



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

Distr.
GENERAL

CMW/C/PHL/CO/1
22 May 2009

Original: ENGLISH

COMMITTEE ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND
MEMBERS OF THEIR FAMILIES
Tenth Session, 20 April – 1 May 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 74 OF THE CONVENTION**

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

THE PHILIPPINES

1. The Committee considered the initial report of Philippines (CMW/C/PHL/1) at its 105th and 107th meetings (see CMW/C/SR105 and SR 107), held on 23 and 24 April 2009, and adopted at its 114th meeting, held on 30 April 2009, the following concluding observations.

A. Introduction

2. The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues. The Committee appreciates the constructive and fruitful dialogue with a competent, high-level delegation, which built on the report and the written responses to the list of issues giving more specific information on questions of both a legal and practical nature concerning the implementation of the Convention.

3. The Committee recognizes that the Philippines is mainly a country of origin with a large number of migrant workers overseas.

4. The Committee notes the fact that many of the countries employing Filipino migrant workers are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee notes with appreciation the State party's commitment to migrant workers' rights, as illustrated by the national constitutional, legislative, judicial, and administrative frameworks that include several institutional mechanisms.

6. The Committee appreciates that the State party considers the issue of migration as a priority in its domestic and foreign policy agenda.

7. The Committee also notes with appreciation the active role that the Philippines is playing to promote the ratification of the Convention by countries of origin, transit and destination.

8. The Committee also welcomes the active role of the Philippines in regional efforts to combat trafficking in persons, especially within ASEAN.

9. The Committee further welcomes the recent ratification of, or accession to, the following instruments:

- (a) The United Nations Convention on the Rights of Persons with Disabilities;
- (b) Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography;
- (c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;
- (d) The ILO Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers Convention (Supplementary Provisions), 1975 (No. 143), making the Philippines one of only a few States to have ratified all the treaties relating to the rights of migrant workers.

10. The Committee welcomes the bilateral social security agreements concluded by the State party in so far as such agreements promote the rights of migrant workers and members of their families.

11. The Committee notes the important role civil society plays as a partner in implementing the provisions of the Convention.

C. Factors and difficulties

12. The Committee acknowledges that the geography of the thousands of islands in the State party makes it challenging to effectively monitor the movement of people and control borders to prevent irregular migration and to safeguard the rights of all migrant workers.

D. Principal subjects of concern, suggestions and recommendations

13. The Committee notes with interest the multitude of initiatives and programmes undertaken by the State party in response to challenges faced in its labour migration policy. At the same time, the Committee is concerned that implementation, follow-up and evaluation of these programmes are insufficient.

14. **The Committee recommends proper follow-up procedures as well as clear measurable and time-bound targets in order to facilitate tracking their implementation.**

15. The Committee welcomes the information given by the State party's delegation on the labour migration policy and, in particular, its efforts to ensure that Filipino migrant workers are only deployed to countries where their rights are respected. However, the Committee is concerned that State party's policies, especially through Administrative Order Nos. 247 and 248, 2008 and 2009 respectively, would seem to be aimed at the promotion of foreign employment of migrant workers.

16. **The Committee recommends that the State party review its labour migration policy in order to give primary importance to human rights of migrant workers, in line with the State party's own professed goal as set out in RA 8042.**

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

Legislation and application

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

18. **The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.**

Data collection

19. The Committee notes with interest the statistics provided by the State party but is concerned at the paucity of information measuring stock and flows of Filipino migrant workers. The Committee regrets that the Inter-Agency Committee on the Shared Government Information System on Migration (SGISM) foreseen to be established by Executive Order is yet to be implemented. Further the Committee notes with regret the scarce information concerning the number of Filipino migrants abroad, their skills and employment, accurate data on returnees,

second and third generation Filipinos overseas, and the little information relating to foreign migrant workers in the State party.

20. **The Committee recalls that reliable, quality information is indispensable to understand the situation of migrant workers in the State party, to assess the implementation of the Convention and to develop adequate policies and programmes. In this regard, the Committee encourages the State party to:**

- (a) **Establish the Shared Government Information System on Migration (SGISM) as a harmonized database, in line with the Convention including disaggregated data, as a tool for a more effective labour migration policy and the application of the provisions of the Convention;**
- (b) **Strengthen collaboration with Philippine Embassies and Consulates for improving data collection;**
- (c) **Adopt a harmonized mechanism for gathering statistics on irregular migrants including through studies or estimated assessments when information is insufficient;**
- (d) **Continue collaboration with relevant partners on analysis and interpretation of statistical data and flow;**
- (e) **Ensure an adequate allocation of funds for the above purposes.**

Training in and dissemination of the Convention

21. The Committee notes with interest that informational and educational materials on the Convention have been developed by the State party as well as by NGOs. However, the Committee is concerned that from the information received, the target groups for whom training programmes and material were developed remain unclear as well as how the dissemination of the Convention was carried out. The Committee notes that pre-departure seminars and orientation for Filipino workers promote the rights under the Convention but regrets that little information was provided on any existing assessments of the effectiveness of these sessions.

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

- (a) **Carry out an evaluation of ongoing training programmes and information campaigns to ensure their effectiveness and impact on public officials working in the area of migration, including consular officials, border police officers, social workers, judges and prosecutors;**
- (b) **Ensure orientation and pre-departure seminars for migrant workers with clear objectives, country-specific information and nationwide outreach using the rights-based approach;**
- (c) **Work with civil society organizations and other relevant partners to disseminate information on migrants' rights under the Convention and accurate information to Filipino workers considering migrating abroad. Similarly, take measures to partner with the media;**
- (d) **Ensure the sufficient allocation of funds for training and,- in collaboration with relevant partners, including non-governmental organizations (NGOs), carry out capacity building training for the government agencies handling migration issues, such as the Overseas**

Workers Welfare Administration, Philippine Overseas Employment Agency, and the Department of Foreign Affairs.

2. General principles (arts. 7 and 83)

Non-discrimination

23. The Committee notes with interest that the principle of non-discrimination exists de jure in the Philippine Constitution, RA 8042, as well as a number of legislative measures. The Committee is concerned however, that, in practice, foreign workers in the Philippines are granted rights only under certain conditions, such as reciprocity, which may not be in line with the Convention.

24. **The Committee reiterates that the exercise of human rights is not based on the principle of reciprocity and recommends that the State party take the necessary steps to align its domestic legislation with the Convention.**

25. Regarding Filipino workers abroad, the Committee notes the role of the Department of Foreign Affairs and the activities of the Legal Assistant for Migrant Workers' Affairs to pursue the rights on behalf of Filipino migrant workers, in case individual complaints are legally impossible. Moreover, the Committee notes with interest the Legal Assistance Fund that has been established for Filipino migrant workers but regrets that no sufficient information was provided regarding the issues that were dealt with and in which countries.

26. **The Committee recommends that the State party continue its efforts to:**

- (a) **Continue and strengthen its activities to provide legal assistance to Filipino migrant workers;**
- (b) **Inform Filipino migrant workers of the administrative and judicial remedies available to them through the Department of Foreign Affairs.**

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

27. While noting with appreciation the activities undertaken by the National Commission on the Role of Filipino Women (NCRFW) and the national legislation enacted to improve the situation of migrant Filipino women, the Committee notes with interest the prominent numbers of female migrant workers. Moreover, the Committee, like the Committee on Cultural, Economic and Social Rights, notes with concern that women are most 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 may face inequitable working conditions.

28. **The Committee urges the State party to continue its efforts to promote the enhancement and empowerment of migrant women facing situations of vulnerability by inter alia:**

- (a) **Conducting a thorough assessment of the situation and taking concrete measures to address the feminization of migration comprehensively in its labour migration policies, including income of women in the informal sector, and minimal social protection for women;**
- (b) **Negotiating more secure employment opportunities and terms and conditions for women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent;**
- (c) **Carrying out gender training and sensitization for government staff dealing with migration issues, in particular those providing legal and consular assistance to Filipino nationals abroad seeking justice against abuse in the workplace;**
- (d) **Implementing the outcome document of the International Conference on Gender, Migration and Development called the *Manila Call to Action* as a tool for informed policy decision-making and advocacy.**
- (e) **Liaising with local and international partner networks to provide services and support to migrants and to advocate for migrants' rights.**

29. The Committee is concerned about the documented cases where embassy/consulate personnel abroad did not properly assist their nationals because the former were not sufficiently aware of processes in the host country. While noting the information provided by the delegation on the alternative dispute settlement mechanism, the Committee is concerned at information that Filipino migrants are unwilling to file cases of abuse by their employers abroad for lack of trust in the justice system or fear of retaliation and unfamiliarity with the redress possibilities.

30. **The Committee recommends that the State party:**

- (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 its 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.**
- (c) **Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues and their progress monitored.**

31. The Committee notes with concern that, despite the State party's efforts to protect the rights of Filipino migrant workers abroad, abuse and exploitation continue, especially of women migrants and that these are underreported.

32. **The Committee recommends that State party:**

- (a) **Conduct a review of bilateral and multilateral agreements, Memoranda of Understanding or other protective measures with countries of employment of Filipino foreign workers;**

- (b) **In case that no bilateral agreement can be finalized, continue cooperation arrangements with countries receiving Filipino migrant workers in areas of mutual concern;**
- (c) **Increase dissemination channels to increase awareness among migrant workers, especially women in domestic service, on the available mechanisms for bringing complaints against employers and so that all abuses, including ill-treatment, be investigated and punished;**
- (d) **Provide adequate assistance through embassy and consulate staff abroad to migrant workers victims of the “sponsorship” or *kafalah* system especially for women domestic workers and most notably in the Gulf countries and endeavour to negotiate a reform or review of such a system with the relevant countries of destination.**

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

33. The Committee is concerned about the fact that restrictions exist on the exercise of foreign migrant workers lawfully residing in the Philippines to engage directly or indirectly in trade union activities, as this right is only recognised for those migrant workers who are lawfully residing and working in the Philippines if they are nationals of a country which grants the same or similar rights to Filipino workers. The Committee is concerned that holding the right to join and establish a trade union subject to reciprocity is in violation of the Convention.

34. **The Committee reiterates the 2008 request by the ILO Committee of Experts on the Application of Conventions and Recommendations in relation to ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise that the State party take the necessary measures, including legislative amendments to sections 269 and 272(b) of the Labour Code, to guarantee to all migrant workers and members of their families lawfully residing within the Philippines the right to join, form and to form part of the leadership of, associations and unions, in accordance with article 40 of the Convention on Migrant Workers, as well as with ILO Convention No. 87, not subject to reciprocity.**

35. The Committee appreciates that the Filipino migrant workers' right to participate in democratic decision-making processes is recognized under RA 8042. While also noting the efforts undertaken by the State party to facilitate the participation of migrant workers abroad in elections for President, Vice-President, Senators and Party-list representatives, the Committee is concerned that the pre-required “affidavit of Intent to Return to the Philippines within 3 years” for immigrants/permanent residents abroad may limit the exercise of their right to vote. Further, the Committee is concerned at the very small percentage of Filipino workers abroad that have registered to vote in elections.

36. **The Committee encourages the State party to continue its efforts to:**

- (a) **Encourage Filipino workers abroad to register and participate in elections;**

- (b) **Maintain a register of overseas voters and take additional steps to facilitate the exercise of voting rights by Filipino migrant workers residing abroad.**
- (c) **Invite the Philippine Congress to consider the proposals to amend RA 9189 to delete the requirement of an “Affidavit of intent to return”.**

37. The Committee appreciates the State party’s efforts to enter into bilateral agreements with countries of destination with a view to promoting employment as well as the welfare and rights of migrant workers. However, the Committee is concerned that the provisions contained in bilateral agreements so far concluded do not sufficiently promote and protect the fundamental human rights of migrants.

38. **The Committee recommends that the State party, to the extent possible, progressively mainstream relevant and appropriate provisions of the Convention into bilateral agreements.**

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

39. The Committee notes with interest the labour migration policy implemented by the State party, with the Government playing a supportive and regulatory role. The Committee further notes the efforts taken by the State party to strengthen the Philippine Overseas Employment Agency and the Department of Foreign Affairs’ handling of irregular migration. At the same time, the Committee is concerned about the large numbers of Filipino workers overstaying their visas and the continuing existence of irregular and undocumented Filipino migrants abroad, of which most are women serving as domestic workers, who may be more vulnerable to abuses.

40. **The Committee recommends that the State party continue to provide assistance to irregular Filipino migrants in need of protection and to:**

- (a) **Step up its efforts to prevent irregular migration of Filipino nationals;**
- (b) **Continue its efforts to secure cooperation agreements with host countries;**
- (c) **Encourage collaboration of its consular services and Labour Attachés abroad and the countries which receive Filipino workers to promote sound, equitable, humane and lawful conditions for migrant workers.**

41. While noting that the State party has increased the penalty for agencies with exorbitant placement fees, the Committee expresses 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.

42. **The Committee recommends that the State party review the role of private recruitment agencies and endorses the recommendation of the Special Rapporteur on the human rights of migrants to strengthen the existing government-regulated licensing system for recruitment agencies, migration regulation and control mechanisms.**

43. The Committee notes with interest information given by the delegation on the State party's strategic reintegration programme for migrant workers returnees, including family members. Nevertheless, the Committee notes the lack of information available to the Committee on this programme.

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

- (a) **Work in partnerships with all relevant partners to strengthen the existing reintegration programme, especially with regards to addressing brain drain and developing knowledge transfer initiatives or brain gain schemes;**
- (b) **Allocate sufficient budget to reintegration programmes, and in particular to the reintegration centre which opened in 2007;**
- (c) **Strengthen reintegration programmes in order to ensure migration gains and involvement of Filipino returnees in projects that can lead to job creation in the State party;**
- (d) **Continue and strengthen skills, technical capacities and entrepreneurship trainings for preparing an eventual reintegration into the Philippines;**
- (e) **Adopt measures in accordance with the principles of the Convention in considering setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.**

45. The Committee expresses concern over the situation of children and the negative impact on children whose parents have migrated abroad. Information presented before the Committee points to children with at least one parent working overseas living with loose family ties and performing worse in school, notably in the case of an absent mother. This is of concern to the Committee given that 50 per cent of all Filipino migrant workers are women.

46. **The Committee encourages the State party to support a comprehensive study on the situation of children of migrant families, with the aim of developing adequate strategies to ensure their protection and the full enjoyment of their rights through, inter alia, community support programmes, education and information campaigns and school programmes. The Committee encourages the State party to continue its collaboration with NGOs in favour of these children and their mothers.**

47. While noting the significant efforts of the State party such as the recent convictions of traffickers and the "We are not for sale" campaign, the Committee is concerned about the significant number of Filipino workers abroad who are victims of trafficking. The Committee further regrets the very limited number of cases of filing, prosecution, and conviction of perpetrators of trafficking with many of those cases being dismissed at preliminary stages.

48. **The Committee endorses the recommendations of the Committee on the Elimination of All Forms of Discrimination against Women in this regard and recommends that the State party:**

- (a) **Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to better combating trafficking, especially of women and children;**
- (b) **Vigorously ensure effective enforcement of anti-trafficking legislation and increase efforts to improve the record of prosecutions, convictions, and punishment for traffickers and public officials who profit from or are involved in trafficking and bring perpetrators to justice;**
- (c) **Strengthen the Anti-Illegal recruitment campaign and provide adequate funding for the implementation of the National Strategic Plan of Action against Trafficking;**
- (d) **Continue collaboration with all relevant partners to increase advocacy, information, education and overall public awareness activities. Likewise, continue its ongoing early detection and prevention activities.**
- (e) **Coordinate and monitor the implementation of laws regarding forced labour and slavery, and continue training programmes in identifying and providing the necessary intervention and assistance to trafficked persons. Continue training of prosecutors to make them fully aware of the nuances of anti-trafficking law. Similarly, continue partnerships to increase technical capacity building and training of law enforcers, prosecutors and service providers.**
- (f) **Continue partnership with national and international relevant partners, including NGOs to provide services to victims of trafficking.**

49. The Committee notes the large number of government departments and attached agencies as well as legislation dedicated to migration issues, including RA 8042, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers' Welfare Administration (OWWA). Nevertheless, the Committee is concerned that institutional responsibilities are spread among different ministries without a coordinating entity and about their limited means and capacity to fulfil their mandate in a proper manner and little coordination in the effective implementation of the promotion and protection of the rights of migrant workers.

50. **The Committee recommends that, in order to improve institutional capacity to respond to problems affecting migrant workers, the State party simplify and streamline the institutional structure dealing with migration issues and allocate sufficient resources, human and financial, for agents within this structure to carry out their work efficiently. Furthermore, the Committee recommends that the State party guarantee broader participation of civil society NGOs**

6. Follow-up and dissemination

Follow-up

51. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to

ensure that these recommendations are implemented, including by transmitting them for consideration and action to all relevant national and local authorities.

52. The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second report.

Dissemination

53. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Filipino migrants abroad and foreign migrant workers residing or in transit in the Philippines.

7. Next periodic report

54. The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting (HRI/MC/2006/3 and Corr.1).

55. The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 May 2011.
