

50 Years A Slave: A Review on Philippine Labour Migration

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ABSTRACT

The Philippines has been deploying migrant workers to more than 192 countries, with a rising number that exceeds up to a million workers every year. In 2009, the record of migrant workers' remittances went up to 17.4 billion US dollars from 10.4 billion US dollars in 2005. Reports showed that remittances comprise a bigger portion of the Philippines' gross domestic product, as it contributed 10.8% to the GDP in 2005, and 11.1% in 2009. After more than 50 years of deploying Filipino workers overseas, the Philippines should have improved with its labour policies and implementing them. Yet, reports on abuses of Filipino workers can still be read and heard. This paper reviews the two most controversial cases where the Philippine government had failed to protect its migrant workers by analysing its then labour policies; and how they have impacted the labour and migration sectors to ensure the welfare of its migrant workers. Further, this research discusses reoccurring issues such as delayed services from government agencies, lack of administrative skills to process complaints and cases of Filipino migrant workers, poor communication and coordination among government offices, labour policies that do not abide by the constitution, and the unfair provisions in the treaties between Philippines and destination countries for low-skilled workers.

Keywords: labour migration, migration, migrant workers, labour policies

ALU	Associated Labor Union
BLA"s	Bilateral Labor Agreements
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CFO	Commission on Filipinos Overseas
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
DFA	Department of Foreign Affairs
ILO	International Labor Organization
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
OFW	Overseas Filipino Workers
OWWA	Overseas Workers Welfare Administration
PDOS	Pre-Departure Orientation Seminar
POEA	Philippines Overseas Employment Administration
POLO	Philippine Overseas Labor
TUCP	Trade Union Congress of the Philippines
UN	United Nations
UN CMW	UN Convention on the Rights of all Migrant Workers and Members of their Families
UN MWC	UN Migrant Workers Committee

INTRODUCTION

Seeking employment to other countries has been the major solution of most Filipinos to elevate themselves and their families from poverty. They choose to venture to an unfamiliar territory and take the risk of a life away from their families, rather than staying in the Philippines and being contented with jobs that are very casual, low-paying, and with lesser benefits. This is because the country is being hit by a high percentage of unemployment. The unemployment

rate was highest at 13.90% in the year 2000 as reported by the National Statistics Office, and it is only recently that the unemployment rate went down to 6.0% as there are more people who found jobs in the services and agricultural sectors. The next challenge is somehow to survive from their income with their newfound jobs. The National Statistics Coordination Board reported in 2013 that the estimate should concern the Philippine government because despite all the efforts that have been exerted, the poverty rates have not changed since in the year 2009. So, there is no wonder why a great number of Filipinos still want to migrate and find work overseas.

The country has been deploying OFW"s to 192 countries at present, with a rising number that exceeds to a million workers every year starting in 2005 (Abrigo and Orbeta, 2005). In 2009, the record of OFW remittances went up to 17.4 billion US dollars from 10.4 billion US dollars in 2005 (Setyawati, 2013). The OFW remittances comprise a bigger portion of the Philippines" gross domestic product, as it contributed 10.8% to the GDP in 2005, and 11.1% in 2009 (Antique, 2010; Setyawati, 2013). These numbers are from OFW remittances that are transacted through banks only, and those that have been recorded. These numbers do not include remittances that are sent through non-formal channels, or directly given to the recipients.

The migrant Filipino workers have filled posts from different skills sets from high, to medium, to low skills set of jobs. A few OFW"s are working in countries like Saudi Arabia, Hong Kong, Singapore, Malaysia, and other destination countries in construction and domestic work (Rojas, 2009; Setyawati, 2013). Meanwhile in Thailand, Vietnam, and China, several OFW"s are working as English language tutors, grade school and high school teachers, site engineers, telecommunications engineers, IT specialists, hotel supervisors and managers, and restaurant wait staff (Hall, Mai Thi, and Manajit, 2011; see also Chalamwong, 2012; Mah, 2014). In the researcher"s personal account, he met a few OFW"s in Bangkok (mostly undocumented) who are engaging in sex work. These undocumented OFW"s are on *visa-runs*. The International Labor Organization (ILO) holds a record of about 700,000 to 1,000,000 workers from the Philippines (and Indonesia) fleeing their countries each year, and an approximate twice of these numbers are undocumented workers (ILO, 2011; see also Setyawati, 2013).

The Philippine president, President Benigno Aquino III, in his inaugural speech on the 30th of June 2010 has promised protection and assistance to OFW"s. Yet, there are still reported cases of Filipino workers being abused by their employers that ended up to losing their jobs and non-compensation. These scenarios mostly reflect the poor implementation of labour migration policies between the Philippines and the destination countries (Abrigo and Orbeta, 2005; Begonia, 2013; Chammartin et. al., 2012; Gulnara, 2010). To quote Aquino III.

Our goal is to create jobs at home so that there will be no need to look for employment abroad. How-ever, as we work towards that end, I am ordering the DFA, POEA, OWWA, and other relevant agencies to be even more responsive to the needs and welfare of our overseas Filipino workers. (Aquino III, 2010)

With the fall of unemployment rate in the country at present, there is no doubt that the president has delivered his promise on establishing jobs locally. Yet, the promise of a more responsive government to the needs and welfare of OFW"s has yet to be delivered. Given the

fact that OFW's have contributed greatly to the economic development of the Philippines, and with Aquino III's promise, this paper shall assess how effective and efficient are the Philippine labour migration policies (from recruitment, application and registration to settling as a migrant worker in the country of destination) in protecting the rights of OFW's and promoting their welfare. This paper shall also analyse the implementation procedures of these policies as to how they impact OFW's by looking into literatures of migration governance, the international conventions of migrant workers, the Philippine constitution, reports of past and present or pending cases of OFW's.

After 40 years of deploying Filipino workers overseas, the Philippines should have improved triumphantly with its policies and the implementation schemes for these policies. Yet, reports of abuses on Filipino workers can still be read and heard in the news. Moreover, this paper has found issues that need to be raised, such as the delayed services from government agencies, the lack of administrative skills to process complaints and legal cases of OFW's in a reasonable time frame, the lack of communication and coordination between government sectors, questionable constitutionality of some policies, and the provisions of treaties and agreements between Philippines and the destination countries.

STATEMENT OF THE PROBLEM

In the 1974 Philippine Labor Code, the provisions on labour migration was established with a prime goal to promote overseas contract work for the government to benefit from the monetary remittances of the overseas Filipino contract workers, as well as to lessen the unemployment rate of the country (De Guzman, 2003). Thus, the aim of the labour migration program is more focused on economic benefits rather than the rights-based policies and regulations that promote the welfare and protection of overseas workers.

At present, the Philippine Labor Code of 1974 still applies with only a few revisions regarding direct hiring procedures. Yet, most of the policies and regulations are still heavily focused on economic benefits. In De Guzman's overseas labour migration paper in the *Kyoto Review of Southeast Asia* journal, he mentioned that sociologists Graziano Battistella (1992), Anthony Paganoni (1996), Maruja Asis (1992), Joaquin Gonzales III (1998), and urban development specialist Benjamin Carino (1995) have examined the policies and regulations of the government on labour migration and concluded that the promotion of the welfare of overseas Filipino contract workers is just an afterthought. Thus, this results to poor implementation of good policies, or immediate but ineffective solutions just for the sake of responding to issues that are raised by civil societies and activist groups.

An example of poor problem-solving skills in the government was when the cases of abused Filipino women (Filipina) migrant workers in Japan increased and were widely publicized in the 1980's, the administration of then President Corazon Aquino temporarily banned the deployment of domestic workers. The aim of the ban is to protect migrant Filipina workers, and it also served as an immediate solution to respond to the growing issues of abused Filipina migrant workers. Although the intention is good, the debate lies whether this is the most suitable solution. The ban on the deployment of workers is questionable with its constitutionality. Section 6 of the Philippine Constitution Bill of Rights states, "Neither shall the right to travel be impaired except in the interest of national security, public safety, or public

health, as may be provided by law.” Therefore, this immediate solution of banning OFW’s from being deployed is a violation of the constitutional rights of the Filipino workers to travel and to find better employment opportunities overseas. NGO’s and activist groups also argued that instead of protecting these Filipina migrant workers, this kind of solution will just push them to more harm because many will resort to other means of obtaining work overseas, resulting to illegal recruitment, or worse, human trafficking (Begonia, 2013; Charmmartin et. al., 2012; see also De Guzman, 2003). As a result, they will become undocumented migrant workers and leaving them with no government protection.

The government counter argued that if they ban deployment of workers to destination countries, these destination countries will come to terms with the Philippine government. Yet, this does not give any assurance that the destination countries will agree to the demands of the Philippine government because they can always hire workers from other developing countries such as Indonesia, India, Cambodia, Myanmar, and Laos.

First in the list of all the problems is the fact that the government has not changed its approach in dealing with issues on OFW’s. The solutions are still *band-aid* and are not even carefully studied if they can cause more harm instead of solving an issue permanently.

There are policies that are questionable in their constitutionality and have loopholes in their implementation procedures that instead of promoting OFW’s welfare, they can cause more harm. An example of such is the requirement of an *exit clearance* at the immigration borders or check points in Philippine airports and seaports. Although this policy is established on good intentions and may appear effective in ensuring that the OFW’s are sent to the proper employers; yet, the excessive fees and the red tape in obtaining this *exit clearance* are too much. The *exit clearance* requirement also became the ground for many officers and staff of the Bureau of Immigration to prohibit Filipino tourists from travelling out of the country because of fears that they will be working overseas, even without substantial evidence. Thus, this policy becomes questionable to its constitutionality because immigration officers are holding the constitutional rights of Filipinos to travel with basis on mere suspicions. Unfortunately, no one seems to question the constitutionality of this implementation policy. There are also some reported cases of extortion that are happening in the borders; with immigration officers threatening to prohibit Filipinos from travelling and may only be allowed to travel if they will pay a certain amount of money.

The final call is up to the immigration officer, who must assess a variety of factors when deciding whether to allow a passenger to depart: the stated purpose of travel, their capacity to pay for the trip – even their appearance and demeanour. It is at this stage, passengers say, where some extortion attempts of up to 20,000.00 pesos have occurred. (Ruiz, 2010)

The purpose of travel and the capacity of a passenger to pay for his or her trips are already assessed by the embassies, or consulate offices, before a visa can be granted; so, this makes the authority of the immigration officers to assess passengers who hold visas questionable.

Another issue on constitutionality of the implementation policies is on Section 10 of the Republic Act 8042. The same provisions are also found in the Republic Act 10022 that revised

Republic Act 8042. This provision mandates that “in cases of illegal termination of employment for an OFW without acceptable reasons as defined by law, or by the employment contract, the OFW is entitled to a full refund of his placement fees and the incurred deductions with an interest of 12% per annum, plus the salary of the OFW for the unexpired portion of his or her contract, or 3 months’ worth of salary for every year of the unexpired portion of the contract, whichever is lesser” (R.A. 8042 in Ambito & Banzon, 2011). On the other hand, Filipino workers, who are working on Philippine soil, regardless they are working for a local firm or an international company, will receive the full compensation when terminated illegally from his or her work; and there are no restrictions to 3 months’ worth of salary or whichever is lesser. This provision of full compensation to an illegally terminated employee is stipulated in the Philippine Labor Code. The constitution also explained in its provisions under Section 3, Article 13...

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. (Constitution of the Philippines, 1987)

Therefore, the clause, “or for three (3) months for every year of the unexpired term, whichever is less” is questionable to its constitutionality because it singled out OFW’s from the rest of the Philippine labour force. This type of compensation is made only applicable to them. Hence, this implementation policy obviously shows that there is no equality to all the Filipino workers. In addition, it also violates the provision of the Philippine Labor Code by not giving full compensation to the employee, and only choosing whichever compensation is lesser. This is an example of a policy that is more focused to the economic agenda rather than to the welfare of the workers because it clearly gives more benefits to the employer that **illegally terminated** an employee.

Second, there are issues of OFW’s signing with dual contracts of employment. Again, the policy and regulation on employment contract requirement is good for the Philippine government agency to assess the validity of the employment contracts and the credibility of the international employers. Yet, there is no institutionalized framework to assess if the provisions of these contracts are met as soon as the OFW settles into the destination country. Thus, there are reports of OFW’s signing two contracts; one to be submitted to POEA to comply with the requirements, and obtain the *exit clearance*, while the second contract is the actual contract that binds the OFW to his or her employer. This second contract is only known between the employees, the employers, and may be by the recruitment agencies. Obviously, the conditions of this contract benefit more the employer and do not uphold conditions required by POEA. These contracts stipulate a much lesser salary, lesser benefits, and no protection mechanisms. Most OFW’s are left to accept the new contracts rather than going home to the Philippines with debts from placements fees and other processing fees that are still payable (Ambito & Banzon, 2011). This scenario draws the debt-bondage situation of many migrant workers, not just Filipinos.

So, the third problem is the excessive placement fees charged from private recruitment agencies. Some of the placement fees are equivalent to a six months’ worth of salary. In Hong Kong, the average pay that a Filipino domestic worker receives monthly is 500.00 Hong Kong dollars. Yet, employers pay recruitment agencies 2,500.00 Hong Kong dollars to hire a Filipino

domestic worker, and eventually take this money back by deducting an amount from the domestic worker's monthly salary (Tan, 2013). This kind of arrangement puts a Filipino migrant domestic worker in a debt bondage situation. She (or he) has not started working yet, but she already owes her employer 2,500.00 Hong Kong dollars. If the employer deducts only 200.00 Hong Kong dollars from the domestic worker's monthly salary, then it means that the domestic worker is tied to work for her employer for more than a year, until she pays off the recruitment agency's placement fee. The Director General of IOM, Ambassador William Lacy Swing, clearly mentioned in his speech, during the UN high level dialogue on international migration and development in 2013, that the issues on high placement fees, excessive processing fees, and other required fees that a migrant worker must pay to avail of jobs should be, if not eliminated, lessened to a much more reasonable cost.

Fourth, there are unsystematic administration procedures and a massive lack of coordination between government sectors. The government has established different sectors to look after and address the different needs of OFW's. There is the POEA who handles recruitment, placement, assessment of contracts for directly hired employees, and registration of all Filipino migrant workers and private recruitment agencies. There is OWWA that looks after the benefits of OFW's and their family members. There is POLO in the consulate offices to address issues and concerns of OFW's with their employers and their destination countries; and there is TFAIR that prosecutes illegal recruitment agencies and helps in stopping illegal recruitment. Yet, the records of success in these government agencies are not impressive. OFW's complain that some POLO officers are not well versed with the labour policies in the destination countries, and even with the Philippine labour migration policies. Worse, they are also not aware of the migrant workers' rights, and can only suggest repatriation as the easiest and fastest solution to all the concerns of OFW's. Yet, even if they have the knowledge and background of labour policies, POLO officers still have got no legal hold against the employers in the destination countries. As with TFAIR, it has pending 20,000 warrants of arrest to an estimated number of 200 illegal recruitment agencies, yet these warrants are still not served (Ambito & Banzon, 2011). The government should be concerned with what has been happening to these agencies as to reasons of delay on services, as to incompetence of staff and officers, and plainly, no coordination amongst these sectors.

Fifth, if TFAIR has not yet served 20,000 warrants of arrest to illegal recruitment agencies, what is expected to rise is also the number of victims of illegal recruitment and human trafficking. The 2013 Global Slavery Index has estimated about 140,000 to 160,000 Filipinos being enslaved in labour-receiving countries (Global Slavery Index, 2013). It is also believed that enslaved OFW's are mostly trafficked to their destinations countries (Da Sal, 2013). This is expected to happen since trafficked migrant workers are off the records and have got no entitlement to protection in the labour laws of the destination countries. They have no choice, but too be enslaved by their employers who obviously will not allow them to contact their embassies and consulate offices. God only knows if they are even allowed to leave the workplace.

Worse, between the years of 2011 to 2012, there were 680 cases of human trafficking that were filed in Philippine courts; yet only 28 convictions were made in the same period (Belarmino,

Dabalos, and Saguing, 2013). Again, the very slow administrative procedures have impacted the justice system and risking more lives to be trafficked.

The problems that are enumerated are not new problems. They have existed from the time labour migration started in the Philippines. New policies and regulations are established to address these problems; yet why do these problems still exist? Are the policies and regulations ineffective? Or is it on the implementation? What should be the most suitable solutions? These are the questions that this research paper shall answer.

METHODOLOGY

Data Gathering and Analysis

Because this research is descriptive research, the researcher uses qualitative techniques of content analysis: (a) by reviewing related literatures from books, journals, news articles, independent online articles, and academic publications on labour migration policies, migration governance, and labour migration issues. Then, compare the data from these materials to past and existing issues on Philippine labour migration (from selection, recruitment, hiring, contract-signing, and settlement as migrant workers in destination countries); (b) also by reviewing actual cases of Philippine labour issues, and studying how the Philippine government handled and solved these issues through amending policies, or formulation of new policies and implementing them.

Literature Analysis and Case Reviews

Labour migration is not a new trend that is happening in the Philippines. It has been practiced since from the recorded history of the Philippines, yet formalising the institutions and networks of labour migration started only in 1974 (Asis, 2006; Feina, 2011). After years of exporting labour resources throughout the world, what has the Philippine government learned, when it comes to policies and regulations, human rights protection, and promotion of welfare for the Filipino migrant workers, so far?

History of Philippine Labour Migration: Policies, Regulations and Issues

The earliest recorded history of Philippine labour migrations can date to 1417 when Filipinos in Sulu went to work in China, as Sultan Paduka Batara initiated a mission to improve trade relations with the Chinese emperor (CMA, 2010). In the 18th century, under the Spanish regime, the trade relations of Manila and Acapulco, Mexico promoted labour migration as Filipinos worked as seafarers in the vessels (CMA, 2010). During this period, labour migration policies were neither drafted, nor initiated because both states are colonies of Spain, and such migration can be considered internal (CMA, 2010).

In the beginning of the 20th century until the late 1940's labour migration has expanded and certain policies were created. It was between 1906 and 1934 that about 120,000 to 150,000 Filipinos arrived in the United States of America, particularly in Hawaii, working in the agricultural sectors. (Feina, 2011). Asis (2007) on her paper, "The Philippines' Culture of Migration", explained that because Philippines, at that time, was a colony of America, migration was considered internal movement because Filipinos were American '*nationals*'; not American citizens, but as '*nationals*'. Thus, migration policies were not drafted. Asis (2007) added that only in 1937, after about 4,000 Filipinos were hired to work in the merchant marine, that a

labour policy was passed requiring 90% of the crew of a US flag vessel should be **American citizens**. Being only American nationals, the Filipinos were no longer hired to work in the merchant marines. Migration to the United States dropped off after the Tydings-McDuffie Law was passed, wherein the Philippines “became a subject to immigration quotas”, limiting the Philippines to 50 visas per year (Asis, 2007; see also Feina, 2011). Yet, in case of labour shortage at this time, there was an exception clause that the Filipinos can still be hired to work in Hawaii only (Asis, 2007; see also Feina, 2011). In the exception clause, only the governor of Hawaii was authorized to hire Filipino workers (Asis, 2007).

Therefore, during this period, labour migration policies were not formalised, and were not even drafted under the Philippine government, but were made and implemented by the colonising countries such as Spain and the U.S.A. Obviously, these policies were made for the reasons of economic benefits, and issues on human rights protection were never discussed.

Labour migration policies were formalised during the term of then President Ferdinand Marcos, as he incorporated the labour migrations programs in the 1974 Philippine Labor Code (De Guzman, 2003). De Guzman (2003) argued that it was obvious that the purpose of promoting labour migration is solely for the economic benefits of the country and a response to the growing unemployment rate at that time. Therefore, policies were not rights based (De Guzman, 2003). On the other hand, Setyawati (2013) expressed that formalising new policies and regulations at this period has developed a better frontier of Philippine labour migration compared to the early years; wherein policies were drafted and implemented for the benefit of the colonising country. There were new set of guidelines for “placement, dispute resolution, and documentation were in placed” through the Overseas Employment Development Board and the National Seamen’s Board (Gonzales 1998 in Setyawati, 2013). In addition to the new regulations that were set, Article 18⁹ of the 1974 Labor Code stipulated a ban to the direct hiring of Filipino workers to overseas employers; this aimed to manage labour migration by placing Philippine recruitment agencies in charge with the arrangements and bargaining agreements on behalf of the Filipino workers (Rojas, 2009). Although, there were also a few exemption clauses, if a Filipino worker is directly hired by the diplomatic corps, international organisations and other employers selected by the Secretary of Labour to be exempted from this provision (1974 Philippine Labor Code; Rojas, 2009). Yet, in Rojas’s paper (2009), he wrote that many complaints and concerns were raised about Article 18 because it promotes labour migration programs as business opportunities for private recruitment agencies and of the government. Rojas added that, although, the private recruitment agencies made sure that Filipino workers are paid in reasonable salaries and with better benefits, but too much demands from the recruitment agencies, and the excessive placement fees that they ask, ended up with the foreign employers to back out and search workers from other labour-sending countries. Another argument from Rojas is that the exemption clauses are unfair to other employers because it gives full authority to the Secretary of Labor to select which organisations or employers can be exempted from the “ban on the direct hire”; plus, this can even lead to possibilities of corruption with the Secretary of Labor.

After the people power revolution in 1986 against President Marcos, President Corazon Aquino took oath as the new president of the country and included in her priorities the protection and welfare of Filipino labour migrants (Bello, 2013; Setyawati, 2013). Although, there was a

constitutional change in 1987, the government retained the provisions of the 1974 labour code. Therefore, Article 18 was still in place, and its provisions were still implemented. Setyawati (2013) on her paper, "Assets or Commodities? Comparing Regulations of Placement and Protection of Migrant Workers in Indonesia and the Philippines", explains that, on this decade, even if the 1974 Labor Code was still in place, there was already a paradigm shift in the Philippines, from exporting labour resources to '*migration management*'. Keeping up to her promise, between the years 1987 to 1992, President Corazon Aquino issued three executive orders (EO) that would help serve OFW's address their concerns and deliver to them their needs. These executive orders are E.O. 126 establishing the Overseas Workers' Welfare Association (OWWA), E.O. 247 empowered POEA as the sole agency to control and regulate deployment of OFW's, and E.O. 450 that lifted the ban on granting licenses to new recruitment agencies. In addition, new provisions in the Philippine laws that promote better welfare for workers were added. For example, in the new 1987 Philippine Constitution, Section 3 of Article 13 promoted equal opportunities in employment.

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all". (Section 3 of Article 13, Philippine Constitution, 1987)

Amidst the new policies and regulations that were set by the Corazon Aquino's administration, there were still issues that pushed the civil society to demand for much better policies and regulations that will hold both the Philippine government and the destination countries accountable. So, as a response to the continuing demands to improve the mechanisms in protecting OFW's, new laws were passed; Republic Act 8042 (R.A. 8042), also known as the "Migrant Workers and Overseas Filipinos Act", was passed and acted for implementation in 1995. In a summary, the law's provisions are:

- *the deployment of workers in countries that ensure protection, including the banning of deployment if necessary;*
- *providing support and assistance to overseas Filipinos, whether legal or in an unauthorized situation;*
- *imposing stiff penalties for illegal recruiters;*
- *free legal assistance and witness protection program for victims of illegal recruitment;*
- *the institution of advisory/information, repatriation, and reintegration services; the stipulation that the "protection of Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino abroad, in general, shall be the his/her priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service Posts;"*
- *the establishment of the Migrant Workers and Other Overseas Filipinos Resource Centers in countries where there are large numbers of Filipinos;*
- *and the creation of the Legal Assistant for Migrant Workers Affairs (now the Office of the Undersecretary of Migrant Workers Affairs) and the Legal Assistance Fund.*
(R.A. 8042 in Asis, 2006)

In Asis (2006) assessment of the Philippine migration laws, she mentioned that R.A. 8042 resulted to some “problematic provisions”, where NGO’s and other groups demanded amendments of the law. Asis specified examples like the “Declaration of Policies”, wherein it was expressed that “the state does not promote overseas employment to sustain economic growth and achieve national development”, and as matter of fact, the state actually does the exact opposite. Another example cited by Asis is the provision on Section 29 that discusses about the deregulation of recruitment. According to Asis, “if this were implemented, the regulatory functions of the POEA would have been phased out in 2001, that is, within 5 years of the law becoming effective”. NGO’s and other groups are obviously not in favour with this, because there will be no more institutions that will regulate recruitment of OFW’s and regulate and manage of private recruitment agencies. Private recruitment agencies are very much in favour of the deregulation, as this is more beneficial to them than to the migrant workers (Asis, 2006). In summary, Asis concluded that R.A 8042 was not a total failure but needed fine tuning. In response to the growing issues of R.A. 8042, Republic Act 10022 (R.A. 10022) was formulated. POEA is the implementing body of all the provisions in R.A. 10022, but the implementation policies drew plenty of criticisms. Hall, Mai Thi, and Manajit (2011), “Migrant Workers” Rights to Social Protection in ASEAN: Case Studies of Indonesia, Philippines, Singapore and Thailand”, enumerated several issues like, first, POEA makes it complicated for a Filipino worker to be hired directly by foreign employers because POEA, just like other private recruitment agencies, demands so much requirements that are time consuming and can entail more costs causing for these foreign employers to back out, and rather hire workers from other labour supplying countries. Second, there was no strong legal framework to regulate over-priced placement fees from private recruitment agencies, and even POEA has a fee to register one’s self as an OFW, before a person can obtain the ‘*exit clearance*’. Third, there is no strong mechanism, or established institutions, to validate legal contracts from those that are not, as many OFW’s are victims of “contract substitution”. Lastly, the highly bureaucratic structure of the agency makes application procedures extremely time-consuming, causing delays.

On another argument, in a much more personal voice, based on a personal experience, Gonzales (2011), published through her column in a national newspaper, added to the above-mentioned issues the redundancy and excessive medical assessment costs. Gonzales explained that when an OFW processes a work visa, the embassy of the destination country and the foreign employer will ask the OFW for medical assessment results before a working visa is granted; this is to assure the foreign employer and the destination country that the migrant worker is in good physical condition to carry out his or her work. Yet, upon registering one’s self to POEA, a medical assessment, **only from Department of Health (DOH) accredited medical facilities**, is required. Gonzales added that DOH accredited medical facilities charge up to 5,000.00 pesos for a POEA medical test. She also wrote on her column that it took her 3 days to process her registration through POEA because of the lack of systematic processes, lack of communication and coordination amongst staff, and the lack of manpower even when there was obviously a high volume of applications that were submitted.

The complications in the procedures and delays of results have led many Filipino migrant workers to seek for easier and faster paths that eventually pushed a few of them to become undocumented migrant workers; while others were human trafficked (Hall, Mai Thi, and

Manajit, 2011; Rojas, 2009; see also Gonzales, 2011; Valente, 2013). At present, these issues are still being raised, and concrete solutions are still not found.

Policy Formulation and Implementation for Philippine Labour Migration

Sociologists, political scientists, and policy writers have looked into different angles and came up with different assessments as to what caused the problems of labour migration in the Philippines, and how these problems create an impact to OFW's. Most of the issues that were discussed are the processes as to how these policies and regulations were formulated, to start with.

Gonzales (1998), in his book "Philippine Labour Migration: Critical Dimensions of Public Policy", claims that to understand fully the issues that underlie the problems with labour migration policies is to understand the process how these policies were formulated in the first place. He argues that examining the adequacy and inadequacy of policy formulation and implementation processes can be a good predictor on the „anticipated effectiveness of the public policy output. First of Gonzales's argument is the '*Rational-Comprehensive Approach*', wherein this approach assumes that and "individual, or a group, is constantly in pursuit of his or her self-interest". According to Gonzales, the process of this approach is enumerated in sequential actions: (a) a problem arises, (b) the decision maker will have to judge the importance of the problem basing from his or "goals, values, and objectives", (c) different possible solutions will be collected, (d) the cost and benefit analysis to every possible solution will be considered, (e) compare the alternative solutions to other possible alternative solutions, and lastly, (f) the decision maker will obviously choose the solution that can "maximise the attainment of his or her goals, values, and objectives". Although, the sequential process seems to be fit to solve OFW's and other labour migration issues, the criticism falls mainly on the part that the solution is chosen or made to attain the "goals, values, and objectives" of the decision maker(s) (Gonzales, 1998).

The researcher of this paper interprets Asis's (2008) arguments on this type of approach, as to be more reactive rather than preventive. This argument simply explains that only when problem arises, then a solution is studied, created, and implemented as a **reaction** to address the problem; instead of formulating strong policies to **prevent** problems from happening. For example, the Magna Carta for Overseas Filipino Workers, also known as Migrant Workers and Overseas Filipino Act, was established only after the incident of a Filipina domestic worker, Flor Contemplacion, was sentenced to death in Singapore for the alleged murder of her co-domestic worker and her employer's child. The formulation and implementation of this act was a response to the growing demands of NGO's, labour unions, and other human rights groups to create more rights-based policies and regulations. There was indeed a paradigm shift of policies from an economic-centred labour migration program to a more rights-focused program. But Asis points out and emphasizes that "the passing of the Migrant Workers and Overseas Filipinos Act is important for what it signified rather than for what it has actually achieved". Asis argued that there is no evidence of significant reduced migration among Filipina domestic workers; and worse, there is no evidence to show a substantial improvement on the conditions of OFW's, especially in the domestic workers in Singapore and Hong Kong. If the Magna Carta for Overseas Filipino Workers was established before the "Flor Contemplacion incident", the government

could have saved Flor Contemplacion from the death sentence and could have granted her a better due process both in Philippine and Singapore courts.

Based from the points discussed of both Gonzales and Asis, it is quite clear that the Philippine government resorts to '*Rational-Comprehensive Approach*' in drafting policies and regulations. What are the issues on this type of approach in policy formulation? First, as what Asis was trying to say about how this approach is more reactive rather than preventive; this means that the Philippine government did not assess its existing policies and regulations, and the implementation procedures, unless a problem arises, and thus the need to act out on it. This makes the policies and regulations questionable as they are formulated and implemented to respond to the immediate need to solve a problem at present but are not examined if they could be permanent and be the most suitable solution to the problem and prevent other future problems. Second, basing on Gonzales's explanation on the sequential actions as to how these policies and regulations are formulated and implemented, then it is understandable that the current and new policies in place are made to attain the "goal, values and objectives" of the government (the decision-maker), which are more likely for the economic benefits of the country. Well, there is no wrong in making decisions that would bring forth economic gain for the country, but there are underlying issues that are neglected once the person (or group) has already achieve his (or their) "goals, values and objectives". As what Setyawati (2013) explains in her research paper, "Yet, by maximizing economic benefits, the protection of labor migrants is often neglected by both origin and host countries".

Another criticism on the Philippine policy formulation practices is the idea of seeing migrant workers as political subjects. Onuki (2007) explains that there were elite state actors (transnational, state, or corporate agents) that were created during the policy formulation process that also contributed to the failure of implementation policies. These elite actors have "direct and top-down decision making" impact to the formulation and implementation of policies; thus, making the entire process very political. According to Onuki, "a neo- Gramscian focus on elitist agency presupposes migration workers as passive recipients of state policies and/or as victims of geographically uneven and fragmented development of capitalist economy". Again, this leads to the discussion of Gonzales on '*Rational- Comprehensive Approach*', wherein policies are formulated and implemented to help in maximising the attainment of an individual's (or group's) goals, values, and objectives.

Philippine Labour Migration: Policies versus Issues vis-à-vis with Global Migration Governance

The idea of migration governance has been recently in placed due to the increasing demands of global migration. Yet, a formal multilateral framework for labour migration has not yet been **strongly** established, unlike with the multilateral framework for refugees and asylum seekers, and debates on the topic of labour migration are still ongoing (Betts, 2010). Many states find a '*formal UN based multilateral framework*' too binding and too inflexible (Betts, 2010). At present, there are only 47 states that have ratified, and only 17 states that are signatories, to the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families. Most of the states that ratified and signed are from labour-sending countries like Mexico, Indonesia, and the Philippines because they need this as an effective tool to protect their migrant workers (Committee on ICRMW, 2005). The concern is that some labour-

receiving states, an example of which is Australia that receives 222,292 working holiday visa holders and 125,070 sponsored work visa holders as of 2011- 2012 records (Collins, 2013), have neither ratified, nor signed this multilateral framework for migrant workers. Another concern would be the Arab states of the Persian Gulf that hold an estimate of 825,402 Filipino migrant workers (based on the 2012 records of the Bureaus of Labor and Employment Statistics), as far as the Philippine government is concerned, these States have also not ratified the multilateral framework for the protection of migrant workers. The International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families is the best tool that the Philippine government can have to assure the protection of rights and the promotion of welfare for the OFW"s. Yet, without the cooperation and agreement from labour-receiving countries, then, the Philippines has no legal hold against these countries to protect its OFW"s.

The International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families is the UN treaty considered to have lack of success as a core human rights treaty, most especially that none of the major labour receiving states is a party or a signatory to this convention (MacDonald and Cholewinski, 2007). In the UN report "Obstacle to the Ratification of the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families: EU / EEA Perspectives", Macdonald and Cholewinski (2007) explained that from their analysis, they have categorised the obstacles on the ratification of the treaty as to „legal, financial or administrative, and political“ based on reports collected within the EU member states:

➤ **Legal**

The legal obstacles are believed to be a misconception among many states, firstly, that the ICRMW treaty will limit their rights and authority to approve or deny entry of migrants into their territories, decide the length of stay of migrants, approve or deny the migrant from staying within their territories at any given time deemed necessary by the states as stated in the provisions of Article 79 of the Convention; and secondly, the ICRMW treaty would provide rights to all migrant workers to demand family reunification policies impacting that of the state's policies as perceived in the provisions of Article 44 in the ICRMW. Yet, there are also specific legal obstacles considered in this analysis by MacDonald and Cholewinski, and these are more on the incompatibility of specific national laws from the provisions of the Convention, which may require an amendment in the national laws. An example cited in the report is the case of France's long-established policy "of asserting the individuality of the French people, and on this basis denying the applicability of any group specific rights on their territory"; yet, Article 31 of the convention discusses about *group rights*, and "obliging states to ensure respect for the cultural identity"" A ratification of France to this treaty would entail an amendment of their long-standing policy. In a more recent study on the obstacles of ratification of the ICRMW conducted by Touzenis and Sironi (2013), other states also share the same reasons of not ratifying the ICRMW, considering that they will have to amend certain national legislations. In addition, states also believe that there is a redundancy in the provisions of the ICRMW with the provisions in other "UN core human rights treaties" like the ICCPR and ICESCR; plus, labour laws on national levels cover the protection of rights of workers, even if they are migrant workers (Touzenis and Sironi, 2013).

➤ **Financial or Administrative**

Touzenis and Sironi (2013) explain that, even though there are not too many states that agree, ratification would undeniably entail costs for the states to enforce the rights, such as costs on “law enforcement, pursuit of due process and justice, training of authorities, and public education”. In addition, if it is deemed necessary to amend national legislations upon ratification of the ICRMW treaty, the amendment proceedings can also add up to the costs; thus, it will also entail additional costs to institutionalise the framework in national levels. Although, later in their paper, the authors argued that states should investigate the relation of cost and benefit that migrant workers can bring to a labour receiving country. The state may spend excessive amount to put in place institutions to enforce the provisions of the treaty; but eventually will receive more income as migrant workers pay taxes to the country.

➤ **Political**

MacDonald and Cholewinski (2007) believe that the major reason of many states not to ratifying the treaty is political in nature. They explained in their paper that after gathering the reports from EU member states, the most common argument of the states are that (a) the provisions of the ICRMW are already covered in the provisions in other “UN core human rights treaties”, therefore, as parties to ICCPR, CRC, CEDAW, and ICESCR, the states find it redundant to institutionalise the framework at national levels the provisions of ICRMW when similar provisions were already in place; (b) the states’s national laws, particularly their labour laws, do not specify protection of the rights of local workers only, thus, migrant workers are also covered by the provisions of these laws and their rights being protected; and lastly, which MacDonald and Cholewisnki believe to be the main political reason of many labour- receiving states, is that (c) ICRMW lobby robust rights for irregular migrants as guaranteed under Part III of the convention, as stated “the rights of all migrant workers regardless of status...” – obliging party states of ICRMW to acknowledge and provide their rights. In the paper of Touzenis and Sironi (2013), factors (a) and (b) are discussed under the legal obstacles, because these issues are both legal and political. Yet, for the third issue, their paper debated, apart from the financial contribution, that regularisation of irregular migrants is beneficial for the host country’s economy, as well as, for the promotion of human rights for the migrants.

They further discussed that “regular migrants, but often also irregular migrants, pay direct and indirect taxes is an important element that is too often overlooked when discussing migration policies and, notably, the access of migrants to contributory and non-contributory social security schemes”.

This is the challenge of the Philippine government, as well as, with the other states, most especially the labour-sending countries, to promote ratification of this multilateral treaty. The strongest convincing claim is the debate of Touzenis and Sironi as to how migrant workers can contribute to the economic development of their countries of origin, as well as, to the host countries. Yet, if it took the United Nations 13 years to achieve the treaty’s threshold of 20 ratifying states, then, how many years will it take for the parties of the ICRMW treaty to convince the other states, especially the labour-receiving countries, to ratify? The obstacles are more complicated than the debate of economic contributions and human rights protection of migrant workers. Therefore, now, the Philippine government is left with lesser options but to formulate the best and permanent solutions to address labour migration problems from its

national framework; and finally, put an end to these issues that are repeatedly harming the country's OFW's.

Migration governance studies also discuss '*informal network based governance*'. This is a type of governance that is highly promoted by the International Organization for Migration (IOM); like the Regional Consultative Process (RCP) model that discusses on policies, and focuses more on "information sharing, best practices, and capacity building" at regional, inter regional, and trans regional levels (Betts, 2010). Still, many states find this approach as not the best solution to answer labour migration issues, and could not totally protect migrant workers because: first, these are not legally binding policies, therefore, labour- sending countries have no legal hold against destination countries; and second, it can be "exclusionary and inequitable" that some key issues can be neglected (Agunias, Aghazarm, and Batistella, 2011; Betts, 2010). In Alexander Betts's book "Global Migration Governance" (2010), he discussed that capacity building can be more focused on securing borders and validity of travel documents rather than a rights-based approach to assess migrants entering the borders. An example that Betts (2010) cited is that of the East African borders; research showed that border guards are remarkably familiar with fake documents but could not define a refugee. With this kind of practice, illegal labour migration and human trafficking can be avoided, but other migrants' rights can also be affected; and this is how *informal network-based governance* can be exclusionary and inequitable. Although, one big advantage of this practice is the cooperation and coordination among state actors, practitioners, and policy writers alike, and NGO's to formulate good practices that will benefit the migrant workers (Agunias, Aghazarm, and Batistella, 2011). In the Philippines, it is a requirement for every Filipino migrant worker to undergo PDOS before he or she gets registered under POEA and be given the *exit clearance*. This is beneficial for the migrant workers to prepare them for a life of overseas employment, information with what to expect in their destination countries, and giving them the chance to rethink if they are ready for it. This system is shared and already being practiced by all members states of the Colombo Process, whether as a pre-departure seminar, pre-departure training, or a pre-departure orientation program. Like any other good practices, the pre-departure information program also has loopholes, and it is in danger of being used for corruption and illegal recruitment. In the IOM assessment paper for regional consultative practices by Agunias, Aghazarm, and Batistella, (2011), several flaws were found in the pre-departure information services:

- *Pre-departure orientations are additional costs to the migrant workers.* They are mostly hosted in the main or large cities of the country, thus, costing migrant workers travel expenses and living expenses while staying in the host cities; plus, the registration fees of these seminars can also be expensive. In the Philippines, PDOS can cost up to 400.00 pesos (Commission on Filipinos Overseas, 2014). This issue results to migrant workers obtaining fake certificates; and there are also reported cases of corruption wherein government officers are selling the certificates at a more expensive price directly to the migrant workers, without the need for migrant workers to attend the orientation (Agunias, Aghazarm, and Batistella, 2011).
- *There is no established regional assessment to monitor the pre-departure seminars.* Pre-departure orientations or seminars vary from country to country, some are doing it for 20 hours, while others do it for 2 hours, and it has become more of a routine, so the quality has gone terribly low (Agunias, Aghazarm, and Batistella, 2011). Moreover, the materials are not gender sensitive, and have brought issues on sexual

discrimination by not addressing the specific needs of women migrant workers in their discussions (Agunias, Aghazarm, and Batistella, 2011).

By looking into the gaps on the best practices that are being shared amongst states in the South and Southeast Asian regions, it is easy to rationalise that it is **not best to approach labour migration issues by using only the ‘informal network-based governance’**. Moreover, even if this approach may be good to address issues of Philippine labour migration, by looking into the best practices and effective measures from other countries in the region, this is still neither a perfect and nor a permanent solution. The gaps on these practices, and the very poor and inefficient coordination of government sectors in the Philippines, can just cause more harm to OFW's. Therefore, the Philippine government is, again, left with the need to formulate the best and permanent solutions.

What Alexander Betts suggested as to how migration governance should be is the idea of *coherent plurilateralism*. With this practice, the states shall understand that there (a) should be no uniform framework that is applicable to all because every state is unique, and has different needs; (b) that states do not necessarily have to create and establish new institutions solely to address labour migration issues, but to push existing institutions to work better; and (c) there is lack of coordination, and gaps are not addressed properly by the existing institutions (Betts, 2010). According to Betts, this approach uses the best of both the multilateral framework approach and *informal network-based governance* approach.

Yet in a research paper done by Douglas and Schloendhardt of the University Queensland (2012), which is an examination of the Bali Process, they argued that “it is highly unlikely that the international community, especially the countries of the Asia Pacific region, will develop more comprehensive, binding frameworks that manage and monitor international migration in a more coordinated and sustainable way in the foreseeable future”. This argument is based on their assessment on the Bali Process, after 10 years since its inception, realising that there is a lack of cooperation from participating countries to discuss openly the “causes, circumstances, and characteristics of international migration” (Douglas and Schloendhardt, 2012), and some of these topics that need to be discussed are irregular migrants, people smuggling, and labour migration. This showed that plurilateralism will find it difficult to create a framework agreement between member states because some member states may not be signatory or parties of international conventions that other states are parties of; thus, it is challenging to get all of the states to agree on a framework in a more realistic timeframe. Using the Bali Process as an example, most member states, and even the chief member states like Indonesia and Malaysia, are not parties to the ‘*Convention and Protocol relating to the Status of Refugees*’; thus, the effort to encourage compliance to the principles of international refugees’ laws is very less (Douglas and Schloendhardt, 2012). Moreover, the dialogues can be more focused to establishing direct solutions of certain issues that affect chief states, or majority of the regional state members, but may look over other issues that are underlying, which can be particularly important for some states. An example of this scenario, again, is Douglas’s and Schloendhardt’s, examination of the Bali Process; in their paper, it was said that the Bali Process was more focused on securing borders and law enforcement, and overlooked issues on human rights obligations. A US-based NGO, Human Rights Watch, criticised the plurilateralism approach of the Bali Process as “it has taken a narrow law enforcement approach to controlling irregular

migration, with inadequate consideration of human rights and refugee protection” (Human Rights Watch in Douglas and Schloendhardt, 2012). Thus, Douglas and Schloendhardt explain that regional plurilateralism has become more of an ‘*informal socialisation networks*’ or ‘*informal plurilaterarilsm*’. Although Christina Oelgemoller (2011) in her research paper, “Informal Plurilateralism: The Impossibility of Multilateralism in the Steering of Immigration”, mentioned that “the informality of this form of consultation is aid to be conducive to trust building that is, strengthening the “we” impression of the other group, and is open to finding new practices”. Yet, they tend to benefit only groups that are like-minded, and leaving civil society out of the picture.

Applying the approach of plurilateralism in the situation of Philippine labour migration, again, can be beneficial as labour migration issues will be assessed accordingly to the causes of the problems, activate government sectors to act out on these problems, share best practices with other countries in the region, and agree on a framework of implementation; but the challenge lies on filling the gaps, and not by-passing other issues without compromising the main issue.

Reviewed Actual Cases

Case 1

In September 1991, an OFW in Japan named Maricris Sioson was believed to be murdered. Sioson was diagnosed with hepatitis, and the Hanawa Welfare Hospital in Fukushima reported it in her death certificate as the cause of her death (Equality Now, 1993). Yet in Crescini’s report (1993), when the bodily remains of Sioson was sent to the Philippines, the family found bruises and scars on her body. There was an autopsy conducted in the Philippines on the 4th of October 1991 by Dr. Floresto Arizala, and “the autopsy findings included a subdural hemorrhage in the cerebral cortex, presumably caused by blows to the head, and two stab wounds, one in the thigh indicating that a double-edged blade had been twisted upward, downward and diagonally in the flesh, and one in the genital area indicating that a blade had been inserted vertically” (Arizala, 1991 in Crescini, 1993).

Although Dr. Arizala and the Secretary for DOLE, Ruben Torres, were sent by President Corazon Aquino to investigate the case, but both were unsuccessful in probing question with the Japanese hospital and the doctors. The Japanese police force did a quick probing and eventually closed the case, declaring the cause of death as natural, and was caused by illness (Crescini, 1993). Equality Now (1993) reported that the family of Sioson requested the Philippine Department of Justice (DOJ) to re-open the case, and for the Philippines to conduct a thorough investigation, but their request was denied by the DOJ, explaining that the Japanese government would not allow criminal investigations conducted by foreign agencies. Although the family of Sioson pleaded for copies of documents, but again, their request was denied, and they were not granted access to medical records and police reports (Equality Now, 1993). Up to present, the case of Maricris Sioson was never re- opened and re-investigated. This is a clear example that even if the Philippines may have structured and improved labour laws and migrant workers’ laws, yet irrelevant if there is no cooperation or binding agreements between Philippines and the OFW’s destination countries.

The immediate solution that President Corazon Aquino’s administration did was to ban the deployment for overseas Filipina workers as entertainers in Japan, and even domestic workers

in Hong Kong and Singapore. As discussed previously in this paper, the immediate solution was made and implemented to address the situation without considering its far consequences.

The original intention is to protect migrant Filipina workers, and it shall also serve as an immediate solution to respond to the growing issues of abused Filipina migrant workers. NGO's and activist groups argued that, a possible consequence, instead of protecting these Filipina migrant workers, this kind of solution will just push them to more harm because many will resort to other means of obtaining work overseas, resulting to being illegally hired, or worse, being human trafficked (Begonia, 2013; Charmmartin et. al., 2012; see also De Guzman, 2003). As a result, they will not be in the records of both the government of the destination country and the Philippine consulate offices in the destination country, leaving them with no government protection.

Case 2

Flor Contemplacion, a Filipino migrant domestic worker in Singapore, was sentenced to death after being found guilty of murdering another Filipino domestic worker, Delia Maga, and the child that she was looking after, Nicholas Huang. Contemplacion pleaded guilty; even if Contemplacion mentioned in her confession that she had been experiencing symptoms of seizure at the time when the crime happened, and medical evidence to these symptoms were not yet being presented, the Philippine Consulate in Singapore deemed her confession as credible (Far Eastern Economic Review, 1995). During the court hearings of Contemplacion's case, there was no representative sent by the Philippine Consulate office to observe, or legally represent Contemplacion in court (Far Eastern Economic Review, 1995).

The civil society and human rights activists' group, as mentioned in Setyawati's paper, found these cases as proof of incompetence of the Philippine government to protect Filipino migrant workers. After Contemplacion's execution, protesters rallied on the streets demanding that the Philippine government should make an action and improve its policies and systems for migrant Filipino workers. The rally aimed that the migrant workers' rights will be protected and be recognised by the countries of destination and employment. In response to these demands, President Fidel Ramos pushed to Philippine Congress, for the completion of the Magna Carta of Overseas Filipino Workers, also known as Republic Act No. 8042 (RA 8042), in that very same year of Contemplacion's execution.

Setyawati believes that R.A. 8042 started the policy shift from laws that are focused on economic benefits to laws that are focused more on rights protection and promotion of welfare for Filipino migrant workers. More policies were lobbied focusing on the protection of OFW's in the succeeding years. For example, in the administration of Gloria Macapagal- Arroyo, an amended version of the Migrant Workers and Overseas Filipino Act of 1995 was lobbied and signed; and this was successfully passed to parliament in 2010, named RA 10022, by President Benigno Aquino III. Moreover, House Bill 5804 (HB 5804), also known as the Magna Carta for Domestic Workers, was passed to protect domestic workers rights, and ensure their fair and equal treatment from the household where they are employed (Setyawati, 2013).

Even though, there are new laws and changes in the policies, there are still debates on how poor and unsystematic the implementation processes make the laws ineffective and inefficient.

The Constitutionality of the “Exit Clearance”

In 2007, the POEA issued MC 04¹⁷ that regulates all workers to be deployed must be hired by an accredited placement/employment agency with the exceptions of those that are hired by “government-to-government placement by POEA”, and those that were able to find employment without the assistance of a placement/employment agency but whose documents are processed by POEA (Rojas, 2009). MC 04 resulted in the requirement of a POEA “exit clearance” at immigration offices before the worker can be deployed to the country of employment (Gonzales, 2011; Rojas, 2009; see also Valente, 2013).

The requirement of an *exit clearance* at the immigration borders or check points in Philippine airports and seaports can lead to situations that can breach provisions of the Philippine Constitution. Tiglao (2011) explains that Section 6 of the Philippine Constitution’s Bill of Rights states, “Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law”.

Moreover, there is no due process afforded to the suspected traveler. Immigration officers can deplane any traveler based on mere suspicions which is another violation under the Philippine constitution.

Unfortunately, no one seems to question the constitutionality of this implementation policy. There are also some reported cases of extortion that are happening in the borders; with immigration officers threatening to prohibit Filipinos from travelling and may only be allowed to travel if they will pay a certain amount of money.

The final call is up to the immigration officer, who must assess a variety of factors when deciding whether to allow a passenger to depart: the stated purpose of travel, their capacity to pay for the trip – even their appearance and demeanour. It is at this stage, passengers say, where some extortion attempts of up to 20,000.00 pesos have occurred. (Ruiz, 2010)

Tiglao also explains that the Philippines, being a party to international conventions on human rights, is obliged to create and implement laws that ensure human rights protection. The basic right to travel is a human right and must be protected. Apparently, requiring an “exit clearance” is in contradiction to these international conventions:

Everyone has the right to leave any country, including his own, and return to his country.

(Article 13 No. 2, Universal Declaration on Human Rights, 1948)

Everyone shall be free to leave the country, including his own.

(Article 12 No. 2, International Covenant on Civil and Political Rights, 1966)

Migrant workers and members of their families shall be free to leave any state, including their state of origin.

(Article 8, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2014)

Standard Requirements of Employment and the Underlying Costs, Poor Implementation Procedures, and Corruption in the Government Staff

The POEA has set standard requirements of employment that every employer and employee should avoid and must be stipulated clearly on the contracts for the POEA to grant exit clearances to OFW's (Ambito & Banzon, 2011). Contracts should be detailed with all the information required for POEA to be able to assess whether the contract is legal and binding, and if the OFW is to be compensated appropriately.

A standard overseas employment contract must reflect the names and details of the contracting parties (foreign employer, local agent and the OFW) who voluntarily bind themselves to terms and conditions of employment, which shall include, among others, the site/workplace, contract duration, employee's position, monthly salary, regular working hours and overtime pay, leave credits, insurance, repatriation and termination procedures, settlement of disputes and applicable law on the contract.

Parties to overseas employment contracts are allowed to stipulate other terms and conditions and other benefits not provided under these minimum requirements; provided the whole employment package should be more beneficial to the worker than the minimum; provided that the same shall not be contrary to law, public policy and morals, and provided further, the Philippine agencies shall make foreign employers aware of the standards of employment adopted by the POEA.

(POEA in Ambito & Banzon, 2011)

Although these strict policies are being printed on legal documents, but the implementation procedures are poor and ineffective in the actual protection of workers' rights (Ambito & Banzon, 2011). One of the many concerns is 'contract substitution', wherein most OFW's are asked to sign another contract with lesser salary packages, and lesser (if none) benefits; leaving most OFW's with no choice whether to get the job and be paid less, or losing the job to someone else who would be willing to take the pay and accept the illegal private arrangements (Ambito & Banzon, 2011; Gonzales, 2011; Rojas 2009). In some cases, the OFW's are asked to sign another contract when they arrived in the country of destination, again with lesser pay and lesser benefits. Most OFW is left to accept the new contracts rather than going home to the Philippines with debts from placements fees and other processing fees that are still payable (Ambito & Banzon, 2011). In Carcamo's (2010) paper, the idea of a debt bondage with the exuberant placement fess and processing fees are also being taken as an advantage for most employers not to follow the conditions of the contract. In the Middle East, 5 out of 8 cases reported regularly are on contract substitution, or non- payment of wages for several months (Monterona in Migrante, 2009; see also Carcamo, 2010; Ambito & Banzon, 2011).

Sadly, the Philippine consulate offices in most labour-receiving-countries admit that they find it challenging to monitor every employer and every OFW (Ambito & Banzon, 2011). Worst, many OFW's who seek help from the Philippines Overseas Labor Office (POLO) were only advised to give up their jobs and go home to the Philippines because POLO have got no legal hold against the employers; and that OFW's can ask for "money claims" from the National Labor Relations Commission or NLRC (Ambito & Banzon, 2011).

An example case of poor implementation procedures on the POEA, and a corruption of a labour officer:

In a report written by Ambito and Banzon (Review of Philippine Migration Laws and Regulations: Gains, Gaps, and Prospects, 2011), there were 19 OFW's from two employment agencies, namely Aqua-Gem International Manpower, Incorporated and Sharikat Al-Saedi International Manpower, Incorporated (both holding offices in Ermita, Manila, Philippines) were victims of contract substitution. The OFW's were to be deployed to work for Cifex World Construction Firm at Dhat El Imad, Tripoli, Libya. They signed a contract with their respective agencies during application, yet few hours before their flight, they were asked to sign another contract. "The wages contained in the second contract, verified by the POEA and signed by Labor Attache Nasser Mustafa, was US\$100 lower than the first contract." (Ambito & Banzon, 2011). The OFWs were left with no other choice but to sign the contract since they were already at the airport (Ambito & Banzon, 2011; see also Melencio, 2010).

In another report, the same OFWs mentioned above also complained in Libya that both contracts that they signed were even breached by their employer (Melencio, 2010). They were asked to work more than 8 hours in a day without overtime pay and were required to work for 7 days in a week, without off days; contrary to the provisions written on both contracts that they signed (Melencio, 2010). So, they went to POLO to file a complaint against the violations of the employer, but Labour Attache Mustafa said that they will just have to sign another contract that follows the regulations and provisions of the company; otherwise, they can go home to the Philippines and take a legal action from there (Melencio, 2010).

Why was going home the only next option when these OFWs are bonded to debts of placement fees and processing fees, and not to mention, the lesser employment opportunities in the Philippines? In addition, filing legal charges against an international employer may take a very lengthy process and will cost so much time for the victims.

In Thailand, there are also several Filipinos working as English language teachers, but they are paid lesser than what their contracts originally stipulated. Because of debts and to support their families, the Filipino teachers had no choice but to take the offer (Hall, Mai Thi, and Manajit, 2011). Another concern raised by many Filipino teachers is the unfair labour practice on compensation of Thai employers to Filipino teachers. Native English speakers (must have Caucasian features) are paid twice more than what the Filipino teachers are paid, but they have fewer workloads compared to the Filipino teachers (Novio, 2012). This issue was brought up to the consulate, and Consul Edgar Badajos responded that this kind of issue is difficult for the embassy to handle because it is a private agreement between the employer and the employee (Novio, 2012). Although, Badajos promised that they will try to establish bilateral labour agreements between Thailand and the Philippines to help the many OFW's in Thailand (Novio, 2012).

Constitutionality on Section 10 of R.A. 8042

R.A. 8042 mandates that in cases of illegal termination of employment for an OFW without acceptable reasons as defined by law, or by the employment contract, the OFW is entitled to a full refund of his placement fees and the incurred deductions with an interest of 12% per annum, plus the salary of the OFW for the unexpired portion of his or her contract, or 3 months"

worth of salary for every year of the unexpired portion of the contract, whichever is lesser (R.A. 8042 in Ambito & Banzon, 2011). The same provisions are also stipulated in R.A. 10022.

The clause, “or for three (3) months for every year of the unexpired term, whichever is less” creates the confusion on the constitutionality of this provision. Apparently, this clause violates provisions of the Philippine Constitution about equality on the rights of all workers, regardless they are an OFW or local workers (Ambito & Banzon, 2011):

- Section 18, Article II: The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.
- Section 1, Article III: No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.
- Section 3, Article XIII: The State shall afford full protection to labor, local and overseas, organized, and unorganized, and promote full employment and equality of employment opportunities for all.

(Constitution of the Philippines, 1987)

Therefore, based on the above provisions of the Philippine Constitution, it clearly stipulates that all workers, regardless with their type of employment and regardless they work on-shore or off-shore, they will all receive the same equal treatment. The subject clause in R.A. 8042 puts a classification of OFW's as if they are being singled out for this type of compensation; wherein there is a 3-month cap of their monetary benefits for every year of the unexpired portion of their contracts (Philippine Laws and Jurisprudence Databank, 2009). Other Filipino employees, especially those that are based in the Philippines, do not hold the same provisions with the OFWs about their monetary claims when they are being illegally terminated from their jobs (Ambito & Banzon, 2011). Thus, this situation obviously violates the constitution when it comes to equality amongst workers and has showed lesser protection to the rights of the migrant workers.

An example is the case of Antonio Serrano versus Gallant Maritime Services Inc. and Marlow Navigation Company, Inc. From the records of the Philippine Laws and Jurisprudence Databank (2009), Antonio Serrano is a seafarer and was hired by Gallant Maritime Services, Inc. with a POEA verified contract through a Philippine employment Agency called Marlow Navigation Company, Inc. Serrano signed a one-year contract as a chief officer with a monthly salary of \$1,400 for 48 hours per week work, plus a \$700 overtime pay per month. Yet, on the date of his departure in March 1998, Serrano was constrained to sign a new contract that made him only as Second Officer with a salary of \$1,000 per month with a promise that he will be promoted to chief officer by the end of April 1998, and all that was stipulated in the first contract will be granted. Contract substitution is a common situation amongst seafarers (Ambito & Banzon, 2011; Novio, 2012). Yet in the reports of the “Philippine Laws and Jurisprudence Databank” (2009), unfortunately, Gallant Maritime Services Inc. did not deliver their promise to Serrano; and because of this situation, Serrano refused to continue working for the maritime company. He was then repatriated back to the Philippine in May 1998; therefore, Serrano has got 10 months of an unexpired portion of his contract which Serrano demanded to be paid. Serrano also demanded that the computation of his monetary claim should be based on the Chief Officer's salary package of \$1,400 per month, plus the \$700 overtime pay and the \$490 vacation leave pay.

“Philippine Laws and Jurisprudence Databank” further discussed that the Labour Arbiter came up with a decision that the termination of employment was illegal and unjust, and that both Gallant Maritime Services Inc. and Marlow Navigation Company, Inc. should jointly be responsible to compensate Serrano for the all the legal claims and benefits that he is entitled to. Yet, the Labour Arbiter only computed for the three months of unpaid salary of Serrano, as stipulated in the clause of R.A. 8042. What happened next was worse; the National Labor Relations Commission (NLRC) corrected the computation made by the Labour Arbiter, bringing Serrano’s monetary claim down to only \$1,400 multiplied by the 3 months as stated in R.A. 8042. NLRC did not include the overtime pay and the vacation leave pay. According to NLRC, “R.A. No. 8042 “does not provide for the award of overtime pay, which should be proven to have been actually performed, and for vacation leave pay” (NLRC, 2001 in Philippine Laws and Jurisprudence Databank, 2009). This made Serrano to appeal to the Court of Appeals and question the constitutionality of the subject clause in R.A. 8042. The Court of Appeals acted on this petition of Serrano (Philippine Laws and Jurisprudence Databank, 2009). The Court of Appeals reported:

Upon cursory reading, the subject clause appears facially neutral, for it applies to all OFWs. However, a closer examination reveals that the subject clause has a discriminatory intent against, and an invidious impact on, OFWs at two levels:

First, OFWs with employment contracts of less than one year vis-à-vis OFWs with employment contracts of one year or more;

Second, among OFWs with employment contracts of more than one year; and Third, OFWs vis-à-vis local workers with fixed-period employment;

(Philippine Laws and Jurisprudence Databank, 2009)

Yet, like other amendments of any law in the Philippines, the Congress must pass a resolution to change the subject clause of R.A. 8042. However, instead of passing a resolution to eliminate the subject clause in R.A. 8042, Congress re-enacted the subject clause to R.A. 10022 (Ambito & Banzon, 2011); which is highly questionable. At present, this subject clause is now under review by congress (Setyawati, 2013).

Illegal Recruitment that led to Human Trafficking and Enslaved Filipino Migrant Workers

Recently, ILO reported that Asia Pacific has an estimate of 11.7 million victims of forced labour, most of which are from the countries in Southeast Asia (ILO in Kranrattanasuit, 2013). With the high numbers of forced labour and human trafficking victims reported by ILO, and Philippines being part of Southeast Asia, who knows how many of those victims are Filipinos. Therefore, if the Philippines want to take the anti-human trafficking law seriously, then it must establish better implementation procedures.

Amidst the many laws established by the Philippine government to protect OFW’s, there are still a number of reported cases on illegal recruitments (Ambito & Banzon, 2011). The amended R.A. 1022 defines illegal recruitment as:

...any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or

advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non- holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. (R.A. 1022, 1995)

The definition of illegal recruitment under this law looks very promising, but the questions to its effect and efficiency are on the implementation procedures of this law. If this law was imposed and implemented effectively, then why are there still reported cases of many OFW's recruited illegally, and why do these illegal recruiters manage to avoid imprisonment?

In 2011, The Task Force Against Illegal Recruitment (TFAIR) has not served an estimate of 20,000 warrants of arrest to more than 200 illegal recruiters in the country (Ambito & Banzon, 2011). To worsen the picture, Ambito and Banzon added, Republic Act No. 9208 (R.A. 9208) was established as the Anti-Trafficking of Persons Act in 2003, but from its implementation day to 2011, there were only 13 convictions under R.A. 9208, amidst the great number of reported cases of human trafficking between those years. In Belarmino, Dabalos, and Saguing (2013) report, it says that between the years of 2011 to 2012, there were 680 cases of human trafficking that were filed in courts, whether they are ongoing or pending; yet, only 28 convictions were made in the same period. It is either the other 652 cases were acquitted, or the Philippine justice system is just too slow in processing legal cases of human trafficking.

The 2013 Global Slavery Index has estimated about 140,000 to 160,000 Filipinos being enslaved in labour-receiving countries (Global Slavery Index, 2013). It is also believed that enslaved OFW's are mostly trafficked to their destination countries, of which mostly are women (Da Sal, 2013). According to Shalima Parmanand (Director for Visayan Forum Policy), "Even that figure does not capture the entirety of the human trafficking in the Philippines. What we must understand about these figures is that this is just a conservative estimate. In truth, there can be more incidents of trafficking in persons as many cases got unrecorded because human trafficking is illegal, and many victims do not report to authorities out of shame, or fear of being mistaken as criminals" (Parmanand in Da Sal, 2013).

CONCLUSIONS

The Philippines is known worldwide as the pioneer supplier of labour resources throughout the globe, and the country also has the most advanced labour policies amongst Asian countries that can protect its local workers and migrant workers, yet the implementation procedures of these policies are ineffective and inefficient, and still needs much improvement. To answer the question why this is happening is to understand that first, the Philippine government and its agencies do not find the urgency to address issues and concerns. This research paper has cited numerous examples regarding issues between the Filipino employees and the international employers, and it took years before those issues are resolved, or even attended to by the governmental agency that is supposed to look after these problems. For example, the case of Antonio Serrano versus Gallant Maritime Services Inc. and Marlow Navigation Company, Inc. that took 6 years before the Court of Appeals could pass a resolution that was in favour of the OFW; and it took 6 years as well for the Supreme Court to rule out the subject clause in the

provisions of R.A. 8042. At the time of this writing, the decision to amend this subject clause in R.A. 10022 is still in congress. It is clear, that is it not only the sense of urgency that is lacking in here, but also the proper coordination between governmental agencies.

Second, the Philippine Senate and the Congress have drafted laws that are questionable as to their constitutionality. Although these laws are meant to protect the Filipino workers, but the consequences of these laws can lead to situations wherein the laws, themselves, may have breach provisions in the constitution. These issues have impacted migrant workers and pushed them to more complicated and difficult ordeals. For example, the establishment of "exit clearances" that gave POEA the monopoly of authority to control deployment of migrant workers, and this has led to OFW's in paying the excessive costs of processing fees. In addition, the violation of the constitutional rights of Filipinos to travel just because of unfounded suspicions and without substantial evidence.

The Philippine government has been very much concerned with diplomacy and has become very lenient to countries of destination to maintain their economic ties, rather than being focused to the welfare of Filipino workers overseas. Thus, the policies and regulations were drafted and implemented to help attain the government's goals, values, and objectives; making our policy makers the "elite decision-makers" that control the situations of labour migration, and the OFW's just subjects of their political agenda. The example of this situation is the unresolved case of Maricris Sioson, where the Philippine government could not demand from Japanese authorities to re-open the case and do further investigation as to what really caused her death.

The Philippine consulates and embassy have no officials, or they lack a staff that would deal specifically with OFW's and their concerns, providing them assistance (legal, financial, emotional, and mental support, health and welfare services, education and training, etc.). Worse, as given previously in this research paper, some officials are corrupt and inefficient in dealing with the issues and concerns of the OFW's.

The Philippines still continuously sends her labour resources to destination countries that has reservations or has not ratified numerous provisions from different international conventions for the protection of migrant workers and their families, especially International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families.

RECOMMENDATIONS

After a careful consideration on the issues discussed, this paper recommends that Philippines government should: develop a more rights-focused approach in formulating policies, and plan an implementation scheme that is effective and efficient by assessing the consequences of these policies and regulations, and considering further problems and drawing their solutions; must coordinate well with each sector and agency to address issues promptly; to avoid monopoly of authority, and eliminating the "elite decision-makers" who will only look at the idea of attaining their „goals, values, and objectives“, there should be civil society participation in the drafting and implementing of new policies; review all existing policies, and amend if necessary, to avoid breaches and violations in the Philippine Constitution and in the multilateral frameworks of which the country is a party. Deploy knowledgeable and competent officers and staff in the

Philippine Overseas Labor Offices to assist promptly and properly in the needs of OFW"s in the destination countries. establish bilateral agreements with countries of destination, especially those countries that have reservations, or have not ratified numerous provisions from different international conventions for the protection of migrant workers and their families, with a strong emphasis on the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families. The bilateral agreements should be rights-based, gender sensitive, and should be binding to ensure that the rights of migrant workers are protected.

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