

Submission to the UN Committee on Migrant Workers

**For the List of Issues Prior to Reporting (LOIPR) of the Philippine Government in Preparation for the
Committee on Migrant Workers' 16th Session (16-27 April 2012)**



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**Organization: Center for Migrant Advocacy (CMA),
a Member of Migrant Forum in Asia**

Contact Person: Ellene A. Sana, Executive Director

Email Address: cmaphils@pldtdsl.net

Web: www.pinoy-abroad.net

Phone: (+632) 990-5140

Fax: (+632) 433-0684

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I. List of Acronyms

CMA	-	Center for Migrant Advocacy
COMELEC	-	Commission on Elections
CFO	-	Commission on Filipinos Overseas
CSO	-	Civil Society Organization
DOLE	-	Department of Labor and Employment
DFA	-	Department of Foreign Affairs
FDC	-	Freedom from Debt Coalition
GAD	-	Gender and Development
HSW	-	Household Service Workers
LGU	-	Local Government Unit
MFA	-	Migrant Forum in Asia
NGO	-	Non-Government Organization
NRCO	-	National Reintegration Center for OFWs
NOVA	-	Network Opposed to Violence Against Women Migrants
OAV	-	Overseas Absentee Voting
OFW	-	Overseas Filipino Workers
OWWA	-	Overseas Workers Welfare Administration
PAHRA	-	Philippine Alliance of Human Rights Advocates
PEOS	-	Pre-Employment Orientation Seminar
PDOS	-	Pre-Departure Orientation Seminar
PhilHEALTH	-	Philippine Health Insurance
PMRW	-	Philippine Migrant Rights Watch
POEA	-	Philippine Overseas Employment Administration
RA 8042	-	Republic Act 8042 otherwise known as Migrant Workers and Overseas Filipinos Act of 1995
RA 10022	-	An Act Amending RA 8042 otherwise known as Migrant Workers and Overseas Filipinos Act of 1995 (2009)
SGISM	-	Shared Government Information System on Migration
SSS	-	Social Security System

II. Introduction

This report has been prepared by the Center for Migrant Advocacy to assist the UN Committee on Migrant Workers in identifying the main human rights issues arising under the articles of the Convention. It addresses human rights issues affecting migrant workers and members of their families living in the Philippines and abroad. The issues identified are culled from CMA's experience doing lobby-advocacy work before representatives of migration-focused agencies of the Philippine government.¹ The report is also informed by CMA's direct assistance program, which supports distressed migrants in their interactions with government agencies for prompt resolution of their cases; and by inputs from CMA's partner organizations as well as individual OFWs and migrant associations in the Philippines and abroad.

The submission is geared towards assisting the Committee in identifying the **List Of Issues Prior to Reporting (LOIPR)** of the Philippine government. It takes into consideration the Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, from May 2009, assessing government progress towards implementing the recommendations contained therein. The broader goal is to assist in making the Philippine government more effective and responsive in fulfilling its obligations under the Migrant Workers Convention.

About the Center for Migrant Advocacy:

The Center for Migrant Advocacy (CMA) is a Philippine-based migrants' rights advocacy non-government organization (NGO). Our work focuses on public policy advocacy for the rights and well-being of overseas Filipino workers (OFWs) and their families. We do lobby-advocacy work at the local, regional, national,

¹ These agencies include the legislative branch and direct service units overseas, such as Philippine embassies, consulates, and labour offices.

and international levels. The focus of our work is on government protection of OFWs. Our recent policy advocacies include the restructuring of OWWA (Overseas Workers Welfare Administration) to make it a substantive welfare agency for migrants and their families; and amendments to the Overseas Absentee Voting (OAV) Law to make it more enfranchising for overseas Filipinos. We also advocate for better information dissemination and empowerment of migrants through improvements to the Pre-Employment Orientation Seminar (PEOS) and the Pre-Departure Orientation Seminar (PDOS). Towards this end, CMA is currently conducting a review of PDOS and working with partner organizations to make it more effective and relevant to OFWs. CMA is regular active participant in Congressional hearings on migration-related issues in order to ensure a consistent voice is maintained representing OFWs and their families.

Complementing CMA's lobby-advocacy work is its research, information and education work. CMA conducts research and produces publications to bring attention to a variety of salient issues. Our most recent publications were a survey research on the effectiveness of the Household Service Workers (HSW) Policy Reform package; a Policy Paper on the OWWA Charter; and a policy paper on Overseas Absentee Voting (OAV), Enhancing the Right of Suffrage by Overseas Filipinos.

To maintain its connection to the OFW constituents on whose behalf CMA works, we also facilitate assistance to migrants in distress. A central component of this program is the OFW SOS SMS helpline, launched in 2006. Through this mobile-phone 24/7 helpline, CMA receives cases of distressed migrants and facilitates prompt assistance to them - connecting them with the relevant agencies of government including Philippine Foreign Service Posts, and following-up to ensure speedy resolution of their cases.

CMA is a member of several rights-based networks: the Philippine Alliance of Human Rights Advocates (PAHRA); Network Opposed to Violence Against Women Migrants (NOVA); Freedom from Debt Coalition (FDC) and Philippine Migrant Rights Watch (PMRW), a Philippine-based advocacy network for migrants' rights. In the region, it is a member of Migrant Forum in Asia (MFA). CMA has partners in some 52 countries and destinations of overseas Filipinos.

III: The Context: An overview of Filipino Labour Migration

Government-managed migration from the Philippines is over 4 decades old. What was originally envisioned as a temporary solution to an acute crisis of unemployment and balance of payments deficit in the early 1970s has become a permanent fixture of the Philippine government's employment strategy.

President Benigno Simeon Aquino III, in his inaugural address in June 30, 2010 said that "Our goal is to create jobs at home so that there will be no need to look for employment abroad. However, as we work towards that end, I am ordering DFA, POEA & OWWA and other relevant agencies to be more responsive to the needs & welfare of our OFWs." By end of December 2010 however,

POEA reported the highest deployment of OFWs to date, with migrant domestic workers or household service workers comprising the biggest deployment under a single job category².

A year later, in December 2011, President Aquino stated that “The Philippine economy is now focused on “investment-led growth” and is no longer heavily dependent on the remittances of overseas Filipino Workers.” The statements of the President sound good but remain wanting in terms of clear perspective and program to stem the tide of outmigration.

The centrality of OFWs to the Philippine labour market has been recognized by the DOLE. As their *Philippine Labour and Employment Plan 2011-2016* recognizes, the annual outflow of OFWs, which began in the 1970s, has dramatically and steadily increased since the 1970s.³ In 1972 the annual deployment was 14,366; in 2006 it passed one-million, reaching 1.063 million; in 2008 OFW deployment grew by 14.7% to 1.236 million; and in 2009 it grew by 15.1% to reach 1.423 million.⁴ About three-fourths of them were land-based workers.⁵ In 2010 781,710 OFW were rehires. There are currently Filipinos in 238 countries.⁶

Coupled with the dramatic increase in the number of OFWs deployed overseas has been prolonged unemployment and underemployment. In 2010, unemployment slightly slowed down to 7.4% from 7.5% in 2009 (men: 7.6% (2010 & 2009), women: 6.9% in 2010 from 7.2% in 2009).⁷ Unemployment is especially high among the youth, with 17.6% of Filipinos between the ages of 15 and 24 having experienced unemployment in 2010.⁸

Similar trends can be found in underemployment. According to the latest trends reported by the Institute on Labour Studies at a February 14th conference on Gender and Migration, the underemployment rate stands at 18.8% (6.76 million) ((men: 21.3% (4.68 Million), women: 4.8% (2.08

2 Based on POEA statistics. www.poea.gov.ph

3 Department of Labour and Employment. *Philippine Labour and Employment Plan 2011-2016: Inclusive Growth through Decent and Productive Work*. The Department of Labour and Employment. Manila: DOLE Building, 2011. Web.

4 See note 2.

5 See note 2.

6 Institute for Migration and Development Issues (IMDI). *Philippine Migration and Development Statistical Almanac*. IMDI. Mandaluyong City, Philippines, 2008. Print. Note: 238 was arrived at by tallying the countries listed in the Almanac.

7 Gavilla, Asuncion. “Latest Trends in Gender and Employment.” Bureau of Labor and Employment Statistics. Power Point Presentation presented at 4th ILS Strategic Conversations Series Promoting Inclusive Growth for All through Gender Equality, Migrant Rights and Decent Work, Institute for Labor Studies. 14 – 15 February 2012 / The Bayleaf Hotel, Manila. 2012.

8 See note 6.

Million)).⁹ Filipino workers are consistently unable to find enough work at home, compelling them to migrate overseas to support themselves and their families.

This pattern of migration is confirmed by the statistics. As we saw above, annual deployment has been increasing steadily. With such steady increases, by 2010 there were a staggering 2.043 million OFWs (men: 1.068 Million (52.3%), women: 975,000 (47.7%)) who were working or had worked abroad in the past 6 months.¹⁰ Clearly overseas migration is an integral component of the government's labour and employment policy. This is particularly apparent when one considers the large number of rehires being deployed. 'Temporary' migrants are returning overseas year after year in what is fast becoming an entrenched pattern of labor migration at the (unofficial) center of the country's development plan.

Another phenomenon that emerges from an analysis of the data is the feminization of migration. POEA statistics from 2010 put the number of deployed women migrants at 55% as against 45% of males.¹¹ Women migrants are mostly relegated to the service sector and other areas considered traditional women's work (such as housekeeping, care giving, teaching and nursing).¹² In 2010, of the top ten occupational categories of deployed land-based OFWs, household service workers (or domestic workers) ranked number one, with women accounting for 98% of the HSWs deployed.¹³

Almost 1/3 of the Filipinos deployed in 2010 were domestic workers (96,583), and a majority of them (94,880 or 98%) were women.¹⁴ The nature of their jobs is inherently vulnerable. They live in their employers homes, work long hours without breaks, and have difficulty accessing their rights. Many are subject to abuse and exploitation as a result of living and working in a space that is so difficult to regulate.

Other overseas jobs classified under the professional category, such as nursing, are also dominated by female OFWs. 10,254 of 12,082 nurses deployed in 2010 were women.¹⁵

The migration of nurses, among other professionals, also highlights the 'brain drain' phenomenon that is a component of overseas migration. In search of secure jobs and higher salaries, engineers, accountants, and doctors leave the Philippines each year. In 2010 an estimated 41,385 professionals left the Philippines in search of work overseas.¹⁶

9 See note 6.

10 See note 6.

11 Philippine Overseas Employment Administration (POEA). *Overseas Employment Statistics*. 2010; Note: this estimate is based on top ten occupational categories only and by sex.

12 See note 10.

13 See note 10.

14 POEA. *OFW Deployment per Skill and Country - New hires For the Year 2010*. Available at:

<http://www.poea.gov.ph/stats/2010%20Deployment%20by%20Major,%20Sub-Major%20Occupation%20and%20Sex%202010%20-%20New%20hires.pdf>

15 See note 13.

16 See note 13.

Next to patterns of increased migration is the proliferation of irregular migration. According to stock estimates from the Commission on Filipinos Overseas (CFO) there were an estimated 704,916 (8% of the total deployed) irregular migrants worldwide as of December 2010.¹⁷ This was up from 658,370 in December 2009 and 653,609 in 2008.¹⁸ Undocumented or irregular OFWs are at the cross-section of various systems of marginalization. They are inherently vulnerable because of their 'illegal' status, they are often struggling with poverty, they are generally women, and they are relegated to the margins of society - unable or unwilling to assert their rights for fear of detention and deportation.

Overseas labor migration continues to be promoted and managed by the Philippine government. There is no serious reintegration program. Moreover, as outmigration persists and deployment continues to increase, there will always be significant shortcomings with government's finite existing support structures, personnel and programs for OFWs at all stages of the migration process –from pre-departure, onsite in the destination countries and upon return and reintegration in the country.

Below, CMA has culled some of the most glaring issues that have arisen in recent years in relation to the Migrant Workers Convention, and made some suggestions on potential ways forward.

IV: Key Issues in Relation to the Concluding Observations

1. Follow-up, Implementation, and Evaluation: While the government has continued to develop programmes to respond to the challenges faced by migrant workers, improper implementation, follow-up, monitoring, and evaluation of these programs is a persistent problem. Programmes continue to lack clear, measurable, and time-bound targets to facilitate their implementation and increase their effectiveness.

A. Household Service Workers Policy Reform: As a glaring example of improper implementation, follow-up and evaluation, the Household Service Workers (HSW) Policy Reform continues to suffer from improper implementation and evaluation. While the program was meant to help protect the rights of domestic workers abroad by setting the minimum age for deployment at 23, obliging the employer to shoulder the cost of deployment, and increasing the minimum wage to \$400 monthly (among other things), a CMA study conducted in July 2011 shows that these standards are not being followed.¹⁹ Violations of the provisions of the HSW Policy are rampant (with workers often receiving half the \$400 salary) and, although the government recognizes the policy's weaknesses, they have done little to improve or enforce it.²⁰ To date there has been no assessment undertaken by the government regarding the efficacy of the Household Service Workers Policy Reform, despite the urging of civil society organizations.

17 Commission on Filipinos Overseas. *STOCK ESTIMATE OF OVERSEAS FILIPINOS As of December 2010*. Available at: <http://www.cfo.gov.ph/pdf/statistics/Stock%202010.pdf>

18 Commission on Filipinos Overseas. *STOCK ESTIMATE OF OVERSEAS FILIPINOS As of December 2009*; Commission on Filipinos Overseas. *STOCK ESTIMATE OF OVERSEAS FILIPINOS As of December 2008*.

19 Center for Migrant Advocacy. *Survey Research on the Effectiveness of the Household Service Workers (HSW) Policy Reform Package*. Quezon City, July, 2011.

20 See note 18.

This is especially troubling, considering that deployment of women domestic workers has increased since 2008²¹, especially to the Gulf Cooperating Council (GCC) countries whose laws, policies, social structures and relations make women migrants, especially domestic workers, more vulnerable to abuse and exploitation. The GCC share of new-hired domestic workers was highest in 2010 at 63% (61,084 out of a total 96,583).²²

Ineffective Implementation and Follow-up leads to Circumvention of the HSW Policy: Provisions of the Household Service Workers Policy are violated for a number of reasons. One is inconsistencies in the application of the policy. For example, although the government implemented a no-placement-fee policy, recruiters based in Hong Kong may still collect placement fees. Recruiters based in the Philippines use this to justify illegally charging fees to workers. Fearful of reprisal and of being prevented from going abroad, many workers do not report such violations.²³

Recruitment agencies and employers have also found ways to exploit the vulnerability of workers in order to circumvent the requirements of the HSW Policy. For example, facing the prospect of unemployment at home, workers will often agree to enter into a 'false' employment contract that satisfies official POEA requirements, knowing well that a new employment agreement will be entered into upon arrival in the host country. In the subsequent contract the worker is generally paid much less than the \$400 minimum and placement fees are often passed onto them. Through this practice, POEA rules are treated as formalities to be circumvented.

Recommendations: Considering the systemic nature of such contract substitution, monitoring and enforcement mechanisms must be implemented to ensure that the HSW Policy Reform Package is actually followed and that the routes being developed to circumvent it are stemmed. Unscrupulous recruitment agencies need to be reprimanded or dismantled so that the burden of defending migrant workers' rights does not fall on the workers themselves. Coordination between and among government agencies involved in the migration process is necessary to make sure that monitoring is done. DOLE should design such agency coordination. Policies, including the HSW Policy Reform Package, should be continuously assessed to determine if they still serve the migrants given the current political, economic and social situation. Evaluation of the HSW Policy and other laws through studies and research should be encouraged, with the participation of the different stakeholders.

CMA welcomes the current efforts of government to engage in bilateral negotiations with governments of destination countries such as Saudi Arabia, the United Arab Emirates, Kuwait, Jordan and Lebanon. It would be good to get updates on the progression and outcomes of these negotiations.

2. Inadequate Promotion of the Human Rights of Migrants in its Labour Migration Policy: In an effort to ensure that OFWs are only deployed to countries where their rights are respected the government amended RA 8042 with RA 10022, which sets out requirements for deployment. As per this new law

21 Note: the increase was only one year after the implementation of the HSW Policy.

22 See note 18.

23 A recent CMA case followed this pattern, as have previous cases.

(effective since 2010) OFWs shall only be deployed to countries where their rights are protected. This requirement can be met by ensuring that a country has at least one of the following in place:

- (a) existing labour and social laws protecting the rights of workers, including migrant workers,
- (b) it is a signatory to and/or ratifier of multilateral conventions declarations or resolutions relating to the protection of workers, including migrant workers; or
- (c) it has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers.

The destination government must also be “taking positive, concrete measures to protect the rights of migrant workers.”²⁴ The Philippine Congress has set April 12th as the deadline by which the final list of countries not compliant with any of the requirements must be released. Thus far, the list has been in a significant state of flux.

Significant Problems with RA 10022: While the effort to ensure that OFWs are only deployed to countries where their rights are respected is laudable, there are many problems with the implementation of RA 10022, such that the extent to which it promotes the protection of the human rights of migrant workers is questionable. In fact, far from protecting the rights of migrant workers, CMA finds that this law could open up the door for irregular migration. Four shortcomings of RA 10022 are outlined below.

RA 10022 Issue #1: Unclear and Ineffective Deployment Criteria: CMA is concerned that the deployment criteria of RA 10022 are not being properly interpreted or implemented. The criteria establish that a country must comply with at least *one* of the three protective measures, and must be taking concrete measures to protect the rights of migrant workers in order for deployment to continue. Consequently, subsection (b) would appear to enable most, if not all, countries to meet the requirements, since most countries are signatories to a multilateral convention, declaration or resolution relating to the protection of workers²⁵.

The process of evaluating the destination countries has led to diplomatic tensions rather than to fruitful discussion on mechanisms to protect and promote migrant workers’ rights. Such was the case of Cambodia which was initially put in the list of non-compliant countries despite it being a signatory to the UN Migrant Convention and a party to several other international human and labor rights instruments. Bangladesh, a state party even to the Migrant Convention was likewise put in the initial list of non-compliant countries along side East Timor, another state party to the Convention²⁶.

24 *RA 10022: An Act Amending RA 8042 otherwise known as Migrant Workers and Overseas Filipinos Act of 1995 (2009)*, Republic of the Philippines, Congress of the Philippines, Metro Manila, 4th Congress, 3rd Regular Session, 2010.

25 All Member States of the United Nations have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties. <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>

26 POEA Governing Board Resolution Number 07, Series of 2011. Review of the list is still on going. Countries cited above along with a lot more have been removed from the list.

This causes one to question how the law is being interpreted, how the final list will be created, and whether it will have a significant impact on the protection of the rights of migrant workers. Considering that many of the countries with the highest number of OFWs inside their borders are not on the list, such as Saudi Arabia, perhaps a list-based approach with such unclear requirements is not the best route forward towards protecting the human rights of migrant workers.

More importantly, it is unclear how the ban will play out in practice or be monitored. Based on what we have seen in relation to previous patterns of migration, it seems that the ban could simply lead to an increase in irregular migration and to increased insecurity of OFWs. This is not a remote possibility, especially when government has yet to create the material conditions and improvements in the country that will make the option of staying behind stronger than the pull to migrate.

Recommendation: The constructive dialogue between the Philippines and the Committee will be an opportune time to clarify the provision on the criteria for deployment and how the executive agencies interpret it so that in the end, it does not result to more irregular migration or disproportionate discrimination.

RA 10022 Issue #2: Illegal Recruitment: CMA is concerned that the provisions on illegal recruitment will not be effective, since they do not go beyond RA 8042 in implementing channels for information dissemination or in providing concrete mechanisms to fight illegal recruitment. The Philippines has been classified as Tier 2 Watchlist in the US Department of State's Trafficking in Persons Report for 2011. The Report concludes that, although significant progress has been made, "the Government of the Philippines [still] does not fully comply with the minimum standards for the elimination of trafficking."²⁷ One reason for this is the government's lack of effort to stop illegal recruitment. As the Report affirms,

*the government needs to further its efforts to address significant obstacles to anti-trafficking progress, including the...lack of vigorous efforts to pursue criminal prosecution of labor traffickers, including labor recruitment companies involved in the trafficking of migrant workers abroad....*²⁸

To create a more supportive framework for prosecution, RA 10022 should include provisions for more effective information dissemination, more concrete mechanisms to fight illegal recruitment,²⁹ and more concrete support to victims to pursue their cases. The realities of illegal recruitment and information on legal recourse for victims of illegal recruitment need to be explained to as wide an audience as possible. Presently, many cases of illegal recruitment go unreported because of widespread fear that speaking out will result in a restriction from going overseas.³⁰

27 Watchlist in the US Department of State's Trafficking in Persons Report for 2011. Available at: <<http://www.state.gov/documents/organization/164457.pdf>>

28 See note 25.

29 Although the Local Government Units Section (16(d)) of RA10022 discusses PEOS and information dissemination, implementation is not effective (e.g. POEA would draw MoAs with LGUs to implement PEOS but lack sufficient support and resources/budget/implementation). Success of depends on the capacity of the LGU.

30 This issue has been encountered by CMA in various cases, most recently in March 2012.

RA 10022 Issue #3: Provision on Money Claims: CMA is concerned about the decision to keep the provision in RA 10022 on money claims, even though it was deemed unconstitutional.³¹ This provision in the Migrant Workers and Overseas Filipinos Act limits the money claims of illegally dismissed OFWs, “arbitrarily set[ting] the recoverable amount to their three-month salary”.³² The provision reads,

*In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement if his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, **whichever is less.***³³

The provision was deemed unconstitutional, as “the clause “or for three months for every year of the unexpired term, whichever is less” violates Section 1, Article III of the Constitution and Section 18, Article II and Section 3, Article XIII on labor as a protected sector”.³⁴

Why has this unconstitutional portion of the law been kept when the Supreme Court ruling was passed before the law was adopted? The law came into force on March 8 2010, while the Supreme Court issued its ruling in 2009. CMA would urge that this portion of RA 10022 be revisited and removed.

RA 10022 Issue #4: Comprehensive Mandatory Insurance: In line with the position taken by numerous other migrants’ rights groups and trade unions, CMA is opposed to the Comprehensive Mandatory Insurance provisions set out in RA 10022.

While the Comprehensive Insurance is supposed to be paid for by the employer, there is no mechanism to ensure that the law is implemented to the letter. The agency is supposed to extend coverage to workers for the duration of their contract (the initial premium rate reported was \$144 for a two year contract). This is to be paid by the agency on top of the \$25 OWWA membership fee. It is already the case that the \$25 fee is often illegally passed onto the worker, and there are no mechanisms in place to ensure that the additional fees from the Mandatory Comprehensive Insurance will not also be passed onto the worker.

Many of these concerns were tabled by various migrants’ rights groups and trade unions, who were among 35 signatories to a letter of opposition addressed to “the Honorable members of the Bicameral

31 GMA News. *SC Strikes Out Discriminatory Provision in Migrant Workers Law*. 2009. Available at: <file:///C:/DOCUME~1/ADMINI~1/LOCALS~1/Temp/SC-strikes-out-discriminatory-provision-in-Migrant-Workers-law.html>

32 See note 29.

33 See note 23.

34 See note 29.

Conference Committee to Amend RA 8042”, dated November 18, 2009. In this letter they drew out the negative implications of the Mandatory scheme, including its exclusion of a majority of OFWs. The Mandatory Insurance excludes most OFWs by only applying to those deployed by a recruitment agency. The law reads:

*Sec. 37-A. Compulsory Worker’s Insurance Coverage.– In addition to the performance bond to be filed by the recruitment/manning agency under Section 10, **each migrant worker deployed by a recruitment/manning agency shall be covered by a compulsory insurance policy which shall be secured at no cost to the said worker.***

As the signatories to the letter noted, “data from the Philippine Overseas Employment Agency (POEA) covering the years from 1990-2008 shows that only an average of 26.6% of the total number of OFWs are deployed through recruitment agencies. The bulk of our OFWs are rehires who renew their contracts on their own. Others are hired through government placement or name hires.”³⁵ Moreover, seafarers are already covered by a comprehensive insurance policy. It is questionable whether an inequitable provision that only applies to ¼ of OFWs is advisable.

Before RA 10022 came into force, there were already recruitment/manning agencies providing insurance coverage for those they sent abroad without being compelled to. In addition, government-to-government hiring schemes can create protection for overseas workers, including insurance coverage. Finally, there are already mandatory insurance programmes for OFWs in place, including the OWWA mandatory insurance coverage; provisions provided for in the POEA Standard contract (which include leave with pay, medical and dental services, work-related compensation accident and death benefits, transportation and repatriation); health and medical insurance through PhilHealth; and onsite coverage of the worker.³⁶

While many of the existing insurance mechanisms are poorly implemented, the solution is not to be found in creating additional systems of coverage operated by private companies, but in fixing the government-run insurance schemes already in place.

For these reasons and others the 35 signatories³⁷ to the letter of opposition (called “Migrants Rights Groups and Trade Unions say NO to the Proposed Compulsory Insurance Coverage for OFWs in RA8042! YES to OFW Protection!”) stated,

We highly doubt the capability of government agencies to effectively implement this insurance scheme, particularly the Philippine Overseas Employment Administration (POEA). Their track record in protecting the basic human rights of our migrant workers has so far been unsatisfactory. We believe that additional provision will follow the fate of

35 35 migrants’ rights and other concerned groups. *Migrants Rights Groups and Trade Unions say NO to the Proposed Compulsory Insurance Coverage for OFWs in RA8042! YES to OFW Protection!* - letter of opposition addressed to “the Honorable members of the Bicameral Conference Committee to Amend RA 8042, November 18, 2009.

36 See note 33.

37 Signatories included migrant rights groups, trade unions, regional advocacy networks, and community-based groups in the Philippines and abroad.

*several other of its mandated tasks: be neglected, or suffer from poor implementation and monitoring, all at the expense of our overseas workers...The State's failure to work cannot be addressed by passing on the burden to private insurance companies.*³⁸

After migrants' rights organizations, labour unions, workers, recruiters, and executive agencies of the government came out against the Mandatory Insurance scheme, Congress still opted to include the provision on mandatory insurance with an appeal to stakeholders to give it a "chance". However, without an enabling environment and effective information dissemination, unscrupulous agencies can easily pass on insurance premiums to the workers.

General measures of implementation (arts. 73 and 84)

3. Poor Data collection: In their 2009 report, the Committee noted their concern at the scarcity of information measuring stock and flows of Filipino migrant workers, including the number of Filipinos abroad, their skills and employment, accurate data on returnees, second and third generation Filipinos overseas, and information relating to foreign migrant workers.³⁹ Such information would assist the government in understanding the situation of OFWs and assess progress towards implementation of the Convention. The government was encouraged to "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." This was one recommendation among many for improved data collection.⁴⁰ However, the government has failed to implement these recommendations.

No Implementation of SGISM: Though the goal of developing a Shared Government Information System on Migration (SGISM) under RA 8042, as amended, was explicitly reaffirmed in the *Philippine Labor and Employment Plan (LEP) 2011-2016*, it has yet to be implemented. The LEP, from April 2011, stated that the DOLE would promote the protection of Filipino workers by "conduct[ing] an audit of existing databases on overseas employment toward ensuring connectivity and activating the inter-agency committee on Shared Government Information System on Migration (SGISM)..." However, nearly a year later (and several years after RA 8042 came into effect) this agency has not been activated. CMA urges that the SGISM be implemented.

No Data for Returning Migrants and Poor Collaboration Among Agencies: All POEA data on migrants is in relation to outgoing migrants. There is no data on those who have returned. Statistics measuring how

38 See note 33.

39 Committee on the Protection of the Rights of all Migrant Workers and Members of their Families. *Concluding observations of the Committee on the Protection of the Rights*. Tenth Session, 20 April – 1 May 2009

40 See note 37; The government was also encouraged to "strengthen collaboration with Philippine Embassies and Consulates for improving data collection; adopt a harmonized mechanism for gathering statistics on irregular migrants including through studies or estimated assessments when information is insufficient; continue collaboration with relevant partners on analysis and interpretation of statistical data and flow; and ensure an adequate allocation of funds for the above purposes." This has not been satisfactorily carried out.

long migrants have stayed in a particular country, what migrants do when they return, the situation returning migrants find themselves in, how many years migrants stay overseas, and if they are subsequently redeployed to the same or a different country would assist in the formulation of sound policies and programmes in relation to migration and development. Databases should be significantly improved, a performance audit of government agencies should be undertaken, and coordination between agencies should be facilitated for more thorough and efficient data collection.

4. No Training in or Dissemination of the Convention: The government has not worked with partner civil society organizations and the media to disseminate information about the Convention. Rather, civil society organizations are the ones who have worked to disseminate such information, including information about migration and migrants' rights. CMA would like to see the government take a more proactive role on this front.

With more than a million OFWs deployed every year, scattered in more than 238 countries and territories, it is to the interest of the Philippines and to the benefit of the OFWs that the Migrant Convention is widely ratified.

Recommendation: The Government should develop and implement a clear information-education program on the relevance and the provisions of the UN Migrant Convention that will cater to different audiences like the OFWs, students, the academe, migration scholars, the private sector and other community-based organizations. The PDOS and PEOS are one such vehicle for this. Transforming OFWs into ambassadors of MWC should be a good idea too.

General principles (arts. 7 and 83)

5. Discrimination against Foreign Workers in the Philippines: In their 2009 Concluding Observations, the Committee noted their concern that the principle of non-discrimination was not respected with regards to foreign workers. The Committee recommended changes to domestic legislation to ensure respect for their human rights. Unfortunately such changes have not been implemented and discrimination persists.

*Overview of Foreign workers in the Philippines:*⁴¹ Foreign-born persons from countries like China, Korea, India, and the United States regularly migrate on a temporary basis to the Philippines in search of

41 Note: This information is taken from a previous CMA report on *The Case of Migrant Workers in the Philippines*, 2011.

economic opportunities.⁴² As of 2011, there were 98, 733 foreign-born nationals working and living in the Philippines.⁴³

Deportation Cases - Reverse Onus and no Right of Appeal: In deportation cases migrants face a reverse onus, that is, the onus is on them to prove their own innocence. If the migrant can show that they did not violate the terms of their stay then the case is cleared. However, if the migrant is found guilty they are deported. There is no right of appeal after a decision is made. The migrant must leave the country as soon as possible. Regular courts cannot intervene in these cases, as they are strictly a matter of the Immigration Bureau.⁴⁴

The reverse onus provision and no right of appeal are problematic for migrants who find themselves in already vulnerable positions. These laws should be reformed and migrants who face deportation should be given the opportunity to appeal the court's decision. International human rights law clearly states that procedural guarantees for expulsion include the right to appeal to a higher authority.⁴⁵ Providing migrants who face expulsion with the opportunity to appeal is a positive step towards implementing a human-rights approach to the deportation process.

6. Legal Assistance to OFWs: There is still insufficient legal assistance available to OFWs. Assistance is often provided after OFWs have been languishing in jail for some time, or not at all.

Often migrants are unaware of their rights related to detention, and some embassy or consular officers are inadequately enforcing these rights on behalf of OFWs.⁴⁶ Better knowledge of criminal procedure is needed among migrant workers, and embassy and consular officials must be more proactive in extending

42 Asis, Maruja. "The Philippines Culture of Migration." *Migration Information Source*. Jan. 2006. Web. 27 Jan. 2011. <<http://www.migrationinformation.org/USFocus/display.cfm?ID=364>>; Torres, Tetch. "Number of Chinese Migrants in PH Doubles in '10." *Asian Journal*. 11 Jan. 2011. Web. 27 Jan. 2011. Available at: <<http://www.asianjournal.com/dateline-philippines/headlines/8436-number-of-chinese-migrants-in-ph-doubles-in-10-.html>>

43 Torres, Tetch. "Number of Chinese Migrants in PH Doubles in '10." *Asian Journal*. 11 Jan. 2011. Web. 27 Jan. 2011. Available at: <<http://www.asianjournal.com/dateline-philippines/headlines/8436-number-of-chinese-migrants-in-ph-doubles-in-10-.html>>

44 Note: This information is taken from a previous CMA report on *The Case of Migrant Workers in the Philippines*, 2011. This section specifically is based Meeting with Attorney Antonio Ravana of Bureau of Immigration, January 17, 2011

45 OHCHR (2005) "International Human Rights Standards for Law Enforcement" *United Nations High Commission for Human Rights Center for Human Rights*. Web. 27 Jan. 2011. Available at: <<http://www.ohchr.org/Documents/Publications/training5Add1en.pdf>>

46 Joseph Henry Espiritu. *The V-Team Kingdom of Saudi Arabia: On Migration handling of distress cases (detention and deportation)*. 2007. <<http://patnubay.com/articles/03.V-Team-Kingdom-of-Saudi-Arabia-on-Migration-Detention-and-Deportation.pdf>>

assistance⁴⁷ in order to stem these violations. Sufficient legal support is also needed, and lawyers should be provided to migrants in detention as a matter of course. It is the responsibility of embassies and consulates to ensure that proper procedure is followed in every case involving a Filipino.

It is also important for the Philippines to pursue negotiations with destination governments for adherence of the latter to the Vienna Convention on Consular relations, and to forge mutual legal assistance agreements as well as bilateral consular agreements. Due to lack of information on detained OFWs in Saudi Arabia, some of them continue to languish in jails beyond their jail sentence. Shortage of diplomatic personnel, compounded with shortage in logistics and resources such as vehicles, likewise impact on the orderly and timely monitoring of cases of detained migrants. The Consulate in Jeddah, Saudi Arabia explained that the reason they could not conduct regular prison visits even if they have teams to do this is because they have zero vehicles to travel hundreds and thousands of kilometers to jail destinations⁴⁸.

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

7. Feminization of Migration: In their 2009 Concluding Observations, the Committee noted 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.” The Committee urged that the government continue to promote the enhancement and empowerment of women migrant workers, and suggested a number of mechanisms through which this might be done. While some progress has been made, there is still much to be done.

*Need Increased Gender Sensitivity:*⁴⁹ Malou Alcid, Professor of Social Work at the University of Philippines, explains how the majority of officials from OWWA, POEA, and frontline workers are not gender-sensitive. That is, they tend to be oblivious to gender-specific differences. Ms Alcid argues they judge the choices women make in a very harsh light. According to Ms. Alcid, while a human rights discourse frames their work, patriarchal notions and attitudes continue to persist. She suggests officials and frontline workers adopt more gender-sensitive approaches to their work with migrants. The Philippine Commission on Women (PCW) is working to redress the gender-blindness of government agency officials and frontline workers. The PCW organizes 3-5 day gender-sensitivity training workshops for government agencies. Training seminars include teaching the participants about women’s issues, gender biases, and women’s vulnerabilities. PCW refers the agencies to NGOs and academic-based consultants. The seminars are provided on an annual basis. To date, there has yet to be a follow up to measure the efficacy of the training programs.

47 In one case that CMA handled (Jamil Mabanto), there was nearly a three year delay by the DFA in securing Special Power of Attorney (wakalah) while Jamil languished in jail. The case could have been resolved earlier, and Jamil potentially released from jail, if the DFA had taken the necessary steps earlier.

48 Comment of Philippine Consul General in Jeddah when asked about jail visits. Congress Delegation visit to Saudi Arabia. January 8-11, 2011.

49 Center for Migrant Advocacy. *Migrant Women and Children*. 2011.

Failure to Mainstream Gender into the ILS and its Policies: CMA has likewise noted a lack of gender sensitivity on the part of government agencies and personnel. This was especially apparent at two conferences organized by the DOLE Institute for Labour Studies (ILS) attended by CMA in February and March 2012 on Gender and Employment, and Men Left Behind, respectively. CMA was present as a moderator at the first conference and as an attendee at the second conference.

In the first of the two conferences, the ILS completely failed to discuss gender in the majority of the presentations. The topics covered included conditions of employment for seafarers, employment trends, and the migrant friendliness of countries.⁵⁰

The study on ‘the Migrant Friendliness of Countries’ aimed to develop a toolkit to be used by the DOLE in assessing the general environment of countries for OFWs, with a focus on countries where not a lot of OFWs are presently deployed. It looked at factors such as how close the country is to the Philippines, cultural similarities in relation to the Philippines, and GDP to assess how ‘migrant-friendly’ potential destination countries are. However, gender was not integrated into the toolkit. This is especially problematic considering that the results were being presented at a forum on Gender and Migration.

Ultimately, the entire conference revealed a significant gap in the ILS’s research on gender and development, and a failure to mainstream gender into their work. This is especially troubling considering that by law there is Gender and Development (GAD) budget. Questions must be raised regarding where the ILS /DOLE GAD budget was spent.

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

9. Restrictions on Freedom of Association for Migrants in the Philippines: The right to join, form and to form part of the leadership of, associations and unions is not protected for foreign workers in the Philippines. In accordance with article 40 of the Convention on Migrant Workers, as well as with ILO Convention No. 87, all workers have the right to join, form and to form part of the leadership of, associations and unions. Despite this, this right is not protected for foreign workers in the Philippines. In their Concluding Observations the Committee recommended 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.” This amendment should be made to protect freedom of association and trade union rights of migrant workers in the Philippines.

10. Overseas Absentee Voting: Although the Committee invited the Philippine Congress in 2009 to “consider proposals to amend RA 9189 to delete the requirement of an “Affidavit of intent to return,” this has yet to be acted upon by Philippine Congress.⁵¹

⁵⁰ Note: ILS organizers admitted the lack of a gender focus

CMA has also noted that Comelec is seriously underfunded. For purposes of information dissemination for registration for the 2013 national elections, Comelec reported that they asked Congress for P80M and got zero⁵². They have been unable to conduct an information or education campaign to promote overseas absentee voting. CMA has consequently taken on this role, producing and disseminating materials on overseas absentee voting to the posts, even though this should clearly be carried out by the government.

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

11. Irregular Migration: In 2010 there were an estimated 704,216 irregular Filipino migrants worldwide, or 8% of the world total. This was up from 658,370 in December 2009 and 653,609 in 2008.⁵³

Undocumented migrants are the most vulnerable among migrants as they are practically denied their basic human rights. OFWs become undocumented in a number of ways. Some leave without the proper travel or work visas; however there are a significant number who become undocumented to escape and abusive employer. In Saudi Arabia, for example, OFWs often become undocumented after running away. Their employers confiscate their papers upon arrival, and so when they run away to escape an abusive situation they become undocumented.

The government needs to be more proactive in pursuing policies and negotiating agreements to stop irregular migration, and extend assistance to those who find themselves in an irregular situation. Rather than criminalization, these migrants need to be assisted and empowered. One thing that is sorely needed is a serious attempt to have the Saudi government review the Kafala system. This sponsorship system should be reformed to loosen the grip that employers have over already vulnerable migrants.

Another avenue that could be explored is a mandatory orientation seminar for employers. The goal of any reform should be to create more avenues for the empowerment of workers vis-a-vis employers. Attempts to address irregular migration should not drive irregular migrants further underground, thereby heightening their vulnerability.

12. Recruitment Agencies: Government efforts to stop illegal recruitment need to be strengthened. Existing laws and regulations too are not being fully implemented or monitored. Illegal recruitment continues to victimize women and men especially from the rural areas. Unscrupulous recruiters continue to pass on fees to workers; charge for their services; engage in contract substitution; and engage in the practice of blacklisting to punish migrants who speak out and keep them from reporting illegal practices.

51 The House of Representatives Committee on Suffrage already adopted the proposed omnibus amendments to RA9189 including the repeal of the requirement for an affidavit of Intent to Return. It needs a counterpart bill in the Senate to effect amendment to the law.

52 Information provided by Atty. Jane Valeza of Comelec. OAV Stakeholders meeting, February 29, 2012.

53 See note 16.

13. Reintegration: While the reintegration program of the Department of Labour has been institutionalized through the creation of the National Reintegration Center for OFWs under RA 10022, there are significant problems with its implementation.

The National Reintegration Program Fund makes money available for loan to OFWs to assist with reintegration in the Philippines. Returning OFWs may apply for loans from the fund to assist in building small businesses or other projects for reintegration. The Program was set up by the DOLE and is being implemented by OWWA and the NRCO. It is said to make available PHP1 billion from Land bank; and PHP1 billion from the Development Bank, with a PHP1 billion guarantee fund from OWWA⁵⁴.

However, it is very unclear how to avail of the funds and the funds are not given out on a per-need basis. The fundamental question of how effective and serious the reintegration program actually remains. Some specific issues with this program are outlined below.

How To Measure Success: It is very unclear how OWWA is measuring the success of the programs. Statistics presented by the National Reintegration Center for Overseas Filipino Workers show that 8 groups and over 2000 individual beneficiaries have availed of the funds. But it is unclear who the beneficiaries are. Information has not been provided on where they are located, whether they were documented or undocumented, whether they were male or female, and so forth.⁵⁵

Who gets the Funds: Many of the program's beneficiaries are from Libya (685 of 1670⁵⁶), a country where many of the OFWs are professionals.⁵⁷ Presumably, professionals are more familiar with the process of applying for loans, and are more likely to secure them. This is problematic on a number of fronts. Not only does this further marginalize already vulnerable migrants, but it also adds to the disparity between assistance given to OFWs returning from Libya and OFWs from other countries. Libyan workers were already given PHP10 000 each in response to the political turmoil there,⁵⁸ while the same was not done for OFWs returning from Syria or Egypt. This further adds to the disparity between assistance given to the large number of professionals returning from Libya and other returning OFWs, such as domestic workers.

Is this Sustainable?: It is questionable whether or not giving PHP10 000 is sufficient to lead to any significant change in patterns of migration. Perhaps the NRCO should be more forward-looking in their approach to reintegration, supporting economic activities that can be sustained and offering more support and guidance in setting up businesses.

54 National Reintegration Center for OFWs. *Reintegration Program for Overseas Filipino Workers*. Power Point Presentation presented at Consultative Council for OFW (CCOFW) meeting. March 21, 2012

55 NRCO should have this data. Unfortunately, when they reported to the public the accomplishments of the center, they did not present such detailed information. There is no public source providing this information.

56 See note 52.

57 POEA. *OFW Deployment by Occupation, Country and Sex – New hires Full Year 2010*.

58 Overseas Workers Welfare Administration. *36 OFWs Arrive from Libya*. September 7, 2011. Available at: <http://www.owwa.gov.ph/wcmqs/news/forArchive/36+OFWs+Arrive+From+Libya.html>>

Not Accessible: Beyond the feasibility of the program in theory, there are significant problems with the program in practice. CMA assisted a worker trying to avail of the funds and encountered numerous difficulties along the way. Firstly, it was difficult to figure out the steps to follow to apply for funds. The website is unclear and the process is not well explained. Once the application was made there were also significant issues with follow-up. CMA had to contact the NRCO numerous times on behalf of the worker just to make sure that the application was processed.⁵⁹ Such a convoluted and inaccessible process speaks to the disingenuous nature with which the government is promoting reintegration. Without a better thought out and more sustainable program, overseas migration will continue to grow and be supported as the nation's unofficial development plan. The government needs to stop marketing its labour force and put serious effort into developing a well-thought out reintegration program.

Recommendation: Government should also create an enabling environment where the vulnerable and those with lesser opportunities such as domestic workers are given 'preferential treatment' or at least measures are adopted that would help them understand the access mechanism and derive justice from it.

Section Five: Additional Issues for Consideration of the Committee

16. Social security: Unlike local workers, migrants do not automatically enjoy the benefits of social security while working overseas. While the Social Security System program of the Philippines is made available to OFWs on a voluntary basis under the self-employed category, portability of benefits is a significant issue. This is slowly being addressed as new bilateral agreements on social security are forged.

How Social Security Agreements Help OFWs: Legislation setting out eligibility requirements for social security benefits can exclude migrant workers in a number of ways. For example, eligibility requirements that tie entitlement to citizenship or length of contribution may bar OFWs from access to benefits and provisions.

In response, the Philippine government has already signed social security agreements with 13 countries, including Austria, Canada, France, UK, Belgium and Switzerland.⁴ Their purpose is to reduce, and wherever possible eliminate, the barriers that often disqualify migrant workers from social security benefits.⁶⁰

Consistent with the International Labour Organization standards, the Conventions generally have the following salient features: 1) equality of Treatment; 2) export of benefits; 3) totalization; 4) payment of benefits; and 5) mutual administrative assistance.

59 From CMA case files. Recounted by Ellene Sana March 23, 2012.

60 International Labour Organization (2007). *Strengthening the Protection for ASEAN Migrant Workers through Social Security Agreements*. Available at: <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_126226.pdf>

Still Many OFWs without Coverage: While the Philippine government has taken significant steps to extend social security, many workers, especially irregular and vulnerable migrants, do not have access to social security while abroad. In fact, even in the Philippines “Only about 28 per cent of the labor force falls under the formal Social Security System (SSS) and its public sector counterpart, the Government Service Insurance System (GSIS)”. [ILO Decent Work Pilot Programme, “Country Brief: Philippines”, 2000-2005, p. 7]. More needs to be done to extend social security to vulnerable sectors, including irregular migrants.

This need to extend protection to undocumented migrants is especially relevant, since the applicability of social security agreements are limited to migrant workers who are categorized as ‘documented.’ Since the Convention binds treaty parties to protect the rights of workers, regardless of immigration status, more needs to be done to extend social security to undocumented migrants.##