

Session 1.1 Protecting the Rights of Migrants – A Shared Responsibility

Chairperson: Nisha Varia, Senior Researcher Women's Rights Division, Human Rights Watch

- One of civil society's concerns is marginalization of human rights of workers

Speaker: Patricia Sto. Tomas, former Secretary of Labor and Employment, Philippines Chair, Development Bank of the Philippines

Title of Presentation: "Protecting Migrant Workers: A Shared Responsibility"

- In the Philippines , workers' protection is an overarching concern of the country. As a source country the g
- As a source country, the government is held accountable by our citizens in protecting our migrant workers particularly in crisis situations.
- Workers' Protection is better protected when migration is regular, organized and documented, and when responsibility is shared
- Though there is no international protocol standard, the Philippine Government formulated its own regulatory framework to I oversee the overseas migration program
- There are numerous constraints faced by migrant workers . Some of these are inadequate workers' education; income differential; cultural differential; absence of protective mechanisms in destination countries; difficulty of getting BLAs, and absence of binding international protocols
- Recommendations on how protection can be extended by host country include
 - regulatory framework that is enforced/enforceable;
 - protective mechanisms/structures in place;
 - international cooperatives (BLAs, minuted meetings, others)
- (See more detailed summary of presentation below)

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Issues	Existing Government Program/Policy	Challenges/Gaps	Policy/Program Recommendations
<p>protecting Filipino migrant workers</p>	<ul style="list-style-type: none"> • Regulatory system for intermediators and other actors in the overseas employment program <ul style="list-style-type: none"> - Licensing of private recruitment agencies - Established rules and standards on recruitment and placement of workers (i.e. verification and registration or accreditation of foreign employers/ principals, advertisement of overseas jobs, skills testing and medical examination of workers, documentation of selected and hired workers - Sanctions for non-compliance with recruitment rules and standards - Protecting the workers from illegal recruitment (i.e. RA 8042 or the Migrant Workers and Overseas Filipinos Act) 	<ul style="list-style-type: none"> • Inadequate workers' education - it is important that departing migrant workers are properly informed of the processes and of the rules governing overseas employment as well as of the working conditions in the destination country including its customs and practices (this is addressed through tri-media information campaign and pre-employment seminars • Income differential • Rampant illegal 	<ul style="list-style-type: none"> • Regulatory framework that is enforced and enforceable • Presence of operational rules and regulations within the country governing the recruitment and placement of the workers overseas and that these rules are properly disseminated and understood by workers, the recruitment agencies as well as receiving countries • Adequate implementing mechanism in place

- **Protective Structures and Mechanisms**

- Establishment of POEA to regulate the recruitment and placement of migrant workers
- Delivery of welfare programs and services through OWWA
- Adjudication of worker-employer conflicts
- On-site protection program through Philippine Overseas Labor Offices (POLOs) established in selected strategic destination countries of many OFWs
- DFA as not only concerned with proper documentation of departing workers through issuance of passports but also providing on-site protection to Filipino workers abroad
- PNP and NBI campaigned against illegal recruitment
- Bureau of Immigration and Deportation assists in departure and arrival of documented workers
- Bilateral labor agreements, regional agreements, multilateral agreements & intl protocols

recruitment (supposed to be addressed by rules and regulations, laws providing severe penalties, and creation of task force to conduct surveillance operations

- The cultural divide – many migrants are subjected to abuse and violence simply because they were not aware of the culture in the destination countries
- Absence of counterpart protective mechanisms in receiving countries
- Difficulty in getting bilateral agreements
- Absence of binding international protocols

to ensure that rules are duly followed

- **International cooperatives - Maintenance of good diplomatic relations with labor-receiving countries such that it can operate on-site protective mechanism or negotiate Bilateral Labor Agreements (BLAs)**

- **Re-integration program for returning migrant workers**
 - OWWA's reintegration program involves economic (loan programs – livelihood programs and OFW grocery project) and psycho-social components
 - National Reintegration Center for OFWs created under the Secretary of DOLE promotes productive and sustainable personal, economic and community reintegration of OFWs (financial literacy, financial planning and management, savings and special remittance schemes, investment options, etc)

Speaker: Hamidou Ba, International Migration Expert, Senegalese Migrants Foundation

Title of Presentation: “Issues Related to the Protection of the Rights of the Migrants borders between African nations”

- Migrant workers in Africa tend to go to developed countries but there are also a many migrants going to other African countries as well. Africans do migrate within African countries.
- Free movement in Africa – a lot of regional / subregional movements in Africa
 - Obstacles to free movement of migrant workers in Africa and elsewhere such as drug smuggling
- Issue of Illegal migration
 - Major source or reason for violation of rights of migrants
 - Human trafficking – organized, particularly of women and children
- Migration policy
 - There is no systematic policy on migration for African nationals but stop gap measures particularly when dealing with undocumented migrants who are then summarily deported.
- Are there any good practices around? What are the conditions to identify good practices?
 - Are there any African countries that have developed policy in terms of protection of migrant rights? – none
- See detailed summary of presentation below

Issues	Challenges/Gaps	Policy/Program Recommendations
<p><i>Issues Related to the Protection of the Rights of the Migrants crossing borders between African Nations</i></p> <ul style="list-style-type: none"> • Expulsions and repatriations • Exorbitant amount of money have to be paid in the diplomatic missions of the countries of destination, who subject 	<ul style="list-style-type: none"> • Policies on migration are segmented, compartmentalized, without a global vision, lacking in forecasting and short in effective mechanisms for monitoring 	<p><i>Good practices apply to:</i></p> <ul style="list-style-type: none"> • Pre-departure requirements (issuance of a passport, visa application , employment contract, living terms and conditions, lodging and residency in host countries) • Citizenship rights • Remittances • Management of acquired skills while abroad • Health care for migrants infected with HIV/AIDS • His/her return to the country of origin and his/her re-entry into the economic and social circles of activity

<p>visa applicants to a deplorable treatment</p> <ul style="list-style-type: none">• Human trade and trafficking	<p><i>Problems in the formulation and implementation of global policies:</i></p> <ul style="list-style-type: none">• Lack of human and financial resources assigned and allocated to those institutions responsible for migration management• Weak participation of trade unions, NGOs, research institutions and civil society organizations• Fragmentation and duplication of work among and between institutions that should be coordinated• Lack of training and access to information coupled by the difficulty of handling the accumulated experience on migration management• Lack of reliable data on migration in general and clandestine migration in particular	<p><i>Good practices relative to the rights of the migrants in Africa:</i></p> <ul style="list-style-type: none">• Increase in the space for freedom of movement• Easing on travel restrictions• Adherence by countries to international standards and the existence of regional and bilateral agreement• Establishment of structures designed to attend to migrants• Regular meetings and consultations and dialogues between entities/institutions on migration• Participation of migrants and their organizations
<hr/> <p><i>Questions pertinent to African migrants:</i></p> <ul style="list-style-type: none">• What mechanisms should be established to ensure that recommendations on the rights of the migrants and the sovereignty of the States, that are being put forward in a variety of African for a, are actually put into action?• Given the magnitude of global institutions and the power of economic interests, can African nations negotiate collectively and enter into agreements on the rights of the		

migrants in countries outside the African continent?

- Aside from (or parallel to) existing institutions, can we envision the establishment of an organization responsible for the protection of the rights of the migrants that would send out rescue missions when a threat exists (to offer e.g. better working conditions, a more humane repatriation/deportation, a decent working contract) – in the same way that Greenpeace does with the environment?
- How can migrants – legal and illegal alike – participate in their own protection?
- What new forms of cooperation between countries of origin and those of destination can lead to greater development for all?

Speaker: Rola Abimourched, Researcher, Institute for the Study of International Migration Georgetown University

Title of Presentation: “Promoting the Rights of Migrants”

- There a number of normative and legal frameworks focusing on international conventions that had been ratified by a number of members. These ratifications however need to be effectively implemented and enforced in order to protect migrants.
- See detailed summary of presentation below

Issues	Existing International Standards	Challenges/Gaps	Policy/Program Recommendations
<ul style="list-style-type: none"> • Marriage migration • Migrants endure exploitative and abusive situations because their immigration status is tied to their continued employment with the sponsoring employer • Lack of resources and inadequate training of police 	<p>General</p> <ul style="list-style-type: none"> • Universal Declaration of Human Rights • Intl Covenant on Civil and Political Rights • Intl Covenant on Economic and Social Rights • Convention on the Elimination of all forms of Discrimination against Women • Convention on the Elimination of all Forms of Racial Discrimination • Convention on the Rights of the Child 	<p>Areas not covered in international law</p> <ul style="list-style-type: none"> • Family unity – splitting families apart derives each member of the fundamental right to respect of his or her family life – whether the principle of family unity requires a State to admit the non-national family members of someone residing legally on its is the point of contention. • Governments impose financial restrictions on persons seeking to 	<ul style="list-style-type: none"> • Enhanced information campaign/ dissemination on migrant labor rights including wages or working conditions, including those workers migrating to join family members abroad • Access to language training courses in destination countries will help migrant workers learn and assert their rights • Monitoring recruitment agencies and employers • Legal representation for migrant workers • Programs that provide

<p>and enforcement authorities places limits on the effectiveness of legislation</p> <ul style="list-style-type: none"> • High transaction costs, recruitment fees, and possible abuse that occur in the destination country hinder migrants' ability to save and invest in sustainable activities 	<p><i>Migrant Specific</i></p> <ul style="list-style-type: none"> • ILO No. 97 (Convention concerning Migration for Employment) <ul style="list-style-type: none"> - Art 2 provision of free and accurate information to migrants - Art 3 prevention of misleading propaganda - Art 4 facilitation of departure, journey, and reception of migrants - Art 6 prevention of discrimination against migrants - Art 9 permission of remittances • ILO No. 143 (Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers) <ul style="list-style-type: none"> - Art 1 respect the human rights of migrants - Arts 2,3,6 investigate, monitor and suppress trafficking - Art 10 provide equality of opportunity and 	<p>sponsor family members to ensure that they have sufficient income to support the new arrivals – such policies can have disproportionately negative impact on women seeking to sponsor their families since women have lower earnings than men</p> <ul style="list-style-type: none"> • Policies of states on “marriage of convenience” hold the potential for harming those in bonafide marriages 	<p>shelter and social services to migrant workers who have experienced abuses</p> <ul style="list-style-type: none"> • Repatriation and reintegration assistance • Standard contracts to regulate relationship between employers and foreign workers and allow government oversight over this relationship for especially vulnerable groups of migrants such as domestic workers • Destination countries can help regularize the status of undocumented workers by streamlining procedures for obtaining the prerequisite work and residency permits • Penalties against abusive employers • Creation and implementation of business codes of conduct • Counter-trafficking programs
<p>Session 1.1 Summary Documentation by Aurora de Dios and Melanie Reyes</p>	<p>investigate, monitor and suppress trafficking</p>		<p><i>Some best practices and limitations:</i></p> <ul style="list-style-type: none"> • Hong Kong – allowing migrants to unionize and collectively negotiate with employers but criticized for its two-week policy for terminated migrant domestic workers

Regional legal instruments

- European Convention on the Legal Status of Migrant Workers
- Inter-American Commission on Human Rights includes monitoring status of human rights of migrants through its own Special Rapporteur on Migrant Workers and their Families

RECOMMENDATIONS FROM THE OPEN FORUM

Ratification, review and implementation/monitoring of existing conventions

- CIVIL SOCIETY MUST BE SOLID IN THEIR DECISION OR POSITION ESPECIALLY IF GOING TO DEMAND EUROPEAN COUNTRIES AND OTHER COUNTRIES TO RATIFY THE CONVENTION ON MIGRANTS
- REVIEW OF LAWS WITH REGARDS TO MIGRATION AND PRESSURE GOVERNMENT TO COMPLY WITH INTERNATIONAL HUMAN RIGHTS LAW EVEN IF THEY ARE NOT MEMBERS OF THE UN, E.G. TAIWAN'S DISCRIMINATORY POLICY AGAINST WHITE COLLAR AND BLUE COLLAR WORKERS
- TRAINING OF ALL GOVERNMENT OFFICIALS ON BINDING INTERNATIONAL CONVENTIONS SUCH AS ILO CONVENTIONS
- ENSURE THAT NATIONAL ACTION PLANS AGAINST TRAFFICKING OF WOMEN AND CHILDREN ARE MONITORED (E.G. ITALY HAS A SPECIAL PROGRAM FOR REINTEGRATION OF TRAFFICKED WOMEN)
- TO HAVE A GENUINE ASSESSMENT OF THE IMPLEMENTATION OF THE CONVENTIONS AT THE NATIONAL/LOCAL LEVEL
- CIVIL SOCIETY TO ORGANIZE THEMSELVES AND ASSESS EXISTING CONVENTIONS AND SITUATIONS OF MIGRANTS WORLDWIDE (I.E. HOLDING OF A WORLD DAY CAMPAIGN PROMOTING EXISTING CONVENTIONS)

Addressing specific issues/rights that are neglected

- PUTTING THE CONCERN OF THE ELDERLY MIGRANTS INTO THE AGENDA
- GOVERNMENTS LIKE AUSTRALIA SHOULD PROVIDE VISAS TO WOMEN VICTIMS OF TRAFFICKING FOR SEXUAL EXPLOITATION
- STRONGLY ADDRESS TRAFFICKING FOR LABOR EXPLOITATION PARTICULARLY INVOLVING THE MOST VULNERABLE YOUNG WOMEN
- RECOGNIZE THAT THE VULNERABILITY OF MIGRANT WOMEN WORKERS IS LINKED WITH THE DEEENING POVERTY IN DEVELOPING COUNTRIES

- RIGHT TO EDUCATION AND RIGHT TO HEALTH CARE (WHETHER IN COUNTRIES OF ORIGIN, TRANSIT OR DESTINATION COUNTRIES)
- ENSURE THE PROTECTION FOR UNDOCUMENTED MIGRANTS AND REVIEW THE EU RETURN DIRECTIVE POLICY WHERE UNDOCUMENTED MIGRANTS ARE LIKELY TO BE CRIMINALIZED
- ASSERT OR ENSURE RIGHT OF MIGRANTS FOR DAY OFF / REST DAY IS OBSERVED BY RECEIVING COUNTRIES
- RIGHT OF WORKERS TO UNIONISM
- THERE IS A NEED TO STRONGLY ADDRESS THE ISSUES OF GUEST WORKERS/TRAINEES; MARRIAGE FOR CONVENIENCE

Very specific proposals

- REPORT OF THE RAPPORTEUR TO THE COMMISSION SHOULD ONLY REFLECT WHAT HAVE BEEN DISCUSSED
- ABOLITION OF DEPLOYMENT/PLACEMENT FEES AMONG FILIPINO MIGRANTS
- NEED FOR MULTILATERAL AGREEMENTS
- ADVOCATE FOR THE ESTABLISHMENT OF A UN PERMANENT OFFICE ON MIGRATION
 - This permanent office receives all the recommendations that we have put forward.
 - It will be managed by a four-party membership – government, employees, trade union, civil society
- IT IS IMPORTANT TO HAVE A UNIFORM LEGAL FRAMEWORK
- INCLUDE CIVIL SOCIETY IN THE DISCUSSION AND NEGOTIATION FOR BILATERAL/MULTILATERAL AGREEMENTS
- GOVERNMENT SHOULD WORK TOWARDS LONG TERM DEVELOPMENT TO REDUCE THE NECESSITY OF MIGRANT WORKERS HAVING TO LEAVE FOR WORK ABROAD