

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON MIGRANT WORKERS 10TH SESSION PHILIPPINES, INITIAL REPORT 23 AND 24 APRIL

Key facts	1
Opening remarks by the delegation	1
Overview of key issues.....	2
International cooperation and implementation of the Convention	2
National migration policy	3
Access to services	4
Overseas voting rights	5
Feminisation of migration and associated problems.....	5
Other issues not reflected in concluding observations...	6
Conclusions and next steps.....	6

Key facts¹

Ratification	Reservations	Recognises Committee's competency under Article 77 ²	Other core treaties ratified
5 July 1995	None	No	ICCPR, ICESCR, ICERD, CAT, CRC, CEDAW

Opening remarks by the delegation

The large delegation of the Philippines was led by Ms. Erlinda Basilio, Permanent Representative of the Philippines to the United Nations, and consisted of representatives from the Department for Social Welfare and Development, the Presidential Human Rights Committee, the Department of Foreign Affairs, the Ambassador to the UN, the Department of Justice, the Director of the Human Rights Committee of the

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² Article 77 provides that a State Party to the Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the Convention have been violated by that State Party.

Philippines and the Director of the Department of Labour and Employment, many of whom were given the opportunity to speak and answer questions during the meeting.

The general make-up of the State delegation suggested an open, comprehensive approach, and the Committee Chairman thanked the delegation for its ‘impressive’ efforts in compiling the initial report and subsequent responses to the advance questions. Ms. Basilio introduced the Philippines’ report³ with a summary of the information contained therein, but her speech contained little new information. She revisited points raised in the advance list of issues,⁴ placing particular emphasis on the State’s response to exorbitant employment agency fees and its level of cooperation with national NGOs in handling migrant workers. The speech lasted 30 minutes and was used mostly to highlight the State’s international record in protecting the rights of migrant workers, and to emphasise the effects of the current global economic downturn on national policies on migration.

Overview of key issues

Considering the extensive development of the national overseas employment programme, the country rapporteur, Mr. Kariyawasam, stated at the outset that, as the Philippines’ the national overseas employment programme was so well-developed, a higher level of scrutiny would therefore be applied. The questions asked by Mr. Kariyawasam in particular were clear and specific, and despite some initial reticence towards this bar-raising, the delegation subsequently persevered to provide detailed answers, with examples and statistics in most cases. Rapporteurs Mr. Kariyawasam and Ms. Poussi were joined by Mr. El-Borai in pushing the State to nonetheless provide more specific answers to particular questions, some of which are elaborated upon below.

International cooperation and implementation of 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”.⁵

Some disagreement between the Committee and delegation was evident from the outset. In its report, the Philippines stated that it endeavoured to create bilateral agreements with those ‘receiving’ States which are currently still not party to the *Convention on the Protection of the Rights of all Migrant Workers and their Families* (‘the Convention’). Mr. Kariyawasam initially asked about the extent to which the Convention was integrated into these agreements, with the State responding that it ‘mainstreams’ all human rights in these agreements, of which it currently has 18. According to the Committee, NGO reports claimed that some of these agreements have expired, however, and the State failed to report on these agreements. No further information was provided on these bilateral agreements but the delegation was clear in asserting its compliance with the terms of the Convention. The Committee nevertheless thought it pertinent to include a recommendation on mainstreaming ‘relevant and appropriate’ provisions of the Convention in its bilateral agreements⁶ and conducting a review of all such current agreements.⁷

In a related issue, the Director of the Department for Labour and Employment addressed the concern raised by some Committee members about the implementation of the Convention in national law. Mr. Kariyawasam

³ See <http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.PHL.1.doc>.

⁴ See <http://www2.ohchr.org/english/bodies/cmw/docs/AdvanceVersions/CMW-C-PHL-Q1.doc> and <http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.PHL.Q.1.Add.1.doc>.

⁵ Concluding observations on the Philippines, CMW/C/PHL/CO/1, at <http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.PHL.CO.1AUV.doc>, para. 24.

⁶ See <http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.PHL.CO.1AUV.doc> at para. 38.

⁷ See <http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.PHL.CO.1AUV.doc> at para. 32(a).

asked specifically whether the much-touted *1995 Migrant Workers Act*, which was enacted before ratification of CMW, therefore contains provisions which are inconsistent with the Convention. A delegation representative responded that the Act was passed in anticipation of the ratification of Convention and was therefore worded so as to ensure compliance with the Convention. Despite NGO assertions that the Act needs amending, the Committee had no more questions on this topic.

An important matter of principle arose in relation to the rights of migrants working in the Philippines. The State prohibits foreign nationals from joining trade unions within the country, but insists that it will respect the rights of workers of those countries which grant the same rights to Filipino workers. The Committee took exception to such application of the principle of reciprocity. Despite its standing in international law, the Committee was keen to emphasise that the application of this principle may not necessarily govern universal human rights or the Convention and recommended in its concluding observations that such workers be provided the rights set out in *ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise*.⁸ Mr. El-Borai objected to the State's position on this matter and noted that the State had still not provided any information on the aforementioned ILO Convention.

National migration policy

“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”.

Both in the review and the prior NGO meeting, a fundamental concern for the Committee was the apparent national policy of encouraging migration as a solution to national unemployment. The delegation stated that it does not emphasise overseas employment as a lasting solution, but rather uses it as a crucial development tool at the present time. Mr. Kariyawasam questioned whether the Government's encouragement of this activity was rights-based or whether it was framed instead in economic terms. The representative for the Presidential Human Rights Committee reported that work towards a human rights action plan began in 2006 in order to develop such a rights-based approach, but this progress is not yet evident in practice, and migration is still largely framed in economic terms. In terms of implementing its policy in this area, the delegation acknowledged the work that still needs to be done in raising awareness of the rights of migrants and added that it is in the process of disseminating booklets to potential migrants.

The delegation pointed out that its orientation seminars⁹ are aimed at enabling individuals to make informed decisions about their options and in this regard the Director of the Department for Labour and Employment asserted that the seminars comply with Convention. Furthermore, they reportedly pay equal attention to the drawbacks and dangers of migrant work as well as the benefits. Nevertheless, Mr. Kariyawasam was clearly concerned that orientation seminars actively encourage overseas employment and expressed his concern about the lack of information provided on the effectiveness of these seminars in educating potential migrants on their rights; indeed the information provided by the Director ran contrary to NGO reports which decried the lack of a human rights context to such seminars and claimed that in any event they are only attended by 4% of all migrant workers. The provision of this kind of pre-departure preparation for potential migrants can evidently be interpreted as active encouragement to seek work abroad. In support of this claim, Committee member Ms. Poussi pursued a pertinent line of questioning regarding the comprehensive training of nurses which the delegation had used as a good example of its bilateral migration agreements. Ms. Poussi pointed out that many of these nurses are trained specifically in Canadian practices, indicating that Government policy is therefore directed specifically towards furthering migration rather than developing a core skills-base to

⁸ Supra n. 5 at para. 34.

⁹ The mandatory Pre-Departure Orientation Seminars provide a one-day briefing on the risks and rewards of working abroad, travel procedures, what to do upon arrival, and where to receive legal assistance once working abroad. See supra n. 3, at para. 299.

retain within the country. In addition, Ms. Poussi expressed concern that this type of activity contributes to the so-called ‘brain drain’ reportedly extant in the country.

Access to services

The Committee drew attention to three particular aspects of migration, including pre-departure preparation, in-country support and reintegration programmes:

“22. The Committee encourages the State party to: ...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 organisations and other relevant partners to disseminate information on migrants’ rights under the Convention and accurate information to Filipino workers considering migrating abroad”.¹⁰

The Committee was keen to explore the methods used to prepare potential migrants for work abroad, and Mr. Kariyawasam expressed some concern that the oft-praised pre-departure orientation seminars might in reality suggest a *de facto* policy of encouraging migration as a solution to growing unemployment within the State. The Committee was furthermore keen to draw attention to effects this labour migration policy was having on illegal migration, with many Filipinos circumventing the departure programme entirely. This exposes them – female domestic workers in particular – to greater risks whilst working abroad. The delegation’s response to this issue was to focus on the symptoms of irregular and undocumented workers, and not the fundamental issue of preventing undocumented migration altogether. The State claimed that it only hears of such migrants after they have experienced problems and can only integrate them once this has happened. It does however purport to register and obtain correct work visas for such undocumented workers once they have been identified, and gave examples of this in Belgium and Luxembourg.

Mr. Kariyawasam also asked about the extent to which such pre-departure training seminars were used and whether they were compulsory. The Philippines responded that pre-departure seminars are indeed mandatory, but provided no additional information on how this is enforced, if at all, or the percentage of migrants who actually participate.

“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, especially in those countries categorised as ‘highly problematic’ by the DFA and DOLE; c) undertake regular performance and financial audits of government personnel and agencies with migration issues and their progress monitored”.¹¹

“32 (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”.¹²

A major issue raised by NGOs and subsequently the Committee was the problem of providing adequate assistance to Filipino migrant workers abroad, many of whom the Committee believes lack sufficient legal protection. Mr. Kariyawasam and Ms. Poussi asked several questions on the problem of overseas employers confiscating passports, rights awareness-raising and improving legal service provision by consular officials. According to NGO testimony relayed by Mr. Kariyawasam, the conduct of some overseas consular officers has been less than professional and they have collaborated with employment agencies and traffickers to the

¹⁰ Supra n. 5 at para. 22.

¹¹ Supra n. 5 at para. 30.

¹² Supra n. 5 at para. 32(c).

detriment of migrant workers. The delegation responded that investigations will be carried out with due process, but that officers facing charges are not suspended from their duties unless the Secretary of State recommends it. The debate on this issue could not be continued due to time constraints, but is partly addressed in the concluding observations made above.

“44(a). Work in partnerships with all relevant partners to strengthen the existing reintegration program, especially with regards to addressing brain drain and developing knowledge transfer initiatives or brain gain schemes”.¹³

Reintegration was addressed in an attempt to encourage the development of sustainable employment strategies for the country, with the Committee highlighting the need to address the issue of ‘brain drain’. Initiatives introduced by the Government include the establishment of a national reintegration centre and a tiered business loan scheme. Mr. Kariyawasam noted that more information was needed on the implementation of these schemes.

Overseas voting rights

“36. The Committee encourages the State party to continue its efforts to:...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’”.¹⁴

Section 5(d) of RA 9189 states that an immigrant must sign an affidavit of intent to return to the Philippines within 7 years in order to enjoy the right to vote. The individual must not be in the process of applying for nationality of another State at the time. Failure to return within the time limit effectively renders the individual’s voting rights null and void. According to the State response to the list of issues raised prior to the meeting, there is presently a proposal before the Philippine Congress to delete the requirement of an affidavit of intent to return.¹⁵ The Committee returned to this point throughout the meeting, again led by Mr. Kariyawasam. The State responded that the affidavit procedure is intended to ensure that migrants maintain a sufficient interest in the country, but that the system is also evolving. It claimed that meetings with all relevant parties were ongoing.

Feminisation of migration and associated problems

“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 feminisation of migrations...including income of women in the informal sector, and minimal social protection of 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.”¹⁶

The State was unclear on its policy relating to the feminisation of migration and failed to elaborate on measures taken to protect female migrant workers. Several Committee experts asked whether such feminisation should be encouraged further, as it clearly exposes women to particularly dangerous situations in some overseas destinations such as the Persian Gulf. The Director of the Human Rights Commission of the Philippines (the ‘HRCP’) responded that the economic empowerment of women is encouraged, yet he also claimed that there is currently a defeminisation of migration, with the Gulf construction industry attracting

¹³ Supra n. 5 at para. 44(a).

¹⁴ Supra n. 5 at para. 36.

¹⁵ See <http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.PHL.Q.1.Add.1.doc>, at para. 98.

¹⁶ Supra n. 5 at para. 28.

many male labourers to the region. It is also possible that the reduction of female workers – although unverified – could be the result of higher standards being enforced for overseas employers wishing to hire female ‘entertainers’ and domestic workers. This nevertheless raised concerns from the Committee about the level of protection currently afforded women in these two particularly vulnerable professions. The Chief of Overseas Welfare Administration emphasised that the departure process for female migrants has been strengthened by a new language scheme and a new task force named the CFO conducts surveillance operations on suspected traffickers. The Director of the HRCP also stated that pre-departure booklets should be published on how to deal with abuse and violence towards women, but did not state when these would be brought in.

Other issues not reflected in concluding observations

Mr. Kariyawasam was concerned about the relative lack of information in the State report regarding migrant workers coming to the Philippines, and reminded it that ratification of the Convention obliges the State to respect and protect the rights of *all* migrants, not just those leaving the country in search of work. There was a limited amount of dialogue on this issue in the meeting, but this concern was not explicitly echoed in the concluding observations.

Broad consultation with NGOs was something the State clearly avoided, failing to mention any collaboration in collating information for its national report. Sadly this omission was echoed by the Committee, which asked questions about NGO participation during the dialogue but then failed to assert any such recommendations for the next periodic report. On a more general note, it did however recommend, in paragraph 50, that ‘the State party guarantee broader participation of civil society NGOs’.

Conclusions and next steps

The State ended the review in a cooperative manner, accepting the high standards expected of it by the Committee and stating its intent to give ‘appropriate consideration’ to the concluding recommendations in order to afford better protection to migrant workers. Ms. Basilio re-emphasised the importance of constructive dialogue, recognising the role of civil society in that regard, and suggested it might help States if further studies were made on the contributions NGOs make to society. She also took the opportunity to bring to the Committee’s attention the plight of Filipino migrant workers detained onboard ships captured by Somali pirates off the African coast.

The Chairman thanked the delegation for its ‘significant’ replies, whilst the country rapporteur praised the State for its novel initiatives, such as the task force on trafficking. He expressed his concern about the lack of information provided on the implementation and effectiveness of these initiatives, and highlighted two areas in need of urgent improvement: the mainstreaming of rights in national institutions, initiatives and policies; and the need for greater focus on female migrant workers as a particularly vulnerable group.

The next periodic report is due on 1 July 2009. Under the circumstances the Committee requested the State submit its second periodic report not later than 1 May 2011.

TREATY BODY MONITOR STAFF

Eléonore Dziurzynski, Communications Officer, Geneva

Gareth Sweeney, Deputy Manager, Geneva

Katrine Thomassen, Manager, Geneva

Michael Ineichen, Human Rights Officer, Geneva

Michelle Evans, Representative to the UN, New York

Vanessa Jackson, Human Rights Officer, New York

AUTHOR OF THE PHILIPPINES REPORT

Peter Tubman, Intern

ABOUT THE PUBLICATION

The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the six treaty bodies (all but the Committee on the Rights of the Child) and provides an overview of every treaty body session. It is currently an online publication that can be found at www.ishr.ch.

COMMENTS AND FURTHER INFORMATION

We would welcome your feedback on this publication so please send any comments and suggestions to information@ishr.ch. You can check the latest Treaty Body Monitor reports published on www.ishr.ch.

COPYRIGHT, DISTRIBUTION AND USE

Copyright © 2009 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify information@ishr.ch.