

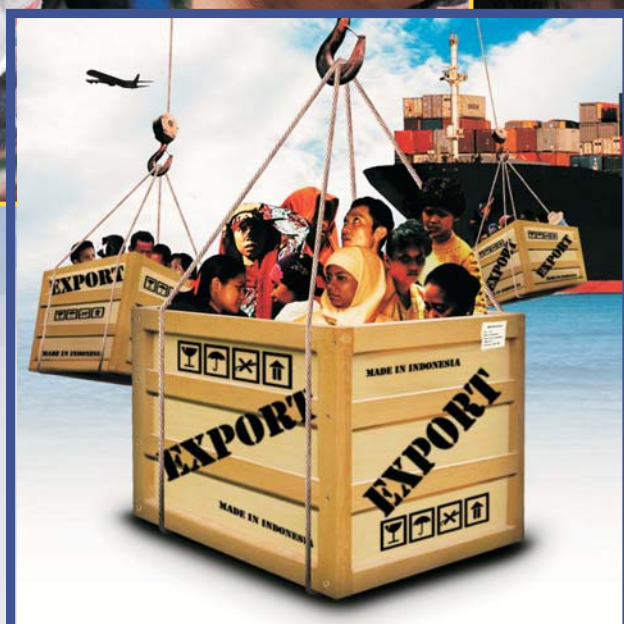
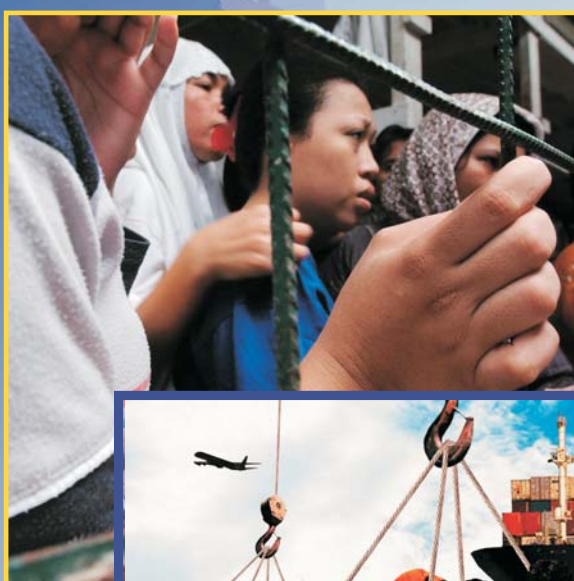


International  
Labour  
Office

Jakarta

# Using Indonesian Law to Protect and Empower Indonesian Migrant Workers:

## SOME LESSONS FROM THE PHILIPINES



# **Using Indonesian Law to Protect and Empower Indonesian Migrant Workers:**

## **Some Lessons from the Philippines**

**ILO Project on Mobilising Action for the Protection of Domestic Workers from  
Forced Labour and Trafficking in Southeast Asia**



**International Labour Organization**

June 2006

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First published 2006

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International Labour Office  
*“Using Indonesian Law to Protect and Empower Indonesian Migrant Workers: Some Lessons from the Philippines”*  
Jakarta, International Labour Office, 2006

ISBN 92-2-018696-9 (print)  
92-2-018697-7 (web pdf)

Also available in Bahasa Indonesia: *“Penerapan Perundangan Indonesia Untuk Melindungi dan Memberdayakan Pekerja Migran Indonesia: Beberapa Pelajaran dari Filipina”*. ISBN 978-92-2-018696-1 (print) and 978-92-2-018697-8 (web pdf)  
Jakarta, 2006

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Printed in Indonesia

# Foreword

All workers, including migrant workers, have equal rights to protection according to the 1998 *ILO Declaration on Fundamental Principles and Rights at Work* and its Follow-up resolution from the 92<sup>nd</sup> session of International Labour Conference in 2004. The ILO Multilateral Framework on Labour Migration specifically aims to provide guidance to Member states in applying these rights and principles in the labour migration sector.

In Indonesia, the number of migrant workers, particularly female migrant workers, going overseas to work, continues to grow, and the remittances sent back to Indonesia by migrant workers now constitute one of the largest sources of foreign income for Indonesia, and thereby makes a significant contribution to the country's economy and development.

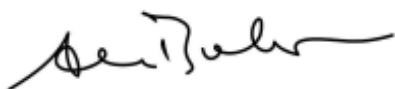
As a result much more attention is now being given to the situation and welfare of Indonesian migrant workers throughout the migration cycle in Indonesia and abroad. Whilst the migration experience of many migrant workers abroad is good, the number of complaints about abuse and exploitation remains high. This is particularly the case for female migrant workers working as domestic workers abroad.

One of the main factors which make domestic workers from Indonesia more vulnerable to exploitative practices is their exclusion from the coverage of general labour legislation both in Indonesia and abroad. Further, there are often problems with the implementation of legislation which regulates labour migration, such as licensing, monitoring and law enforcement with respect to recruitment agencies and officials.

The ILO is assisting the Indonesian Government in addressing these challenges through its support services and technical cooperation projects. As part of this support, this paper outlines practices and experiences in regulating labour migration from the Philippines, one of the largest labour-sending countries in the world. With more than 30 years of experience in managing formal overseas employment programmes, the Philippines is a fertile source of experience which is relevant to the Indonesian Government's aims to strengthen and improve labour migration policies, administration and practices.

This paper has been commissioned under the ILO Project on *Mobilizing Action for the Protection of Domestic Workers from Forced Labour and Trafficking*, funded by DFID-UK, under the Special Action Programme on Forced Labour (SAP-FL), ILO Geneva

Jakarta, June 2006



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Since the Asian economic crisis of the late 1990s, the number of Indonesians working in unskilled and semi-skilled work abroad has increased drastically. APJATI – the largest association of Indonesian labour recruiters and placement agencies – estimates that 40,000 temporary labour emigrants are currently leaving Indonesia each month, 10,000 of whom are leaving through illegal or irregular means.<sup>1</sup> As domestic unemployment and underemployment remain high, and real wages remain low, temporary labour emigration is increasingly being promoted by the Indonesian Government as a means of alleviating poverty. In January 2006, the Ministry of Manpower and Transmigration announced that it aims to send one million workers per year until 2009.<sup>2</sup>

Despite the explosion in temporary labour emigration from Indonesia, a comprehensive policy framework and effective institutions for managing Indonesian migrant workers do not yet exist. In 2004, *Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad* (henceforth the “*Migrant Worker Placement and Protection Law*”) was passed by the Indonesian Parliament. Although the Law contains some admirable provisions, such as an assurance that placement is to be carried out on the basis of “equality of rights, democracy, social justice, gender equality and gender justice, anti-discrimination, and anti-human trafficking” (Article 2), it has both conceptual and substantive shortcomings. For example, conceptually the law has been criticized for focusing on the *placement* of migrant workers rather than on their *protection* – as indicated perhaps by the fact that the word “placement” appears before “protection” in the law’s title.<sup>3</sup> Substantively, the law lacks clarity on several issues such as the attribution of responsibility for the enforcement of migrant worker rights. The weakest aspect of the law, however, is that its enforcement has been minimal if not nonexistent.

As a result of the lack of good law and law enforcement in the area of migrant work, cases abound of abuse and exploitation of Indonesian domestic workers at the hands of recruitment agents, trainers, employers, traffickers and unscrupulous government officials. These incidents occur at every stage of the labour migration process: pre-departure, during employment abroad and post-return.<sup>4</sup> Although most migrant workers have a positive experience – 85.9% of Indonesian domestic workers surveyed recently in Hong Kong stated that their employers treated them well<sup>5</sup> – there is a need to protect the minority who experience severe harm. To be sure, some of the responsibility for such abuses and exploitation lies with the governments and people of the destination countries in which Indonesian migrant workers are employed. Sending countries like Indonesia, however, can take steps to eliminate such practices within their own borders and also reduce the risk of abuse and exploitation abroad.<sup>6</sup>

1 Interview with Husein Alaydrus, Chairman of APJATI, October 2005.

2 “Indonesia Aiming to Send One Million Workers Overseas Each Year”, The Jakarta Post, 26 January 2006.

3 KOPBUMI, Legal Analysis of the Law on the Placement and Protection of Indonesian Migrant Workers Overseas (Draft Paper in Possession of ILO Jakarta, 2005), p2.

4 See the References section below for a list of some of the major reports on abuse and exploitation of Indonesian migrant workers.

5 KOBUMI, AMC et al, Underpayment: Systematic Extortion of Indonesian Migrant Workers in Hong Kong (Oxfam Hong Kong, June 2005), p31.

6 See generally IOM, Labour Migration: Trends, Challenges and Policy Responses in Countries of Origin (IOM Geneva, 2003). See also Simel Esim and Monica Smith, Gender and Migration in Arab States: The Case of Domestic Workers (ILO Beirut, 2004), p22.

The Philippines, having had a formal overseas employment programme in place since 1974, in many respects represents best international practice with regard to protecting and empowering its unskilled and semi-skilled migrant workers. As one of Indonesia's neighbours, and with a GDP per capita that is nearly identical to Indonesia's,<sup>7</sup> the Philippines is therefore a good case study from which Indonesia can draw lessons for the protection of its own migrant workers. Obviously any law or policy that exists in Indonesia needs to be adapted for operation within Indonesia's own social, cultural, economic and political climate, yet this should not be a barrier to useful comparisons.

This paper aims to provide a broad overview of how law and policy in Indonesia respond to key issues involved as a sending country of large numbers of unskilled and semi-skilled temporary migrant workers, and how such issues have been dealt with by the Philippines as a country with a longer history of managing labour migration. Part 2 discusses the government structures for regulating labour migration in both countries. Part 3 then discusses laws relating to the protection of candidate migrant workers during the pre-departure stage. Part 4 focuses on support for migrant workers during their employment abroad, and then Part 5 addresses government support for returned migrant workers.

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7 \$1010, as compared to Indonesia's \$1191: <[http://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_GDP\\_\(nominal\)\\_per\\_capita](http://en.wikipedia.org/wiki/List_of_countries_by_GDP_(nominal)_per_capita)>.

# 2

## OVERVIEW OF GOVERNMENT STRUCTURES FOR THE REGULATION OF MIGRANT WORKERS

In Indonesia, the Ministry of Manpower and Transmigration is the leading government agency for the regulation of Indonesian migrant workers in Indonesia. Recruitment and placement are conducted by private agencies, which are licensed by this Ministry. The Ministry of Manpower and Transmigration also monitor pre-departure skills training, a compulsory pre-departure briefing and provide a limited number of labour attaché at Indonesian Embassies abroad.

Other government departments are also involved, in line with their various mandates. For example, the Department of Foreign Affairs manages consular issues, the Directorate General of Immigration (within the Department of Law and Human Rights) issues passports, and the Department of Health is responsible for pre-departure medical check-ups.

The *Migrant Worker Placement and Protection Law* requires the establishment of a National Migrant Worker Placement and Protection Board (*Badan Nasional Penempatan dan Perlindungan Tenaga Kerja ke Luar Negeri*, or BNPP-TKLN). This board has not yet been established, although the Minister for Manpower has recently assured the public that it will be operational by October 2006.<sup>8</sup> The BNPP-TKLN will be made up of all the relevant government departments, and will be answerable directly to the President. It will have responsibility for “implementing policies in the field of placement and protection of Indonesian Workers in foreign countries in a coordinated and integrated manner” (Article 95). This will cover, *inter alia*, recruitment, health checks, training, departures and in-country protection.

The division of authority between the Central Government, the Provincial Governments and the Municipal/District Governments in implementing the *Migrant Worker Placement and Protection Law* is not made clear. The Law does not describe the relationship between the BNPP-TKLN and different levels of government. At present, job placement agreements are to be registered with Municipal/District authorities, and “Service Bureaus” are to be established at Provincial capitals. Overseeing licensing of recruiters and training seems to be shared on an ad-hoc basis by different levels of governments; the relationship between the Central Government, the Provincial Governments and the District/Municipal Governments is not clear. Other key issues are not covered by either. Given that a policy of regional autonomy now applies in Indonesia, it is necessary for the Law to clearly define the roles and responsibilities of each level of government in managing the migration process. The final division of authority should attempt to balance the need for local-level service delivery on one hand with the greater human resources available to the Central Government on the other.

8 “Pemerintah Segera Bentuk Badan Penempatan dan Perlindungan TKI”, The Jakarta Post, 24 January 2006, <<http://www.thejakartapost.com>>.

In the Philippines, the *Migrant Workers and Overseas Filipinos Act 1995* (Republic Act No. 8042) contains a clear division of government authority between different departments and agencies. For example, the Department of Foreign Affairs is to handle repatriation in foreign countries and to conduct diplomatic advocacy. The Department of Labor and Employment – the Filipino equivalent to Indonesia’s Ministry of Manpower and Transmigration – monitors the application of foreign laws, provides legal assistance and handles medical care. The Secretary of this Department heads the Governing Board of the Philippine Overseas Employment Administration (POEA). The POEA is an independent government agency with the broad mandate of promoting and monitoring the employment of Filipino migrant workers. It conducts most protection work, promotes employment in good practice countries, regulates agencies, conducts community education and maintains a system of migrant labour market information.

A key structural difference between the POEA and the envisaged BNPP-TKLN is that the POEA is a tripartite body; the composition of its Governing Board includes not only government officials but representatives from trade unions and private recruitment agencies. It holds regular dialogue with civil society and many of its community education and protection programmes complement the work of NGOs. The POEA is also supported by another government agency called the Overseas Workers Welfare Administration (OWWA). The OWWA is a quasi-tribunal, whose mandate involves enforcing contracts and adjudicating disputes.

### 3.1 Community Education

One of the starkest differences between the management of labour migration in Indonesia and the Philippines is on the amount of community education conducted on migrant work. In Indonesia, even proactive citizens find it difficult to get access to information on their rights and responsibilities as potential, candidate (post-recruitment but pre-departure) or current migrant workers. Most Indonesians are unaware of recruitment traps or the likely conditions they will face in pre-departure training and overseas employment, let alone how to deal with them. Even those who have already been recruited are often unaware of the name of the agency which recruited them and who to contact in Indonesia and the destination country in case of a serious dispute or other emergency.<sup>9</sup> In Hong Kong, a recent survey of Indonesian migrant workers revealed that only 10% of respondents obtained key information about their employment from the government.<sup>10</sup>

In the Philippines, a concerted public information campaign on migrant work has been taking place for years. The POEA spearheads this, in coordination with NGOs and faith-based organizations. The POEA has a detailed and user-friendly website, which allows advocacy organizations (and some educated individuals) to access key laws, implementing regulations, policies and news on recent developments. The POEA answers queries via email and SMS in addition to its 24-hour telephone hotlines. POEA offices also serve the public directly at the Head Office in Manila, in 12 regional areas and in destination countries. On a peak day, the Head Office may serve 5,000 individuals.

A key aspect of community education on migrant work in the Philippines is that it is a permanent feature that receives a regular budget, rather than a once-off or ad-hoc effort. The *Migrant Workers and Overseas Filipinos Act* even requires the Department of Labor and related government agencies to coordinate the commemoration of a Migrant Workers Day on 7 June of every year. Public information campaigns on migrant work in the Philippines also conform to ILO recommendations for such campaigns:<sup>11</sup>

- ♦ Distributing clear information
- ♦ Distributing information that is easy to access
- ♦ Distributing information through many stakeholders (government, NGOs, unions, employers, agents, etc), but that nevertheless contains consistent messages

9 See generally Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*, Vol 17.10, December 2005.

10 KOBUMI, AMC et al, *Underpayment: Systematic Extortion of Indonesian Migrant Workers in Hong Kong* (Oxfam Hong Kong, June 2005), p25.

11 ILO SAP-CFL, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers* (ILO Geneva, 2004), p55.

## 3.2 Licensing Recruitment and Placement Agencies

In Indonesia, the recruitment and placement of citizens in overseas employment is undertaken by private companies called *Perusahaan Jasa Tenaga Kerja Indonesia*, or PJTKI. The role of the government according to the current regulatory framework is to monitor these agencies through a licensing scheme called the *Surat Izin Pelaksana Penempatan TKI*, or SIPPTKI.

At present, there are currently approximately 400 licensed PJTKI operating in Indonesia, of which around 90 percent are affiliated to the APJATI, the Indonesian Association of Migrant Worker Recruitment and Placement Agencies. In addition to the licensed PJTKI, it is estimated that there are at least 800 illegal recruitment companies in Indonesia.<sup>12</sup> Many of these illegal recruitment companies are actually sub-contracted by licensed PJTKI to conduct their initial recruitment drives.

The Philippines also has a system whereby recruitment and placement is carried out by private agents, but the regulatory regime there is much more effective at preventing abuse and exploitation by agents – whether licensed or not. Part of this relates to political will generated by public pressure exerted on successive governments of the Philippines over the past three decades, but part of difference relates to substantive weaknesses in Indonesia's *Migrant Worker Placement and Protection Law*. While the Indonesian Law's main requirements for obtaining a license are the existence of an undefined "work plan" and burdensome capital requirements, the Philippine *Philippines Overseas Employment Administration Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers 2002* (henceforth the *POEA Rules and Regulations*) focus on more practical requirements for the protection of migrant workers, such as criminal checks for the managers, verification that the agency has received offers of legal employment from overseas, that the managers have a minimum standard of education and that the managers have completed tax returns in recent years.

The *Migrant Workers and Overseas Filipinos Act* also requires inspections to be undertaken in relation to recruitment and placement agencies, whereas the Indonesian Law only requires inspections to be carried out in the destination country. Indonesian law should require routine inspections and audits of recruitment and placement agencies and their training facilities. Policies could also be put in place to penalize recruitment agencies that do not bring abuses by employers to the attention of relevant authorities, backed up by avenues to air grievances in response to lax government action.<sup>13</sup> After all, a weak inspection regime means that any licensing system is of limited value.<sup>14</sup>

Another key difference between the two regimes is the incredibly high capital requirements and deposits demanded of PJTKI in Indonesia as compared to the requirements in the Philippines, as demonstrated by Table 1 below.

12 Sangheetha Chandrashekeran, Review of Regulatory Framework on Labour Migration in Indonesia (Unpublished paper for ILO Jakarta), p11.

13 Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*, Vol 17.10, December 2005, p112.

14 ILO SAP-CFL, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers* (ILO Geneva, 2004), p38.

**Figure 1: Comparative Financial Requirements for Obtaining Placement Licenses**

| Country in which Agent is Licensed | Deposit to Government           | Minimum Capital                    |
|------------------------------------|---------------------------------|------------------------------------|
| Indonesia                          | IDR 500,000,000<br>(USD 50,000) | IDR 3,000,000,000<br>(USD 300,000) |
| Philippines                        | P 100,000<br>(USD 2,000)        | P 500,000<br>(USD 10,000)          |

[Based on USD 1 = IDR 10,000 = P 50]

Despite the massive volumes of Indonesian emigrants, only 400 agencies have received licenses, probably due to the incredibly onerous capital requirements. In Indonesia, USD300,000 represents nearly 300 times the per capita GDP. In the Philippines, despite requiring a lower deposit to be paid to the government, the capital requirement only amounts to around 10 times the per capita GDP. The fact that Indonesia keeps such a high bar to entry can simply drive recruitment agencies into a black market. As an ILO study has revealed: ‘For many migrants, especially women, private employment agencies are the most efficient means of obtaining employment abroad. These private agencies should therefore not be forced into situations where they operate “underground”, thereby becoming difficult to monitor.’<sup>15</sup>

Another barrier to monitoring in Indonesia is the fact that many PJTKI are fully or partly owned by the same officials charged with regulating them. In the Philippines, the *Migrant Workers and Overseas Filipinos Act* states that “it shall be unlawful for any official or employee of the Department of Labor and Employment, the Philippine Overseas Employment Administration (POEA), or the Overseas Workers Welfare Administration (OWWA), or the Department of Foreign Affairs, or other government agencies involved in the implementation of this Act, or their relatives within the fourth civil degree of consanguinity or affinity, to engage, directly or indirectly in the business of recruiting migrant workers” (Section 8). The Act also contains penalties for such breaches. This therefore precludes a wide range of people with conflicts of interests from being legally involved in the recruitment and placement process.

### 3.3 Encouragement of Best Practice in Recruitment and Placement

As well as issuing penalties for agencies that violate laws, an effective regulatory regime should also involve rewarding agencies that engage in best practice. In Indonesia, the *Migrant Worker Placement and Protection Law* contains a provision that authorizes the government to reward best practice (Article 91), without providing any significant detail. As yet, there have been no significant examples of this actually being carried out. The Philippines has an established practice of providing financial and other rewards to recruitment agencies that exhibit best practices (see suggestions below).

To combat trafficking, the ILO recommends the use of a “rating system” for recruitment agents in conjunction with other anti-trafficking efforts.<sup>16</sup> For Indonesia, this would involve the government putting

<sup>15</sup> ILO SAP-CFL, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers* (ILO Geneva, 2004), p37. See also Manolo Abella, *Sending Migrant Workers Abroad* (ILO Geneva, 1997), p77.

<sup>16</sup> ILO SAP-CFL, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers* (ILO Geneva, 2004), pp39-40.

together a list of standards, and routinely rating agents against the criteria specified. The ILO is currently producing a Code of Practice for Recruitment Companies as part of its Plan of Action on Labour Migration in Asia Pacific. Elements from this Code of Practice could be used to determine ratings.

Highly rated agencies could receive preferential treatment, such as:

- ♦ Tax incentives
- ♦ Faster processing of contracts
- ♦ More government invitations
- ♦ Allocation of greater market shares by the government
- ♦ Positive publicity, such as by inclusion in a government-compiled list of recommended recruitment agents

## 3.4 Migrant Worker Liability to Pay Costs and Fees

One of the most common and severe forms of abuse and exploitation of Indonesian migrant workers is the extent of fees and other costs they incur even before they have commenced work. Not only does this often constitute abuse and exploitation in its own right, it can lead to even more serious problems. Firstly, it can lead to forced labour situations where debts owed by migrant workers – whether legal or not – effectively bond them to a particular employer or agent. Secondly, where fees and costs are imposed by the law it can lead to migrant workers avoiding formal systems, leaving without proper documents, and being caught in an underground movement of people that can expose them to being trafficked.<sup>17</sup>

The *Migrant Worker Placement and Protection Law* states that, in the absence of a Ministerial Regulation to the contrary, the fee that recruitment and placement agencies are permitted to charge migrant workers must only represent a reimbursement of the costs associated with processing identity documents, health and psychological tests, job training and competency certification (Article 76). Apart from the open-ended Ministerial Regulation caveat, the law conforms with ILO standards in that the fee from which the private agency gains its profits must be borne by a party other than the migrant worker, such as the overseas employer.

Indonesian law is not clear on who should pay for airfares/transportation to and from the destination country. The *Migrant Worker Placement and Protection Law* is silent on the issue, while Article 53 of Decree of the Minister of Manpower No. 104-A/MEN/2002 lists airfares as a cost that should be borne by “the employer *and/or* the candidate migrant worker”. The law is similarly vague with regard to how to quantify time and expenses involved with job training (see below).

Apart from the airfare issue, which under the law in the Philippines is borne by the agent who can charge it to the overseas employer, migrant workers in the Philippines are not burdened with any extra formal costs than their Indonesian counterparts. In fact, Filipino agents can even charge a placement and recruitment fee not exceeding one month’s salary in addition to reimbursements for the costs mentioned in the Indonesian Law. The main advantage Filipino migrant workers have over Indonesian

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17 Wahyu Susilo, “Taking a Deeper Look at Migrant Workers in Malaysia”, The Jakarta Post, 17 February 2005, <<http://www.thejakartapost.com>>.

migrant workers is simply that the costs specified in the law are more often the only costs they are forced to bear. Indonesian migrant workers, on the other hand, often find themselves burdened with a raft of illegal fees and debts.

The Indonesian Minister of Manpower recently announced that the government would work with commercial banks to provide unsecured loans to migrant workers to cover the various fees. He added that he hopes this way “migrant workers will not need to sell their rice fields, cattle or goats”.<sup>18</sup> It would be more advantageous to poor migrant workers, however, if such credit was made available by the government itself rather than commercial banks charging commercial interest rates. The POEA, on the other hands, provides pre-departure loans to Filipino migrant workers through its Migrant Workers Guarantee Fund.

### 3.5 Pre-departure Training and Holding Centres

Another common abuse of Indonesian migrant workers before they have even left the country relates to pre-departure training and “holding centres”. Given that many candidate migrant workers are entirely unskilled and unable to communicate in the language of the destination country (usually English, Chinese or Arabic), it is mandatory under the *Migrant Worker Placement and Protection Law* for all such workers to undertake job and language training (Article 42). The training is usually carried out by recruitment and placement agencies or affiliated companies. Trainees are often not permitted to leave the premises, are exposed to occupational safety and health hazards, are charged fees disproportionate to the training they receive and are often given no indication while undertaking training of how long the training will last.<sup>19</sup> Even after candidate migrant workers complete their training, they may be held for several months before a place comes available for them.<sup>20</sup>

Indonesian law states that while in training/holding centres, candidate domestic workers are to be treated “humanely and in a normally acceptable manner” (Article 70). What exactly this constitutes is not defined, and the law contains no guarantee of the right of trainees to freedom of movement or communication while undertaking training. Moreover, there does not exist in Indonesia a mechanism for enforcing the rights of candidate migrant workers when undergoing training. The *Migrant Worker Placement and Protection Law* provides no government agency with the responsibility to conduct announced and unannounced inspections of training/holding centres.<sup>21</sup> Even if a breach of the relevant provisions could be established, the sanctions provisions are vague as to who is responsible and to what extent.

The law is similarly weak on how fees are to be calculated and how long the training should be. Some training companies have even complained that the lack of standards means that there is little incentive to provide meaningful training and to tailor it to the specific needs of the job and the country to which the candidate has agreed to be placed.

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18 “Kebutuhan Kredit TKI Mencapai Rp 80 Triliun”, Kompas, 25 January 2006.

19 Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*, Vol 17.10, December 2005, p112.

20 In some cases, candidate migrant workers have spent up to two years in training/holding centres: KOBUMI, AMC et al, *Underpayment: Systematic Extortion of Indonesian Migrant Workers in Hong Kong* (Oxfam Hong Kong, June 2005), p28.

21 Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia*, Vol 16.9, July 2004, Part III.

In the Philippines, pre-departure training for migrant workers is regulated by the Technical Education and Skills Development Authority (TESDA). TESDA accredits training centres and certified candidate migrant workers. For many courses, a total number of hours is specified, which prevents training centers requiring candidate migrant workers to attend training for as long as they determine. TESDA is not a migrant worker-specific institution, meaning that the management of skills training for migrant workers is essentially mainstreamed into the management of vocational training for the general population. This seems to have avoided most of the abusive situations found in Indonesia, where a lack of standardization and competition between providers means that candidate migrant workers are always at the mercy of recruitment and placement agencies.

In addition to TESDA, the *POEA Rules and Regulations* require the POEA to conduct a range of different types of inspections on training centres. These include “regular inspections”, “spot inspections” (following reports of violations) and “regional inspections” (where simultaneously spot-checks are conducted on different training centres to avoid tip-offs).

### 3.6 Pre-departure Briefing

It is important that unskilled or semi-skilled migrant workers attend a pre-departure briefing on their rights and responsibilities as both workers and migrants in the destination country, local customs in the destination country, how to respond to certain circumstances abroad and who to contact in case of an emergency.<sup>22</sup> In Indonesia, the *Migrant Worker Placement and Protection Law* states that all candidate migrant workers must attend a Final Pre-Departure Training Brief, called the *Pembekalan Akhir Pemberangkatan* or PAP. The PAP is conducted by instructors appointed by the Ministry of Manpower and has been criticized in the past by both PJTKI and migrant worker advocates for being non-interactive, expensive and used by the instructors to preach about morality (such as the importance of avoiding drug use and free sex) rather than addressing real issues of concern to migrant workers.

In 2005, the Ministry of Manpower released *Ministerial Regulation No. 4 of 2005 on the Holding of Final Pre-Departure Training Briefs for Migrant Workers*. This regulation clarifies that training sessions should involve question-answer sessions and simulations, that the number of participants in each session cannot exceed 40, that materials should be country-specific, that the rights and responsibilities of the migrant workers should be addressed, and that the cost should be borne by the Ministry of Manpower.

The new regulation on the PAP brings Indonesia largely in line with the Pre-Departure Orientation Seminar (PDOS) that Filipino migrant workers must attend. The only key differences seem to be that the PDOS is more tailored to specific skills/occupations in addition to being country-specific, and that the PDOS involves more extensive advice on who to contact for assistance in destination countries. It is important for Indonesia to address these issues, and to properly implement *Ministerial Regulation No. 4 of 2005*.

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22 See, eg, Simel Esim and Monica Smith, *Gender and Migration in Arab States: The Case of Domestic Workers* (ILO Beirut, 2004).

## 3.7 Contracts of Employment

Under the *Migrant Worker Placement and Protection Law*, every candidate migrant worker is entitled to receive a copy of the contract between him/herself and their overseas employer (Article 8). Article 55 states that the contract must be signed prior to departure, and it lists provisions that must be included:

- ♦ Name and address of the employer;
- ♦ Name and address of the migrant worker;
- ♦ Occupation or type of work of the migrant worker;
- ♦ Rights and obligations of both parties;
- ♦ Terms and conditions of work, including working hours, wages and procedures of payment of wages, leave entitlements and periods of rest, facilities and social security; and
- ♦ Period of employment covered by the work agreement

Other provisions may be added to the contract, but key issues are absent from the list of those required by law, such as:<sup>23</sup>

- ♦ Provisions on how to calculate deductions for food and board
- ♦ Minimum specifications on living conditions
- ♦ How to calculate on-call time
- ♦ Termination procedures
- ♦ Who pays for airfares

Article 8 of the Law lists rights of migrant workers, but does not correspond directly with a sanctions provision. Given that many of these need not be incorporated into a contract, it is therefore unclear who exactly these rights are enforceable against. The rights listed are the rights to:

- ♦ Work or be employed in a foreign country;
- ♦ Receive correct information on job markets in foreign countries and procedures for the placement of Indonesian workers in jobs in foreign countries;
- ♦ Receive equal service and treatment for placement in jobs in foreign countries;
- ♦ Enjoy freedom to adopt his/ her religion and belief and to perform/ fulfill religious worship/ obligations according to that which is required by his/ her religion and belief;
- ♦ Receive a wage according to the standards of wages that apply in the destination country of employment;
- ♦ Receive rights, opportunities and treatment equal to the ones received by other foreign workers [of other nationalities] according to laws and regulations that apply in the destination countries [where the Indonesian Worker is placed/ employed];
- ♦ Receive a guarantee of legal protection according to laws and regulations against action that may lower one's dignity and worth as a human being and against violations of rights that are established according to laws and regulations during employment in foreign countries;
- ♦ Receive a guarantee of protection of the safety and security of the Indonesian Worker upon his/ her return to his/ her place of origin; and
- ♦ Receive the text of the original employment agreement.

23 See also Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*, Vol 17.10, December 2005, p112.

In the Philippines, the *POEA Rules and Regulations* specify that, as a minimum, employment contracts must contain:

- ♦ Guaranteed wages for regular work hours and overtime pay, as appropriate, which shall not be lower than the prescribed minimum wage in the host country, not lower than the appropriate minimum wage standard 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 highest;
- ♦ Free transportation to and from the worksite, or offsetting benefit;
- ♦ Free food and accommodation, or offsetting benefit;
- ♦ Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, norms, mores, practices, company policies and the labour laws and social legislations of the host country

In addition, the POEA may declare a contract void on the basis of one of the following considerations:

- ♦ Existing labor 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 condition/realities in the market

Unlike the empty Article 8 in the Indonesian Law, the *Migrant Workers and Overseas Filipinos Act* holds agencies responsible for breaches by employers. (See Section 4 below.)

A common problem in Indonesia is that candidate migrant workers are asked to sign their contracts on the spot. Apart from not allowing them adequate time to consider the pros and cons of contract, this often also means that they do not understand it. Given that many have only received limited formal education, it is important for them to be given time to show and discuss their contracts with their family, faith-based groups, NGOs, etc.

Another method of assisting candidate domestic workers to understand their contracts is to distribute a sample contract, which they can then compare against the contract they have been issued. In the Philippines, the POEA has widely circulated a sample contract, which is annexed to this paper.

### 3.8 Combating Illegal Recruitment and Trafficking

Trafficking in persons is already a crime in Indonesia, and the Indonesian Parliament is currently deliberating on a draft law to mobilize institutional support for the eradication of trafficking. It is important to involve the government agencies responsible for migrant workers in this process, as migrant workers are obviously a vulnerable group. The *Migrant Worker Placement and Protection Law* prohibits Indonesian workers from being placed in “jobs that turn out to be not in conformity with the jobs intended for them as stated under the provisions of their work agreements that have been agreed upon and signed by the affected Indonesian workers” (Article 72). The licensing regime also provides strict penalties for recruiting and placing without permits, but as discussed above, implementation is weak.

Another measure in the Indonesian Law designed at combating trafficking is the requirement that all migrant workers have completed at least junior high school (*SLTP*) or an equivalent level of education

(Article 35). This is to guard against the most vulnerable groups from being exposed to the risks of trafficking. However, many PJTKI blatantly ignore this provision. When APJATI was asked recently whether it would consider incorporating this existing legal requirement into its Code of Ethics, it responded by stating that it would not do so because the requirement is “too burdensome”, “unrealistic” and “unfair to those who have only graduated from primary school”.<sup>24</sup>

In early 2006, a number of arrests were made in Indonesia in relation to illegal recruitment and potential trafficking. This is a positive start, but needs to be followed up with prosecutions and effective penalties. Measures need to be taken to prevent the establishment of “phoenix companies”, where people found guilty of offences later start up new companies under a different name or through a proxy.

In order to combat illegal recruitment in the Philippines, the POEA is required under law to assist with the prosecution of alleged illegal recruiters. The POEA has its own Prosecution Division, which conducts the preliminary work for the prosecution of criminal acts relating to the sending of migrant workers, before handing the cases over to the Public Prosecutor. When a case reaches trial, migrant workers are eligible for full witness protection measures, unlike in Indonesia. The POEA also conducts surveillance of suspected illegal recruiters. In addition, the public information and community education campaigns run by the POEA (see above) assist with reducing the risk of illegal practices.

The *Migrant Workers and Overseas Filipinos Act* also contains time limits for investigations and the filing of court proceedings. For example, preliminary investigations are to be completed within 30 days of a reported violation, and if enough evidence is available for prosecution the case must be filed in court within 24 hours of completion of the preliminary investigation. These deadlines are to ensure government agencies take complaints seriously, handle problems before they become more severe and prevent parties from destroying or covering up evidence. These provisions are also in line with the adage that “justice delayed is justice denied”.

## 3.9 Information Management

Managing data on migrant workers, agencies, employers, destination country policies and labour market information represents an important aspect of protection and empowerment. In Indonesia, APJATI has begun to keep an electronic database of all the migrant workers it sends as well as the agencies and employers in the destination countries. However, government agencies need to take a lead on these issues to ensure that information is independent and accurate. This is envisaged by the *Migrant Worker Placement and Protection Law*, which states that the Government has a responsibility “to establish and develop an information system for the placement of prospective Indonesian Workers in jobs in foreign countries” (Article 7). The Law does not define how the information system should be established and maintained, or the purposes of managing such data.

The POEA takes a more proactive and coordinated approach to data collection and maintenance. Information on developments in overseas labour markets is disseminated regularly to the community, and tabs are kept on the treatment by overseas governments of Filipino migrant workers. The data is collected by a variety of government agencies and managed by POEA.

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24 Interview with Husein Alaydrus, Chairman of APJATI, October 2005.

### 3.10 International Cooperation

Negotiating and participating in worker-friendly bilateral and multilateral agreements can also further the interests of migrant workers. Indonesia has negotiated Memoranda of Understanding with several destination countries, but so far these have lacked any real teeth. In a May 2004 agreement with Malaysia, for example, Malaysian employers were permitted to withhold passports of Indonesian migrant workers. Such situations can lead to trafficking and forced labour. Although Malaysian employers have a legitimate concern that migrant workers for whose services they have paid an upfront fee remain employed by them for the duration of their contract where possible, situations of absconding migrant workers can be avoided by allowing migrant workers to deposit their passports with the Indonesian Embassy or Consulate. The most effective way to ensure that workers do not abscond, however, is to treat them humanely.

Part of the reason Indonesia has not been more demanding in bilateral negotiations is that it fears the competition posed by other countries should Indonesia demand too high standards for its citizens working abroad. To alleviate some of this concern, Indonesia should enter into bilateral and multilateral negotiations with other sending countries to set minimum standards to be fulfilled by destination countries, below which sending countries will not facilitate labour emigration to the violating destination country. Indonesia should also participate in existing international conventions on migrant worker rights, such as the ILO Convention 143 on Migrant Workers (1975) and the United Nations General Assembly Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990). While Indonesia has signed the latter but not yet ratified it, the Philippines has ratified both.

One problem with setting standards in the laws of sending countries for employment conditions in destination countries is that contracts that are formed in one country are not automatically valid in other countries. As such, the Philippines is attempting to negotiate with Singapore for its standard contracts to be enforceable under Singaporean law.<sup>25</sup> Indonesia could follow suit in its bilateral negotiations.

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25 Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*, Vol 17.10, December 2005, pp104-05.

# 4

## SUPPORT DURING OVERSEAS EMPLOYMENT

### 4.1 Labour Attachés

**T**he *Migrant Worker Placement and Protection Law* states that the Representative Offices of the Republic of Indonesia in destination countries shall “provide protection to Indonesian Workers during the course of their employment in foreign countries according to laws and regulations as well as international laws and conventions” (Article 78). As part of this obligation, the Ministry of Manpower has recently started placing Labour Attachés in some Indonesian Embassies abroad. At present, the total number of Labour Attachés is limited, as is their outreach to Indonesian migrant workers. One of the difficulties with providing services to migrant workers is that many of them can only leave their workplace on Sundays, when the Embassy is closed.<sup>26</sup>

The Department of Labor in the Philippines has established a Philippines Overseas Labour Office (POLO) in 30 cities around the world that represent major destination countries for Filipino migrant workers. These offices provide a range of services, including:

- ♦ counseling and legal services
- ♦ medical and hospital services
- ♦ repatriation of distressed workers
- ♦ post-arrival orientation, settlement, community networking and other skills enhancement programs/activities
- ♦ orientation program for returning workers
- ♦ conciliation of disputes arising from employer-employee relationship
- ♦ mediation and conciliation services for disputes between workers and their agents

The delivery of services offered by POLO is enhanced by the fact that it is proactive in engaging with civil society organizations and informal networks in destination countries so as to reach out to Filipino migrant workers.

### 4.2 Treatment of “Illegal” Workers

It is important that sending countries do not limit their protection and empowerment efforts to formal migrant workers alone. Migrant workers who have been working “illegally” also need to be protected and empowered, and their rights should be articulated in law. In the Philippines, illegal migrant workers are permitted, for example, to participate in insurance schemes without fear of penalties. They also have access to the country’s labour court, the National Labor Relations Commission (see below).

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26 Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*, Vol 17.10, December 2005, p111.

The Indonesian Government is perceived as being overly harsh on illegal/irregular Indonesian migrant workers, a perception that was strengthened after its slow response to the death sentence Singapore imposed on Suhaidi bin Asnawi, a migrant worker from West Nusa Tenggara Province who working illegally in Singapore.

## 4.3 Dispute Resolution and Attributing Responsibility

It is important to have in place mechanisms for the settlement of disputes between migrant workers and both their agents and employers. Where a migrant worker has been found to have been wronged, the sending country's government should do all it can to ensure that s/he is duly compensated. While some disputes are best settled through informal dialogue, including mediation and conciliation, other disputes require formal institutions following rules that provide for due process to each party. The *Migrant Worker Placement and Protection Law* places too much emphasis on settling disputes amicably – through consensus and informal means – despite this being inappropriate where there have been serious breaches of the law including criminal offences.<sup>27</sup>

Indonesian law has not assigned any adjudicating institution the task of deciding on non-criminal grievances lodged by migrant workers in relation to their agents. Article 85 of the *Migrant Worker Placement and Protection Law* contains an incredibly vague procedure for dealing with such disputes: “if a consensus... cannot be reached... any one of the disputing parties or both parties in the dispute may request the help of a district/ city/ provincial government agency responsible for labor affairs or the help of the [central] Government.” It is unclear how this “help” is to be administered and according to what, if any, procedures to ensure natural justice. Given that no such cases have been heard by Indonesian courts at this stage, it is unclear whether a court would find that it has jurisdiction to adjudicate over these disputes.

In the Philippines, migrant workers – both legally and “illegal” – have access to the country's labour court, called the National Labor Relations Commission. They can bring cases for monetary compensation against:

- ♦ Individuals undertaking illegal recruitment
- ♦ Recruitment/placement agencies
- ♦ Foreign employers

A key problem with any dispute settlement mechanism in a sending country is that judgments cannot typically be enforced against employers in the destination country. For this reason, the law in the Philippines deems agencies and foreign employers are *jointly and severally liable* for compensation to migrant workers as determined by the National Labor Relations Commission. This means that Filipino workers can claim against agents for breaches by their foreign employers, after which the agents are free to attempt carrying out a lawsuit against the employer in the foreign country. For Indonesian migrant workers, a breach of the law or contract by their employer will usually not attract any compensation from any party.

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<sup>27</sup> KOPBUMI, Legal Analysis of the Law on the Placement and Protection of Indonesian Migrant Workers Overseas (Draft Paper in Possession of ILO Jakarta, 2005), p17.

## 4.4 Legal Advice and Representation

*Law No.37 of 1999 on Foreign Relations* requires the Indonesian Government to provide legal representation to Indonesian citizens abroad, regardless of whether they have initiated the case or are a defendant to a case. Article 80 of the *Migrant Worker Placement and Protection Law* reiterates this obligation. At present, however, aggrieved Indonesian migrant workers rarely receive legal advice or representation, either in Indonesia or abroad. In cases where lawyers are provided, the lawyers are funded and appointed by the insurance company of the migrant worker. This often leads to a conflict of interests, because the insurance company may be the party ultimately liable for any compensation payable.<sup>28</sup>

The *Migrant Workers and Overseas Filipinos Act* and the *POEA Rules and Regulations* specify the precise entitlements of migrant workers with regard to legal advice and representation, as well as who is responsible for providing it. Indications are that, in most cases, these provisions are implemented.<sup>29</sup>

Some features of the legal assistance provided to Filipino migrant workers include:

- ♦ Free access to courts and tribunals
- ♦ Free legal assistance from Department of Labor and Employment, in coordination with Department of Justice
- ♦ A Resource Centre to provide legal advice through embassies in destination countries
- ♦ Appointment of a Legal Assistant for Migrant Workers Affairs within the Department of Foreign Affairs
- ♦ A Legal Assistance Fund of P 100 million (USD 2 million) to fund lawyer and court fees for migrant workers

## 4.5 Insurance

In Indonesia, Article 68 of the *Migrant Worker Placement and Protection Law* obliges agencies to insure all migrant workers that they place overseas. The Law itself, however, leaves the details to implementing regulations. At present, *Decree of the Minister of Manpower and Transmigration KEP-157/MEN/2003 on Insurance for Indonesian Migrant Workers* is the relevant law. This Decree specifies that insurance must cover migrant workers leading up to their departure, during their employment abroad and between the time they complete their employment and the time they arrive back at their home town in Indonesia.

The Decree creates a system, based on an earlier 1998 Decree, whereby insurance is provided by private companies who are paid a premium of IDR 400,000 (USD 40) per contracted worker. A private company or consortium which wishes to provide such insurance must obtain a license from the Ministry of Manpower. This system has been heavily criticized for a number of reasons:

- ♦ The system commercializes the protection of migrant workers, setting up a conflict of interests for insurance companies between paying compensation to vulnerable migrant workers and maximizing returns to shareholders. One example of this is the appointment of lawyers to represent migrant workers who are paid by a company which stands to gain financially if the compensation is minimized.<sup>30</sup>

28 Sangheetha Chandrashekeran, Review of Regulatory Framework on Labour Migration in Indonesia (Unpublished paper for ILO Jakarta), p19.

29 See, eg, Simel Esim and Monica Smith, Gender and Migration in Arab States: The Case of Domestic Workers (ILO Beirut, 2004).

30 Sangheetha Chandrashekeran, Review of Regulatory Framework on Labour Migration in Indonesia (Unpublished paper for ILO Jakarta), p19.

- ♦ The system gives the Government a scapegoat (insurance companies) for the lack of protection provided to Indonesian migrant workers.
- ♦ As only a handful of licenses have been granted, competition between insurance providers is minimal and therefore services are inadequate.<sup>31</sup> The system has even been the subject of a ruling by the Business Competition Commission, or *Komisi Pegawai Persaingan Usaha* (KPPU), which recommended that the Decree be revoked for conflicting with the country's anti-monopoly laws.
- ♦ The system opens up opportunities for corruption, as there is no open tender process for the acquisition of licenses.
- ♦ The system has no mechanisms for enhancing the awareness of migrant workers of their rights to insurance payouts.
- ♦ Unlike the government, private insurance companies are not required to maintain a presence throughout the country. The result is that many only maintain offices in Jakarta, which are inaccessible to many migrant workers.

In the Philippines, the insurance scheme for migrant workers is administered by the OWWA, a government agency attached to the Ministry of Labor. The premium is USD 25 per contracted worker (maximum 2 years), to be paid by the employer of the migrant worker or the migrant worker him/herself in the case of illegal/irregular migrant workers (the scheme does not discriminate against illegal/irregular migrant workers in coverage or processing claims). Membership of the OWWA provides migrant workers with life insurance, disability benefits, legal assistance, psychological counseling, scholarships, pre-departure loans, family assistance loans and reintegration support.

A further P 900 (USD 18) is required to be paid by Filipino migrant worker to cover health insurance, which is jointly administered by the Department of Health (through the Philippine Health Insurance Corporation), the Department of Labor (through the OWWA and the POEA), the Social Security System and the Department of Foreign Affairs. The combined healthcare and OWWA membership premiums are approximately equal to the premiums paid on behalf of Indonesian migrant workers. However, on the whole the services and benefits appear to far exceed those provided to Indonesian migrant workers.

## 4.6 Destination Country Training

The provision of vocational training in destination countries is an important service for migrant workers. Such training can be provided to workers on their days off or at times they are not working, thus giving them a pretext for leaving their workplace and a chance to build networks with other migrant workers. Destination-country training can also ensure that migrant workers are immediately ready to enter the workforce upon return to their home country.

Indonesia does not yet have a formal programme of destination-country training. One successful example of such training is the Bayanihan Center, which runs a range of courses for Filipino migrant workers in Singapore. The Philippine Embassy in Singapore provides financial support to the Bayanihan Center, which offers certified courses in a range of areas such as hairstyling and nursing.<sup>32</sup>

31 KOBUMI, AMC et al, Underpayment: Systematic Extortion of Indonesian Migrant Workers in Hong Kong (Oxfam Hong Kong, June 2005), p41.

32 Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*, Vol 17.10, December 2005, p104.

# 5

## EMPOWERMENT UPON RETURN

### 5.1 Loans to Returnees and Their Families

It is important that the money saved and remitted by migrant workers is put to productive use and, where possible, contributes to the creation of jobs in the sending country. One way this can be encouraged is through the provision of finance to returned migrant workers. The Indonesian Government does not yet offer such services.

Returned Filipino migrant workers have access to number of sources of credit. The OWWA offers livelihood loans, re-entry loans and has recently begun to offer non-guaranteed loans of up to P 50,000 (USD 1,000) to returned Filipino migrants for the purposes of self-employment. Approximately half of all loan recipients are women. In addition to the OWWA credit schemes, the Department of Labor has established partnerships with NGOs to provide micro-credit to returned migrant workers. Returned Filipino migrant workers can also apply for housing loans through the national Home Development Mutual Fund (*Pag-IBIG*).

### 5.2 Non-loan Services to Returnees and Their Families

Apart from the provision of credit, governments can provide a range of services to returned migrant workers to assist with their reintegration and to utilize their overseas earnings and experience. At this stage, the Indonesian Government's services for returned Indonesian migrant workers largely revolve around compulsory "assistance" offered at Terminal III of the Jakarta airport for the purposes of returning migrant workers to their hometowns. This "service" has been accused in the past of being a way of exploiting migrant workers upon their return.

In the Philippines, the OWWA provides a range of services to returned Filipino migrant workers, such as:

- ♦ Organizing a network of returned Filipino migrant workers
- ♦ Establishing reintegration information desks at airports and local government buildings
- ♦ Employing Family Welfare Officers in key regions to inform returned migrant workers of ways to access government and NGO support programmes
- ♦ Providing scholarships

Other government agencies also provide services in accordance with their respective mandates, for example:

- ♦ The Technical Education and Skills Development Authority (TESDA) provides training on livelihood skills and business management

- ♦ The Bureau of Small and Medium Enterprise Development (an agency of the Department of Trade and Industry) provides business consultancy services

## 5.3 Migrant Worker Involvement in Policy-Making

Those who know most about the migrant worker experience, and are therefore in a position to make meaningful policy contributions on the regulation of migrant workers, are migrant workers themselves. It therefore makes sense for sending countries to involve former migrant workers in the formulation of laws and policies on migrant workers.

In Indonesia, returned migrant workers have been forming organizations like KOPBUMI (the Indonesian Migrant Workers Consortium), SBMI (the Indonesian Migrant Workers Union) and Migrant Care. Rather than tapping the resources and policy inputs these organizations can offer, the government has generally kept them out of policy-making and policy-administration roles.

In the Philippines, there is a much greater involvement of migrant workers formulating and administering migrant worker policies.<sup>33</sup> The *Migrant Workers and Overseas Filipinos Act*, for example, contains a provision on the registration of NGOs which are “active partners of the Philippine Government in the protection of Filipino migrant workers and the promotion of their welfare”. Where the Government’s capacity to deliver services is limited, it often cooperates with NGOs in order to ensure that some protection and empowerment is provided. Equally as important, however, is the fact that key government agencies – from the Governing Board of the POEA to the National Anti-Poverty Commission – include former migrant workers in their composition.

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33 Sangheetha Chandrashekeran, Review of Regulatory Framework on Labour Migration in Indonesia (Unpublished paper for ILO Jakarta), p42.

# 6

## CONCLUDING REMARKS

**E**fforts to protect and empower of Indonesian migrant workers are gaining momentum in Indonesia, in line with an increasing awareness on the part of Indonesian society as to the plight of those who have chosen – and some who have not – to venture abroad in search of better opportunities. The media, NGOs and other elements of civil society have been advocating for better laws and tighter enforcement over a range of issues, some of which the Government has begun to address. The consensus is, however, that a lot more needs to be done. The nearby example of the Philippines, with over three decades of experience in sending large numbers of workers abroad, provides some useful lessons as to how Indonesia can move forward on the issue of protecting and empowering its migrant workers.

This paper has discussed some of the key weaknesses with Indonesian law and some of the lessons Indonesia can learn from the Philippines for the purposes of protecting and empowering its migrant workers. These lessons include:

### Prior to departure

- ♦ Administration of labour emigration laws and policies by an independent, tripartite, proactive and well-funded body
- ♦ Clearly defined division of administrative authority
- ♦ Promotion of widespread community education campaigns
- ♦ Criminal checks for managers of recruitment and placement agencies
- ♦ Inspections of recruitment and placement agencies
- ♦ Not imposing too stringent capital requirements for the licensing of recruitment and placement agencies, so as to avoid creating a black market
- ♦ Clearly defining and prohibiting conflicts of interest in the ownership and regulation of recruitment and placement agencies (ie prohibiting certain officials from owning or running agencies)
- ♦ Rewarding honest and transparent recruitment and placement agencies
- ♦ Controlling fees charged to candidate migrant workers
- ♦ Provision of pre-departure loans through a government agency rather than a commercial bank
- ♦ Integrating pre-departure skills training into the mainstream vocational education system
- ♦ Inspections of training centres
- ♦ Interactive, rights-based pre-departure briefs, tailored to specific occupations and countries
- ♦ Specification of termination procedures in employment contracts
- ♦ Express government authority to void contracts that do not comply with certain minimum standards
- ♦ Distribution of government-endorsed sample contracts
- ♦ Prosecutions handled initially by government agency concerned with labour migration

- ◆ Specified time-limits for undertaking preliminary investigations and filing court proceedings against violators
- ◆ Maintenance of accurate and useful information on placements and labour markets

#### During employment / While abroad

- ◆ Placement of active and skilled labour attachés in all major destination cities
- ◆ Provision of a range of protection and empowerment services by embassies/consulates
- ◆ Less discrimination against “illegal” migrants
- ◆ Access to the formal dispute resolution system (labour tribunal) for both legal and “illegal migrants”
- ◆ Imposition of joint and several liability on employers and agencies, such that agencies bear full responsibility for violations by employers
- ◆ Provision of independent lawyers, rather than lawyers funded by the same insurance companies that are attempting to reduce their liability towards migrant workers
- ◆ Government-management of migrant worker insurance and healthcare
- ◆ Provision of training in destination countries

#### After returning from abroad

- ◆ Facilitation of networks of returned migrant workers
- ◆ Provision of skills training, business advice and capital to returned migrant workers
- ◆ Active incorporation by the government of NGOs and returned migrant workers into the policy-making process and into government bodies
- ◆ Cooperation with civil society for the provision of protective and empowering services to migrant workers

These are but a few of the lessons that can be learnt through comparison. More lessons could be gained by examining issues not covered in this paper, such as the management of remittances or the facilitation of contract extensions and substitutions abroad. As more countries in Asia begin to develop systems to deal with larger amounts of labour emigration, Indonesia may also find it useful to look beyond the Philippines to countries such as Sri Lanka and Pakistan. Ultimately, Indonesia needs to adopt policies that will work for the protection and empowerment of *Indonesian* migrant workers, and the best responses may not always echo what other countries have done. That being said, it is hoped that valuable lessons from other sending countries are taken into account to the extent that they have the potential to further the interests of Indonesian migrant workers and Indonesian society at large.

- ♦ Manolo Abella, *Sending Migrant Workers Abroad* (ILO Geneva, 1997).
- ♦ Sangheetha Chandrashekeran, *Review of Regulatory Framework on Labour Migration in Indonesia* (Unpublished paper for ILO Jakarta).
- ♦ Simel Esim and Monica Smith, *Gender and Migration in Arab States: The Case of Domestic Workers* (ILO Beirut, 2004).
- ♦ Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia*, Vol 16.9, July 2004.
- ♦ Human Rights Watch, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*, Vol 17.10, December 2005.
- ♦ ILO SAP-CFL, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers* (ILO Geneva, 2004).
- ♦ “Indonesia Aiming to Send One Million Workers Overseas Each Year”, *The Jakarta Post*, 26 January 2006.
- ♦ IOM, *Labour Migration: Trends, Challenges and Policy Responses in Countries of Origin* (IOM Geneva, 2003).
- ♦ KOBUMI, AMC et al, *Underpayment: Systematic Extortion of Indonesian Migrant Workers in Hong Kong* (Oxfam Hong Kong, June 2005).
- ♦ KOPBUMI, *Legal Analysis of the Law on the Placement and Protection of Indonesian Migrant Workers Overseas* (Draft Paper in Possession of ILO Jakarta, 2005).
- ♦ “Pemerintah Segera Bentuk Badan Penempatan dan Perlindungan TKI”, *The Jakarta Post*, 24 January 2006, <<http://www.thejakartapost.com>>.
- ♦ “Perlu Badan Khusus Tangani TKI”, *Kompas*, 26 February 2005, <<http://www.kompas.com>>.
- ♦ Wahyu Susilo, “Taking a Deeper Look at Migrant Workers in Malaysia”, *The Jakarta Post*, 17 February 2005, <<http://www.thejakartapost.com>>.

#### Law from Indonesia

- ♦ Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad
- ♦ Decree of the Minister of Manpower and Transmigration KEP-157/MEN/2003 on Insurance for Indonesian Migrant Workers
- ♦ Ministerial Regulation No. 4 of 2005 on the Holding of Final Pre-Departure Training Briefs for Migrant Workers
- ♦ Decree of the Minister of Manpower No. 104-A/MEN/2002

### **Law from the Philippines**

- ♦ *Migrant Workers and Overseas Filipinos Act 1995* (Republic Act No. 8042)
- ♦ Omnibus Rules and Regulations Implementing The Migrant Workers and Overseas Filipinos Act of 1995
- ♦ *POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers 2002*

# 8

## ANNEXES

### Annex 1: Sample Employment Contract for Various Skills (From Philippine Overseas Employment Administration)

This employment contract is executed and entered into by and between:

A. Employer:

Address: \_\_\_\_\_

P.O. Box No. : \_\_\_\_\_ Tel. No.: \_\_\_\_\_

B. Represented in the Philippines by;

Name of Agent / Company: \_\_\_\_\_

Address: \_\_\_\_\_

And

C. Employee: \_\_\_\_\_

D. Civil Status : \_\_\_\_\_ Passport No.: \_\_\_\_\_

Date & Place of Issue: \_\_\_\_\_

Address: \_\_\_\_\_

Voluntarily binding themselves to the following terms and conditions:

1. Site of Employment \_\_\_\_\_
2. Contract Duration \_\_\_\_\_ commencing from employee's departure from the point of origin to the site of employment.
3. Employee's Position \_\_\_\_\_
4. Basic Monthly Salary \_\_\_\_\_
5. Regular Working Hours: Maximum of 8 hours per day, six days per week.
6. Overtime Pay:
  - a. For work over regular working hours: \_\_\_\_\_

- b. For work on designated rest days & holidays: \_\_\_\_\_
7. Leave with Full Pay:
- a. Vacation
- Leave: \_\_\_\_\_
- b. Sick
- Leave: \_\_\_\_\_
8. Free transportation to the site of employment and in the following cases, free return transportation to the point of origin: a). expiration of the contract; b). termination of the contract by the employer without just cause; c). if the employee is unable to continue to work due to work connected or work aggravated injury or illness; d). force majeure; and e). in such other cases when contract of employment is terminated through no fault of the employee.
9. Free food or compensatory allowance of US\$ \_\_\_\_\_, free suitable housing.
10. Free emergency medical and dental services and facilities including medicine.
11. Personal life and accident insurance in accordance with host government and / or Philippine government laws without cost to the worker. In addition, for areas declared by the Philippine government as war risk areas, a war risk insurance of not less P100,000 shall be provided by the employer at no cost to the worker.
12. In the event of death of the Employee during the terms of this agreement, his remains and personal belongings shall be repatriated to the Philippines at the expense of the Employer. In case the repatriation of remains is not possible, the same may be disposed of upon prior approval of the Employee's next of kin and / or by the Philippine Embassy / Consulate nearest the jobsite.
13. The Employer shall assist the Employee in remitting a percentage of his salary through the proper banking channel or other means authorized by law.
14. Termination:
- a. Termination by Employer: The employer may terminate this Contract on the following just causes: serious misconduct, willful disobedience of employer's lawful orders, habitual neglect of duties, absenteeism, insubordination, revealing secrets of establishment, engaging in trade union activities, when employee violates customs, traditions, and laws of \_\_\_\_\_ and/or terms of this Agreement. The employee shall shoulder the repatriation expenses.
- b. Termination by the Employee: The employee may terminate this Contract without serving any notice to the employer for any of the following just causes: serious insult by the employer or his representative, inhuman and unbearable treatment accorded the employee by the employer or his representative, commission of a crime / offense by the employer or his representative and violation of the terms and conditions of the employment contract by the employer or his representative.
- Employer shall pay the repatriation expenses back to the Philippines.
- b.1 The employee may terminate this Contract without just cause by serving one (1) month in advance written notice to the employer. The employer upon whom no such notice was served may hold the employee liable for damages. In any case, the employee shall shoulder all expenses relative to his repatriation back to his point of origin.

- c. Termination due to Illness: Either party may terminate the contract on the ground of illness, diseases or injury suffered by the employee. The employer shall shoulder the cost of repatriation.
15. Settlement of Disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules and regulations. In case the employee contests the decision of the employer, the matter shall be settled amicably with the participation of the Labor Attache or any authorized representative of the Philippine Embassy / Consulate nearest the site of employment. In case the amicable settlement fails, the matter shall be submitted to the competent or appropriate government body in the host country or in the Philippines if permissible by host country laws at the option of the complaining party.
16. The employee shall observe employer's company rules and abide by the pertinent laws of the host country and respect its customs and traditions.
17. Applicable Law: Other terms and conditions of employment which are consistent with the above provisions shall be governed by the pertinent laws of the \_\_\_\_\_.

In witness thereof, we hereby sign this contract this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ at Manila, Philippines.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Philippine Representative  
(Licensed Recruitment Agency)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness