

Reference Paper
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MANAGING
THE PHILIPPINE OVERSEAS
EMPLOYMENT PROGRAM:
KEY POLICY ISSUES
AND RESPONSES

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INTRODUCTION

The Philippine overseas employment program begun in the early 70's. It is founded on a clear constitutional mandate for the State to promote full employment and afford full protection to labor, both local and overseas, organized and unorganized. The enabling act which serves as the legislative framework is the Labor Code of the Philippines of 1975 and later, Republic Act No. 8042 known as the Migrant Worker's and Overseas Filipinos Act of 1995. Both the constitutional and legal framework provide the firm basis of stable and sustainable migration policies and which pave the way for the deployment of millions of Filipinos all over the world.

There are about 7.0 M Filipino people living or working abroad. Some 3.09 M out of the 7 M are temporary workers, 1.2 M are permanent residents and 1.6 M are irregular workers. Everyday about 2800 workers are deployed overseas daily. As of the last estimate, Overseas Filipino workers (OFW) are in more than 190 countries and in every ocean. We deploy workers of various skills, both land-based and sea-based. The Philippines remains the premiere manning capital of the world. Filipinos compete with other seafarers in both ratings and officers categories. In 2002, we deployed 209,593 seafarers and 682,315 land based workers for a total of 891,908 OFWs. Land based workers of various competencies and skills include nurses, information technologists, engineers, construction workers, teachers, housekeepers, nannies, caregivers and governess, entertainers and performing artists. Indeed the services of Filipino workers are the most globalized of our economic forces.

ISSUES AND RESPONSES

With almost three decades of experience in managing overseas employment, key issues can be identified and various lessons can be learned. But, always the underlying principle is the constitutional mandate of the State “to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.” Within this context, government recognizes that the decision to leave the country and work abroad is a personal choice of the worker and it is the task of the State and all the stakeholder to maximize the benefits and minimize the costs of overseas employment to the worker, his family and the country as a whole. This is achieved by setting up mechanisms for the orderly and systematic facilitation and documentation of workers, provision of adequate protection to minimize abuses and exploitation before, during and after employment.

Issue: Private Sector Participation

Initially, overseas employment is under the complete control of the government until the policy shifted to allow private sector participation and even foreign equity of up to 25%. The condition, however, is the Filipino owners, and not the foreign investors, should be the managers and operators of the business. Other government regulations include the licensing system, placement fee system, penalty system and incentive system. The pressure to deregulate and leave to the private sector particularly the employers through their recruiters and the workers the decision to decide on all terms and conditions of employment continues to be a challenge to policy makers and implementors.

- **Licensing System:** Despite the relaxation of the investment policy in overseas employment, the government continues to exercise regulatory authority over private recruitment agencies, through a licensing system. The grant of license is understood to be a privilege, never a demandable right. It is subject to compliance with certain conditions. Otherwise, it can be withdrawn or cancelled anytime.

The current licensing policy is to restrict the entry of new applicants by making compliance with conditions much more difficult compared to existing licensing holders when they renew the license.

- **Capitalization Requirement:** The requirement for capitalization in terms of paid-up capital has been increased from P1 M to P2 M and new applicants have to comply with the requirement at the time of application. For existing license holders, they can put up the increase in capitalization on a staggered basis of four equal yearly installments. The duration coincides with the effectivity of the license which used to be for two years only and was also increased to another two years.
- **Market Requirement:** The requirement for marketing capability was also upgraded by requiring 50 to 100 workers during the first year to be deployed to an employer who has never been accredited to another agency, or if previously accredited, it has been inactive for the last five years. Compliance with the “new virgin market” requirement is conditional and failure to meet the same will result to the expiration of the one year provisional license and automatic cancellation of license. If complied with, the license period is automatically extended to the full term of 4 years.
- **Escrow Deposit:** The more crucial requirement is the escrow deposit which was also increased from 300,000 Pesos to 1 M Pesos with a commercial bank and surety bond of 100,000 Pesos. The scheme of payment of new applicant and existing license holders applicable to capitalization also applies to escrow deposit. Escrow deposit and surety bond are financial guarantees to ensure compliance by the agency and its principal employer with contractual obligations and to answer for fines or restitution of placement fees illegally collected from the workers. For foreign employers of performing artists or entertainers, an additional escrow of US \$20,000 is also required. For domestic helpers in Singapore, employers are also required to post an additional bond of S \$2,000 per worker. Under the joint and soldiery liability principle between the foreign employer and the Philippine agent, both are liable for claims and awards in favor of the workers and the escrow and bond can be levied to answer for the

claims. The escrow deposit once levied against or garnished should be replenished and kept in its original amount.

- **Placement Fee System:** The government continues to regulate the collection of placement fees from the workers. As a general rule, licensed land based agencies can collect placement fee from the workers in the maximum amount of one month salary. In countries where “no placement fee policy” is observed, agencies cannot collect any placement fee otherwise the license can be cancelled. For Taiwan, on-site service fees are allowed to be collected from the workers. Government allows collection of documentation fee from the workers to pay for medical examination, passport fee, police clearances, trade test and cost of documentary authentication. Foreign employers pay the cost of airfare and visa fees. Manning agencies for sea-based workers are prohibited from collecting any placement fee.
- **Penalty System:** Government requires licensed agencies to comply with all the conditions of the license issued to them. A table of offenses and penalty that defines the offenses and violations and provides the corresponding penalties, the maximum of which is cancellation of license plus payment or fines to the government and refund to the workers of excess fees. It is the underlying principle of the new licensing policy to make it difficult for new players to enter the recruitment business, but once they get the license, government should make it easy for them to operate by streamlining the processes of recruitment and deployment. However, should they violate recruitment rules, it should be easy for government to cancel or suspend their licenses.
- **Incentive System:** The penalty system is combined with a reward and incentive system for agencies with good track record of performance in marketing, zero recruitment violations, zero record of adverse decisions, provision of welfare services and community-oriented projects. Incentives include the grant of in-house processing facility for their workers, no verification of contracts for selected workers, inclusion in client referral program, extension of license to another four years, and inclusion in the mailing list of market advisories and other information materials.

- **Pressure to Deregulate:** The government is under pressure by agencies to further deregulate by removing the regulatory functions on licensing and documentation of workers including the setting of standards like placement fees even to vulnerable workers. Amendments to the existing law to strengthen support for deregulation have been the subject of congressional hearings but the initiative did not yield positive results in favor of the recruitment agencies' demand. Instead, a bill that clarifies and further strengthens POEA regulatory functions has passed the Lower House and to be taken in plenary debate at the Senate. A court case against the Secretary of Labor and the POEA Administrator is now pending at the Supreme Court on petition for certiorari to also resolve the issue. Deregulation, as far as POEA is concerned, means streamlining of processes to remove bureaucratic red tape and reduce the cost of transactions, but not the absence of regulations. It is taken in the context of full employment and market realities that enable the government to leave overseas employment as a matter between the workers and employers to decide without compromising their welfare and interest. Unfortunately, such economic conditions have yet to become a reality in the Philippines.

Issue: Documentation of Workers and Employers

Proper documentation for both workers and employers assure them and their governments better and more efficient monitoring of OFWs wherever they are and adequate protection should on-site problems arise, including emergencies like war and other natural calamities that will require them immediate relocation or repatriation. Documentation is done through the following:

- **Employers' Verifications and Authentication System:** The hiring process for overseas employment starts with the documentation of the employers through submission of accreditation documents which are verified by labor officers and authenticated by embassy officials at the foreign posts. Agencies can only recruit for them once accredited and under terms spelled out in a recruitment agreement between employer and agencies. Manpower requests once verified and authenticated are sent to POEA for registration.

- **Workers' Documentation System:** Workers get documented after submission of employment clearances, appropriate credentials, skill certificates, and duly executed and verified employment contract. Once the documents are processed, the POEA requires workers to attend the pre-departure orientation seminar. Workers pay membership fees to the Overseas Workers Welfare Administration (OWWA) for health and medical insurance coverage. Workers are issued overseas employment certificate as exit clearance at the airports, entitling him to travel tax and terminal fee exemption. His dependents are also entitled to reduced travel tax.
- **The E-Link For OFWS:** Workers' documentation requires completion of processes with several government agencies, entailing costs and time on the worker. To address the problem, a one stop processing center is established where workers can get all the documents in one place at the least costs and at the shortest time possible. The concept of one-stop processing centers is the initial step towards the electronic linking of the data bases of all the agencies involved in OFW transactions. It will address bureaucratic red tape that breeds corruption. On a regular run are three electronic operated system to speed up the processing of workers' documents: The E-receipt which is the verified / single receipt for both POEA and OWWA transactions; the E-Submission which the electronic processing of employment contract; and the E-card, which is the electronic identification card that bears the permanent identification number of the OFWs and which replaces the Overseas Employment Certificate (OEC) for exit purposes. The E-card is a government issued identification card to all OFWs which they can also use as remittance card any where in the world. He can also use it as discount card in shopping malls and as credit card to pay his bills. It also serves as OWWA membership card and he can also use it in all government transactions. The e-contract submission system allows agencies to encode all their documents from their offices using internet connection to send them to POEA for processing and issuance of the E-card.
- **Database for Departing OFWS:** Through the electronic data base, the millions of OFWS can be accounted at anytime. A daily monitoring report of deployment is released to the public, with disaggregated data on countries and skills made available

upon request. Immediate tracking of OFWS is critical during time of emergencies requiring relocation or repatriation or when families want to communicate with them.

- **Incentives for Good Employers and Workers:** The government has institutionalized the annual grant of incentive to outstanding employers and workers by way of incentives. Employers are exempted from verification and authentication of documents. Workers are given the Bagong Bayani awards by the President, which is a project of a private foundation conferred annually. Plaque and cash award are given to the awardees.

Issue: Standard Employment Contract, Implementation and Settlement System

- **The Employment Contract:** One way of affording protection to workers is to provide standards of employment that conform to both the laws and practices of both the sending and receiving states. Such standards are embodied in a contract of employment the terms of which are fully disclosed to the workers. The employment contract is one important document that the worker should bring with him. No worker should leave without the POEA-approved contract. During the PDOS, contract provisions are explained such as wage, position, work hours, air fare, accommodation, food allowance, sick leave, vacation leave, just and authorized causes for employment termination, emergency medical provision, workmen's compensation, grievance machinery and worker repatriation mechanism in case of distress and death. Employment contract provisions are based on international convention and principles of labor and employment administration. The provisions should be in compliance with Philippine law and jurisprudence and that of the host government. If there is a conflict, the gap should be addressed by negotiations with the employer or the host government. The principle of "whichever is the higher benefit" between two systems will apply and in no case will any of the provisions be lower than that prescribed under Philippine regulations.
- **The Contract Enforcement:** Cases arising from implementation and interpretation and other contract violations are settled through the grievance machinery by workers and employers. Conciliation services are available on site at the embassies and

consulates. Otherwise, the case will be filed and decided through arbitration by the National Labor Relation Commission in the Philippines (NLRC).

- **System of Discipline:** Employers and workers who commit rampant contract violations can be blacklisted by POEA and disqualified from participating in the overseas employment program, either temporarily or permanently depending on the gravity of the violations. The system has proven to be effective in getting rid of abusive and unscrupulous employers and problematic workers.

Issue: On Site Welfare Assistance Program

- At the Philippine embassies and consulates, the corps of labor attaches and welfare officers acts as advocates for our workers. They attend to welfare cases of OFWs with their employers and with the local authorities. They provide legal and representation services, visit prison, provide conciliation services, coordinate with community organizations like the church and the non-government groups in the conduct of programs that will help them cope and adjust to the local environment. We also send government doctors and psychologists to attend to their health and psycho-social problems. These services are available in the network of Filipino Workers Resource Centers where various skills training and upgrading courses are conducted to prepare for reintegration and transfer to other higher skilled jobs. In case of repatriation in connection with work-connected or employment-related issues, the cost of repatriating the workers is borne by the employer and his agency under the joint soldiery principle. They are under obligation to provide a pre-paid ticket otherwise the processing of the documents for other workers will be suspended by POEA
- In case of war and other emergencies like natural disaster, the government provides an Emergency Repatriation Fund to answer for the cost, drawn from funds of the OWWA. Repatriation is done in coordination with the employer, the agency and the host government that facilitated all the clearances needed. Other than the benefits arising from the contract, collective bargaining agreements, company insurance,

workers are also entitled to burial assistance and death benefits from government social security agencies.

Issue: Reintegration Policy

- The policy is geared towards preparing workers to be back with his family at the earliest time possible because he has found employment locally or his savings have been mobilized and invested in sustainable micro enterprises to provide employment and livelihood for him and his family. The involvement of the business groups and the banks and science and technology training centers on livelihood is most needed. A data base for returning OFWs who decided to stay is now being prepared by OWWA which will contain information on workers and their skills and competencies. The data base will be linked to various chambers of commerce and industries for job placements and livelihood assistance including outsourcing of jobs. This will facilitate transfer of technology from the host country to the Philippines. Families of OFWs are also being organized into associations for livelihood assistance.
- Early reintegration of OFWs with their families is facilitated if their basic need for food, decent housing and education for their children are already met. A special housing program for overseas workers is available at affordable terms. Scholarship programs are also available for deserving children of OFWs by schools and universities funded by the OWWA. Seed capital to start a business is also part of the benefit of an OWWA member.

Issue: Irregular Migration

- An anti-illegal recruitment campaign program is in place and operates nation-wide, consisting of preventive and remedial components. The preventive aspect is a comprehensive and massive public information and education program using multi-media organizations, Church-groups, NGOs, local government units, schools and private entities are government partners in the program.

- The list of licensed agencies is pooled in the POEA website and updated daily. There is also a quarterly printed list distributed free to the public. Information on status of agencies, job orders and other market data are also available on hotlines that operate 7 days on a 24 hour basis. This information is also available through text messages. Public advisories and press releases are also used to warn public of being victims of illegal recruiters. On the remedial aspect, reports of illegal recruitment activities are immediately subject to surveillance and prosecution as criminal cases that are punishable by imprisonment and fine. A joint police and civilian operatives and inquest fiscals attend to these cases on a 24 hour basis.
- Based on cases, irregular migration is facilitated by travel agencies and tour groups and even immigration consultants whose activities go beyond visa facilitation but cover the whole range of recruitment. To curtail their activities, their operation has been placed under the regulatory power of the POEA and they are required to secure a license just like private recruitment agencies.
- This June, the Anti-trafficking Act of 2003 was passed and the implementing rules are being prepared. It defines the acts penalized and provide stiffer penalty for violation and they are no longer prosecuted as illegal recruitment case as before. An OFW complaints and assistance desk is present in all police stations nation-wide to immediately act on illegal recruitment and trafficking cases. Our experience however, shows that the effective collaboration with labor departments and intelligence agencies of various countries is most necessary for both the preventive and remedial approach to illegal recruitment and trafficking cases.

CHALLENGES:

The government perspective about OFWs and overseas employment in relation to national development agenda is clear. Migrant workers and overseas Filipinos numbering 7 M in over 190 countries are important partners in pursuing our national development goals. As economic development partners, OFWs are major source of dollar remittance amounting to US\$7 B to US\$8 B annually that continues to propel our economy even in times of crisis.

But more than mere sources of dollar remittances, the government considers them as showcases of the Philippine's global competitiveness.

To maximize the benefit of overseas employment, our country needs to re-define itself as a highly competitive labor-sending country by transforming itself into a world-class manpower supplier to the international labor market. Leading industrialists in the Philippines have rallied the business sector to give full support in promoting overseas employment as an economic sector needed to be integrated into the country's program for economic modernization and global competitiveness.

In pursuit of this economic development strategy, the government needs to equip our OFWs with new and better skills and make heavy investment in OFWs support system, particularly skills training. Government must explore and develop more and better markets through an aggressive marketing campaign strategy for labor migration management. This is not to say that we will trade them just like chattels and goods, for definitely, they are not. We need to ensure that our workers are qualitatively at par with, if not superior, to their foreign counterparts in terms of knowledge, skills and language proficiency and more importantly with ethics and values that will make them globally competitive and assets to the receiving countries.

There is a need for government to work closely at multilateral levels like in GATS to work towards the liberalization of trade in services under MODE 4-MNP to include mobility of skilled and less skilled workers through mutual recognition schemes and easing up of licensing and qualification system for professionals. There is also a need for government to explore with receiving countries workable schemes to address the brain drain issue by setting up schemes that will continuously replenish the skills demands of labor markets through training and development programs funded by the contribution of employers to subsidize the cost of education and skills training and improvement of education and training facilities in the sending countries.

As a strategy for social development, we consider overseas employment as agents of development for themselves, their families and their country. It is meant to be an enabling tool to help them act on their own choice to improve their status and quality of life for themselves and their families and become better citizens of our country.

It has also provided them enough earnings potential that predisposes the government to encourage them to invest strategically in small and medium enterprise (SME) and likewise empowered them professionally, enabling them to acquire new information, skills and technology useful for reintegration program.

Even as there is a need to maximize the benefits of overseas employment, the primacy of protection and welfare of OFWs remains an indispensable policy and cannot be compromised. Government has both the legal and moral responsibility to protect OFWs from the perils and risks of overseas employment.

Fully aware of the constraints of government to ensure the adequacy and fullness of these services, there is a need to pursue a framework of governance that will recognize synergistic partnership with the private sector, the unions, the NGOs/CS, and the media in the area of information dissemination and education of the publics. Government should also shorten migration especially for vulnerable groups through an effective reintegration program as a strategy to alleviate poverty for the unskilled and low skilled workers who are forced to leave the country due to family security.

Moreover, there is the need to pursue bilateral negotiations on social security and health and safety issues with receiving states and likewise multilateral initiatives with UN agencies and donor agencies at the regional and international levels to facilitate social dialogues to address mutual migration issues between and among sending and receiving countries, thereby making labor migration as a potent tool to bring about peace and security to OFWs, their families, their country and the international communities as a whole.

Government cannot do it alone. The challenges and the goals must be shared by all the stakeholders and more so by receiving states. Managing labor migration issues requires global collaboration. Governments of both sending and receiving countries need to collaborate in enacting policies and implementing mechanism that are sensitive to the needs of the migrant populations. Some practical considerations are worth pursuing:

- Labor migration as an available option should not be an excuse for any delay in pursuing the country's long term sustainable growth and development goals of reducing unemployment and alleviating poverty as push factors for migration.
- Our experience in many cases show that much of the burdens of addressing migration issues is left for sending countries to resolve. Sending countries should insist that receiving countries should jointly manage migration as they benefit both from it. Areas of mutual cooperation include regularization of undocumented workers as was done in Italy, facility for efficient, secure, legal, and inexpensive transfer of voluntary remittance, allowing dual citizenship, exercise of political right, and inclusion of migrant concerns in policy making deliberations.
- Fora for social dialogues on labor migration issues at the national, regional and international levels such as this conference is most appropriate in pursuing the agenda of effective cooperation and collaboration between and among sending and receiving states, including initiatives to set up international standards and ratify international conventions.

Conclusion:

- Indeed, migrant workers are ambassadors of goodwill. They ought to be prepared as such by the sending countries and treated as such by the receiving countries. It is essential that both sending and receiving countries provide the migrant workers the services needed from the time they apply for work, while they are on the worksites, the time they return home to enable them to achieve the mission of peace and security for themselves, for their families, for their countries, and for the international community. Effective management of labor migration by both the sending and receiving states and the participation of relevant international organizations will help maximize the benefits and minimize the risks of overseas employment for all the stakeholders.