



Photo credit: United Nations/Asia Migrant centre



## SENDING COUNTRIES: SOUTHEAST ASIA

# Republic of the Philippines



## A. COUNTRY CONTEXT

The Philippines is an archipelago of about 7,100 islands located between the Philippine and South China Seas in South-East Asia. It has three major island groups: Luzon in the north (which contains the city of Manila, the nation's capital), Visayas in the centre, and Mindanao in the south. The 2012 population is estimated at 103,775,002 million, 83 percent of whom are Catholic, and another 5 percent who are Muslim.<sup>1</sup> Filipino and English are the two official languages. Major ethnic groups include: Tagalog (28.1 percent), Cebuano (13.1 percent), Ilocano (9 percent), Bisaya/Binisaya (7.6 percent), Hiligaynon Ilonggo (7.5 percent) Bikol (6 percent) and Waray (3.4 percent).<sup>2</sup> For decades the government has waged a struggle against ethnic Moro insurgencies in the South, however on 8 October 2012 a Framework Peace Agreement was reached aimed at granting limited political autonomy to the region and ending the fighting.

The Philippines is a lower middle-income country<sup>3</sup> with medium human development.<sup>4</sup> Gross national income was placed at 2,210 US dollars per capita in 2011.<sup>5</sup> The Philippine economy has grown at an average rate of 5 percent over the past 10 years.<sup>6</sup> It weathered the 2008-09 global recession better than its regional peers thanks to minimal exposure to troubled international securities, lower dependence on exports, relatively resilient domestic

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1 US Central Intelligence Agency, *The World Factbook 2012 – Philippines* (2012). Available from: <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>  
 2 Ibid.  
 3 Available from: <http://data.worldbank.org/country/philippines>  
 4 Available from: <http://hdrstats.undp.org/en/countries/profiles/PHL.html>  
 5 Available from: <http://data.worldbank.org/country/philippines>  
 6 Available from: [www.worldbank.org/en/country/philippines/overview](http://www.worldbank.org/en/country/philippines/overview)



consumption, and large remittances, according to observers.<sup>7</sup> Despite this, more than 25 percent of the population still lives under the poverty line. High population growth rates and inequalities in income and asset distribution have hampered poverty reduction efforts.<sup>8</sup>

| Human Development Index                       | Medium human development |
|---|--------------------------|
| Stock of migrants from the Philippines        | 8.6 million <sup>9</sup> |
| Annual growth rate                            | 1.2% (1960-2005)         |
| Share of population                           | 8-9% (2012)              |
| Proportion of female immigrants <sup>10</sup> | 54.5% (2010)             |

The Philippines is primarily a labour-sending country and has one of the largest emigrant populations in the world. In the 1970s the government institutionalized labour migration as a development strategy, and since that time a culture of migration has emerged. A 2005 survey found that 33 percent of Philippine respondents expressed a desire to migrate, despite the risks and vulnerabilities they are likely to face. Various factors have contributed to the Philippines becoming a major labour exporter, including what one think tank has called “the absence of sustained economic development, political instability, a growing population, double-digit unemployment levels, and low wages”.<sup>11</sup> In recognition of this, and the fact that remittances account for a significant portion of gross domestic product, the government has aimed to facilitate migration for work. Despite domestic criticism, the government’s migration policy is considered a model in migration management in South-East Asia .

## B. KEY GENDER AND HUMAN RIGHTS ISSUES

The Philippines has ratified eight of the nine core human rights treaties, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Protection of All Migrant Workers and Members of Their Families (CMW). The government has also adopted several laws which contribute to enhanced protection of women’s human rights. One of the most important is the Magna Carta for Women, adopted in 2009, which translates the CEDAW into national law.

7 US Central Intelligence Agency, *The World Factbook 2012*.

8 Jose Ramon G Albert and Andre Philippe E Ramos, “Examining recent trends in poverty, inequality, and vulnerability”, *Policy Notes No. 2010-03*, Philippine Institute for Development Studies (Makati City, July 2010). Available from: <http://dirp4.pids.gov.ph/ris/pn/pidspn1003.pdf>

9 The Philippines, Office of the President, Commission on Filipinos Overseas, *Frequently asked questions – statistics* (webpage, n.d.). Available from: [www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=1309:statistics&catid=110:frequently-asked-questions&Itemid=858](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1309:statistics&catid=110:frequently-asked-questions&Itemid=858)

10 Maruja MB Asis and Dovelyn Rannveig Agunias, “Strengthening Pre-Departure Orientation programmemes in Indonesia, Nepal and the Philippines”, in *Issue in Brief No. 5*, A joint series of the International Organization for Migration regional office for Asia and the Migration Policy Institute (Bangkok/Geneva, September 2012), p.2. Available from: <http://www.migrationpolicy.org/pubs/predepartureorientation.pdf>

11 Migration Policy Institute (MPI), *Managing Temporary Migration: Lessons from the Philippine Model* (Singapore, October 2008), p.2. Available from: [www.migrationpolicy.org/pubs/Insight\\_POEA\\_Oct07.pdf](http://www.migrationpolicy.org/pubs/Insight_POEA_Oct07.pdf)

The Magna Carta for Women guarantees the civil, political and economic rights of all women including those in marginalized sectors, and also guarantees women: protection from all forms of violence; protection and security in times of disaster; political participation and representation; equal treatment before the law; equal access and elimination of discrimination against women in education, scholarships and training; equal participation in sports; non-discrimination in employment in the field of military, police, and other similar services; non-discriminatory and non-derogatory portrayal of women in media and film; comprehensive health services and health information and education; leave benefits; and equal rights in all matters related to marriage and family relations.<sup>12</sup> This law is a good gender-sensitive rights-based practice that complies with the CEDAW Committee's recommendation in its 2006 Concluding Observations for the Philippines urging the government to "give high priority to strengthening the legal framework for the promotion of gender equality and women's enjoyment of their human rights and, to that end, to expedite the adoption of pending bills in order to promptly bring the relevant national laws into line with the Convention."<sup>13</sup>

While the Magna Carta for Women and other gender-sensitive laws are meant to ensure that women have the same rights and protections accorded to men, in practice this is not always the case. For example, according to the US State Department's most recent human rights report on the Philippines, domestic violence against women remains a serious problem, as does sexual harassment, sexual exploitation through sex tourism, restrictions on birth control, and workplace discrimination.<sup>14</sup> Failure to adequately address these issues is in violation of several articles of the CEDAW, namely: article 6, obligating States parties to take all appropriate measures to suppress trafficking and exploitation of prostitution of women; article 11, requiring governments to eliminate discrimination against women in the field of employment; article 12, obligating government to ensure women access to health care services, including those related to family planning; and General Recommendation 19, which urges all States parties to take appropriate and effective measures to overcome all forms of gender-based violence .

However, the Government took an important step in promoting and protecting the human rights of women migrant workers when, in September 2012, it became the second country to ratify the Convention No. 189 of the International Labour Organization (ILO) concerning Decent Work for Domestic Workers.<sup>15</sup> The Convention will come into force in September 2013, and states that domestic workers must have the same basic labour rights as other workers, including "reasonable working hours, weekly rest of at least 24 consecutive hours, a limit on in-kind payment, clear information on terms and conditions of employment, and respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining." Ratification of this Convention is a good rights-based practice in line with the CEDAW Committee's General Recommendation 26, which encourages all States Parties to "ratify all international instruments relevant to the protection of the human rights of migrant women."

12 Philippine Commission on Women, *Philippine Magna Carta of Women: the "Bill of Rights" of Filipino Women*, (Manila, n.d.), p.2. Available from: [www.oecd.org/dev/povertyreductionandsocialdevelopment/44847597.pdf](http://www.oecd.org/dev/povertyreductionandsocialdevelopment/44847597.pdf)

13 CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women – Philippines* (Thirty-sixth session, 2006), para. 11. Available from: [www2.ohchr.org/english/bodies/cedaw/](http://www2.ohchr.org/english/bodies/cedaw/)

14 US State Department, *Human Rights Report 2011 – Philippines* (2011), pp. 26 and 27. Available from: [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper)

15 International Labour Organization, *NORMLEX - Information System on International Labour Standards* (webpage, n.d.). Available from: [www.ilo.org/ilolex/english/newratframeE.htm](http://www.ilo.org/ilolex/english/newratframeE.htm)

## C. KEY STAKEHOLDERS

**Philippine Overseas Employment Authority (POEA)** is the government agency mandated to: promote and develop the overseas employment programme; protect the rights of migrant workers; regulate private sector participation in recruitment and overseas placement; and maintain a registry of skills and secure the best terms of employment for Overseas Foreign Workers (OFWs). It directly provides temporary labour to foreign employers or governments, performs inspections of labour-export agencies, and provides training and skills tests for workers before they leave the country.

**Overseas Workers Welfare Administration (OWWA)** under the Department of Labour and Employment (DOLE), is the lead government agency tasked to protect and promote the welfare and well-being of Overseas Filipino Workers (OFWs) and their dependents. OWWA administers a welfare fund to assist OFWs when problems arise at the workplace, which is pooled largely from membership contributions of foreign employers, land-based and sea-based workers, and investment and interest income. The OWWA is mandated to undertake the repatriation of workers in cases of emergency, and develop financing schemes for migrant workers including pre-departure and family assistance loans.

**Department of Foreign Affairs (DFA)** is responsible for the pursuit of the State's foreign policy and one of its main objectives is to protect the rights and promote the welfare of Filipinos overseas and to mobilize them as partners in national development.

**Commission on Filipinos Overseas (CFO)** primarily registers and provides pre-departure orientation seminars to emigrants. It also assists with the transfer of material and financial contributions from overseas to development activities in underserved communities all over the Philippines, and provides younger generations of Filipinos overseas with opportunities to learn Philippine history, culture and language.<sup>16</sup>

**Unlad Kabayan Migrant Services Foundation Inc.** is a non-governmental organization (NGO) based in the Philippines focused on migrant workers and social entrepreneurship. Activities include: directing migrants' savings into business and enterprise development in some of the poorest areas of the Philippines; providing business knowledge and skills training to migrant workers; and support for successful reintegration upon return to the Philippines. The programme also aims to provide would-be migrant workers with an alternative to migration.

**Visayan Forum Foundation, Inc.** is a Philippine-based NGO that provides specialized services to trafficking victims and their families, builds social movements, and advocates for lasting policy changes to combat human trafficking, domestic servitude and other forms of exploitation. Major activities include: 24-hour shelters to provide safety, security, and services to vulnerable migrants; partnerships with lawyers groups, prosecutors, and other legal professionals to secure justice for trafficking victims and abused domestic workers; work with legislators and political leaders on legal reform and improving mechanisms for implementation of anti-trafficking laws; psycho-social assistance; and empowerment programmes for victims.

<sup>16</sup> The Philippines, Office of the President, Commission on Filipinos Overseas, About Us (webpage, n.d.). Available from: [www.cfo.gov.ph/index.php?option=com\\_content&view=section&id=12&Itemid=789](http://www.cfo.gov.ph/index.php?option=com_content&view=section&id=12&Itemid=789)

**Kanlungan Centre Foundation Inc.** is an NGO engaged in direct service, advocacy work, research, and policy interventions for Philippine migrant workers who are survivors of human trafficking, illegal recruitment, workplace abuse and non-payment of wages, as well as their families and their communities. Through its integrative case management approach, Philippine migrants and human trafficking survivors, and their families, are provided with free legal assistance, psycho-social counselling, rescue and repatriation assistance from their destination countries, and welfare and shelter assistance. Kanlungan also engages in advocacy actions for the enactment of laws and policies to protect migrant workers and prevent human trafficking; research and publications to increase public awareness of these issues; and grassroots organizing so that communities will be able to prevent the commodification of Philippine labour.

**BATIS centre for Women** is an NGO working to address the needs and concerns of returned distressed Philippine women migrant workers (including victims of trafficking, illegal recruitment, unjust working conditions, domestic violence and family abandonment and other forms of violence against women migrant workers) and their families through direct and other welfare services, organizing, education and training, social enterprise development, scholarship and educational assistance, legal and medical assistance, counselling, networking and advocacy at the national and local levels.

**Scalabrini Migration centre (SMC)** is dedicated to the promotion of the interdisciplinary study of international migration, with a specific focus on migration questions in the Asia-Pacific region. Aside from research, SMC maintains a resource centre specializing in migration literature, publishes the academic quarterly, "Asian and Pacific Migration Journal", organizes training programmes, advocates for the promotion of the rights of migrants, and builds networks with academic institutions, civil society, international organizations and governments.

## D. RATIFICATION RECORD

The following table illustrates the Philippines' ratification status of international treaties related to women migrant workers.

| TREATIES                            | RATIFICATIONS     |
|-------------------------------------|-------------------|
| MWC                                 | 5 July 1995       |
| CEDAW                               | 5 August 1981     |
| ICESCR                              | 7 June 1974       |
| ICCPR                               | 23 October 1986   |
| ICERD                               | 15 September 1967 |
| ILO C29 Forced or Compulsory Labour | 15 July 2005      |

|   |                   |
|---|-------------------|
| ILO C87 Freedom of Association  | 29 December 1953  |
| ILO C97 Migration for Employment  | 21 March 2009     |
| ILO C98 Right to Organize and Collective Bargaining   | 29 December 1953  |
| ILO C100 Equal Remuneration   | 29 December 1953  |
| ILO C105 Abolition of Forced Labour   | 17 November 1960  |
| ILO C111 Discrimination in Employment   | 17 November 1960  |
| ILO C138 Minimum Age for Admission to Employment <sup>4</sup><br>June 1998  | 13 June 2005      |
| ILO C143 Migrations in Abusive Conditions and the<br>Promotion of Equality of Opportunity and Treatment of<br>Migrant Workers | 14 September 2006 |
| ILO C181 Private Employment Agencies  | -                 |
| ILO C182 Prohibition of the Worst Forms of Child Labour   | 28 November 2000  |

## E. COMPLIANCE WITH CEDAW

### DISCRIMINATION

The principle of gender equality is enshrined in the Philippine Constitution, which stipulates that the State shall ensure fundamental equality before the law of women and men.<sup>17</sup> Additionally, the Magna Carta of Women affirms the State's obligation to "pursue equal opportunities for women and men and ensure equal access to resources and to development results and outcome". It also recognizes that "equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality."<sup>18</sup>

However, according to the Government, discriminatory practices are prevalent, and "women [in the Philippines] continue to be treated as objects instead of contributors to [the] economy and active participants in nation building."<sup>19</sup> The Committee on the Protection of the Rights of All Migrant Workers also has noted with concern that migrant women "are most often employed in gender specific industries such as care-givers, entertainers and domestic workers

17 The Philippines: *The 1987 Constitution of Republic of the Philippines*, Art. II, Sect. 14.

18 The Philippines, Republic Act No. 1790 "An Act Providing for the Magna Carta of Women", Section 2, 2008, available at: [http://www.lawphil.net/statutes/repacts/ra2009/ra\\_9710\\_2009.html](http://www.lawphil.net/statutes/repacts/ra2009/ra_9710_2009.html).

19 The Philippines, *House Bill No. 4683, Republic of the Philippines, House of Representatives, Fifteenth Congress, First Regular Session, 2011*, available at: [www.congress.gov.ph/download/basic\\_15/HB04683.pdf](http://www.congress.gov.ph/download/basic_15/HB04683.pdf).

where they are vulnerable to physical, sexual and verbal abuse, unpaid/delayed/underpaid wages, and may face inequitable working conditions”.<sup>20</sup>

Attitudes regarding traditional gender roles contribute to discrimination. In its Concluding Observations for the Philippines, the CEDAW Committee noted its concern regarding “the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society”. The Committee emphasized that “these stereotypes present a significant impediment to the implementation of the Convention and are a root cause of violence against women, as well as of the disadvantaged position of women in a number of areas, including in all sectors of the labour market and in political and public life.”<sup>21</sup>

To combat these problems the Committee recommended measures to bring about changes in attitudes and gender-role stereotyping, including “awareness-raising and public education campaigns addressing women and girls, as well as, in particular, men and boys, and religious leaders with a view to eliminating stereotypes associated with traditional gender roles in the family and in society, in accordance with articles 2(f) and 5(a) of the Convention”.<sup>22</sup>

The latest US State Department Human Rights Report on the Philippines noted that the Country has no law prohibiting discrimination in hiring, and that women in the labour force reportedly earn 37-47 percent less than men.<sup>23</sup> Discrimination, stereotyping, and a lack of employment opportunities are contributing factors to the feminization of migration for work. The Committee on the Protection of the Rights of All Migrant Workers stressed the need for the Government of the Philippines to “conduct a thorough assessment of the situation and take concrete measures to address the feminization of migration comprehensively in labour migration policies, including income of women in the informal sector, and minimal social protection for women”.<sup>24</sup>

To its credit the government has enacted several measures to eliminate discrimination against domestic workers, an occupation heavily dominated by women. For example, domestic workers in the Philippines are explicitly included in the Labour Code, Presidential Decree No. 442 (as amended in 1998) and thus are covered by provisions related to minimum wage and health care.<sup>25</sup> This is an example of a gender-sensitive rights-based practice in line with article 11 of the CEDAW ensuring women the right to equal remuneration and to equal treatment in respect of work of equal value.

## POLICY MEASURES

In its 2009 Concluding Observations, the Committee on the Protection of the Rights of All Migrant Workers commended the Government of the Philippines for prioritizing migration in domestic and foreign policy agendas, and supporting a multitude of labour migration

20 CMW Committee, *Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families – Philippines* (Tenth session, 2009). Available from: <http://www2.ohchr.org/english/bodies/cmw/docs/co/CMW.C.PHL.CO.1.doc>

21 CEDAW Committee, *Concluding Observations*, para. 17.

22 *Ibid*, para. 18.

23 US State Department, *Human Rights Report 2011*.

24 CMW Committee, *Concluding Observations*, para. 28(a).

25 CARAM Asia, *Reality Check! Rights & Legislation for Migrant Domestic Workers across Asia*, (Kuala Lumpur, 2011), p. 47. Available from: [www.caramasia.org/reports/FDWlegislationAsia.pdf](http://www.caramasia.org/reports/FDWlegislationAsia.pdf)



initiatives and programmes to improve the situation of migrant women. However, the Committee stated its concern that some of the government's policies appear to be aimed more at promoting foreign employment of migrant workers rather than protecting migrant workers, and thus recommended a review of migration policies to ensure they promote and respect human rights.<sup>26</sup>

Some policy initiatives have been successful at protecting women migrant workers' rights. For example, the POEA has drafted guidelines regarding the deployment of household domestic workers. These guidelines include policies aimed at improving working conditions such as: upgrading workers skills; providing country-specific culture and language orientation courses; enacting protective mechanisms at the job sites; obliging employers to pay deployment costs; and increasing the minimum salary to a level commensurate with workers' acquired competencies.<sup>27</sup> These are good gender-sensitive rights-based practices in line with General Recommendation 26, which urges governments to "facilitate access for women migrant workers to opportunities abroad, promote safe migration, ensure the protection of rights of women migrant workers" and "develop appropriate education and awareness raising programmes."<sup>28</sup>

A Study by the Global Commission in International Migration also indicated that the Philippines' policies regarding migration to the Middle East are beneficial to migrant workers. Specific good practices noted by the study included: both workers and recruiters enter into contracts that are enforceable under Philippine law; the POEA regularly inspects labour recruitment agencies; skills tests are given to workers prior to deployment to assess qualifications; and Foreign Service officials are trained and actively involved in searching for housing, and repatriating Philippine victims of trafficking.<sup>29</sup>

The POEA also has a policy of periodically issuing bans on Filipinos migrating to certain countries for employment until adequate steps are taken to ensure workers' rights are protected. For example, in July 2012 the government announced a ban on the deployment of overseas Philippine workers to 15 countries for failing to meet the safety requirements of the amended Migrant Workers and Overseas Filipino Act.<sup>30</sup> Once legal protections are in place however, bans have been lifted, as was the case recently when the Government agreed to lift the temporary suspension of domestic workers to Lebanon and Jordan.<sup>31</sup> These temporary bans are further to 2009 amendments to the Migrant Workers and Overseas Filipino Act law, which states that the government "shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers: (a) It has existing labour and social laws protecting the rights of workers, including migrant workers; (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers,

26 CMW Committee, *Concluding Observations*, paras. 13, 15 and 16.

27 CARAM Asia, *Reality Check!*

28 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, (CEDAW/C/2009/WP.1/R) (UN Doc A/64/38 at 15, 2008) (Forty-second session, 2008), paras. 23(a) and 24(b). Available from: [www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

29 Global Commission on International Migration, *Migration in the Middle East and Mediterranean*, (Manila, 2005).

30 Philip C. Tubeza, "PH to Ban OFW Deployment to 15 Countries", *Philippine Daily Inquirer*, Manila, 3 July 2012. Available from: <http://globalnation.inquirer.net/42739/ph-to-ban-ofw-deployment-to-15-countries>

31 Overseas Foreign Workers' Guide (OFWG), "OFWs Can Work in Lebanon and Jordan, Deployment Ban Lifted", Manila, 23 October 2012. Available from: [www.ofwguide.com/article\\_item-1855/OFWs-Can-Work-in-Lebanon---Jordan--Deployment-Ban-Lifted.html](http://www.ofwguide.com/article_item-1855/OFWs-Can-Work-in-Lebanon---Jordan--Deployment-Ban-Lifted.html)

including migrant workers; and (c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers.”<sup>32</sup>

Policies such as these that require receiving countries to respect migrant workers rights are in compliance with the CEDAW Committee’s General Recommendation 26, which urges governments to promote safe migration by: ensuring that occupations dominated by women migrant workers are protected by labour laws; entering into bilateral agreements that protect the rights of women migrant workers; and ensuring that governments carry out their obligations under international law.<sup>33</sup> However, some critics charge that rigid regulations and bans on migration have the unintended effect of forcing women migrant workers and recruitment agencies out of the legal system and into irregular channels. For instance, the Migration Policy Institute found that more stringent requirements introduced by the POEA in 2006 meant that 40,000 individuals were not able to take domestic work abroad. Consequently, the agency witnessed an increase of domestic workers attempting to migrate illegally for work and signing contracts that provided less protection and lower salaries than normally prescribed by the POEA.<sup>34</sup> In its 2006 Concluding Observations the CEDAW Committee commented on this problem requesting that the Government “develop policies and measures to protect women migrant workers who go abroad through informal channels from all forms of violations of their rights.”<sup>35</sup>

## TRAFFICKING

According to the US State Department’s 2012 Trafficking in Persons (TIP) Report, the Philippines is a source country for women subjected to sex trafficking and forced labour. Many Philippine women who migrate abroad for work are subjected to conditions of involuntary servitude, violence, threats, inhumane living conditions, nonpayment of salaries, and withholding of travel and identity documents. A significant number of migrant domestic workers also become victims of rape, and sexual abuse. Often these problems are the result of fraudulent recruitment practices whereby illicit recruiters circumvent laws and regulatory frameworks. In 2011, the Inter-Agency Council against Trafficking (IACAT) was allocated 1.5 million dollars to address these issues.<sup>36</sup>

## PROSECUTION

The Philippines criminally prohibits both sex and labour trafficking through its 2003 Anti-Trafficking in Persons Act. The Government has conducted anti-trafficking training sessions with thousands of law enforcement officials and increased the number of designated

32 The Philippines, *Republic Act No. 10022, An Act Amending Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995*, (Manila, Third regular session, 27 July 2009). available at: [http://www.lawphil.net/statutes/repacts/ra2010/ra\\_10022\\_2010.html](http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.html)

33 CEDAW Committee, *General recommendation No. 26 on women migrant workers*, paras. 24(j), 26(b) and 27(a).

34 MPI, *Managing Temporary Migration*, p. 25.

35 CEDAW Committee, *Concluding Observations*, para. 22.

36 US State Department, *Trafficking in Persons Report 2012 – Philippines* (2012). Available from: [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/), pp. 284-285.

trafficking prosecutors from 36 to 58 individuals. However, inefficiencies in the judicial system continue to pose serious challenges to the successful prosecution of some trafficking cases. Additionally, corruption and official complicity in human trafficking remains a pervasive problem. According to the TIP Report, “officials in government units and agencies assigned to enforce laws against human trafficking reportedly permitted trafficking offenders to conduct illegal activities, allowed traffickers to escape during raids, extorted bribes, and accepted payments or sexual services from establishments known for trafficking women and children.” Despite this, in 2011 no public officials were convicted for trafficking or trafficking-related corruption and no efforts were made to criminally prosecute labour recruitment companies involved in the trafficking of migrant workers abroad.<sup>37</sup> The government does provide some support for a witness protection programme in order to encourage victims to assist in the investigation and prosecution of their traffickers. However, a lack of funding, lengthy trial processes, and a fear of retaliation by traffickers, causes many victims to refuse cooperation.

Article 6 of the CEDAW obligates States Parties to take all appropriate measures to suppress all forms of trafficking in women. General Recommendation 26 also states that “States Parties should take active measures to prevent, prosecute and punish all migration-related human rights violations that occur under their jurisdiction whether perpetrated by public authorities or private actors.” Thus in order to comply with its obligations under the CEDAW, the government must do more to prosecute both public officials and private recruitment firms engaged or complicit in trafficking, and must provide better witness protection and encouragement for women to participate in the prosecution of traffickers.

## PROTECTION

Significant efforts aimed at protecting victims of trafficking include the operation of 42 temporary shelters, an anti-trafficking hotline, and a Recovery and Reintegration programme for Trafficked Persons which has provided skills training, shelter, legal advice, and financial assistance to thousands of trafficking victims.<sup>38</sup> These efforts represent good rights-based practices in line with General Recommendation 26, which states that governments should “provide temporary shelters for women migrant workers who wish to leave abusive employers” and “design or oversee comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned.”<sup>39</sup>

In another gender-sensitive rights-based good practice, the government repatriated 514 Philippine domestic workers from Syria in early 2012. It is estimated that over 90 percent of those rescued were trafficking victims who had suffered physical, psychological, and verbal abuse from employers in Syria.<sup>40</sup> This is in compliance with the CEDAW Committee’s General Recommendation 26 that encourages States Parties to ensure that women who wish to return to their countries of origin are able to do so.<sup>41</sup>

37 Ibid, p. 286.

38 Ibid.

39 CEDAW Committee, *General recommendation No. 26*, paras. 26(c)(iv) and 24(i)

40 US State Department, *Trafficking in Persons Report 2012*, p. 285.

41 CEDAW Committee, *General recommendation No. 26*, para. 24(h).

## PREVENTION

According to the TIP Report, the government has made notable efforts to prevent trafficking, by training public officials, improving screening mechanisms for signs of trafficking before migrant workers depart overseas, and negotiating bilateral agreements with receiving countries. Additionally, the government has supported media programmes to educate the public about the dangers of trafficking. Anti-trafficking information has also been made a part of pre-employment orientations for migrant workers. Additionally, The Philippine Overseas Employment Agency (POEA) conducted 1,539 pre-deployment orientation seminars and 583 pre-employment seminars for over 100,000 prospective and outbound Filipino overseas workers. The POEA and the Department of Labour and Employment (DOLE) also conducted seminars on recruitment and trafficking in the country, attended by local prosecutors, law enforcement personnel, local government units, NGOs, recruitment agencies, and community members. The POEA distributed nearly 100,000 pieces of printed material about trafficking and illegal recruitment and the community education programmes of the Commission on Filipinos Overseas (CFO) reached over 50,000 people.<sup>42</sup> All of these efforts reduce the likelihood of women migrant workers being subjected to trafficking and are in compliance with General Recommendation 26, which states that governments should develop appropriate education programmes that raise awareness of potential exploitation during migration, and encourage the media, information and communication sectors to contribute to awareness raising efforts.<sup>43</sup>

## EMPLOYMENT

In the World Economic Forum's 2012 Global Gender Gap Report, the Philippines ranked among the top 20 with respect to closing the gender gap in economic participation.<sup>44</sup> Despite this progress, women in the Philippines continue to be paid less than men for similar work, earning only 76 cents for every dollar that men earn. Additionally, only about 30 percent of medium-sized enterprises in the Philippines have female managers, while about 20 percent of large enterprises have female managers. Philippine women are also more likely to work in small firms and in the informal sector, and in lower-paid occupations.<sup>45</sup> According to the Government "the inadequacy of employment opportunities in the country for Philippine women leads to female labour migration as more and more women leave the borders of the land to seek greener pastures but end up being maltreated or exploited."<sup>46</sup> In its Concluding Observations on the Philippines the CEDAW Committee noted with concern gender wage gaps as well as the over-representation of women in the informal economy. It urged the

42 US State Department, *Trafficking in Persons Report 2012 – Philippines* (2012). Pg 287

43 CEDAW Committee, *General recommendation No. 26*, paras. 24(b)(i) and (vi).

44 World Economic Forum, *The Global Gender Gap Report 2012* (Geneva, 2012), p. 22. Available from: [www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2012.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf)

45 World Bank, *Towards Gender Equality in East Asia and the Pacific – A Companion to the World Development Report*, (Washington DC, 2012), p. 72. Available from: <http://siteresources.worldbank.org/EASTASIAPACIFICEXT/Resources/226300-1339798342386/eap-gender-full-conference.pdf>

46 The Philippines, "Lawmaker pushes for passage of women legislations", press release, June 2011. Available from: [www.congress.gov.ph/press/details.php?pressid=5143](http://www.congress.gov.ph/press/details.php?pressid=5143)



Government to address the root causes of women seeking employment abroad and create viable economic alternatives to migration.

The Government has made efforts to address these problems by undertaking initiatives aimed at decreasing discrimination against women in employment and increasing their participation in the national workforce. However, migration for work still remains a prominent feature of the Government's employment and development strategy. Each year since 2006, the government has reached its target of sending one million workers overseas as stated in the 2004-2010 Medium Term Philippine Development Plan. While the target number has been dropped from the 2011-2016 plan, "the deployment of workers continues to be the centrepiece of the country's labour migration strategy."<sup>47</sup>

Labour migration is governed by the Migrant Workers and Overseas Filipinos Act of 1995 which includes provisions relating to promotion and development of foreign employment; regulation and management of recruitment, placement and labour migration flows; and welfare and protection of migrant workers and their families.<sup>48</sup> The Act also penalizes illegal recruitment and provides a list of services available to Philippine migrant workers including issuance of travel advisories, information dissemination, repatriation of workers, counselling and legal services, welfare assistance including medical and hospitalization services, and orientation for returning workers. The Act specifically states that the government "shall apply gender sensitive criteria in the formulation and implementation of policies and programmes affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers." This Act is an example of a good rights-based practice recognizing the particular vulnerabilities of women who migrate for work. It complies with the CEDAW in that it recognizes the differences between men and women and promotes the substantive model of equality, which a central principle of the Convention.

The POEA is charged with implementing the Migrant Workers Act. It controls overseas employment by: limiting participation to qualified employers, workers, and recruitment and manning agencies; creating rules and regulations that govern the recruitment process and set minimum employment standards; and maintaining a system of adjudication to ensure that all involved comply with rules and regulations.<sup>49</sup> Foreign employers must meet certain qualifications in order to receive approval to hire Philippine workers, which includes undergoing a registration or accreditation procedure. Those hiring low-skilled workers must meet additional requirements. For example, employers hiring domestic workers must be interviewed by an official at the Philippine Overseas labour Office (POLO) or embassy in the country of hire, and must attend a pre-employment orientation. They are also required to provide a photo of themselves and spouse, the address and size of the residence, proof of income, and a clean criminal record with police clearance.<sup>50</sup> The CEDAW Committee has noted that "domestic workers are particularly vulnerable to physical and sexual assault, food and

47 Maruja MB Asis and Dovelyn Rannveig Agunias, "Strengthening Pre-Departure Orientation programmemes", p.2.

48 Jean D'Cunha, *Claim and Celebrate Women Migrants' Human Rights through CEDAW*, UNIFEM, (New York, 2005). Available from: [http://www.unifem.org/materials/item\\_detailc768.html](http://www.unifem.org/materials/item_detailc768.html)

49 MPI, *Managing Temporary Migration*, p. 5.

50 *Ibid.*, p. 9.

sleep deprivations and cruelty by their employers.”<sup>51</sup> Thus, the extra requirements put in place for those hiring domestic workers represent gender-sensitive rights-based good practice in line with article 11 (1)(f) of the CEDAW, which obligates States Parties to ensure women the right to protection of health and safety in working conditions.

## EMPLOYMENT CONTRACT

All prospective migrant workers are required to sign an Overseas Employment Contract with their employer, which must be approved by the POEA before they can be deployed for work abroad. At a minimum, contracts must provide for: guaranteed wages for regular working hours; free transportation to and from the work site or provision of offsetting benefits; free food and accommodation or provision of offsetting benefits; and fair or authorized causes for termination of employment. Additional terms and conditions or benefits can be included as long as they are beneficial to the employee.<sup>52</sup>

The POEA often requires that additional terms and conditions included in employment contracts for Philippine domestic workers deployed abroad. These include requiring that domestic workers: have custody of their passport at all times; be treated humanely by the employer and others in the house; be given a separate sleeping room and a daily rest of at least eight continuous hours; be made to work only in the residence of the employer; be allowed to freely communicate with her family in the Philippines or with the Philippine Embassy; be taken to the Philippine embassy when so required; be provided with free emergency medical and dental services; be given one day of rest per week; and be informed about procedures for settling disputes.<sup>53,54</sup>

Contractual requirements protecting the rights of women migrant workers represent a good rights-based practice in line with General Recommendation 26, which urges States Parties to recommend the contents of labour contracts for women migrant workers and ensure that contracts are legally valid.<sup>55</sup> However, because the Philippine Government does not have a monitoring authority in the countries of employment, nor does it have the jurisdiction to penalize the employers, it is often difficult to enforce these contracts.<sup>56</sup>

## MINIMUM WAGE AND AGE

### Minimum Age

The 2006 Household Service Workers Reform Package specifies 23 as the minimum age for deployment abroad to work in domestic service. The minimum age was increased from the original age of 18 years in order to ensure a higher level of maturity and sense

51 CEDAW Committee, *General recommendation No. 26*, para. 20.

52 MPI, *Managing Temporary Migration*, p. 14.

53 UNIFEM, *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*, (Bangkok, 2007), p. 119.

54 MPI, *Managing Temporary Migration*.

55 CEDAW Committee, *General recommendation No. 26*, para. 24(b)(i) and 26(b).

56 UNIFEM, *Legal Protection for Migrant Domestic Workers*, p.118.

of responsibility of the worker in dealings with her employer and towards her work and to effectively reduce incidents of homesickness and psychological un-preparedness of the worker, which are often the causes of runaways and early contract termination.<sup>57,58</sup> The minimum age regulation is meant to strengthen the protection of Philippine domestic workers. However, because the vast majority of Philippine women who migrate for employment do so as domestic workers, the regulation has a discriminatory impact. Some critics have also argued that such limitations force women to alter identity documents and fake their age in order to work abroad, or, worse, use irregular methods of migrating, which increases their risk of being trafficked and exploited.<sup>59</sup> Thus, in its General Recommendation 26 the CEDAW Committee urged States Parties to repeal discriminatory restrictions on women's migration on the basis of age.

In recognition of these issues, in 2011 the POEA Governing Board issued Resolution No. 4 which allows for exceptions to the minimum age requirement as long as "the employment terms and conditions of the household worker are compliant with the HSW [Household Service Workers] Policy Reform Package, protection of the worker is assured by legislation, and adequate protective mechanisms are in place as may be determined by the Secretary of labour and Employment or her duly authorized Representative."

### Minimum Wage

POEA regulations dictate that there be "guaranteed wages for regular work hours and overtime pay, which shall not be lower than the prescribed minimum wage in the host country or not lower than the appropriate minimum wage standards set forth in a bilateral agreement or international convention, if applicable, or not lower than the minimum wage in the Philippines, whichever is highest."<sup>60</sup> Saudi Arabia, the United Arab Emirates, Qatar, Bahrain, Oman, and Malaysia do not have minimum wage laws. However, the Philippine Government negotiates bilateral agreements with each destination country, which in some cases set a minimum wage.<sup>61</sup>

On 24 October 2006, the POEA increased the entry-level minimum monthly salary of domestic workers deployed overseas from 200 to 400 dollars per month. However, not all countries accept the Philippine-mandated minimum. For example, Bahrain has announced that it does not consider it legally binding.<sup>62</sup> In a survey of migrant domestic workers published in 2011, almost half reported being paid less than 400.<sup>63</sup>

57 POEA, *Household Service Worker Protection and Welfare Enhancement Reform Package*, (2007);

58 UNIFEM (2008), *Legal Protection for Migrant Domestic Workers in Asia and the Arab States*

59 POEA Governing Board Resolution No. 14 (2007);

60 Available from: [www.poea.gov.ph/rules/POEA%20Rules.pdf](http://www.poea.gov.ph/rules/POEA%20Rules.pdf)

61 David McKenzie, *Distortions in the International Migrant Labour Market: Evidence from Filipino Migration and Wage Responses to Destination Country Economic Shocks*, World Bank, Development Research Group (WPS6041) (Washington DC, February 2012), p. 8.

62 UNIFEM, *Legal Protection for Migrant Domestic Workers*.

63 Graziano Battistella and Maruja MB Asis, "Protecting Filipino Transnational Domestic Workers: Government Regulations and Their Outcomes", *Discussion paper series No. 2011-12*, Philippine Institute for Development Studies (Makati City, July 2011), p. 25. Available from: <http://dirp4.pids.gov.ph/ris/dps/pidsdps1112.pdf>

## REGULATION OF EMPLOYMENT AGENCIES

Article 18 of the Labour Code prohibits the direct hiring of Filipino workers for placement overseas. This rule is intended to protect applicants by regulating recruitment through licensed employment agencies. Before being allowed to participate in the recruitment process, agencies must meet a set of standards set by the POEA. For example, “only a Filipino citizen, or a partnership or corporation created under Philippine law in which 75 percent of capital is Filipino owned or controlled, can operate an agency. This requirement ensures that the recruiter or recruitment agency owner is within the Philippine government’s jurisdiction should litigation be necessary.”<sup>64</sup> In order to receive a licence, agencies must prove they have sufficient operating capital, pay a registration fee, and post bonds. Owners must also pass a criminal background check, and any found to have previously violated recruitment or placement laws are ineligible to receive a licence. Once these requirements are satisfied, agencies are interviewed by a POEA panel and if they pass, receive a licence to operate which must be renewed every four years. Applicants for renewal have to meet the same requirements as when they first applied.<sup>65</sup>

According to the Migration Policy Institute, “Agencies represent foreign employers in selecting, registering, and transporting workers, but they also serve as ‘co-employers’ and must ensure the employment contract’s proper implementation. If the employer fails to comply with the contract or violates any of its provisions, the worker can apply for legal assistance from the recruitment agency. In such cases, the agencies are liable jointly with and separately from the foreign employer. Through the agencies, the government can exercise pressure on employers who are beyond the jurisdiction of the Philippines’ justice system – which can benefit workers who would otherwise be left without recourse for unfair treatment.”<sup>66</sup>

The POEA’s Rules and Regulations on Recruitment and Employment provide that, “the Administration shall exercise original and exclusive jurisdiction to hear and decide all cases which are administrative in character, involving or arising out of violations of recruitment rules and regulations including refund of fees collected from workers and violations of the conditions for issuance of license to recruit workers.”<sup>67</sup> Grounds for imposing sanctions against recruitment firms include: charging excessive recruitment and placement fees; engaging in acts of misrepresentation in connection with recruitment and placement of workers, obstructing or attempting to obstruct inspection; failing to submit required reports; withholding or denying travel or other pertinent documents from workers; falsifying or altering travel documents of applicants; deploying workers to employers not accredited by the Administration; coercing workers to accept prejudicial arrangements; withholding salaries; and deploying underage workers.<sup>68</sup>

64 MPI, *Managing Temporary Migration*, p.7.

65 *Ibid*, p. 7.

66 *Ibid*, p. 6.

67 Overseas Foreign Workers’ Guide (OFWG), *POEA Rules and Regulations on Recruitment and Employment* (webpage, n.d.), part VI. Available from: [www.ofwguide.com/poea\\_rules\\_recruitment\\_employment.php#gotohear](http://www.ofwguide.com/poea_rules_recruitment_employment.php#gotohear)

68 *Ibid*.



In order to ensure compliance with these rules, the POEA is tasked with regularly inspecting the offices and records of licensed agencies and conducting spot inspections upon receipt of complaints against agencies. Critics have charged, however, that the POEA does not have adequate resources to carry out this function. A 2007 study showed only one inspector for every 317 agencies, and POEA records indicated that not all agencies were inspected each year.<sup>69</sup> The Committee on the Protection on the Rights of All Migrant Workers noted the Government's efforts at ensuring recruitment agencies respect the rights of migrant workers, and in particular, increased penalties for agencies charging exorbitant placement fees. However, it expressed concern at "claims that private recruitment agencies continue to overcharge fees for their services and act as intermediaries for foreign recruiters, which may in certain instances, increase the vulnerability of migrants." Thus it urged the government to strengthen the licensing system and control mechanisms.<sup>70</sup>

## BILATERAL AGREEMENTS

The Philippines has entered into bilateral agreements and signed memorandums of understanding (MoUs) with many labour-receiving countries in order to ensure respect for the rights of its citizens who migrate abroad for employment. As of 2011, the Government had entered into bilateral agreements with Norway, the United Kingdom, Papua New Guinea, the Republic of Korea, Taiwan Province of China, Switzerland, Libya, Jordan, Qatar, Kuwait, Iraq, the Northern Mariana Island, and Indonesia. Additionally, it has signed MoUs with, the Republic of Korea, Canada, the UAE, Bahrain, the UK, Switzerland, Norway and Taiwan province of China on various issues ranging from health services for migrant workers to recruitment for specific occupational categories.<sup>71</sup>

Bilateral agreements between labour-sending and receiving countries aimed at protecting migrant workers are a good rights-based practice in line with the CEDAW Committee's General Recommendation 26, and its 2006 Concluding Observations commending the Philippines on the conclusion of bilateral agreements and memorandums of understanding on migrant workers' rights.<sup>72</sup> While negotiation of bilateral agreements is considered a good practice, the government must ensure that the agreements contain strong provisions for promoting and protecting workers rights. For example, a MoU between the Philippines and UAE specifies that the terms and conditions of employment shall be defined by a contract between the worker and the employer, specifying the rights and obligations of both parties. Upon arrival in the UAE however, workers often find that the terms and conditions in the contract offer fewer rights and less protection than the one signed with the recruitment agency.<sup>73</sup> Because of such problems the Committee on the Protection of Migrant Workers expressed concern that the provisions of bilateral agreements so far concluded

69 MPI, *Managing Temporary Migration*, p. 16.

70 CMW Committee, *Concluding Observations*, paras. 41-42.

71 CARAM Asia, *Reality Check!*, p.44.

72 CEDAW Committee, *General recommendation No. 26*, para. 27(a).

73 CARAM Asia, *Reality Check!*, p.45.

do not sufficiently promote and protect the fundamental human rights of migrants, and recommended that the Philippines, to the extent possible, progressively integrate relevant and appropriate provisions of the Migrant Workers' Convention into its bilateral agreements with labour-receiving countries.<sup>74</sup>

## REINTEGRATION

Reintegration into family and society is often difficult for returning migrant workers, and those with little support often feel that they have no choice but to re-emigrate for work. The government has recognized this problem and established programmes to provide reintegration services to returning migrant workers. However, it acknowledges that a lack of coordination and cooperation among the various initiatives has often resulted in uneven delivery of services. To remedy this the Government established the Return and Reintegration programme to act as a "clearing house and consolidator of information and programme packages aimed at facilitating the reintegration of returning migrant Filipinos into mainstream Philippine social and economic life".<sup>75</sup> Services aimed at returning migrant workers will include those related to: health, recreation, business and investment, real estate, retirement, legal assistance and education.<sup>76</sup>

This focus on ensuring migrant workers are able to successfully reintegrate is a good practice in line with the CEDAW Committee's General Recommendation 26, which states that governments "should design or oversee comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned."<sup>77</sup> Additionally, it responds to the 2009 Concluding Observations of the Migrant Workers Committee, which encouraged the Philippines to work in partnership with all relevant partners to strengthen the existing reintegration programme and facilitate durable social and cultural reintegration.<sup>78</sup>

## WOMEN'S ACCESS TO JUSTICE

The Magna Carta for Women mandates the designation of a gender focal point in the consular section of Philippine embassies and consulates who are charged with assisting Filipino women living abroad, including women migrant workers.<sup>79</sup> The Government also operates temporary shelters for victims fleeing abusive employers in 20 Philippine Embassies or consulates, where women can stay temporarily while their case is being

74 CMW Committee, *Concluding Observations*, paras. 37-38.

75 The Philippines, Office of the President, Commission on Filipinos Overseas, *Return and Reintegration programme* (webpage, u.d.). Available from: [http://www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=1361%3Areturn-and-reintegrate&catid=145%3Aintegration-and-reintegration&Itemid=833](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1361%3Areturn-and-reintegrate&catid=145%3Aintegration-and-reintegration&Itemid=833)

76 The Philippines, Office of the President, Commission on Filipinos Overseas, *Return and Reintegration programme* (webpage, u.d.). Available from: [www.cfo.gov.ph/index.php?option=com\\_content&view=article&id=1361:return-and-reintegrate&catid=145&Itemid=866](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1361:return-and-reintegrate&catid=145&Itemid=866)

77 CEDAW Committee, *General recommendation No. 26*, para. 24(i).

78 CMW Committee, *Concluding Observations*, para. 44.

79 The Philippines, *Republic Act No. 1790* "An Act Providing for the Magna Carta of Women", Section 2, (Manila, 2008), sect. 37. Available from: [www.lawphil.net/statutes/repacts/ra2009/ra\\_9710\\_2009.html](http://www.lawphil.net/statutes/repacts/ra2009/ra_9710_2009.html)

investigated and until they are able to be repatriated. Additionally, Republic Act No. 8042 (as amended by No. 10022), provides for a legal assistance fund to enable migrant workers and overseas Filipinos to access legal services including foreign lawyers, bail bonds to secure temporary releases and other litigation expenses.<sup>80</sup> These are good gender-sensitive rights-based practices in line with General Recommendation 26, which urges States Parties to “properly train and supervise their diplomatic and consular staff to ensure they fulfil their role in protecting the rights of women migrant workers abroad. Such protection should include quality support services available to women migrants including timely provision of interpreters, medical care and counselling, legal aid and shelter when needed.”<sup>81</sup>

The Committee on the Convention for the Protection of All Migrant Workers recognized these efforts but also noted documented cases where embassy or consulate personnel abroad did not properly assist their nationals because the staff was not adequately informed of procedures for doing so. Additionally, the Committee expressed concern that too often migrant workers’ unfamiliarity with and lack of trust in the justice system made them unwilling to file cases of abuse by their employers abroad. To remedy this, the Committee recommended that the government: (a) ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families; (b) take measures to ensure that embassy and consulate staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino migrant workers, especially in those countries categorized as “highly problematic” by the DFA and the DOLE, and; (c) undertake regular performance and financial audits of government personnel and agencies dealing with migration issues and their progress monitored”.<sup>82</sup>

In cases where recruitment agencies have violated the law, aggrieved individuals may file complaints with the POEA, and the Agency may also take action on its own initiative. Upon the filing of complaints, hearings are held and adjudicators must issue findings within 90 days. Where it is determined that the recruitment agency has violated the regulations, depending upon the nature of the offense, fines may be imposed and licences may be suspended or revoked.<sup>83</sup>

POEA lawyers also help victims of illegal recruitment and trafficking during criminal investigations and in making claims for actual, moral and other forms of damages with the Labour Arbiters of the National Labour Relations Commission.<sup>84</sup> This represents a good rights-based practice in line with the recommendation by the Committee on Migrant Workers that the Government continue efforts to inform migrant workers of the administrative and judicial remedies available to them continue to provide them with legal assistance in seeking remedies.<sup>85</sup>

80 CARAM Asia, *Reality Check!*, pp. 38-39.

81 CEDAW Committee, *General recommendation No. 26*, para. 24(j).

82 CMW Committee, *Concluding Observations*, paras. 29-30.

83 OFWF, *POEA Rules and Regulations*, part VI

84 Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants - Mission to the Philippines* (Geneva, 2002).

85 CMW Committee, *Concluding Observations*, para. 26.

## F. ANALYSIS AND CONCLUSIONS

Over the past several decades the Philippine Government has managed the deployment of millions of migrant workers and continues to explore how migration can be an instrument for development. The Government understands that protecting migrant workers requires effective policies and institutional mechanisms, responsible private recruitment agencies, supportive NGOs, and educated citizens. Government systems for managing migrant labour face many constraints, not least limited resources for handling the huge volume of citizens migrating for work.

Despite this, many governmental initiatives have been successful in promoting and protecting the rights of women migrant workers, including anti-illegal recruitment campaigns, bilateral agreements, assignment of overseas labour and welfare officers, and education and information campaigns. Examples of some of the government's gender-sensitive and rights-based good practices include:

- Ratification of eight of the nine core human rights treaties, including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Protection of All Migrant Workers and Members of Their Families (CMW).
- Adoption of the Magna Carta for Women, which translates the CEDAW into national law.
- The principle of gender equality is enshrined in the Philippine Constitution, which stipulates that the State shall ensure fundamental equality of women and men.
- Domestic workers in the Philippines are explicitly included in the Labour Code, and thus are covered by provisions related to minimum wage and health care.
- Government guidelines regarding the deployment of household domestic workers include policies aimed at improving working conditions such as: upgrading workers skills; providing country-specific culture and language orientation courses; enacting protective mechanisms at the job sites; obliging employers to pay deployment costs; and increasing the minimum salary to a level commensurate with workers' acquired competencies.
- Regular inspection by the POEA of labour recruitment agencies.
- Skills tests are given to workers prior to deployment to assess qualifications.
- Amendments to the Migrant Workers and Overseas Filipino Act law state that the Government "shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected."
- 2003 Anti-Trafficking in Persons Act prohibits sex and labour trafficking.
- Anti-trafficking training sessions have been conducted with thousands of law enforcement officials.
- The number of designated trafficking prosecutors has been increased from 36 to 58 individuals.
- The Government operates 42 temporary shelters in the Philippines, an anti-trafficking hotline, and a Recovery and Reintegration programme for Trafficked Persons which has provided skills training, shelter, legal advice, and financial assistance to thousands of trafficking victims.
- The government repatriated 514 Filipino domestic workers from Syria in early 2012, 90 percent of whom were trafficking victims.
- Screening mechanisms for signs of trafficking before migrant workers depart overseas



have been improved.

- Bilateral agreements with receiving countries have been negotiated to improve protection of migrant workers rights.
- Government-supported media programmes educate the public about the dangers of trafficking. Anti-trafficking information has also been made a part of pre-employment orientations for migrant workers. Additionally, "the POEA distributed nearly 100,000 pieces of printed material about trafficking and illegal recruitment and the community education programmes of the Commission on Filipinos Overseas (CFO) reached over 50,000 people.
- The Philippines has been ranked among the top 20 countries or territories with respect to closing the gender gap in economic participation.
- The Migrant Workers and Overseas Filipinos Act of 1995 includes provisions relating to the promotion and development of foreign employment; regulation and management of recruitment, placement and labour migration flows; and welfare and protection of migrant workers and their families. The Act also penalizes illegal recruitment and provides a list of services available to Filipino migrant workers including: issuance of travel advisories; information dissemination; repatriation of workers; counselling and legal services; welfare assistance including medical and hospitalization services; and orientation for returning workers.
- The POEA controls overseas employment by: limiting participation to qualified employers, workers, and recruitment and manning agencies; creating rules and regulations that govern the recruitment process and set minimum employment standards; and maintaining a system of adjudication to ensure that all involved comply with rules and regulations.
- All prospective migrant workers and recruiters must enter into contracts that are enforceable under Philippines law. Additionally, once hired, all workers are required to sign an Overseas Employment Contract with their employer, which must be approved by the POEA before they can be deployed for work abroad. At a minimum, contracts must provide for: guaranteed wages for regular working hours; free transportation to and from the work-site or provision of offsetting benefits; free food and accommodation or provision of offsetting benefits; and fair or authorized causes for termination of employment.
- Additional terms and conditions must be included in employment contracts for domestic workers deployed abroad. These include requiring that domestic workers: have custody of their passport at all times; be treated humanely by the employer and others in the house; be given a separate sleeping room and a daily rest of at least eight continuous hours; be made to work only in the residence of the employer; be allowed to freely communicate with her family in the Philippines or with the Philippine Embassy; be taken to the Philippine embassy when so required, be provided with free emergency medical and dental services, be given one day of rest per week and be informed about procedures for settling disputes.
- Entry-level minimum monthly salary of domestic workers deployed overseas increased from 200 to 400 dollars per month.
- If the employer violates any provisions of the employment contract, the worker can apply for legal assistance from the recruitment agency. In such cases, the agencies are liable jointly with and separately from the foreign employer.
- Return and Reintegration programme acts as a clearinghouse and consolidator of information and programme packages aimed at facilitating the reintegration of returning migrant Filipinos into mainstream Philippine social and economic life.
- Gender focal point in the consular section of Philippine embassies and consulates are charged with assisting Filipino women living abroad, including women migrant workers.

- Temporary shelters for victims fleeing abusive employers are in operation in 20 Philippine Embassies or consulates, where women can stay temporarily while their case is being investigated and until they can be repatriated.
- Additionally, Republic Act No. 8042 (as amended by No. 10022), provides for a legal assistance fund to enable migrant workers and overseas Filipinos to access legal services including foreign lawyers, bail bonds to secure temporary releases and other litigation expenses.

Despite these good practices, discrimination, stereotyping, and a lack of employment opportunities for women in the Philippines are contributing factors to the feminization of migration for work. When women migrate however, they are often employed in gender-specific industries such as care-givers, entertainers and domestic workers where they are vulnerable to physical, sexual and verbal abuse, unpaid/delayed/underpaid wages, and many face inequitable working conditions. To address these issues, a gender-sensitive and human-rights based approach must be used when enacting migration laws and policies, to ensure the promotion and protections for women migrant workers.

## G. RECOMMENDATIONS

- Enhance awareness-raising and public education campaigns addressing women and girls, as well as men and boys and religious leaders with a view to eliminating stereotypes associated with traditional gender roles in the family and in society.
- Take concrete measures to address the feminization of migration comprehensively in labour migration policies, including income of women in the informal sector, and minimal social protection for women.
- Increase efforts to create viable economic alternatives to migration for women.
- Develop policies and measures to protect women migrant workers who go abroad through informal channels from all forms of violations of their rights.
- Enhance efforts to prosecute both public officials and private recruitment firms engaged or complicit in trafficking, and provide better witness protection and encouragement for women to participate in the prosecution of traffickers.
- Enhance measures to monitor the employment situation of women migrant workers in countries of employment, particularly those working in domestic service.
- Repeal discriminatory restrictions on women's migration on the basis of age.
- Increase human and financial resources to ensure regular inspection of the offices and records of licensed agencies and spot inspections upon receipt of complaints against agencies.
- Strengthen the licensing system and control mechanisms of recruitment agencies.
- Continue conducting bilateral agreements and MoUs with countries and regions to which Filipino women migrate in search of work, and ensure that bilateral agreements contain strong provisions for promoting and protecting workers rights and include relevant and appropriate provisions of the Migrant Workers' Convention.
- Increase migrant workers' familiarity with and trust in the justice system so that they are more unwilling to file cases of abuse by their employers abroad.

- Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families.
- Take measures to ensure that embassy and consulate staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino foreign workers, especially in those countries categorized as “highly problematic” by the DFA and the DOLE.
- Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues and their progress monitored.
- Institutionalize interagency coordination on migration
- Encourage a consultative processes to ensure participation of civil society.
- Use a human rights lens over numerical targets when reviewing labour migration deployment policies.
- Provide financial support to NGOs, including religious NGOs, which run shelters and drop-in centres for the rehabilitation of women and girls in prostitution.
- Ensure the prosecution and punishment of traffickers and those who exploit the prostitution of women, and provide protection to victims of trafficking.
- Ensure sufficient implementation, follow-up and evaluation of the labour migration programmes and enhance mechanisms for tracking their implementation.
- Allocate sufficient resources, human and financial, for migration officials to carry out their work efficiently.

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