draw the attention of POEA on the existence of a number of non-registered or disenfranchised agencies using registered agencies as a front for such illegal dealings and vice versa;
- We condemn the existence of “fixers” inside the POEA office who legitimize such practices for a fee.
- We express our deep concern on the fact that a considerable number of applicants for work abroad are thus forced to incur grave financial burdens for themselves and their families to meet the required placement fees. For a considerable number of unfortunate overseas workers the imposed financial burden becomes a downward spiral to greater poverty from which they can hardly redeem themselves.

We recommend:

- Greater vigilance and true commitment from POEA personnel in the application of the Rules and Regulations concerning recruitment for overseas employment;
- A revision of the mandatory placement fees to make them more reasonable and favorable for the OFW applicants.

3. Unauthorized Migration from the Philippines

According to a study conducted by the Scalabrini Migration Center (SMC) in 2001, the forms of irregular migration from the Philippines are varied. Overstaying, the use of a tourist visa to gain entry to a destination country, and documentation irregularities were common. Undocumented migration was observed only for migration to Sabah. Most irregular migrants, thus, needed travel documents to leave the Philippines and to enter another country. For such services, migrants sought out the migration industry to gain entry as tourists or trainees to countries that would otherwise not welcome them as workers. The primary reason of these practices is to get around migration restrictions, specifically gaining admission to countries such as Japan, Korea and Italy.

The directions of the flows and the gender distribution of irregular migration are strikingly similar to those of legal migration. The countries of destination where legal Filipino migrants go to are the same countries which attract irregular migrants. Nevertheless, there are some differences though in the share or proportion by destination in legal vs. irregular migration. For instance, Saudi Arabia is the primary destination of Filipino migrants, but the top countries of destination for irregular migrants in this study were Malaysia (specifically Sabah), Italy and Taiwan. The participation of women in irregular migration is high. Irregular migrants are confined to the less skilled occupations and work in specific niches which local workers have abandoned.

Generally, irregular migrants have sufficient knowledge of the legal processes in going abroad, but there are also some indications that they lacked accurate information on some basic aspects – e.g., placement fees. Family, friends and recruitment agencies are the usual sources of information related to migration. Government efforts in reaching migrants through various information campaigns seem to have a limited impact on migrants. It is quite frequent the practice to deal with illegal recruiters. Migrants seek out illegal recruiters because they do not want to go through the hassles of complying with the requirements.

Irregular migrants who are victimized by illegal recruiters lost money; and those who are trafficked get into untoward situations (e.g., no salaries, prostitution). Lacking a work contract, work for many is intermittent. The world of irregular migrants is separate and distinct from the local population. Their workplace and their place of worship are peopled either by other Filipinos or other nationalities. Their contact with the local population is limited to sharing the same neighborhood. Opportunities for migrants to regularize their status are extremely limited in the destination countries in Asia. Because of this, returning to the Philippines is normally a problem. On a day to day basis, migrants lived with uncertainty and lack of freedom, afraid of catching the attention of authorities.

Compared to other countries of origin, the Philippines is considered to be quite progressive in terms of having established institutions and mechanisms to curb irregular migration at the source. However, the unlicensed agencies or recruiters escape regulation. Lacking a legal identity, they are difficult to trace and to monitor. Unless migrants report incidents of abuse or victimization, these cases fade into oblivion and may be repeated involving other victims. An unintended consequence of the stiffer rules concerning licensed agencies may result in fewer licensed agencies, but a proliferation of unlicensed or freely operating agencies. From an administrative viewpoint, it may be more manageable to regulate fewer agencies, but it also leaves more space for unlicensed agencies to flourish. More regulations may not necessarily solve the problem of curbing irregular practices. Several recommendations for research and policymaking are suggested by the study:

Research

The migration industry is one of the distinctive features of migration in Asia, but not much is known about the operations and workings of this sector. In part, this lacuna is due to researchers not having access to agencies. We experienced the difficulty of getting the cooperation of recruitment agencies in the course of the study. Despite repeated calls and follow-ups, we had a high rate of refusal or non-response from the recruitment agencies we had approached. The challenge is even greater in how to identify and access agencies as well as agents/brokers who engage in illegal practices. Alternative approaches to gather data from the many actors involved in the migration industry will have to be explored in order to have a firmer understanding of the terrain of this industry.

The continuation of migration flows has been attributed to social networks which, as conduits of information and support, facilitate migration. Their role in irregular migration requires further investigation. Unlike licensed agencies, social networks are outside state regulations, and if they are involved in irregular migration, curbing the phenomenon could be formidable indeed. At what point do social networks replace the functions of the migration industry, if any? What is the interface between the migration industry and social networks? How can social networks be developed as a vehicle to promote legal migration? The macro level impacts of irregular migration – both in the countries of origin and destination –are not well-understood. Public perceptions, particularly in the destination countries, cast migrants (especially irregular migrants) as harbingers of low wages, crimes and other social ills. More attention should be invested to empirically examine these concerns.

Policymaking

The seeming ease with which applicants can secure a passport using another identity or fraudulent information indicates loopholes in related-processes, e.g., authentication of birth certificates and other documents, which must be addressed. A review of the verification process is necessary to identify weaknesses in the present system and to lay down mechanisms for strengthening coordination among the agencies involved – National Statistics Office, Department of Foreign Affairs, Bureau of Immigration, National Bureau of Investigation, Professional Regulatory Commission, POEA.

Public education on legal and irregular migration (including trafficking in persons, especially women and children) and human rights should be continuing programs. The finding that government agencies are the least likely places where migrants seek information implies the need to develop approaches that ensure that information about the consequences of irregular migration and trafficking reach the general public. Developing the capabilities of local communities to provide migration information could enhance the dissemination of accurate information as well as the possibility of reaching migrants who otherwise would go through irregular channels. Also, public education to encourage people to protect their rights is critical to encourage those whose rights had been violated to bring wrongdoers to justice.

The slow delivery of justice is one of the reasons why migrants do not pursue their case against illegal recruiters. The streamlining of the redress and grievance process should be reviewed to identify strategies to encourage more victims to come forward.

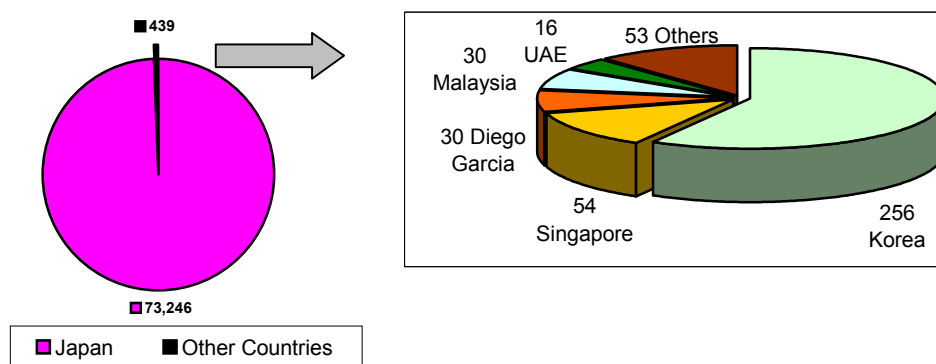
Dialogues and negotiations with countries of destination are becoming more critical. Securing the cooperation of destination countries is crucial in curbing irregular migration. One specific area where harmonization of efforts is most necessary is the regulation of the migration industry in the destination countries. Efforts to regulate the migration industry in the countries of origin must be matched by the regulation of the industry in the destination countries. Otherwise, even if irregularities in the countries of origin can be curbed, the demand for migrant labor and the existence of agencies which facilitate the transfer of labor will ensure the continuation, not the end, of irregular migration.

4. Migration Experience in Japan *The Case of Filipino Women Entertainers*

With the feminization of migration, many Filipino women go out of the country to work as entertainers or what the Philippine government now calls the, “overseas performing artists” (OPAs). They are sent to different countries but their most common destination is Japan.

The Philippine Overseas Employment Administration (POEA) recorded 73,246 Japan-bound Filipino entertainers in year 2002. Only 439 entertainers were deployed to other countries like South Korea, Singapore and Malaysia.

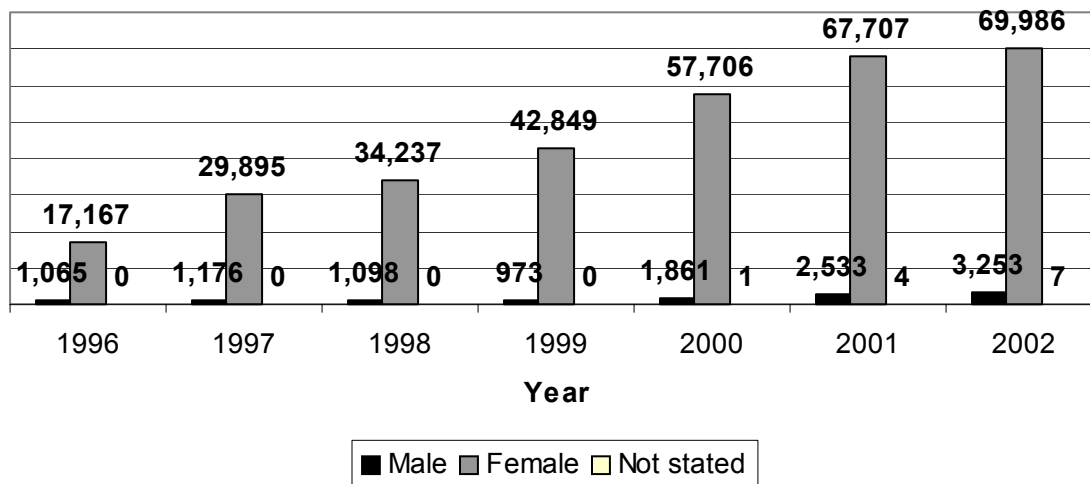
Chart 1. Filipino OPAs by Destination (2002)



Source: Philippine Overseas Employment Administration (POEA)

Also worth noting is the fact that a large percentage of these entertainers are women. In year 2002 alone, out of the 73,246 Filipino entertainers deployed to Japan, 69,986 of them were women.

Chart 2. No. of OPAs in Japan (by gender)



In a study conducted by the Development Action for Women Network (DAWN), a non-government organization that assists women migrants from Japan and their Japanese-Filipino children, economics (poverty, low-income jobs and unemployment) was the foremost reason cited by the respondents for their decision to go to Japan. Sadly though, these women also experience numerous contract violations which they are not even aware of. Aside from being underpaid and getting their salaries at the end of their six-month contracts, women entertainers also become vulnerable to other forms of abuse and harassment in their work places.

This was also confirmed by the UN Special Rapporteur Gabriela Rodriguez-Pizarro who made an official visit to the Philippines on May 20-June 1, 2002. In her report (E/CN.4/2003/85/Add.4) she specifically cited incidents actually experienced by a 28-year-old Filipina entertainer whose agency forged her birth certificate and flew her to Japan. The club owner took her passport, told her to put on a sexy outfit, was taught how to serve drinks and entertain customers whom she was also asked to go out with on private dates. This common club practice of going out with customers is known as dohan. She was also often sexually harassed and forced to work long hours.

DAWN's study showed that despite their intensive training prior to their deployment, women entertainers do not actually perform on stage. Their performance is based not on their singing or dancing prowess, but on how many customers they manage to go out with and lure into the club every night.

The academic and skills trainings and tests required for the issuance of the Artist Record Book or ARB which is a prerequisite for securing a visa, and calling these women as "overseas performing artists," are no longer appropriate and necessary to the kind of work which Filipino women entertainers actually do in Japan.

In his letter to DAWN, dated January 30, 2004, Department of Foreign Affairs Undersecretary for Migrant Workers' Affairs Jose Brillantes cited an excerpt from a report by the Philippine Embassy in Tokyo (December 2002) explaining OPAs' status in Japan, "...they are considered "guest" workers with visas for a limited contract period of three months with allowable extension of three months. Japan has no specific laws for the "Guest Worker" and this is an inherent limitation in affording protection and welfare assistance to these workers who many times experience violation of their contracts by employer, e.g., delayed or non-payment of salaries, flying booking, extended working hours, rest-days reduction, performance of non-contract jobs like waitressing/hostessing or even prostitution."

Though the Philippines has yet to ratify the International Labor Organization's Convention 97 on Migration for Employment, it is worth noting that Article 11 of the said Convention also excludes entertainers as they fall under the classification, "short-term entry of members of the liberal professions and artists." Thus, entertainers are also not protected by this ILO Convention.

With the continuous deployment of Filipino women to Japan, DAWN recommends a joint review by both the Philippine and Japanese governments of the executive and legislative policies and their implementation, and monitoring measures and conditions in Japan that endanger Filipino women entertainers and other foreign workers there.