



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the second periodic report of the Philippines*

1. The Committee considered the second periodic report of the Philippines (CMW/C/PHL/2) at its 249th and 250th meetings (CMW/C/SR.249 and SR.250), held on 3 and 4 April 2014. At its 260th meeting (CMW/C/SR.260), held on 11 April 2014, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party, in response to the list of issues prior to reporting, and the additional oral information provided by the large, multisectoral and high-level delegation that was headed by Rosalinda Dimapilis Baldoz, Minister of Labour and Employment of the Philippines, was co-headed by Cecilia B. Rebono, Permanent Representative of the Philippines to the United Nations in Geneva, and included five Deputy Ministers representing the Department of Foreign Affairs, the Department of Labour and Employment, the Philippine Overseas Employment Administration, the Department of Justice, and the Presidential Human Rights Committee, as well as other government officials. This enabled the Committee to better understand the extensive and advanced legal and policy framework for implementing the Convention in the State party.

3. The Committee recognizes that the Philippines, which is predominantly a country of origin and has more than 10 million migrant workers overseas, has made substantial progress in protecting the rights of its migrant workers abroad. The country, however, continues to face several challenges as a country of origin, transit and destination for migrant workers.

4. The Committee notes that some of the countries in which Filipino migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.

* Adopted by the Committee at its 20th session (31 March–11 April 2014).



B. Positive aspects

5. The Committee reiterates its appreciation for the expressed high-level political will by the State party to respond to the needs of migrant workers abroad, as evidenced by the multitude of programmes and support structures for overseas Filipino workers, covering all stages of the migration process. The Committee in particular appreciates the review of the State party's policies to advance the rights of migrant workers and strengthen programme implementation procedures, capacity-building and the rationalization of resources.

6. The Committee welcomes as a positive step the adoption of the following instruments:

(a) The Magna Carta of Women (Republic Act No. 9710), in August 2009;

(b) The Migrant Workers and Overseas Filipinos Act, as amended (Republic Act No. 10022), in March 2010;

(c) Executive Order No. 34 creating the Overseas Preparedness and Response Team, which provides for assistance to migrants in times of crisis; Executive Order No. 41 reactivating the Presidential Task Force Against Illegal Recruitment, in April 2011; and the campaigns against illegal recruitment to raise awareness among migrant workers about pre-employment and pre-departure requirements;

(d) The Guidelines and Procedures which shall be adopted to harmonize the forging of bilateral labour agreements between the Philippines and other countries (Administrative Order No. 28), in 2012;

(e) The Domestic Workers Act (Republic Act No. 10361), on 18 January 2013; and

(f) The Expanded Anti-Trafficking in Persons Act (Republic Act No. 10364), which provides additional protection to victims of trafficking and service providers, in January 2013.

7. The Committee welcomes the ratification by the State party of the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 17 April 2012; and

(b) International Labour Organization (ILO) Convention No. 189 (2011) concerning decent work for domestic workers, on 5 September 2012.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

8. The Committee appreciates the detailed information on the achievements in establishing the necessary legal and policy framework and other practical measures that form part of the infrastructure for regular migration. However, it notes that the State party has not supplied sufficiently detailed information on legal and practical measures taken to implement the Committee's previous concluding observations (CMW/C/PHL/CO/1). The Committee reiterates its previous recommendations (CMW/C/PHL/CO/1, paras. 40 and 44) to step up efforts to prevent irregular migration of Filipino nationals, and to strengthen the reintegration programmes, including by means of job-creating measures.

9. **The State party is requested to implement all the recommendations addressed to it by the Committee and to take the necessary steps to ensure that its national laws and policies are in line with the provisions of the Convention.**

10. The Committee is concerned that section 29 (a) (2) of the Immigration Act, which allows for the prohibition of entry or expulsion on the grounds that the immigrant worker is suffering from an infection or illness or is pregnant, irrespective of the performance of the tasks for which the worker has been recruited, may result in discrimination against migrant workers.

11. **While noting the enactment of the Anti-HIV/AIDS Discrimination Law, the Committee recommends that the State party amend the Immigration Act in order to avoid discrimination against migrant workers on the basis of one's health situation, including real or perceived HIV status or pregnancy, and ensure that any health testing is voluntary and free from coercion.**

12. The Committee is concerned at the lack of sufficient information, including statistics, on the effectiveness of the Household Service Workers Programme of 2006 on the protection of the rights of migrant workers employed in household service.

13. **The Committee recommends that the State party assess the effectiveness and monitor the implementation of the Household Service Workers Programme of 2006, in particular the compliance with contracts of employment by employers abroad as regards the payment of adequate salaries and provision of labour benefits, and that it include relevant qualitative information and statistical data in its next periodic report.**

14. The Committee notes that the State party has not made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

15. **The Committee reiterates its previous recommendation and encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention as soon as possible (CMW/C/PHL/CO/1, para. 18).**

16. The Committee notes that the State party has not acceded to ILO Convention No. 131 (1970) concerning Minimum Wage Fixing, ILO Convention No. 167 (1988) concerning Safety and Health in Construction, or ILO Convention No. 181 (1997) concerning Private Employment Agencies.

17. **The Committee invites the State party to consider acceding to ILO Convention No. 131 (1970) concerning Minimum Wage Fixing, ILO Convention No. 167 (1988) concerning Safety and Health in Construction, and ILO Convention No. 181 (1997) concerning Private Employment Agencies.**

Data collection

18. The Committee notes with interest the expanded range of statistics on the flows of Filipino migrant workers, and welcomes the commitment by the State party to arrange for sharing of electronic information between the Department of Foreign Affairs, the Overseas Workers Welfare Administration, the Philippine Overseas Employment Administration and the Bureau of Immigration. However, it observes the existence of several departmental information systems, which results in a lack of centralized disaggregated data to evaluate the effective implementation of the Convention, particularly with regard to Filipino migrant workers abroad and their conditions of employment, the situation of returnees, migrants in transit, women and unaccompanied child migrants and foreign migrant workers in the State party, including seasonal migrant workers.

19. **Reiterating its previous recommendations (CMW/C/PHL/CO/1, para. 20), the Committee encourages the State party to create a sound, centralized and comprehensive database covering all aspects of the Convention and to include in it disaggregated data, to the extent possible, in order to facilitate the adoption of migration policies for effective implementation of the provisions of the Convention. The State party should ensure that the Shared Government Information System on Migration receives adequate human and financial resources, should enhance collaboration with the country's embassies and consulates to compile data and, among other measures, should endeavour to systematically evaluate the situation of irregular migrants.**

Training on and dissemination of the Convention

20. The Committee notes the insufficient clarity regarding the target groups for whom training programmes and materials on the Convention have been developed and regarding the means of dissemination of such information among all relevant stakeholders, including national, regional and local government bodies and civil society organizations.

21. **The Committee encourages the State party to:**

(a) Intensify training on rights under the Convention for all officials working in the area of migration, in particular police and border personnel, judges, prosecutors, and responsible consular officers, as well as national, regional and local government officials and social workers;

(b) Take further steps to ensure access by migrant workers to information and guidance on their rights under the Convention in all commonly used languages in the State party, in particular through the Pre-Employment and Pre-Departure Orientation Seminars; and

(c) Continue to work with civil society organizations and the media, including in the provinces, in order to disseminate information and promote the Convention.

2. General principles (arts. 7 and 83)

Non-discrimination

22. While noting with interest that the principle of non-discrimination is stipulated in the State party's laws, the Committee regrets that foreign workers can enjoy fundamental rights of workers only on the basis of restrictive conditions, such as reciprocity, in contravention of the Convention.

23. **The Committee reiterates its previous recommendation that the exercise of human rights is not based on the principle of reciprocity and recommends that the State party amend domestic laws so that all migrant workers and members of their families residing within the country can enjoy the rights under the Convention without any discrimination, in conformity with articles 1 and 7 of the Convention.**

Right to an effective remedy

24. While noting the measures and mechanisms adopted by the State party to protect the rights of migrant workers abroad, the Committee expresses its concern at the persistence of some obstacles to access to justice, including delays in proceedings, corruption and abuse of authority, such as in the cases of exploitation of distressed Philippine women workers abroad by some foreign service, labour and welfare personnel. It is also concerned at the lack of legal assistance in cases of illegal recruitment, limited access to the Legal

Assistance Fund, and the low number of complaints reported to the Philippine Overseas Employment Administration and the Philippine Overseas Labour Office. The Committee notes the lack of adequate information on available administrative and judicial remedies, and on remedies sought and received by migrant workers and in which countries, as well as the insufficient numbers and the inadequate awareness of the diplomatic and consular staff abroad about the remedies available in countries of employment.

25. **The Committee recommends that the State party should:**

(a) **Investigate and punish all cases of corruption involving public officials, implement mechanisms to detect public officials abusing their authority, and enhance the safeguards at the Filipino Workers Resource Centres;**

(b) **Systematically inform migrant workers and members of their families, including those in an irregular situation, about the available judicial and other remedies; and guarantee their equal access to complaints procedures and effective legal assistance, including through the Legal Assistance Fund, as well as to redress from the courts and other mechanisms when their rights under the Convention have been violated; and**

(c) **Allocate sufficient material resources and competent foreign service, labour and welfare personnel for the effective conduct of work abroad and ensure regular capacity-building and skills enhancements for such personnel, in cooperation with the relevant civil society and workers' communities, on the available remedies in countries of employment, in particular those categorized as "highly problematic".**

26. The Committee recognizes the commitment by the State party to the human rights of migrant workers and members of their families; however, it notes with concern that the Commission on Human Rights of the Philippines does not have a comprehensive mandate pertaining to rights of migrant workers, and that it lacks adequate financial and human resources to conduct work effectively as well as clear and transparent selection and dismissal procedures for the Commissioners.

27. **The Committee requests the State party to:**

(a) **Provide the Commission on Human Rights of the Philippines with a broad mandate to effectively carry out the promotion and protection of the rights of migrant workers and members of their families under the Convention;**

(b) **Provide adequate financial and human resources to the Commission to enable it to effectively discharge its mandate in full compliance with the Paris Principles (General Assembly resolution 48/134, annex); and**

(c) **Establish clear and transparent selection and dismissal procedures for the Commissioners.**

3. **Human rights of all migrant workers and members of their families (arts. 8–35)**

28. The Committee notes with concern that the granting of a work permit is conditional on the existence of employment and that loss of employment results in the loss of the work permit, which impacts on the legal situation of migrant workers.

29. **The Committee recommends to the State party to bring its laws and practice into line with article 8, paragraph 1, of the Convention, to ensure that the right of a migrant worker to reside in the country for the purpose of employment shall not be revoked if the migrant worker loses employment prematurely.**

30. The Committee notes with appreciation the progress made in improving and expanding the State party's consular services, including the deployment of female officers

and welfare wardens. Nonetheless, the Committee notes with concern the insufficient consular staffing and the lack of information on the protection and assistance provided by the State party's consulates to migrant workers abroad, especially in cases involving deprivation of liberty and/or expulsion orders.

31. **The Committee recommends that the State party take further steps to strengthen consular staffing, so that its consular services can respond more effectively in order to protect and promote the rights of Filipino migrant workers and members of their families, where necessary, and can provide, in particular, the necessary assistance to any of them who are deprived of liberty or subjected to an expulsion order. The Committee also recommends that the State party enhance the assistance provided through embassies and consulates to migrant workers who are victims of the *Kafalah* (sponsorship) system, particularly in the Gulf countries, so that all exploitation and abuses can be effectively reported, investigated and punished.**

32. The Committee is concerned that, notwithstanding the efforts by the State party, Filipino migrant workers abroad, especially women domestic workers, continue to suffer from widespread exploitation and abuse in several host countries.

33. **The Committee recommends that the State party continue to:**

(a) **Monitor and assess the implementation of bilateral and multilateral labour agreements and memorandums of understanding between the origin and destination countries, and of other protective measures, in order to ensure the effective enjoyment of the rights and benefits by Filipino workers abroad, in particular women, in line with the Convention;**

(b) **Address the situation of migrant workers who are victims of the *Kafalah* system, in particular in the Gulf countries, and consider raising this issue with a view towards abolishment of this system by the Governments concerned, as well as concluding specific bilateral agreements with the countries receiving Filipino migrant workers, with the involvement of concerned civil society actors, to enhance protection of specific categories of workers, in particular women, against exploitation and abuse; and**

(c) **Offer adequate information to migrant workers and members of their families travelling to countries with the *Kafalah* system on the regulatory framework, and on the rights and benefits, as part of the Pre-Employment and Pre-Departure Orientation Seminars.**

34. Although the Committee recognizes the measures taken by the State party to provide mobile services for registering the birth of Filipino migrant children abroad, the Committee is concerned at the reported difficulties in accessing birth registration for Filipino migrant children abroad in some instances, including those in an irregular situation, for example due to the distance to the foreign service posts and the costs incurred.

35. **The Committee encourages the State party to take further steps to reach out to the destination countries in respect of the registration of children of migrant workers, both those in regular and those in irregular situations, and to update the relevant databases.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)

36. The Committee expresses concern that sections 269 and 272 (b) of the Labour Code impede the exercise by migrant workers in the State party of the right to freedom of association and the right to form or join a trade union.

37. **The Committee recommends that the State party should adopt all necessary measures, including legislative amendments, to guarantee the right of migrant workers and members of their families to form associations and trade unions, in accordance with article 40 of the Convention.**

38. The Committee appreciates the efforts of the State party to facilitate the right to participate in public affairs and the right to vote, on the basis of the Overseas Absentee Voting Act, in the elections for President and Vice-President and for senators and party list representatives, but it regrets the low level of participation by Filipino workers abroad in the national elections in May 2013.

39. **The Committee recommends that the State party strengthen its efforts to guarantee the right to vote of Filipino migrant workers living abroad by facilitating their registration and participation in the next presidential and national elections, that it continue measures for voting by mail and via the internet, and that it secure sufficient funding for overseas voting.**

40. While noting with appreciation the State party's information that a foreign migrant worker has the freedom to remit all or a portion of his or her earnings, the Committee notes that under section 22 of the Labour Code, certain categories of Filipino workers abroad, such as seafarers, are reportedly obliged to remit up to 80 per cent of their foreign exchange earnings to their families and dependents and other beneficiaries in the State party.

41. **The Committee recommends that the State party review its legislation in this regard to bring it into line with article 47 of the Convention, so that migrant workers can transfer their earnings and savings as they may desire.**

5. **Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)**

42. While recognizing the State party's commitment to pursuing ethical recruitment principles, such as through the Code of Ethics for Manning Agencies, as well as its efforts to strengthen the system for the licensing of recruitment agencies, the Committee is concerned that private recruitment agencies continue to charge excessive placement fees, to provide often incomplete information, which may result in acceptance of salaries below the minimum wage and deprivation of other labour benefits, and to serve as intermediaries for abusive foreign recruiters.

43. **The Committee recommends that the State party undertake the following measures:**

(a) **Reinforce the regulatory regime for private recruitment agencies and strengthen the existing licensing system for recruitment agencies;**

(b) **Enhance recruitment monitoring and inspections to prevent private recruitment agencies from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters;**

(c) **Ensure that private recruitment agencies provide complete information to individuals seeking employment abroad and that they guarantee the effective enjoyment of all agreed employment benefits, in particular salaries;**

(d) **Investigate and punish illegal practices by recruiters, with a view to exposing errant practices; and**

(e) **Adopt a “no placement fees” policy for persons intending to work abroad.**

44. The Committee notes the State party's efforts to secure the welfare of the children of migrants in situ and those left behind in the country of origin, including through the pilot education, entrepreneurial and training programmes. However, the Committee is concerned at the limited number of such measures, and their reliance primarily on civil society input and participation, and at the vulnerability of children left behind in the country of origin to violence, abuse, neglect and exploitation. The Committee also regrets the lack of clarity about the measures taken to facilitate the resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country of origin.

45. **The Committee recalls its previous recommendation and recommends that the State party:**

(a) Conduct nationwide research on children of migrant workers in situ and on those left behind in the country of origin to establish the demographic profile of this population in order to guide its policies and programmes; and

(b) Adopt a comprehensive strategy to promote and protect the rights of children and families of Filipino workers, in particular through education, entrepreneurial, training and community welfare programmes, and further its cooperation to that effect with civil society actors in situ and in the country of origin;

(c) Provide information in its next periodic report on the measures taken to facilitate the resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country.

46. The Committee takes note of the State party's efforts to prevent and combat trafficking in persons, including the operation of the Inter-Agency Committee Against Trafficking and the Philippine Anti-Trafficking Database, and particularly notes the increased number of convictions of traffickers in the past few years, whereby 121 cases of human trafficking resulted in convictions involving 140 traffickers and 340 trafficked persons. It expresses its concern, however, that the prosecution rate for trafficking in persons, especially women and children, remains low, due to difficulties in law enforcement, as illegal recruiters are often relatives of the persons trafficked, or foreign recruitment agencies, according to information received by the Committee. The Committee also notes with concern that many judges, prosecutors, social service workers and law enforcement officials seem to have insufficient knowledge of the legislation against trafficking in persons, which may hinder both the successful investigation, prosecution and punishment of such acts and the providing of assistance to the victims.

47. **The Committee recommends that the State party strengthen its efforts to combat trafficking in persons, particularly women and children, through vigorous implementation of the national strategic plan to that effect, which should include measures to:**

(a) Enhance mechanisms for proper identification and referral to improve assistance to victims of trafficking;

(b) Promptly, effectively and impartially investigate, prosecute and punish all acts of trafficking in persons and other related offences, and deal expeditiously with the cases filed against illegal recruiters;

(c) Reinforce the mechanisms of support, rehabilitation, protection and redress, including the State-funded social rehabilitation services and assistance with reporting incidents of trafficking to the police, and ensure their availability to all victims of trafficking, including at the provincial and local levels;

(d) Enhance training for police officers, law enforcement officers, judges, prosecutors, labour inspectors, teachers, health workers, and the staff of the State party's embassies and consulates, and distribute the Manual of Procedures in Handling Complaints of Trafficking in Persons, Illegal Recruitment and Child Labour, and the Manual on Labour Dimensions of Trafficking in Persons for Investigators, Prosecutors, Labour Inspectors and Service Providers;

(e) Place public information materials in all transport terminals in order to educate the public about trafficking and the protection of migrants; and

(f) Systematically collect disaggregated data on trafficking in persons.

6. Follow-up and dissemination

Follow-up

48. The Committee requests the State party to include in its third periodic report detailed information on measures taken to follow up on the recommendations made in the present concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and the Parliamentary Assembly, as well as to local authorities.

49. The Committee requests the State party to involve civil society organizations more closely in the preparation of the State party's third periodic report, and in the implementation of the recommendations made in the present concluding observations.

Dissemination

50. The Committee likewise requests the State party to disseminate these concluding observations widely, particularly to public agencies and the judiciary, non-governmental organizations, and other members of civil society, including those in all provinces, and to bring them to the attention of Filipino migrants abroad and foreign migrant workers in transit or residing in the Philippines.

7. Next periodic report

51. The Committee requests the State party to submit its third periodic report by 1 May 2019. Alternatively, the State party may follow the simplified reporting procedure whereby the Committee draws up a list of issues which is then transmitted to the State party for a response. The State party's replies to the list of issues constitute its report under article 73 of the Convention, without the State party having to submit a traditional periodic report. This new optional procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, para. 26).
