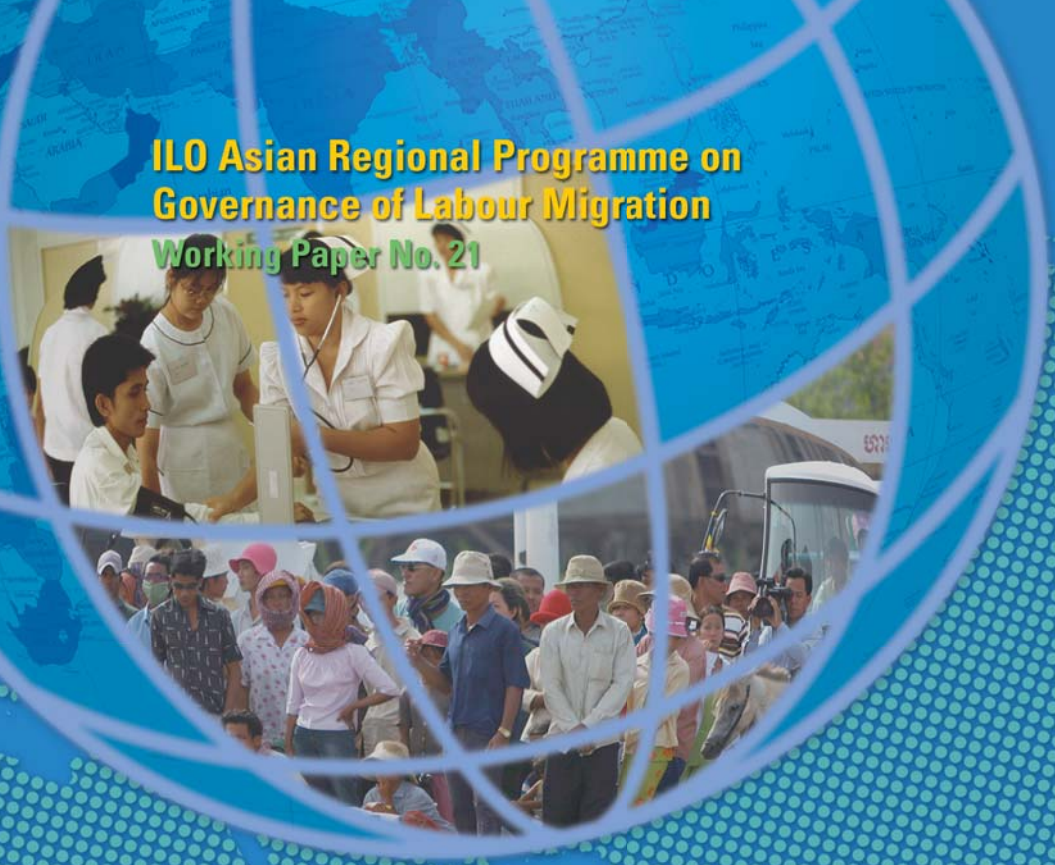
ILO Asian Regional Programme on Governance of Labour Migration

Working Paper No. 21



International Labour Organization

European Union

Protecting Migrant Workers from the Philippines

Patricia Sto. Tomas

Regional Office for Asia and the Pacific
March 2009

ILO Asian Regional Programme on Governance of Labour Migration
Working Paper No.21

Protecting Migrant Workers from the Philippines

Patricia Sto. Tomas

March 2009

Copyright © International Labour Organization 2009
First published 2009

Publications of the International Labour Offi ce enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Offi ce, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The International Labour Offi ce welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to fi nd the reproduction rights organization in your country.

Tomas, Patricia Sto

Protecting migrant workers from the Philippines / Patricia Sto. Tomas ; Asian Regional Programme on Governance of Labour Migration, ILO Regional Office for Asia and the Pacific. - Bangkok: ILO, 2009
26 p. (Working paper ; no.21)

ISBN: 9789221221395; 9789221221401 (pdf)

ILO Regional Office for Asia and the Pacific; Asian Regional Programme on Governance of Labour Migration

migrant worker / workers rights / Philippines

14.09.2

ILO Cataloguing in Publication Data

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Offi ce concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Offi ce of the opinions expressed in them.

Reference to names of fi rms and commercial products and processes does not imply their endorsement by the International Labour Offi ce, and any failure to mention a particular fi rm, commercial product or process is not a sign of disapproval.

ILO publications and electronic products can be obtained through major booksellers or ILO local offi ces in many countries, or direct from ILO Publications, International Labour Offi ce, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

Visit our website: www.ilo.org/publns

Printed in Thailand

Protecting Migrant Workers from the Philippines

By Patricia Sto. Tomas

Abstract

The paper reviews policies and programmes the Philippines has adopted as an origin country to protect its migrant workers at different stages of migration – pre-deployment, at the worksite, and upon return. The paper looks in detail at features of regulatory frameworks for overseas employment, the varied mechanisms for disseminating clear and vital information to migrants and their families, and what institutional structures need to be present to ensure fair application of rules to migrants.

About the author

Patricia Sto. Tomas was the Secretary of the Department of Labor and Employment of the Philippines from 2001 to 2006. She was the head of the Philippine Overseas Employment Administration – the agency tasked with promoting and developing the country's overseas employment programme and protecting the rights of migrant workers – when it was established in 1982. She was named Outstanding Woman in Government Service by the National Council of Women of the Philippines in 2002, and was a Ten Outstanding Women in the Nation's Service awardee for public administration in 1982.

The responsibility for opinions expressed in this working paper rests solely with the author or authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them, or of any products, processes or geographical designations mentioned.

TABLE OF CONTENTS

1. Introduction 1
2. The Philippine Experience: Framework for the Protection Of Migrant Workers 2
2.1. The Regulatory Framework for Contract Migration 2
2.1.1. The Philosophy Behind the Deployment of Filipino Workers 3
2.1.2. The Licensing of Private Recruitment Agencies 4
2.1.3. Rules and Standards on Recruitment and Placement of Workers 5
2.1.4. Sanctions for Non-Compliance with Recruitment Rules and Standards 9
2.1.5. Protecting the Workers from Illegal Recruitment Activities 10
2.2. Protective Structures and Mechanisms 12
2.2.1. Regulating the Recruitment and Placement of Migrant Workers 12
2.2.2. The Delivery of Welfare Programmes and Services 13
2.2.3. The Adjudication of Worker-Employer Conflicts 13
2.2.4. The Delivery of Welfare Programmes and Services 14
2.2.5. Other Offices Involved in Migrant Worker Protection 15
2.2.6. Bilateral, Regional, and Multi-Lateral Agreements and International Protocols 15
2.3. Re-integration Programme for Returning Migrant Workers 16
3. The Philippine Experience: Constraints to Migrant Workers' Protection 18
3.1. Workers' Education 19
3.2. Narrowing the Development Gap 20
3.3. The Cultural Divide 21
3.4. The Absence of Counterpart Protective Mechanism in Receiving Countries 21
3.5. Difficulty in Getting Bilateral Agreements 22
3.6. Absence of Binding International Protocols 22
4. Conclusion 23

LIST OF TABLES

Table 1: Deployment of Overseas Filipino Workers (OFWs), Number of Licensed Recruitment Agencies and Record of Cases Handled and Disposed 25
Table 2: Benefits and Services for Overseas Filipino Workers (OFWs) 26

PROTECTING MIGRANT WORKERS FROM THE PHILIPPINES [1]

By Patricia A. Sto. Tomas

1. INTRODUCTION

Unlike permanent emigration which presumes residency and eventual citizenship in a new country, labour migration is usually time-bound, contract-based and employment related. In a very real sense, it is temporary migration. While some destination countries allow a shift to something more permanent, many others require immediate return or negotiated extensions/renewals, with employers taking responsibility for eventual repatriation. Whatever motives underlie the migration movement, protecting migrant workers is a concern that usually comes up only when something has already gone wrong. Workers' welfare admittedly takes a lower priority than employment (from the point of view of the source country) or the skills need of a destination country. Over the years, however, modalities for protection have come up as a reaction to the increasing movement of persons for economic purposes. Some emanate from source-country regulations. Others proceed from legal and humanitarian traditions in destination countries. Still, others come from a realization that the movement of workers, being mutually beneficial, can only continue under a regime of shared responsibility.

The world, however, is still a long way from acknowledging that protection is a moral consequence of benefiting from the fruits of human labour, even if, and particularly when the human resource comes from outside a country's boundaries. The difficulty of establishing binding international protocols is testimony to this ambivalence in labour protection. **Given the continuing migratory flows across countries, it is important to delineate what has been done, what is possible and the gaps that exist in protecting migratory workers**. It is also **important to demonstrate that when migration is regular, organized, and documented, workers' protection is a responsibility that is easier to discharge**. It must also be stressed that **workers' protection is not just one person or one country's look-out**. All the actors concerned - the workers themselves, their employers, intermediators, source and receiving governments, non-government organizations, and international agencies - should be made more aware and better-positioned to assume their roles in protecting workers outside their national territories.

---

[1] Background paper for the 2nd Global Forum on Migration and Development in Manila on 27-30 October 2008.

This paper takes off from the experience of the Philippines in the protection of its workers who choose to work overseas. It is also a documentation of what some destination governments do or have done to ensure that foreign nationals in their territories are able to access labour and human rights while contributing to their own national development.

2. THE PHILIPPINE EXPERIENCE: FRAMEWORK FOR THE PROTECTION OF MIGRANT WORKERS

The Philippine framework for the protection of migrant workers has three (3) major components, namely: a) a regulatory system for intermediators and other actors in the overseas employment programme; b) the provision of institutional structures and mechanisms for workers' protection; and c) a re-integration programme for returning workers.

2.1. The Regulatory Framework for Contract Migration

Formal government intervention in the recruitment and placement of migrant workers began in 1974 with the issuance by then President Ferdinand E. Marcos of Presidential Decree 442 or the Labour Code of the Philippines. This was upon the initiative of the late Blas F. Ople, former Minister of Labour, Senator, Ambassador, Minister of Foreign Affairs and the Father of the Overseas Employment Programme. The Labour Code of the Philippines formally put in place overseas employment as a programme of the government in order to ensure that workers leaving for overseas jobs are carefully selected, thus ensuring that the good name of the Philippines is protected and workers are provided with the best possible terms and conditions of employment. To achieve this objective, the Labour Code provided for the setting up of special offices within the then Ministry of Labour, namely: the Overseas Employment Development Board (OEDB), which was mandated to undertake a systematic land-based overseas deployment of Filipino workers and at the same time protect their rights to fair and equitable employment practices; the National Seaman Board (NSB) for the overseas deployment of Filipino seafarers; and the Bureau of Employment Services (BES), whose mandate, among others, was to establish and maintain a registration or licensing system in order to regulate private sector participation in the recruitment and placement of Filipino workers overseas. Thus, no employer was allowed to hire Filipino workers for overseas jobs except through the above-named offices or private entities duly licensed by the government. Exceptions however were given in the case of hiring done by members

of the diplomatic corps, international organizations, and other employers allowed by the Secretary of Labour. This set-up governing overseas employment of Filipino workers continued until 1982 when the three agencies were merged and re-named the Philippine Overseas Employment Administration or POEA, which thereafter assumed all the responsibilities relative to the overseas employment of Filipino workers.

2.1.1. The Philosophy Behind the Deployment of Filipino Workers.

A primary and basic rule governing overseas employment of Filipino workers is that deployment shall only be allowed to countries where the rights of Filipino migrant workers are protected. In short, from the start of the programme, the protection of migrant workers was already a major concern of the government. Presently, the government recognizes any of the following as a guarantee on the part of the receiving country to protect the rights of overseas Filipino workers:

- it has existing labour and social laws protecting the rights of workers;
- it is a signatory to multi-lateral conventions, declarations, or resolutions relating to the protection of workers;
- it has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers;
- it is taking positive, concrete measures to protect the rights of migrant workers; and
- it recognizes the standard employment contract promulgated by the Philippine government.

Notwithstanding the above conditions, it is also the policy of the government that, pursuant to national interest or when public welfare so requires, the Philippine government may, at any time, terminate or impose a ban on the deployment of migrant workers to a particular destination country. This has happened a number of times when war seemed imminent or when hostilities or social conditions (such as epidemics or moral situations)

obtaining were such that local conditions pose a threat to the life or safety of overseas Filipino workers.

2.1.2. The Licensing of Private Recruitment Agencies

Even when the government itself was into the recruitment and placement of Filipino migrant workers, this was limited only to what are known as government-to-government arrangements. The bulk of the recruitment and placement of departing migrant workers are done by licensed private recruitment agencies. The licensing of private participants in the recruitment and placement of migrant workers is an essential part of the government's regulatory framework. For this purpose, certain requirements are imposed and should be met by those wanting to participate in the programme prior to the issuance of license to them. Among these are the following:

- only Filipino citizens or corporations, partnerships or entities, of which at least 75% of the authorized and voting capital stock is owned by Filipino citizens, are permitted to participate;

- a minimum capitalization of Php2 million is required; and

- a bond deposit of Php1 million is also required to answer for all valid and legal claims arising from violations of the conditions for the grant and use of the license and of contracts of employment.

The license issued to a qualified entity is valid for four (4) years and may not be transferred, conveyed, or assigned to any person, partnership or corporation. Also, in the course of doing its business, no licensed recruitment agency is allowed to conduct any recruitment activity outside of its registered office, although an agency can establish additional offices subject to the prior approval of the government. A license may be revoked and a permanent ban on overseas employment may be imposed on erring agencies.

2.1.3. Rules and Standards on Recruitment and Placement of Workers

It is the policy of the state that all recruitment and placement activities done by licensed recruitment agencies shall be in accordance with the rules and the minimum standards set by the government. This is to ensure the protection of workers from the unscrupulous practices of some recruiters. The more important of these rules and standards are:

a) The verification and registration or accreditation of foreign employers/principals.

Recruitment agencies are not allowed to undertake recruitment and deployment of workers to a foreign employer or principal until the latter is first verified as a duly licensed entity in the country of destination and allowed by the laws of that country to employ foreign workers in support of its business activity. The on-site verification of the foreign employer is done by the Philippine Overseas Labour Office (POLO) nearest to the worksite. The POLO verification report together with other documents like the Special Power of Attorney or the Recruitment Agreement between the employer and the local licensed agency, the Master Employment Contract that will define the terms and conditions for the employment of Filipino workers, and the employer's manpower request indicating the positions and salaries of workers to be hired, shall be submitted by the concerned recruitment agency. These documents shall serve as the government's basis for the registration of the foreign employer and its issuance of the permit to the licensed agency to initiate recruitment and deployment activities. In countries where there are no POLOs to verify the existence of the foreign employer, the licensed recruitment agency is required to submit additional documents outside of those mentioned above to support the validity of manpower request, namely: (1) a valid business license, registration certificate or equivalent document or proof of existence of the project, which should be properly certified by the issuing authority in the host country; and (2) visa assurance or any equivalent document also certified by the issuing authority in the host country. Should these requirements be met, the foreign employer/principal will be accredited by the government and its manpower request can therefore be properly serviced by the authorized

licensed recruitment agency. The registration or accreditation of the foreign principal or employer is valid for four (4) years but revocable anytime the terms and conditions of accreditation are breached.

b) Foreign Employer's/Principal's Compliance with Employment Standards

As mentioned earlier, the licensed recruitment agency is required to submit a master employment contract for verification by the government before a foreign principal or employer is registered or accredited and his manpower request duly serviced. This is to ensure that the terms and conditions for the employment of Filipino workers meet the following minimum standards prescribed by the government:

- Guaranteed wages for regular work hours and overtime pay which shall not be lower than the prescribed minimum wage in the host country or the minimum wage standards set forth in a bilateral agreement or international convention duly ratified by the host country and the Philippines, or not lower than the minimum wage in the Philippines, whichever is higher;

- Free transportation to and from the worksite or offsetting benefits;

- Free food and accommodation or offsetting benefits;

- Just or authorized causes for termination of the contract or the services of the worker taking into account the customs, traditions, norms, mores, practices, company policies and the labour and social legislation of the host country; and

- In addition, the government may also consider the following:

  - existing labour and social laws of the host country;

- relevant agreements, conventions, delegations, or resolutions;

- relevant bilateral and multilateral agreements or arrangements with the host country; and

- prevailing conditions/realities in the market

c) Advertisement of Overseas Jobs

Licensed recruitment agencies may advertise actual job vacancies covered by the manpower requests of their registered or accredited foreign employers/principals or project. They are, however, required to identify themselves in the advertisements together with their addresses and license number, the worksite of their principals or projects, the skills categories and qualification requirements, and the number of available positions.

Advertisement for manpower pooling is also allowed, but this must be indicated in bold letters in the advertisement, and no fees shall be collected from the worker applicants.

d) Skills Testing and Medical Examination of Workers

Licensed recruitment agencies may subject worker applicants to skills testing to determine their real capabilities and competencies. It is a requirement, however, that skills testing should be conducted only by government-accredited skills testing centers and only after the applicants shall have been interviewed by the licensed agency or its principal and have been pre-qualified to an existing overseas position covered by a government-approved job order. The tests shall only be for the skills category that the workers have applied for.

It is also a requirement that worker-applicants be medically examined to ensure that they are physically fit for overseas employment. Like in skills testing, the medical examination shall only be conducted by a medical clinic duly accredited by the government and only after the applicant has been interviewed and pre-qualified. The scope

of the medical examination shall be in accordance with the requirements of the employers.

e) Documentation of Selected and Hired Workers

A worker selected and hired by a licensed recruitment agency for an overseas job shall be properly documented. The documentation of the worker is the responsibility of the recruitment agency which also has the obligation to provide the worker with a copy of the approved employment contract or service contract. A duly documented worker shall be issued by the government an Overseas Employment Certificate (OEC) which shall serve as his/her exit pass at the airport upon deployment. The Rules require the agency to deploy the hired/selected worker within sixty (60) days from the issuance of the OEC.

f) Placement and Other Fees

In payment for the selection and hiring of the worker-applicant, the licensed recruitment agency is allowed by law to collect from the hired worker a placement fee equivalent to one month salary, exclusive of the documentation costs. However, where the destination country does not allow the charging or collection of placement and recruitment fee, the recruitment agency is consequently not allowed to collect the same from the hired workers.

As regards the documentation costs, the same can be passed on by the agency to the hired workers if the process of documentation was done by the agency but only up to the actual cost of documentation. All payments made by the worker to the agency shall be covered by official receipt. The documentation costs shall be limited to the following:

- Passport;
- NBI/Police/Barangay Clearances;
- Authentication of documents;
- Birth Certificate;
- Medicare;

- Trade or skills testing, if necessary;
- Inoculation, when required by the host country; and
- Medical Examination

2.1.4. Sanctions for Non-Compliance with Recruitment Rules and Standards

Any violation of the recruitment rules and standards by a licensed agency can be subject to administrative sanctions as may be imposed by the government after hearing the complaint filed by an aggrieved party or by the government on its own initiative. There are however administrative procedures that should be followed. Depending upon the gravity of the offense or violation, the sanction can range from reprimand to suspension of license or cancellation of license[2].

On the other hand, the violation of the rules by the foreign employer, including offenses like gross negligence leading to serious injury or illness or death of the worker, grave misconduct, and conviction in an offense involving moral turpitude can be also subject to disciplinary action by the government. Sanctions can range from suspension to permanent disqualification of the employer from participating in the overseas employment programme, meaning that the foreign employer shall no longer be allowed to recruit and hire Filipino workers.

In the case of workers violating the recruitment rules, like submitting false information or documents for purposes of job application, unjustified refusal to depart for the worksite after all employment and travel documents have been approved, as well as the commission of felony or crime punishable by Philippine laws or by the laws of the host country, unjustifiable breach of the employment contract, embezzlement of company funds and/or properties of a fellow worker entrusted for delivery to kin or relatives in the Philippines, and violation of the sacred

[2] See Table 1 for the number of licensed recruitment agencies closed or licenses cancelled for violation of recruitment rules and regulations.

practices of the host country, the same may also be subject to sanction by the government after observance of due process in the investigation of the complaint. The sanctions can range from temporary to permanent disqualification from overseas employment depending upon the gravity of the offense committed.

2.1.5. Protecting the Workers from Illegal Recruitment Activities

Illegal recruitment is a problem that has confronted the overseas employment programme since its formalization in 1974. Perhaps, this is because the business of recruiting and deploying workers has become profitable due to the surge of job applicants for overseas jobs enticed by the higher salaries being offered relative to comparable positions locally. There is also the noticeable increase in demand for overseas Filipino workers, particularly in the skilled category. Thus, many have joined the business of recruitment even if they do not have the required license issued by the government.

In order to protect the workers from illegal recruitment, the Philippine Congress passed Republic Act No. 8042 or The Migrant Workers and Overseas Filipinos Act of 1995 which, among others, defined illegal recruitment activities and put down the penalties on persons found guilty of it. The penalties can be in the form of imprisonment of not less that six (6) years and one (1) day but not more than twelve (12) years, and a fine of not less than two hundred thousand pesos (P200,000.00) nor more than five hundred thousand pesos (P500,000.00). If illegal recruitment is found to constitute economic sabotage, the penalty can go up to life imprisonment and a fine of not less than five hundred thousand pesos (P500,000.00) nor more than one million pesos (P1,000,000.00). Economic sabotage is also a non-bailable crime[3].

Four years ago, the President of the Philippines issued Executive Order No. 325 creating the Presidential Anti-Illegal Recruitment Task Force with the mandate to conduct surveillance of and entrapment operations against persons alleged to be engaged in illegal recruitment, and to

[3] See Table 1 for the number of illegal recruitment cases handled and decided.

cause or direct the immediate investigation and speedy prosecution of cases involving illegal recruitment. The task force operated under the supervision of an oversight committee chaired by the Secretary of Labour and Employment with the heads of seven (7) other agencies directed to also actively support the anti-illegal recruitment campaign as members.

But illegal recruitment is not limited only to activities of unlicensed entities or persons. Under the law, illegal recruitment can also be committed by licensed recruitment agencies if they undertake the recruitment and placement business in violation of the prescribed rules and standards. Among others, the following activities by a licensed agency can constitute illegal recruitment:

- Charging or accepting any amount greater than that specified in the schedule of allowable fees;
- Furnishing or publishing any false notice or information or document in relation to recruitment or employment;
- Engaging in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
- Substituting or altering the employment contract approved and verified by the government to the prejudice of the worker;
- Withholding or denying the travel documents of applicant-worker before departure for monetary or financial considerations;
- Failure to deploy a worker without a valid reason; and
- Failure to reimburse expenses incurred by the worker in connection with his documentation and processing in cases where deployment does not actually take place without the worker's fault.

Victims of illegal recruitment activities by licensed agencies can file a complaint before the appropriate government office which then undertakes its own surveillance operation and preliminary examination. If such activities are confirmed, the government can immediately impose administrative sanctions like a closure order for the licensed agency. If sufficient basis for criminal action is found, then the criminal prosecution of the people involved is pursued.

2.2. Protective Structures and Mechanisms

Rules, regulations and standards are not enough to ensure that workers are amply protected. What is more important is that these rules and regulations and the programmes developed for the protection of migrant workers are properly and consistently enforced, reviewed, improved and implemented with vigor and resolute desire to achieve the objectives. Thus, institutions or offices are set-up, manned and funded in the hope that these will bring fruition to the objective of migrant worker protection. In the Philippines, a number of offices were set-up under the Department of Labor and Employment (DOLE) with clearly defined mandates and specific duties and functions focusing on the following: 1) the regulation of recruitment and placement of overseas workers; 2) the delivery of Welfare programmes and services; 3) the adjudication of conflicts arising from employer-employees relations; and 4) the delivery of on-site protection and other services. Outside of these DOLE offices, there are still other government offices which are also involved in migrant worker protection.

2.2.1. Regulating the Recruitment and Placement of Migrant Workers

To ensure that the departure of migrant workers are in accordance with the prescribed rules as briefly discussed previously, an office to regulate the operations of licensed recruitment agencies has been established also known as POEA. Other than directly undertaking recruitment and placement of Filipino workers in jobs overseas, this office is also responsible in (1) regulating private sector participation in the recruitment and overseas placement of workers through its licensing and registration system, 2) formulating and implementing, in coordination with appropriate entities concerned, a system of promoting and monitoring the overseas employment of Filipino workers, taking into consideration their welfare and domestic manpower requirements, and (3) informing migrant workers not only of their rights as workers but also of their rights as human

beings, as well as instructing and guiding them on how to assert their rights, and providing the mechanism to redress violations of their rights.

2.2.2. The Delivery of Welfare Programmes and Services

The delivery of welfare programmes and services designed to promote and protect the welfare and well-being of Overseas Filipino Workers (OFWs) and their families has been deemed important by the government, and for this reason another office known as OWWA was set up to carry out this mandate. This office has a two-fold mandate, namely: (1) the delivery of welfare services and benefits, and (2) ensuring capital build-up and fund viability for the continuing protection of overseas worker. In pursuit of the first mandate, the office provides OFWs with social and welfare services, which include death and disability insurance coverage, social work assistance, legal assistance, placement assistance, cultural services, remittance services, repatriation of workers in case of war, epidemics, disasters or calamities whether natural or man-made, psychological counseling and stress-debriefing, training on capacity building and value formation, among others, and reintegration services for returning OFWs who decide to permanently stay in the country after years of overseas employment. To fund its numerous protection programmes for OFWs, the office receives a $25 membership contribution for each departing documented worker, which it puts together and invests on high-yielding financial instruments. From the earnings of the accumulated membership contributions collected and invested, the office derives the funds to finance its programmes. The office is also managing the ONE HUNDRED MILLION PESOS (P100,000,000) Emergency Repatriation Fund especially set aside for the emergency repatriation of workers should the need arises[4].

2.2.3. The Adjudication of Worker-Employer Conflicts

Worker-employer conflicts concerning terms and conditions of employment are always expected to happen. For this reason, and recognizing that foreign employers are usually outside the jurisdiction of the Philippine government, a special policy governing violations of employment contract obligations by the

[4] See Table 2 for the welfare programmes and services delivered to OFWs and their families.

employers was put in place. Under existing policy, the local licensed recruitment agency is **jointly** and **severally liable** with its registered/accredited foreign employer/principal for whatever violations of the contract the latter may commit. Thus, a returning OFW who feels aggrieved by the non-compliance of his foreign employer with the terms and conditions of the employment contract can file a complaint against his employer, together with the licensed recruitment agency which sent him overseas, upon his arrival in the Philippines. The office, which has the mandate to adjudicate worker-employer conflicts, has a nationwide operation and can be easily accessed by the returning OFW wherever he may be in the country. Upon receipt of the migrant worker's complaint, the office immediately requires the licensed recruitment agency to respond and the adjudication process begins. If a violation of the employment contract by the foreign employer is eventually found, a decision is issued by the office directing the licensed recruitment agency to rectify the error or to pay or award the worker whatever he is entitled to under the contract[5].

2.2.4. The On-Site Protection Programme

In order to afford on-site protection to Filipino migrant workers, the Department of Labour and Employment sought the establishment of Philippine Overseas Labour Offices (POLOs) in selected strategic destination countries of many OFWs. This was done by providing the Labour Attaches assigned in various Philippine embassies abroad with additional staff complement and funding such that, other than verifying employers wanting to recruit and hire Filipino workers, they can also provide migrant workers on-site services and assistance, especially in times of emergencies where the movement or evacuation of the workers have to be effected fast. At present, there are thirty two (32) POLOs distributed as follows: fourteen (14) in the Middle East; five (5) in Europe; two (2) in the Americas; and the rest distributed in the Asia Pacific region. These overseas labour offices are staffed by at least 400 personnel, mostly Filipino nationals who are employees of the DOLE, except for a few local hires in positions where knowledge of the local language as well as familiarity with the police and legal institutions, are necessary

[5] See Table 1 for the number of cases involving foreign employers' violation of employment contracts handled and decided.

2.2.5. Other Offices Involved in Migrant Worker Protection

Outside of the four (4) DOLE offices mentioned above, there are still a number of other government offices that are also involved in migrant worker protection. Among these are the following:

- The Department of Foreign Affairs (DFA) which is not only concerned with the proper documentation of departing workers through the issuance of passports, but more importantly, in providing on-site protection to Filipino workers, especially in countries where there are no assigned Labour Attaches or Philippine Overseas Labour Office. The DFA also assumes jurisdiction over assistance to nationals, including undocumented or irregularly deployed migrants;

- The Philippine National Police (PNP)and the National Bureau of Investigation (NBI), two law enforcement agencies whose help and assistance are very valuable, especially in the campaign against illegal recruitment;

- The Prosecution Service of the Department of Justice, which assists in the filing and prosecution of criminal cases, especially in the area of illegal recruitment; and

- The Bureau of Immigration and Deportation which assists in the departure and arrival of documented migrant workers.

2.2.6. Bilateral Labour Agreements, Regional Agreements, Multi-Lateral Agreements and International Protocols.

Good diplomatic relations between the labour-sending and labour-receiving countries can go a long way in achieving meaningful on-site protection to migrant workers. Moreso if this relationship is defined in a bilateral agreement entered into by the labour-sending and labour-receiving countries or in a multi-lateral or regional agreement or international protocol, where the two countries are signatories or participants. It is in this regard that the Philippines has actively pursued negotiations and succeeded in the signing of Bilateral Labour Agreements (BLAs) with Fifty nine (59) labour receiving countries. To date, eighty two

(82) BLAs have been signed with these fifty nine countries. Although the number is less than half of the total number of countries where Filipinos work, it is substantial enough to ensure ample protection for OFWs. These BLAs are subject-specific and majority of them pertain to the recognition of the credentials of Filipino seafarers, which is crucial in the employment of our seafarers because, were these credentials not recognized, Filipino seafarers cannot board the ships owned by or carrying the flags of these countries. The other BLAs are agreements on employment and welfare and on social security. The first BLA the Philippines entered into was in 1968 with the United States of America in relation to the employment of Filipinos by the US military forces and contractors of the US government in certain areas of Asia and the Pacific. The latest BLA signed by the Philippines was with the province of Manitoba, Canada.

Other than Bilateral Labour Agreements, multi-lateral or regional agreements, international protocols or conventions can further improve the labour-sending country's capacity to provide on-site protection to its workers. This is best exemplified by the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers which, other than defining the obligations of both the receiving and sending states, clearly provided the commitment by ASEAN Member Countries in the protection and promotion of the rights of migrant workers. This regional agreement was agreed upon during the ASEAN Head of States meeting held in Cebu City, Philippines, in January 2007.

The Philippines is also a signatory to the International convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted by the UN General Assembly through Resolution 45/158 on 18 December 1990. The Convention entered into force on 1 July 2003. The scope of the Convention is comprehensive and if the signatory states fully abide by them, the protection of documented migrant workers should not be much of a worry for the labour-sending countries like the Philippines.

2.3. Re-integration Programme for Returning Migrant Workers

The protection of migrant workers is not limited to ensuring that they leave fully documented and not victimized by illegal recruiters, nor does it end by seeing to it that they are provided ample on-site protection such that they do not become objects of exploitation and

abuse. There is one aspect of migrant worker protection that appears to be not very critical but which, in reality, has the most impact on the migrant worker's future well-being and that of his family. This is the re-integration of the migrant worker back into the socio-economic reality of his country once he decides to end overseas work. A good reintegration programme can make him an even more active contributor to national development, much more than before his departure for overseas employment.

This issue of re-integration has become critical because not too many OFWs end up with sufficient savings that can tide them over during their period of retirement. But even for those with adequate savings, re-integration assistance may still be necessary, especially if the OFW would wish to go into some livelihood alternatives like starting a small business. Assistance in this case is important because entrepreneurship is not that easily attained and, should the project fail, the savings of the OFW that was used as his capital for the business may just go to waste, his years working overseas rendered meaningless. Right now this concern is overseen by two offices in the Department of Labour and Employment through programmes they have put in place and operationalized.

1) The Welfare Office's Reintegration Programme

The Welfare office's reintegration programme has two components: economic and psycho-social. The psycho-social component includes community organizing or organizing of OFW Family Circles and providing them with services like social counseling, family counseling, stress debriefing, and training on capacity building, value formation, etc. The economic component on the other hand, includes social preparation programmes for livelihood projects or community-based income generating projects, skills training and credit facilitation and lending. At present, the economic component has two (2) loan programmes: 1) the Welfare office's National Livelihood Support Fund (NLSF) Livelihood Development Programme; and 2) the OFW Grocery Project. These loan programmes are aimed at providing OFWs or members of their families with livelihood and self-employment opportunities as well as entrepreneurial development opportunities, by allowing them to borrow at low interest rates funds they may require for a small or micro-business they may want to set-up.

2) The National Reintegration Center for OFWs (NRCO)

This is a special Office created under the Office of the Secretary of Labour and Employment to implement the Department's reintegration programme that promotes the productive and sustainable personal, economic and community reintegration of OFWs. Services such as financial literacy, financial planning and management, savings and special remittance schemes, investment options/livelihood opportunities, business counseling and mentoring are provided by the NRCO to equip OFWs and their families with knowledge and skills in their desired re-entry options.

The NRCO is implementing an Income Augmentation Training Cum Production Programme for OFWs nationwide to provide self-employment through the establishment of micro-enterprises with training and other support services needed in the project. To prepare OFWs and OFW families, especially returnees who are planning to establish micro-enterprises, orientation seminars on entrepreneurship are conducted twice monthly. The orientation seminar is a learning session activity to provide OFWs and their families the knowledge needed to identify business opportunities, as well as the threats and the do's and don'ts in business operations.

3. THE PHILIPPINE EXPERIENCE: CONSTRAINTS TO MIGRANT WORKERS' PROTECTION

Protecting migrant workers is not an easy task as our experience has shown. While it can be said that the Philippines has had some measure of success, much remains to be done. This is because the task of providing ample protection to migrant workers – and also to the prospective migrant workers – is not as simple as having adequate policies, rules and regulations governing the programme. There should also be adequate rules and regulations comprehensive enough to cover all aspects of the labour migration process, from pre-departure to departure and on-site protection, and even to the workers re-integration when the time comes that they decide to return and permanently stay in the country. Yet, problems still arise and often, when these are given prominence in the media, like in cases of maltreatment of OFWs by their employers, the public sees government as not effective in pursuing its task of protecting migrant workers. Problems in the protection of migrant workers are a function of circumstances which are often cultural rather than deliberately criminal. These are constraints difficult

to manage even if adequate rules and regulations and protective mechanisms are in place

Gaps exist in the protection of workers and these must be addressed if worker's protection is to be optimized. These include:

3.1. Workers' Education

Labour migration is difficult enough but when a worker leaves with incomplete or fraudulent documentation, he or she becomes prone to abuse and/or exploitation. An irregularly deployed worker usually has no back-up documents to prove that he has been wronged: no contract, no registered recruiter, no insurance coverage or membership. In fact, majority of those who got subjected to exploitation are those who choose to take their chances outside of the official system. It is true that processes can sometimes be cumbersome but this is to ensure maximum protection. Thus, other than the regulatory and protective mechanisms in place, it is important that departing migrant workers are properly informed of the processes and of the rules governing overseas employment, as well as of the working conditions in the destination country, including its customs and practices.

It is for these reasons that the Philippines has undertaken a tri-media information campaign and pre-employment seminars for those wishing to work overseas. The purpose is to inform them of the processes they have to undergo and of the requirements they must meet when applying for overseas work in order that they leave fully documented and therefore reduce the probability of encountering problems or of being subjected to exploitation. This pre-employment seminar is done with the local government units. For those who are eventually selected and hired there is also the mandatory Pre-Departure Orientation Seminar or PDOS they must attend. Conducted by government-accredited organizations, the PDOS aims to orient the departing migrant workers about their new working environment, especially the gaps or differences in the customs and practices between the Philippines and their destination countries, and the need to properly adjust to these changes if they have to avoid encountering problems at the workplace. Feedback received from returning migrant workers showed that PDOS has helped many of them to more easily adapt to the new environment although problems still persist for some. This is partly because the PDOS is

of limited duration and not all the cultural issues can be discussed in detail, as such understanding by some departing migrant workers of the cultural and sometimes religious differences is still limited.

3.2. Narrowing the Development Gap

The Philippines, like other developing countries, is confronted with problems of unemployment, underemployment, and low level of pay which is often not sufficient to provide for the needs of the family. Given these and the fact that many have seen how the families of their OFW neighbors and friends have improved – they have renovated their houses or even expanded them, acquired new and better furniture and even motor vehicles – many are enticed to do the same. And as many more in the community who left for overseas employment have improved their living conditions, the enticement of labour migration has become stronger over the years. There is nothing wrong with this except that others have used the enticement and attractiveness of overseas employment for their own selfish interest. Thus, the problems like illegal recruitment by unscrupulous unlicensed individuals out to make money from poor, unsuspecting and naïve applicants, as well as illegal recruitment activities committed by licensed recruitment agencies in cahoots with their collateral partners, like the trade testing centers and the medical clinics.

This problem of illegal recruitment is addressed by rules and regulations. A law has been passed providing for severe penalties as mentioned earlier, task forces were created to conduct surveillance operations and, in the process, a good number of individuals were arrested and imprisoned while several licensed agencies were suspended and eventually closed. Still, the problem persists and will continue so long as the economic reality in the country characterized by unemployment, underemployment and low level of pay continue to exist. One happy note though is that the government's campaign against illegal recruitment has been gaining grounds over the years as supported by the declining statistics in illegal recruitment. In 2007, illegal recruitment cases declined by 4.4% compared to the previous year's, and it is hoped that this will continue to go down inspite of the present economic reality of rising inflation, declining value of the peso, increasing prices of commodities like rice and fuel, etc.

3.3. The Cultural Divide

If there is one serious constraint to effective migrant worker protection, it is the cultural divide between labour-sending and labour-receiving countries. Behavior of people is dictated mainly by the cultural idiosyncrasies they are exposed to since birth and while growing up. It is these cultural influences that also dictate one's thinking and decision-making processes. You can therefore imagine how difficult it could be for a Filipino migrant worker to adjust and adapt to an entirely different culture and way of life in a Middle East country as compared to another Filipino migrant worker who gets work, say, in Hongkong, the US, or Canada. It is for this reason that majority of the POLOs are situated in the Middle East if only to ensure that workers who get to transgress local laws, regulations, customs and practices are given help and assistance. What complicates the matter however is that the problems of Filipino workers in culturally different countries are not limited to their inadvertent or unintentional transgression of local laws, customs, and practices. Quite often, the problems result from conflict in employer-worker relationships due mainly to culturally differences. This is especially true among migrant workers engaged in household work, although less in the case of workers involved mainly in office work or business activities.

3.4. The Absence of Counterpart Protective Mechanism in Receiving Countries

As has been observed, cultural differences have caused conflicts in employer-worker relationships. In some cases, cultural differences, coupled by the migrant workers' ignorance of the host country's justice system, has been taken advantage of by employers to exploit or even abuse migrant workers, especially those involved in household work. These violations of the migrant workers' rights and dignity would often remain unattended for long and, in some cases, for the entire duration of their stay abroad. If actions are at all eventually done, these are upon the intercession of the embassy staff after the embassy is informed by the migrant workers' families in the Philippines of the predicament faced by their family members in the destination country. The process is cumbersome and risky at times on the part of the migrant workers who have to surreptitiously send letters back home or request returning OFWs to inform their families about their problems. This kind of situation is happening because of the absence of counterpart protective mechanisms in

receiving countries which migrant workers can take avail of. This is not to say that there is no justice system which migrant workers can avail of in the host country. Surely there is. More often than not, however, the system is not known to migrant workers or, if it is, the system is not easily accessible to them. This, coupled by the migrant worker's feeling of isolation and of being a stranger in a foreign land, can make them more susceptible to abuse and exploitation. It is important therefore that receiving countries must also have in place protective mechanisms with its processes, structure, and organization made known and accessible to migrant workers. It is always important for receiving countries to demonstrate that they take care of the strangers amongst them because their reputational risk as a sovereign country is significant.

3.5. Difficulty in Getting Bilateral Agreements

The constraint mentioned above could best be addressed by bilateral agreements between the labour-sending and labour-receiving countries. Through a bilateral agreement, the parties can define the protocols for migrant workers' protection and provide for the specific systems and procedures that maybe put in place to achieve it. From experience though, bilateral agreements are not that easily concluded. This is because the agreement can entail commitments that labour-receiving countries may, for some reasons, be reluctant to easily agree on. A long period of diplomatic negotiation may be necessary before an agreement can be finally concluded. This is exemplified by the Philippine experience which shows that after over four decades of continuous diplomatic dealings and negotiations with countries employing OFWs, the government has so far succeeded in concluding Bilateral Labour Agreements with only less than half of the total number of countries employing its workers.

3.6. Absence of Binding International Protocols

Other than bilateral agreements, one other instrument which labour-sending countries can take advantage of, to ensure migrant worker protection is an international protocol or agreement. But except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Assembly Resolution 45/158 of 18 December 1990 which entered into force only on July 1, 2003) there appears to be no other substantive international protocol on migrant

worker protection. Yet, even the convention itself, while comprehensive in its enumeration of the rights of migrant workers, is not binding with non-signatories as to compel strict adherence to its provisions. An aggrieved migrant worker, or the government in his behalf, who wishes to take advantage of the convention as the mode for protection has to be content with negotiation between state parties as the means for settling the dispute. It must be pointed out that most of the receiving states are non-signatories. Should negotiation fail, the parties can resort to arbitration or refer the matter to the International Court of Justice for resolution. This can be a long and tedious process and, precisely for this reason, the Philippines has adapted a policy that, pursuant to national interest or when public welfare so requires, the government may, at any time, terminate or impose a ban on the deployment of migrant workers to a particular destination country. At least 10 such bans have been imposed on certain countries.

4. CONCLUSION

As shown by the Philippine experience, the protection of migrant workers, while somewhat difficult to effectively attain, especially when their number is huge and their area of distribution very wide, can still be possible so long as certain conditions are present. The three most important are the following:

1. There are operational rules and regulations within the country governing the recruitment and overseas placement of the workers and that these rules are properly disseminated and understood by workers, the recruitment agencies, as well as receiving countries;

2. There is an adequate implementing mechanism in place to ensure that the rules are duly followed; and

3. That the country maintains good diplomatic relations with labour-receiving countries such that it can operate on-site protective mechanism or negotiate Bilateral Labour Agreements.

The third condition is extremely important in situations where the major destinations of the migrant workers are countries with different cultural and religious norms and practices from that of the labour-sending countries. As shown in the discussion above, the cultural

divide between the labour-sending and labour-receiving countries requires the protection of migrant workers not only from their inadvertent and unintentional violation or transgression of customs and practices but also protection from conflicts and misunderstandings with their employers and even more so, from violation of their personal dignity in the course of employment.

In conclusion, it must be stressed that migrant workers protection is not the responsibility of the labour-sending country alone. It is also the responsibility of the worker himself and of his employer. But beyond his employer, the responsibility also lies with the labour-receiving country. In short, migrant worker protection is a shared responsibility. It is a responsibility all actors must share – this must be clearly articulated so we can move the frontiers of trans-national protection for migrant workers.

Table 1. Deployment of Overseas Filipino Workers (OFWs), Number of Licensed Recruitment Agencies and Record of Cases Handled and Disposed

		1995	2000	2005	2006	2007
No of Workers Deployed (annually)		653,574	841,628	988,615	1,062,567	1,077,623
No of Licensed Agencies Operating		900	1,220	1,363	1,374	1,363
No of Licensed Agencies Closed/Licenses Cancelled for Violation of Recruitment Rules				73	55	10 *
Illegal Recruitment Cases	Handled	439	573	1,198	1,504	1,624
	Decided	394	446	206	350	339
Cases involving Foreign Employers' Violation of Employment Contract	Handled		4,707	6,032		
	Decided		3,283	4,329		

* January to June only

Table 2. Benefits and Services for Overseas Filipino Workers (OFWs)

	1990	1995	2000	2005
No of OFWs/Beneficiaries extended Education/Training Assistance	83,899	52,281	53,393	67,394
No. of OFWs/Beneficiaries Extended Loans for Livelihood Programs	903	553	566	811
Total Amount of Loans Extended	P17,025,983	P33,449,881	P38,061,000	P74,928,768
No. of OFWs Extended On-Site Assistance			2,831	105,868
No. of OFWs Extended Repatriation Assistance	2,187	7,048	11,320	30,852

The paper reviews policies and programmes the Philippines has adopted as an origin country to protect its migrant workers at different stages of migration – pre-deployment, at the worksite, and upon return. The paper looks in detail at features of regulatory frameworks for overseas employment, the varied mechanisms for disseminating clear and vital information to migrants and their families, and what institutional structures need to be present to ensure fair application of rules to migrants.

This is part of the series of papers being published by the Asian Regional Programme on Governance of Labour Migration, ILO Regional Office for Asia and the Pacific.

ISBN: 978-92-2-122139-5; 978-92-2-122140-1 (web pdf)