

## TABLE OF CONTENTS

Preface / 3
List of Acronyms / 5
1. Executive Summary / 6
2. Introduction / 13
3. Overseas Filipino Workers / 14
4. Free Trade Agreements / 18
4.1 General Agreement on Trade in Services Mode 4 / 18
4.2 Japan-Philippines Economic Partnership Agreement / 19
4.3 Philippines-European Union Partnership and Cooperation Agreement / 20
5. Bilateral Labor Agreements / 22
6. Philippine Bilateral Labor Agreements / 25
6.1 Process of Negotiating a Bilateral Labor Agreement / 26
6.2 Challenges in Developing, Negotiating, Implementing, and Monitoring a Bilateral Labor Agreement / 28
6.3 Recommendations / 30
7. Social Security Agreements / 33
8. Philippine Social Security Agreements / 37
8.1 Process of Negotiating a Social Security Agreement / 37
8.2 Challenges in Developing, Negotiating, Implementing, and Monitoring a Social Security Agreement / 39
8.3 Recommendations / 44
9. Conclusion / 48

## Appendices

1. Philippine Bilateral Labor Agreements / 49
2. Philippine Social Security Agreements / 55
3. Philippine Conventions/Agreements on Social Security: Date Signed and Ratified / 59
4. Claims Receive / 60
5. Research Project Implementation / 61

Endnotes / 62

References / 65

Interviews / 66

Public Events and Working Group Meetings / 66

## PREFACE

In the last four decades, migrant workers have increasingly served as the backbone of our national economy. With more than 8 million Filipinos spread across 214 countries around the world, it comes as no surprise that their hard-earned remittances constitute the lifeblood of the Philippine economy. The economic contribution of Overseas Filipino Workers (OFW) can't be overstated. During the recent global financial crisis, they practically resuscitated the battered Philippine economy by sending a whopping \$17 billion back home. However, for us, the central issue should not be the economics of migration, but instead the more urgent issue of protecting the inherent, basic, and inalienable legal rights of our citizens, who have been extremely vulnerable to abuse, exploitation, and often neglect, if not physical, emotional abuse, and death. The exigency of extending protection to our migrant workers gains more prominence in light of four main trends: first, the feminization of our migrant labor; second, the growing number of undocumented migrant workers; third, the huge number of low-skilled migrant workers, who mostly operate within dangerous working environments; and, lastly, the increasing concentration of migrant workers in often-precarious destinations such as the Middle East. Understanding the intricacies of labor migration is a prerequisite for effectively fulfilling the mounting challenge of protecting our citizens – an issue, which this report tackles head-on.

This report represents an in-depth analysis of the major challenges faced by the Philippine state in crafting, negotiating, and implementing necessary bilateral, and international agreements with states of employment – primarily designed to protect OFWs. It provides a comprehensive evaluation of the issues pertinent to drafting, and negotiating bilateral labor agreements as well as social security agreements with states of employment. Aided by a nuanced understanding of the dynamics of labor migration, the Center for Migrant Advocacy (CMA) forwards a series of recommendations on how to overcome challenges, which confront the development, negotiation, and implementation of essential agreements. The recommendations are embedded in a systematic understanding of the principles of international law, and a genuine appreciation of a multi-sectoral, transparent, effective, and democratic approach to improving the welfare of Filipino migrant workers. Daily, almost four thousand Filipinos leave the country in search for better employment opportunities overseas. The Philippine government is seemingly under-equipped, under-staffed, and too overstretched to single-handedly deal with a plenitude of complaints, demands, and issues pertaining to OFWs. In the broader context of regional and multilateral economic integration the issue of labor mobility becomes even more important.

The report provides a more nuanced understanding of migration-related issues under the rubric of several economic integration agreements such as the General Agreement on Trade in Services (GATS), Japan-Philippines Economic Partnership Agreement (JPEPA), and the Philippines-European Union Partnership and Cooperation Agreement (PCA). Thus, given the growing complexity of problems concerning labor migration, it is imperative for the Philippine state to encourage, and solicit sustained cooperation from states of employment. This report draws on a rich volume of data, and analysis that sheds light on the gravity, and nature of the problems, which growing labor migration begets. CMA has provided a platform for better understanding the magnitude of the problem, and the amount of efforts and investments, which the protection of OFWs demands. This report is undoubtedly a must-read for concerned sectors, scholars specializing on migration-related issues, and most especially policy-makers in different branches of the government and agencies within the Philippine bureaucracy.

Representative Walden F. Bello  
Chairperson  
Committee on Overseas Workers Affairs  
House of Representatives  
15<sup>th</sup> Philippine Congress

## LIST OF ACRONYMS

BLAs	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
CNMI	Commonwealth of Northern Marianas Islands
COWA	Committee on Overseas Workers' Affairs
CRC	Convention on the Rights of the Child
DFA	Department of Foreign Affairs
EPA	Economic Partnership Agreements
EPS	Employment Permit System
EU	European Union
FSI	Foreign Service Institute
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GFMD	Global Forum on Migration and Development
GSIS	Government Service Insurance System
ICMC	International Catholic Migration Commission
ILAB	International Labor Affairs Bureau
ILO	International Labor Organization
ILS	Institute of Labor Studies
JPEPA	Japan-Philippines Economic Partnership Agreement
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NCRFW	National Commission on the Role of Filipino Women
OFW	Overseas Filipino Workers
OLA	Office of Legal Affairs
OUMWA	Office of the Undersecretary for Migrant Workers Affairs
OWWA	Overseas Workers Welfare Administration
PCA	Partnership and Cooperation Agreement
PDOS	Pre-Departure Orientation Seminar
PEOS	Pre-Employment Orientation Seminar
POEA	Philippines Overseas Employment Administration
POLO	Philippine Overseas Labor Office
SSAs	Social Security Agreements
SSS	Social Security System
TESDA	Technical Education and Skills Development Authority
TMNP	Temporary Movement of Natural Persons
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
WTO	World Trade Organization

## **1. EXECUTIVE SUMMARY**

In 2010, the United Nations estimated that there were 214 million international migrants - approximately 3.1 percent of the world's population. Migrant workers are a vulnerable sector in our increasingly integrated global economy. Numerous international agreements, conventions, and other legal instruments protect the rights of migrants, including bilateral agreements and social security agreements.

A bilateral agreement is a legal instrument that reflects the interests of states of origin and states of employment. It is a critical vehicle for protecting the rights of migrant workers to ensure decent working conditions, equitable compensation, non-discrimination, legal redress and access to justice. Social security agreements are focused on the management and distribution of social security benefits to migrant workers and deal mainly with long-term benefits such as disability, old-age and survivor pensions.

This report focuses on bilateral labor agreements (BLAs) and social security agreements (SSAs) between the government of the Philippines and states of employment. It seeks to deepen the understanding on BLAs and SSAs as potential platforms for migrant worker advocacy and offers recommendations to improve these policies and their implementation. The report also includes a brief introduction to an emerging trend in which labor migration issues are being included in free trade agreements, including the General Agreement on Trade in Services Mode 4 on Temporary Movement of Natural Persons, the Japan-Philippines Economic Partnership Agreement, and the Philippines-European Union Partnership and Cooperation Agreement. Migrant rights advocates are concerned about this emerging trend in trade bilaterals because of the lack of a human rights-based framework.

### **Free Trade Agreements**

Free trade agreements (FTAs) and economic partnership agreements (EPAs) are primarily trade and investments agreements. One example is the General Agreement on Trade in Services (GATS), which covers four different "modes of supply", which include: mode 1, cross-border supply (service from the territory of one member into the territory of another); mode 2, consumption abroad (service in the territory of one member to the service consumer of any other member); and mode 3, commercial presence (supply of a service by a service supplier of one member, through commercial presence in the territory of any other member); and mode 4, the movement of natural persons (supply of a service by a person from one country by entering the territory of another). GATS mode 4 has its limitations and should not be seen as the instrument to reduce or eliminate poverty. Levels of liberalization obtained under GATS Mode 4 are quite low and account for only 0-4% of all GATS commitments to date. The actual scope of Mode 4 is also extremely limited. It applies only to people who cross a border temporarily for the

purpose of supplying services. In addition, the temporary movement of natural persons forbids the state of employment to integrate the worker in the labor market of the host country and to provide training and better work opportunities (as defined in ILO Conventions and UN Migrant Workers Convention).

A second example is the Japan-Philippines Economic Partnership Agreement (JPEPA) which seeks to expand trade and investment relations between the two countries. JPEPA would also facilitate the recruitment of Filipino caregivers who were formerly barred from entry under Japan's immigration policy. However, JPEPA would require Filipino caregivers to have a college degree compared to Japanese nationals who are only required to complete an elementary education and three years of work experience or a high school education. Filipino caregivers could only take the licensing exams only once during their four-year stay in Japan. Based on the low passing rate of Japanese caregivers themselves, it is projected that more than half of the Filipino caregiver candidates would not pass the licensing exams.

A third example is the Philippines-European Union (EU) Partnership and Cooperation Agreement (PCA) that will lead to the negotiations of a free trade agreement. The PCA created between the EU and the Philippines is designed to update prior bilateral agreements with the EU, which were forged in the 1980s, to address more recent issues. The Philippines-EU PCA contains provisions that protect the rights of migrant workers such as the development and implementation of national legislation and practices which include provisions of relevant international agreements and standards. However, migrants' rights advocates raised concerns about the development of the Philippines-EU PCA. For example, a future free trade agreement could include provisions based on the movement of natural persons or GATS Mode 4, which encourages the entry of higher skilled workers and excludes other migrant workers. The PCA also includes a provision based on the EU Return Directive Policy which allows member states to detain undocumented migrants for up to 18 months and impose a five-year ban on their return to the EU. In addition, civil society organizations expressed concern about the lack of transparency and participation in the process of negotiating the PCA.

### **Bilateral Labor Agreements**

International documents which focus on the protection and promotion of the rights of migrant workers may provide a framework for bilateral labor agreements. These include the United Nations' Convention on the Protection of All Migrant Workers and Members of Their Families, Convention on the Elimination of All Forms Discrimination Against Women, Convention on the Elimination of Racial Discrimination, International Convention on Civil and Political Rights, and Convention on the Rights of the Child. The International Labor Organization's Model Agreement on Temporary and Permanent Migration for Employment,

including Migration of Refugees and Displaced Persons (R086, 1949), is also a useful guide in developing bilateral labor agreements

The Philippines does not have bilateral agreements with all countries and territories where Filipinos overseas work and reside. As of 2010, the Philippine government had signed 49 bilateral labor agreements with 25 countries and territories. There are also 44 agreements pertaining to the recognition of seafarers' training certificates. Not all of these BLAs however, are in force.

There are many challenges in developing, negotiating, and implementing bilateral labor agreements. These include the lack of bilateral labor agreements with many states of employment where Filipino migrant workers are present; the lack of binding agreements; the lack of participation of stakeholders in the process; the non-recognition of the feminization of labor migration; the lack of monitoring and implementation mechanisms and procedures; the lack of staff capacity of government agencies; and the inaccessibility of relevant documents.

Based on the experience of the Philippines in forging a bilateral labor agreement with states of employment, advocates recommend the following to strengthen this legal instrument in protecting the rights of migrant workers and their families.

- **Forge binding bilateral labor agreements with states of employment.** Incorporate provisions in the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and International Labor Organization conventions.
- **Include provisions to protect women migrant workers.** Incorporate provisions from the Convention on the Elimination of All Forms of Discrimination Against Women, particularly General Recommendation 26 on women migrants, Convention on the Rights of the Child, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
- **Ensure that implementing guidelines and sample employment contracts are developed.** The contracts and guidelines must be consistent with international treaties and conventions and complement national laws.
- **Include return and reintegration programs in the bilateral labor agreements.** The reintegration programs could include help in finding local jobs for returning migrants, assistance in addressing social costs, microfinancing projects, technology transfer, and coordination with civil society organizations.
- **Include all stakeholders in the drafting, implementation and monitoring of bilateral labor agreements.** It is essential for negotiators

to share information and consult migrant workers, rights advocates, and civil society organizations, which have a human rights framework. Creation of technical working groups composed of government and civil society representatives can expedite the drafting of a bilateral labor agreement.

- **Inform migrant workers and the public about the bilateral labor agreements.** Government agencies could issue regular reports on agreements which have been finalized and the implementing guidelines.
- **Create a document describing the bilateral negotiation process.** The document could be used by implementing agencies to organize and coordinate their work. The Department of Foreign Affairs could produce a document to guide implementing agencies.
- **Increase government personnel and develop the staff capacity to thoroughly engage in the treaty negotiations and review process.** Provide resources to the Office of Legal Affairs, Office of the Undersecretary for Migrant Workers Affairs, Department of Foreign Affairs, and Department of Labor and Employment.
- **Create a central repository for all bilateral labor agreements.** Some potential venues are the libraries in the Department of Foreign Affairs, Department of Labor and Employment, and the University of the Philippines College of Law, which has an extensive collection of international law materials. Another possibility is the website of the Philippine Overseas and Employment Administration, which has posted several bilateral labor agreements.

### **Social Security Agreements**

Accessing social security is a basic human right and should be available to all migrant workers. Countries which would like to develop social security agreements can use international instruments, including the ILO Model Provisions for the Maintenance of Social Security Rights Recommendation 1983 (No. 167), other ILO conventions, and the UN International Convention on the Rights of all Migrant Workers and Members of their Families.

To date, the Philippines has signed social security agreements (SSAs) with eight countries and the province of Quebec, Canada. Two SSAs are pending ratification and two have been drafted. Negotiating SSAs with more states of employment is a high priority for the Philippine government in anticipation of the impending retirement of overseas Filipino workers who started working abroad more than 40 years ago and the steady flow of retirees that is expected to follow as a result of the exponential growth in the number of migrant workers over the years.

There are many challenges in the development, negotiations, implementation, and monitoring of social security agreements. These are: the incompatibility of the national legal frameworks and social security infrastructures of the states of origin and states of employment; lack of recognition or prioritization of migrant workers' right to social security; limited social security benefits; exclusion of seafarers, self-employed and undocumented migrants; lack of gender perspective in accessing social security benefits; low level of awareness about social security among migrant workers; uneven utilization of benefits; lack of specific data and documentation on utilization of benefits; lack of clear guidelines on stakeholder participation; limited staff capacity of government agencies to implement its functions; and the lengthy period for the agreement to be developed, negotiated, and implemented.

Based on the experience of the Philippines in forging social security agreements, the following are recommended to address the challenges in developing, negotiating, implementing, and monitoring SSAs.

- **Pursue adoption of SSAs which include the ILO provisions.** These provisions include: (1) the equality of treatment, which allows migrants the same entitlement to benefits as nationals, (2) the provision of benefits abroad, which allows benefits to be paid to the worker's country of residence, (3) the determination of the applicable legislation, which consists of rules to determine which country's system will apply to the migrant worker, (4) the maintenance of rights in course of acquisition that allows periods of membership in both countries to be combined to determine eligibility for benefits, and (5) administrative assistance, a provision which guarantees the co-ordination of liaison offices to extend assistance to covered workers and implement the provisions of the agreement.
- **Pursue adoption of regional social security standards for migrants.** Create regionally specific model provisions for bilateral social security agreements that countries within the ASEAN region are able to use as a framework in the construction of their own social security agreements, both regionally and globally.
- **Incorporate social security provisions in bilateral labor agreements.** In the event that it is impossible to negotiate a social security agreement, social security provisions should be incorporated in bilateral labor agreements. This may be a preferable option for a state of employment that is hesitant to commit to all of the provisions in a social security agreement.
- **Sharpen gender analysis in SSA preparation and in monitoring its impact.** Promote gender equality in social security agreements by responding to specific needs of women which are identified through

gender analysis. In monitoring and evaluating SSA implementation, the establishment of mechanisms for the collection and analysis of sex-disaggregated data are imperative in planning and fine-tuning of gender-fair social security programs.

- **Promote social security for undocumented migrants.** Social security of migrants, regardless of their immigration status, should be promoted.
- **Ensure stakeholder participation in the SSA process.** Migrant workers should be able to participate in the development, negotiations, implementation and monitoring of agreements. It would be helpful for the DFA to draft guidelines for participation of stakeholder groups in the SSA process based on principles of transparency and accountability.
- **Increase informational activities on social security.** Low level of awareness and appreciation of social security benefits can be addressed by an information-education drive that aims to increase voluntary membership of migrant workers in the SSS. At the same time, migrant workers must be provided with clear instructions on how to access social security benefit claims when and if they are available.
- **Educate the public about the contributions of migrants to the states of employment.** An information campaign on the value of migrant workers could help establish a positive public opinion of migrants and a receptive government that facilitates the conclusion of SSAs.
- **Mandate an inter-agency mechanism to monitor SSA preparation and implementation.** The development of a committee composed of officials from a wide variety of agencies would be essential in developing long-term strategies to address the root causes of issues related to migrant workers.

## Conclusion

Bilateral agreements, especially on labor and social security, have the potential to enhance protection, equal treatment and non-discrimination of overseas Filipino workers in the states of employment. International conventions and treaties provide a framework in developing bilateral labor agreements and social security agreements that protect the rights of migrant workers. In this report, the recommendations are principally addressed to the Philippine government.

Migrant workers and rights advocates can:

- Inform the public and stakeholders about the importance of bilateral agreements, particularly on labor and social security.

- Advocate for a human rights based framework which is in accordance with United Nations conventions. A human rights based framework ensures the protection of the rights of migrant workers, identifies the obligations and responsibilities of governments of states of origin and employment, and establishes clear implementation, monitoring and review mechanisms.
- Advocate for the participation of stakeholders, especially migrant workers and rights advocates, in developing, negotiating, and implementing bilateral labor agreements and social security agreements

With the participation of all stakeholders, the bilateral labor agreements and social security agreements can truly be mechanisms in protecting the rights of migrant workers.

## 2. INTRODUCTION

Migration is a multi-faceted global phenomenon. In 2010, the United Nations estimated that there were 214 million international migrants who compose 3.1 percent of the world's population.<sup>1</sup> The reasons for living and working away from one's home country are manifold. Various social, economic and political factors affect the decision of individuals to work in another country. The situations of migrants are also diverse and require focused interventions that complement other policies and programs. Focused interventions that attend to the uniqueness of migrant conditions contribute to the fulfillment of international human rights treaties that compel states to ensure fair and humane treatment of migrant workers. Cognizant of these various dimensions, United Nations Secretary General Ban Ki-Moon, in his address at the 2009 Global Forum on Migration and Development, reminded the world that "Like so many of today's global challenges, migrations cannot be addressed unilaterally."

Migrant workers are a vulnerable sector of our increasingly integrated global economy. Numerous international agreements, conventions, and other legal instruments protect the rights of migrants, including bilateral agreements and social security agreements. A bilateral agreement is a legal instrument that synthesizes the interests of the state of origin and the state of employment. It is a critical vehicle for protecting the rights of migrant workers to ensure decent working conditions, equitable compensation, non-discrimination, legal redress and access to justice. Social security agreements are focused on the management and distribution of social security benefits to migrant workers and deal mainly with long term benefits such as disability, old-age and survivor pensions.

This report focuses on bilateral labor agreements (BLAs) and social security agreements (SSAs) between the government of the Philippines and the states of employment of overseas Filipino workers. It seeks to deepen the understanding on BLAs and SSAs as potential platforms for migrant worker advocacy and offer recommendations to improve these policies and their implementation.

While the desired goal of BLAs and SSAs is to extend protection to OFWs, the same cannot be said of the bilaterals on free trade agreements (FTAs) and economic partnership agreements (EPAs), which are primarily trade and investments agreements. Trade bilaterals are now including provisions on migration under the framework of the Temporary Movement of Natural Persons of the General Agreements on Trade in Services (GATS) Mode 4 of the World Trade Organization (WTO). Migrants' rights advocates are concerned about this emerging trend in trade bilaterals because of the lack of a human rights-based framework. This report provides a brief introduction on FTAs and EPAs, specifically GATS Mode 4, the Japan-Philippines Economic Partnership Agreement, and the Philippines-European Union Partnership and Cooperation Agreement.

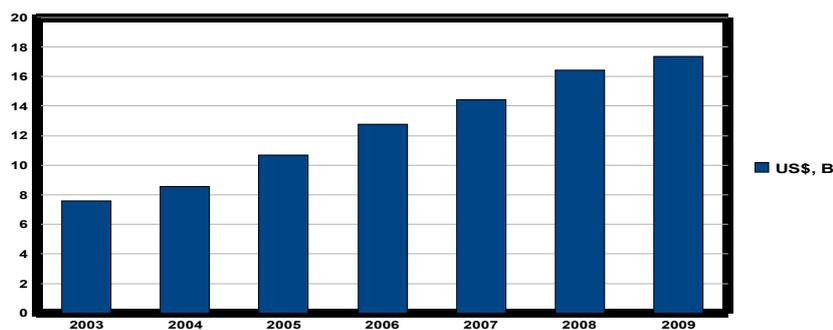
### 3. OVERSEAS FILIPINO WORKERS

The Philippines ranks high among countries whose nationals work abroad.<sup>2</sup> In 2009, overseas Filipino workers (OFWs) can be found in 214 countries and territories.<sup>3</sup> More than 3,800 OFWs are deployed daily overseas.<sup>4</sup> Of the 1,422,586 Filipino workers deployed in 2009, 77 percent or approximately 1.1 million individuals had land-based jobs and 23 percent or 330,424 were seafarers. Of the estimated total population of 8.5 million Filipinos overseas, 92 percent were regular migrants, and of these 47 percent were permanent migrants and 45 percent were temporary migrants<sup>5</sup>. Approximately 3.58 million reside in the Americas, 2.42 million in the Middle East, 1.07 million in Asia, 722,427 in Europe, and 64,736 in Africa. Together, these Filipino migrants sent over \$17.35 billion to the Philippines in remittances in 2009.<sup>6</sup> More than half a million (658,370) Filipinos overseas are considered by states of employment as undocumented. Most of them are in Malaysia, Europe and the United States. Undocumented workers are the most vulnerable migrants because their rights are not respected and recognized due to their immigration status. Many undocumented workers go underground to avoid arrest and deportation or agree to work under exploitative terms and end up isolated and vulnerable to other forms of abuse.

Labor migration has become a way of life for Filipinos for more than three decades now. It provided jobs which are scarce or nonexistent in the Philippines. The billions of dollars in remittances, which represent some 9-12% of GNP, helped uplift the lives of millions of Filipino families. In addition, the remittances have kept the Philippine economy afloat for many years. Similarly, states of employment have benefited from the labor of migrant workers.



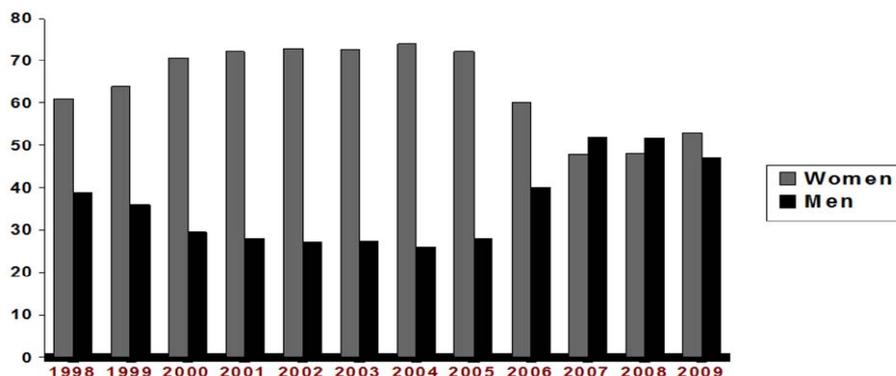
#### Annual Remittances 2003-2009, in Billions, US\$



Source: [http://www.poea.gov.ph/stats/2009\\_OFW%20Statistics.pdf](http://www.poea.gov.ph/stats/2009_OFW%20Statistics.pdf)

Filipino labor migration has been dominated by women migrants particularly those who are deployed in precarious employment, such as domestic workers who comprised 40% or 69,669 of newly-hired women workers in 2009. Domestic work remains the top single job category for women migrant workers because of the high demand as more women in many states of employment join the labor force. Filipino women migrants are also in the nursing profession (11,866 or 6.77%) and work as caregivers, hotel workers and building caretakers (8,721 or 5%)<sup>7</sup>. The feminization of labor migration is a concern because the majority of women migrants are concentrated in domestic work which is less protected as they are excluded in labor and social laws of many countries.

## Proportion of Men & Women Migrants (1998-2009,%)



Source: [http://www.poea.gov.ph/stats/2009\\_OFW%20Statistics.pdf](http://www.poea.gov.ph/stats/2009_OFW%20Statistics.pdf)

OFWs work and stay overseas on fixed temporary work contracts. More often than not, the validity of their visa to live in another country is tied to their work contract and fully controlled by their employer. End-of-service benefits are offered to them in lieu of social security protection. Family reunification is often restricted to migrant workers in high-end job categories.

The Philippine government has actively promoted labor migration as an economic policy. Under former President Ferdinand Marcos in the 70s, labor migration was seen as a solution to unemployment. Under the administration of former President Gloria Macapagal Arroyo, the Philippines sent at least one million OFWs every year since 2006.<sup>8</sup> She also issued Administrative Order No. 247 which instructed

the Philippine Overseas Employment Administration to “execute a paradigm shift by refocusing its functions from regulation to full blast market development efforts, (and) the exploration of frontier, fertile job markets for Filipino expatriate workers”<sup>9</sup> in the heat of the global economic meltdown when hundreds of OFWs were being laid off. More recently, President Benigno C. Aquino III, in his inaugural speech in June 2010, vowed “to create jobs at home so that there will be no need to look for employment abroad”<sup>10</sup>. To date, however, almost 4,000 Filipinos leave the Philippines daily to work abroad.

The Philippine government has put in place laws and programs that seek to promote the rights of OFWs. In 1995, Congress enacted the Magna Carta for Migrant Workers and Overseas Filipinos (Republic Act 8042). At that time there was public outrage at the government’s ineptness in handling the case of Flor Contemplacion, a domestic worker who was charged for the death of her Singaporean ward and executed. The Magna Carta seeks “to institute the policies of overseas employment and establish a higher standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress...”<sup>11</sup> It mandated the establishment of the Office for the Undersecretary for Migrant Workers Affairs (OUMWA) at the Department of Foreign Affairs. Where there is a huge concentration of OFWs, the law mandates the setting up of a Filipino Workers Resource Center. It also provided for additional membership of OFW women, land-and-sea-based representatives in the boards of the Overseas Workers Welfare Administration (OWWA) and the Philippine Overseas Employment Administration (POEA).

The law was amended for the first time in 2007 to further strengthen the regulatory power of the POEA and repealed Sections 29 and 30 on deregulation. RA10022 which lapsed into law on March 8, 2010 introduced further improvements to RA8042 in order to tighten the protection provisions of the law. It expanded the definition of illegal recruitment and other prohibited acts. It institutionalized the National Reintegration Center for OFWs and provided for an open and transparent selection and screening of the OFW representatives in the boards of OWWA and POEA and similar formations. The new amendatory law also reminded the POEA and DFA to strictly comply with the criteria for deployment of OFWs in the states of employment.

The Philippines has 67 embassies, 23 consulates, four permanent missions, one extension office, and 38 Philippine Labor Overseas Offices that assist Filipinos living and working abroad. Although Philippine laws and government agencies provide support to Filipinos abroad, numerous cases of unfair treatment of migrant workers have been documented. These include nonpayment of wages and salaries, physical, mental, and sexual abuse, isolation and confinement in homes, lack of redress and legal representation. In many cases, the labor and social laws of the states of employment provide limited assistance and protection.

National laws and bilateral and multilateral agreements are needed to address the concerns of Filipino migrant workers. A rights-based framework based on International human and labor rights conventions and standards is essential to ensure that the laws and agreements protect the rights of Filipino migrant workers. The succeeding sections will focus specifically on free trade agreements, bilateral labor agreements, and social security agreements.

## **4. FREE TRADE AGREEMENTS**

The objective of Free Trade Agreements (FTAs) is to enhance economic relationships between contracting countries for mutual development, to remove trade barriers such as tariff, quota, health or safety regulations, and to facilitate imports and exports by making procedures easier. Due to the collapse of the multilateral negotiations in the World Trade Organization (WTO), more countries are negotiating bilateral trade agreements. Industrialized countries have adopted a strategy of pursuing bilateral negotiations in conjunction with multilateral talks in the WTO.

### **4.1 General Agreement on Trade in Services**

The General Agreement on Trade in Services (GATS), which came into force in 1995, is a binding multilateral framework agreement with the following objectives: to create a credible and reliable system of international trade rules; ensure fair and equitable treatment of all participants; stimulate economic activity through guaranteed policy bindings; and promote trade and development through progressive liberalization...All WTO Members, some 140 economies at present, are at the same time Members of the GATS..<sup>12</sup>

The GATS covers four different “modes of supply”, which include:

- mode 1, cross-border supply (service from the territory of one member into the territory of another);
- mode 2, consumption abroad (service in the territory of one member to the service consumer of any other member);
- mode 3, commercial presence (supply of a service by a service supplier of one member, through commercial presence in the territory of any other member); and
- mode 4, the movement of natural persons (supply of a service by a person from one country by entering the territory of another).<sup>13</sup>

An important aspect of the GATS is the process by which countries commit themselves to liberalizing services. Countries are free to decide which service sectors they wish to include in the negotiations. A country can request another to open up certain service industries, while the latter can limit the sectors that would be covered in the negotiations. WTO members, which are also states of employment, have used this flexibility of deciding which service sectors to negotiate, to protect their domestic workforce from competition by foreign workers.

GATS liberalizes the migration of certain categories of migrant workers. It covers high-skilled workers who are provided employment contracts. It includes expatriate executives who are in the same multinational corporation.<sup>14</sup> In addition to arranging their residence and work permits, corporations usually provide relocation benefits, language, and culture training. Although GATS does not define the skill level of migrants to which Mode 4 applies, governments have focused on hiring high-skilled workers.

GATS Mode 4 has been proclaimed as the development model for developing countries because it would facilitate the legal entry of workers from states of origin to states of employment. Supporters said that it would address the lack of employment in the states of origin, develop economic growth, and increase participation of developing countries in the trading system of the World Trade Organization. If developed countries were to remove barriers to workers from the developing countries by as much as 3% of their labor force, gains of over US \$150 billion could be generated annually.<sup>15</sup>

However, GATS Mode 4 has its limitations and should not be seen as the instrument to reduce or eliminate poverty. To date, it remains very restrictive. Levels of liberalization obtained under GATS Mode 4 are quite low and account for only 0-4% of all GATS commitments to date. World services trade under Mode 4 stands at less than 5%, compared to 55-60% under mode 3, 25-30% under mode 1 and 10-15% under mode 2.<sup>16</sup> In addition, the actual scope of Mode 4 is extremely limited. It applies only to people who cross a border temporarily for the purpose of supplying services. The temporary movement of natural persons forbids the state of employment to integrate the worker in the labor market of the host country and to provide training and better work opportunities as defined in ILO Conventions and UN Migrant Workers Convention.<sup>17</sup> “Temporary workers are rarely accorded the same treatment given to permanent workers as a matter of policy aimed at discouraging settlement.”<sup>18</sup> Mode 4 does not apply to access to the local labor market, citizenship, residence, or employment on a permanent basis.

#### **4.2 Japan-Philippines Economic Partnership Agreement**

The Japan-Philippines Economic Partnership Agreement (JPEPA) seeks to expand trade and investment relations between the two countries. JPEPA would also facilitate the recruitment of Filipino caregivers who were formerly barred from entry under Japan’s immigration policy. However, JPEPA would require Filipino caregivers to have a college degree compared to Japanese nationals who are only required to complete an elementary education and three years of work experience or a high school education. Filipino caregivers could only take the licensing exams only once during their four-year stay in Japan. Based on the low passing rate of Japanese caregivers themselves, it is projected that more than half of the Filipino caregiver candidates would not be successful in taking the

licensing exams. They would need to leave Japan even though they had worked as trainees for four years and received salaries that are much lower than a licensed caregiver.

Although the Philippine government wanted to increase the number of nurses in Japan's health care industry under JPEPA, it would be difficult to do so. The Japanese government reported that it is facing a shortage of nurses and other medical personnel, especially in rural areas, due to its aging population. However, Health Minister Hakuo Yangisawa remarked that it does not have a shortage of nurses and caregivers.<sup>19</sup> In fact, the number of nurses needed has decreased from 41,600 nurses in 2006 to 15,900 in 2010.<sup>20</sup> During the first two years of the implementation of JPEPA, only 400 Filipino nurses and 600 caregivers would be hired.<sup>21</sup> In addition, while the demand for caregivers will increase by 40,000 to 55,000 annually, the supply of caregivers can be augmented to around 70,000 without bringing in foreign caregivers.<sup>22</sup>

### **4.3 Philippines-European Union Free Trade Agreement**

Negotiations for a comprehensive regional agreement between the European Union (EU) and the Association of Southeast Asian Nations (ASEAN) initially were launched in May 2007 in Brunei.<sup>23</sup> The agreement was to liberalize trade in goods and services as well as investments. After its initial launch the parties were expected to conclude negotiations within two to three years. In January 2008, the approach of the EU changed when the office of the Director General for Trade of the European Commission reported that the EU will continue the region-to-region approach while simultaneously starting to explore agreements with ASEAN members on a bilateral level.<sup>24</sup>

In May 2009 the bilateral approach was formally adopted.<sup>25</sup> There were three reasons for this multilateral to bilateral shift. First, the EU did not find a high level of commitment from ASEAN members as a bloc. Secondly, it was difficult to undertake negotiations in the absence of a regional trade minister or authorized agency. Thirdly, the EU refused to negotiate with ASEAN as a bloc because of human rights abuses by Burma's military regime.<sup>26</sup>

In January 2010, Singapore became the first ASEAN member to negotiate with the EU<sup>27</sup> because both parties wanted a comprehensive agreement, which will then set a precedent for succeeding talks. To date, the EU has initiated talks with Vietnam, Thailand and Malaysia. As a requirement for a free trade agreement, Indonesia signed a Partnership and Cooperation Agreement (PCA). The PCA which is being negotiated between the Philippines and the EU does not include specific trade concessions by either party. It is designed to update prior bilateral agreements with the EU, which were forged in the 1980s, to address more recent issues. The PCA includes sections on Political Dialogue and Cooperation; Trade and Investment; Justice and Security Cooperation; Migration; and Economic,

Development Cooperation and Other Sectors. It contains provisions that protect the rights of migrant workers such as the development and implementation of national legislation and practices based on relevant international agreements and standards. The PCA also includes provisions that refer to the 1951 Geneva Convention on the Status of Refugees and its Protocol of 1967 and the provision of fair treatment and avenues for integration of lawfully residing non-nationals, education and training and measures against racism, discrimination, and xenophobia.

Migrants' rights advocates have raised concerns about the development of the Philippines-EU PCA. For example, one of the aims of the PCA is "to establish cooperation in all trade and investment areas of mutual interest, in order to facilitate trade and investment flows and to remove obstacles to trade and investment, in a manner consistent with the principles of WTO and ongoing and future regional EU-ASEAN initiatives." A future free trade agreement within this framework would imply that the movement of natural persons would be based on GATS Mode 4, which encourages the entry of high-skilled workers and excludes other migrant workers. The PCA also includes a provision based on the EU Return Directive Policy which allows member states to detain undocumented migrants for up to 18 months and impose a five-year ban on their return to the EU.<sup>28</sup> In addition, migrants' rights advocates expressed concern about the lack of transparency and participation in the process of negotiating the PCA. It was only in September 2010 - more than two years after the start of the negotiations - that a copy of the Philippine-EU PCA was released to the public. Under the PCA, the parties agree that it would not change domestic laws which would mean that it does not need to be ratified. However, since the PCA is a precedent to a free trade agreement, it should be discussed by the Senate, which is responsible for ratifying free trade agreements.

## 5. BILATERAL LABOR AGREEMENTS

A bilateral agreement is an accord between two states concerning a specific area or sector. The provisions of bilateral agreements are based on the state parties' national policies and should ideally meet the minimum standards inscribed in international treaties. Compared to a treaty or a covenant that requires broader commitments from state parties, a bilateral agreement is more specific in scope and application.

Bilateral labor agreements (BLAs) were first used by states of origin and Western European states of employment in the 1960s to regulate temporary labor migration.<sup>29</sup> The BLA "can be adapted to the specific characteristics of particular groups of migrants and both sending and receiving countries can share the burden of ensuring adequate living and working conditions for these migrant workers, as well as monitoring and more actively managing pre- and post-migration processes."<sup>30</sup>

There are two forms of BLAs.

- A Memorandum of Agreement (MOA) is a binding document that explicitly states the specific responsibilities of, and actions to be taken, by each of the parties to accomplish their goals.<sup>31</sup>
- A Memorandum of Understanding (MOU) is a non-binding document. It may be formulated as a Declaration, Implementing Arrangement, Letter of Intent, Joint Communiqué, or a Joint Statement, and takes effect immediately because it does not require ratification.<sup>32</sup> In terms of content and intent, an MOU is limited to a promise by both parties to sit down at the negotiating table in order to reach a mutually acceptable agreement.

The United Nations has underscored the importance of forging bilateral labor agreements between states of origin and states of employment and called on governments to operationalize the application of the minimum labor standards set by the UN and International Labor Organization conventions for the protection of the rights of migrant workers.

Developing and negotiating BLAs require cooperation among states of origin and states of employment, including the participation of non-state stakeholders such as migrant workers, advocates, and private labor recruiters. Based on a rights-based approach to development, BLAs should not only ensure stakeholder compliance to state regulations but they should also guarantee and protect the rights of migrant workers. These rights include the migrant workers' entitlement to safe and decent working conditions, just compensation, non-discrimination, and access to legal redress.

There are international conventions which may provide a framework for bilateral labor agreements. These documents focus on the protection and promotion of the rights of migrant workers and members of their families. These include the United Nations' Convention on the Protection of All Migrant Workers and Members of Their Families, which recommends that governments, "to the extent possible, progressively mainstream relevant and appropriate provisions of the Convention into bilateral agreements." The other UN conventions include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Elimination of Racial Discrimination (CERD), International Convention on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC), which have been widely ratified.<sup>33</sup>

The International Labor Organization's (ILO) Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons (R086, 1949), is also a useful guide in developing bilateral labor agreements.

**TABLE 1. Provisions in the International Labor Organization's Model Agreement on Temporary and Permanent Migration for Employment**

Article 1: Exchange of Information	Article 16: Settlement of Disputes
Article 2: Action against Misleading Propaganda	Article 17: Equality of Treatment
Article 3: Administrative Formalities	Article 18: Access to Trades and Occupations and the Right to Acquire Property
Article 4: Validity of Documents	Article 19: Supply of Food
Article 5: Conditions and Criteria of Migration	Article 20: Housing Conditions
Article 6: Organization of Recruitment, Introduction and Placing	Article 21: Social Security
Article 7: Selection Testing	Article 22: Contracts of Employment
Article 8: Information and Assistance of Migrants	Article 23: Change of Employment
Article 9: Education and Vocational Training	Article 24: Employment Stability
Article 10: Exchange of Trainees	Article 25: Provisions Concerning Compulsory Return
Article 11: Conditions of Transport	Article 26: Return Journey
Article 12: Travel and Maintenance Expenses	Article 27: Double Taxation
Article 13: Transfer of Funds	Article 28: Methods of Cooperation
Article 14: Adaptation and Naturalization	Article 29: Final Provisions
Article 15: Supervision of Living and Working Conditions	

BLAs should be negotiated to promote the human and labor rights of migrants and members of their families. These agreements should also aim to (a) progressively harmonize migration policies between the states of origin and employment in accordance with universally-accepted labor and human rights standards in order to promote non-discrimination and equal treatment of migrants thus securing better and secure terms of employment; (b) regulate and more efficiently manage the migration flows; and, (c) provide a platform for continuing dialogue and trust-building between the states of origin and employment.

The importance of bilateral labor agreements for international organizations, governments, migrant workers and worker rights groups is recognized. However, there are challenges in developing and implementing bilateral agreements as shown in the experience of the Philippines.

## 6. PHILIPPINE BILATERAL LABOR AGREEMENTS

Bilateral labor agreements are crucial in ensuring protection of OFWs especially in the state of employment. They provide the avenue for dialogue with the state of employment when national protective policies prove inadequate.

The Magna Carta for Migrant Workers and Overseas Filipinos (RA8042) as amended by RA10022 states that the government “shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:

- a) It has existing labor and social laws protecting the rights of workers, including migrant workers;
- b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and
- c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino workers; (and) (p)rovided that the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the (above) guarantees”.<sup>34</sup>

Furthermore, RA10022 asserted that the Philippine government should endeavor to enter into bilateral agreements with countries hosting overseas Filipino workers.<sup>35</sup> The need to forge BLAS are also reflected in the concluding observations and recommendations of the Committees of the following treaty bodies based on the recent reports from the Philippine government, namely the UN Committee on the Elimination of All Forms of Discrimination Against Women (August 2006 Session); the UN Committee on the Economic, Social, and Cultural Rights (November 2008 Session) and the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (April 2009 Session)<sup>36</sup>

Almost all members of the United Nations and Taiwan have labor and social laws to protect workers. Many of these provisions also apply to foreign workers. However, the Philippines does not have bilateral agreements with all countries and territories where Filipino migrant workers reside. As of 2010, the Philippine government had signed 49 bilateral labor agreements with 25 countries and territories. It also signed 44 bilateral agreements concerning recognition of Seafarers' Training Certificates. Not all of these BLAs however, are in force.

Agreements with European countries are more focused. For instance, the agreement with Switzerland involves the exchange of professionals and technical trainees for short-term employment; the agreement with the United Kingdom aims

to facilitate the recruitment of Filipino health professionals; and the Philippines-Norway agreement aims to address the shortage of health professionals in Norway including the promotion of employment opportunities for Filipino health workers in that country. In addition, the Philippines recently entered into an agreement with Indonesia, which is itself a state of origin. The agreement seeks to enhance the effective management of migration in order to promote and protect the welfare and rights of Filipino and Indonesian migrant workers.<sup>37</sup>

Director Liberty Casco of the Philippine Overseas Employment Administration (POEA) cited two model BLAs.<sup>38</sup> The first was the Philippine Memorandum of Understanding (MOU) with Western Canada (06-08) which includes provisions on the exchange of labor market information, procedures for recruitment and selection of workers, setting minimum employment standards, mandatory orientation for workers, protection of workers, formation of a joint consultative committee, and a mechanism for mutual development of human resources. The second was the Philippine-Bahrain Memorandum of Agreement (MOA) in which the government of Bahrain committed to grant graduate and post-graduate scholarships to Filipino health workers on-site, with the condition that they will work in government hospitals, universities and other institutions upon reintegration in the Philippines.

### **6.1 Process of Negotiating a Bilateral Labor Agreement**

The process of negotiating a BLA involves many stakeholders. It includes the following steps.

1. The state of origin or state of employment expresses its intention to establish a bilateral labor agreement. Ideally, the intention should be towards a commitment to ensure that labor migration in both countries are regulated, that national policies and international norms are implemented, and the rights of workers are protected. The governments of the state of origin and state of employment inform the appropriate embassies of its intent.

The state of employment may decide to initiate a bilateral labor agreement to address the following circumstances: when it needs to hire workers in specific sectors; a labor ban imposed by the state of origin affects the human resources of the state of employment; or the state of employment has to address illegal recruitment practices.<sup>39</sup> The Philippines, as a state of origin, communicates its intention to form an agreement when there are employment prospects for Filipinos; the Philippines sees an inconsistency between its labor migration regulations and the policies of the state of employment, thus creating roadblocks for deployment; or the welfare of migrant workers is not being addressed.

2. The Department of Foreign Affairs writes to the Department of Labor and Employment, which is the main implementing agency of labor agreements in the Philippines, to draft agreements with the assistance of focal implementing agencies such as the Philippine Overseas Employment Administration, Department of Health, and Bureau of Immigration.<sup>40</sup>
3. Negotiations of bilateral labor agreements are done by technical panels of government officials from the implementing agencies of both countries. The implementing agency of the Philippines, for instance, the Philippine Overseas Employment Administration, holds consultative meetings with relevant stakeholders to gather input and recommendations in preparation for the negotiation with the state of employment.<sup>41</sup> However, in many cases, there is no participation from the civil society organizations or the implementing agency fails to inform and request their participation even though the Magna Carta of Migrant Workers and Overseas Filipinos affirmed the partnership between the state and civil society organizations in protecting the rights and welfare of Filipino migrant workers<sup>42</sup>.
4. The Office of Legal Affairs of the Department of Foreign Affairs oversees the treaty writing process. It reviews the form and content of the agreements drafted and submitted by the implementing agencies. When writing bilateral agreements, implementing agencies do not use a template and largely base their drafts on past or existing agreements. Once the Office of Legal Affairs approves the agreement, it will submit the draft to the respective geographical unit in the Department of Foreign Affairs (for example, ASEAN Affairs, Office of European Affairs) and then to the embassies and Philippine Overseas Labor Offices. Revisions will be made by the implementing agencies and fine-tuned by the Office of Legal Affairs.<sup>43</sup>
5. From the perspective of the Philippine government, a Memorandum of Understanding (MOU) and a Memorandum of Agreement (MOA) are the same. However, a Presidential Directive instructed implementing agencies to negotiate an MOA instead of an MOU because an MOU signifies only an intention to go into an agreement and therefore it is not legally-binding.<sup>44</sup> The Department of Foreign Affairs' Manual on Treaties Review emphasizes the use of MOA. However, government agencies generally use the term MOU. Countries have different procedures for MOAs and MOUs. For example, in Australia an MOA has to go through Parliament before an agreement is finalized. In certain situations, parties develop executive agreements which require only the approval of the heads of state. An MOU is claimed to be advantageous for both parties.<sup>45</sup>
6. Implementation and monitoring of bilateral labor agreements are assigned to joint commissions where contracting parties agree to establish commissions, working groups or technical panels composed of representatives from each party for the purpose of implementing and coordinating all aspects of the

agreements. The contracting parties agree that the joint commissions should meet on a specified period, ideally every year, to create implementing guidelines of the agreement, assess the progress and effectiveness of the labor agreements and modify the terms if deemed necessary.

## **6.2 Challenges in Developing, Negotiating, Implementing, and Monitoring a Bilateral Labor Agreement**

The Philippine government is seen by other countries as a pioneer in negotiating bilateral labor agreements. Negotiating a bilateral labor agreement, whether in the form of an MOU or an MOA, is a difficult undertaking. Hence, in almost four decades of labor migration, the Philippines has forged BLAs/ MOUs/ MOAs with only 79 states of employment (including those for seafarers) despite the presence of OFWs and Filipinos overseas in more than 214 countries and territories. The effectiveness of these bilateral mechanisms depends on how well they are implemented and enforced by the contracting countries. In addition, there are challenges in the development, negotiations, implementation, and monitoring of bilateral labor agreements as noted below.

### *6.2.1 Few bilateral labor agreements with states of employment*

The Philippines does not have bilateral labor agreements with all of the countries and territories where Filipino migrant workers are present. Among the most common arguments raised by states of employment for their reluctance, if not outright refusal, to enter into any formal agreement is that foreign workers are subject to the same laws and regulations as nationals; consequently, they do not need any special attention. Moreover, since the terms of employment are negotiated by the workers and private employers or agencies, government intervention is not necessary since it is a private and personal matter. Some states of employment decided not to negotiate bilateral labor agreements with the Philippines because it might serve as a precedent. Others stated that the number of OFWs in their countries is not yet significant to merit a BLA as in the case of OFWs in Thailand.<sup>46</sup> Some countries may also abandon negotiations with the Philippines if the latter's requirements are more stringent compared to agreements with other states of origin. Or the states of employment prefer other forms. "Regarding the Gulf States for example, Asian sending countries [like the Philippines] have generally managed to achieve framework agreements, or statements of mutual cooperation, concerning recruitment and protection of workers rather than specific agreements."<sup>47</sup>

### *6.2.2 Lack of binding agreements*

The legal status of BLAs is unclear on whether these agreements are treaties and if they are binding. Philippine officials normally prefer a Memorandum of Understanding or statements of mutual cooperation on recruitment, which do not

require ratification.<sup>48</sup> According to the Philippine government, although bilateral labor agreements have proven to be effective in addressing issues and concerns affecting the employment of workers, it takes a long time for these agreements to be developed and implemented. In recent years, the Philippines has veered away from the formulation of general agreements. It has worked towards the adoption of more focused and specific agreements which are easier to negotiate and operationalize.<sup>49</sup> Advocates believe that MOUs and statements of mutual cooperation are useful as long as they serve as roadmaps to more formal binding agreements that will protect the rights of migrant workers.

### *6.2.3 Lack of participation of stakeholders*

Although the 1987 Constitution, Magna Carta for Migrant Workers and Overseas Filipinos (Republic Act 8042), and the Civil Service Code recognize people's organizations and non-governmental organizations as partners in development, they are not consulted during the drafting of bilateral labor agreements. The existing process also allows for the participation of migrant workers and advocates but it is not being implemented fully. Most agreements mentioned the role of implementing agencies but did not include other stakeholders. However, the BLA with New Zealand noted that each party can invite trade unions, employers and/or other persons and organizations.<sup>50</sup>

### *6.2.4 Non-recognition of the feminization of labor migration*

Majority of Filipino women migrant workers are employed as domestic workers which make them vulnerable to discrimination, violence and exploitation. Domestic workers are often excluded from the protection of labor and social legislation, rendering their contract of employment meaningless in the absence of grievance mechanisms, support services, and a worker-friendly environment.<sup>51</sup> The United Nations Committee on the Protection of All Migrant Workers and Members of their Families recommended to the Philippine government to negotiate more secure employment opportunities and terms and conditions for women in vulnerable sectors through bilateral agreements with countries where cases of discrimination and abuse are more rampant.<sup>52</sup>

### *6.2.5 Lack of monitoring and implementation mechanisms and procedures*

Implementation and monitoring of bilateral labor agreements and MOUs is almost non-existent. Regardless of whether they are binding labor agreements or memorandum of mutual understanding for cooperation between states of origin and employment, mechanisms that will enforce what has been agreed upon in writing must be put into practice.<sup>53</sup> Almost all the agreements and MOUs that have been reviewed mentioned a Joint Committee that will operationalize the provisions and develop implementing guidelines. To the knowledge of one negotiator, no such joint committee meetings have been carried out so far.<sup>54</sup> The Joint Committee meetings were intended to provide a forum where both countries could assess the implementation of the labor agreements' provisions and consider any

further adjustments to the agreement itself. Without such meetings, there is no formal mechanism to ensure that the states of origin and states of employment follow the guidelines to which they agreed. The fact that no meetings have been held severely weakens the government agencies' statement that "soft law" and diplomacy are the more practical and advantageous negotiating methods for advancing the Philippines' interests.

#### *6.2.6 Lack of staff capacity of government agencies*

Presently, the Office of Legal Affairs in the Department of Foreign Affairs has five staff persons who review all the treaties and agreements entered into by the Philippines with all countries.<sup>55</sup> There is limited staff capacity to thoroughly review and analyze bilateral labor agreements which could result in important provisions being overlooked such as those which would protect and promote the rights of migrant workers.

#### *6.2.7 Inaccessibility of documents*

There is no central repository for the exchange of notes, minutes of consultations, meetings, drafts and implementing guidelines related to the bilateral labor agreements. Documents are dispersed among implementing agencies. The Institute of Labor Studies in the Department of Labor and Employment (DOLE) has copies of some bilateral labor agreements, which were compiled by a student volunteer.<sup>56</sup> DOLE published a list of bilateral agreements, MOUs, agreements on the recognition of seafarers' training certificates and social security agreements. But many of the documents could not be found in the Department's offices. The Foreign Service Institute library in the Department of Foreign Affairs has an index of all known bilateral labor agreements. The Department of Foreign Affairs should have copies of the agreements since the agency oversees all of the treaties of the Philippines with other countries. However, some of the documents cannot be found in their archives.

The Philippine Overseas Employment Administration created a section on labor agreements on its website and posted seven agreements. It also posted the labor code provisions on overseas employment and the Migrant Workers and Overseas Filipinos Act of 1995.<sup>57</sup> However, the exchange of notes, minutes of consultations and meetings, drafts and implementing guidelines, which are essential to review and revise the agreements cannot be found.<sup>58</sup>

### **6.3 Recommendations**

Based on the experience of the Philippines in forging a bilateral labor agreement with states of employment, advocates recommend the following to strengthen this legal instrument in protecting the rights of migrant workers and their families.

**6.3.1 Forge binding bilateral labor agreements with states of employment.** Incorporate provisions in the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and International Labor Organization conventions. When re-negotiating bilateral labor agreements, ensure that these provisions are included in the original agreement.

**6.3.2 Include provisions to protect women migrant workers.** Incorporate provisions from the Convention on the Elimination of All Forms of Discrimination Against Women particularly General Recommendation 26 on women migrants, Convention on the Rights of the Child, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Women migrant workers, especially domestic workers and entertainers, are more vulnerable to abuse. Specific measures must be included such as monitoring their conditions. This requires the proactive and collaborative work between the Philippine Overseas Labor Offices and Overseas Workers Welfare Administration and local migrant worker organizations and women rights groups.

**6.3.3 Ensure that implementing guidelines and sample employment contracts are developed.** These are essential because they are part of the enforcement mechanisms for the bilateral labor agreements. The contracts and guidelines must be consistent with international treaties and conventions and complement national laws.

**6.3.4 Include return and reintegration programs in the bilateral labor agreements.** Labor migration should not only be about the deployment of human resources but also the reintegration of people who acquired work skills and experiences abroad and who can make valuable contributions to their local communities upon their return. Generally, MOUs support human resources development such as the transfer of technology and skills, development assistance including reintegration programs, upgrading of facilities, and strengthening training institutions. The reintegration programs could include help in finding local jobs for returning migrants, assistance in addressing social costs, microfinancing projects, technology transfer, and coordination with civil society organizations. The Overseas Workers Welfare Administration and the National Reintegration Center for OFWs can serve as the implementing agencies.

**6.3.5 Include all stakeholders in the drafting, implementation and monitoring of bilateral labor agreements.** Although it is the responsibility of governments to negotiate agreements in accordance with protocols on confidentiality, it is essential for negotiators to share information and consult migrant workers, rights advocates, and civil society organizations, which have a human rights framework. Creation of technical working groups composed of government and civil society representatives can expedite the drafting of a bilateral labor agreement.

There is a precedent for this process at the multilateral level. The Philippine Government is currently consulting with civil society organizations on how to

proceed with the ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers.<sup>59</sup> Recommendations gathered from the consultations were presented at the 2<sup>nd</sup> ASEAN Forum on Migrant Labor in July 2009. The ASEAN Forum brought together participants from civil society organizations, trade unions, employer associations, national human rights institutions, governments, and international and regional organizations, to talk about the drafting and implementation of the ASEAN instrument on migrant workers.<sup>60</sup>

**6.3.6 Inform migrant workers and the public about the bilateral labor agreements.** Government agencies could issue regular reports on agreements which have been finalized and the implementing guidelines. These reports could be distributed to migrant workers organizations, labor unions, and civil society organizations in the Philippines and states of employment.

**6.3.7 Create a document describing the bilateral negotiation process.** The document could be used by implementing agencies to organize and coordinate their work. The Department of Foreign Affairs could produce a document for implementing agencies on the bilateral negotiations process, the templates to use, which organizations to consult with, and where to find resources or information on past and current agreements, implementing guidelines, exchange of notes and minutes of meetings. The document, with a corresponding flowchart, can help make the bilateral negotiation process more efficient and manageable because an implementing agency knows where to look for information.

**6.3.8 Increase government personnel and develop the staff capacity to thoroughly engage in the treaty negotiations and review process.** Provide resources to the Office of Legal Affairs, Office of the Undersecretary for Migrant Workers Affairs, Department of Foreign Affairs, and Department of Labor and Employment.

**6.3.9 Create a central repository for all bilateral labor agreements.** Migrant workers, trade unions, employer associations, national human rights institutions, international and regional organizations, the academe, other civil society organizations, and the general public will find it very helpful to have a repository of all the agreements. Some potential venues are the libraries in the Department of Foreign Affairs, Department of Labor and Employment, and the University of the Philippines College of Law, which has an extensive collection of international law materials. Another possibility is the website of the Philippine Overseas and Employment Administration, which has posted several bilateral labor agreements.

## 7. SOCIAL SECURITY AGREEMENTS

Studies have shown that major spending by migrant families tends to be on consumer durables, payment of debts and savings for their children's education.<sup>61</sup> For majority of low-income OFWs, wages earned from overseas work leave very little for savings and a retirement fund.<sup>62</sup> In other cases, inability to save for retirement may also be a function of several factors combined, such as undeveloped financial management skills and lack of awareness and access to savings and investments products. Migrant workers contribute years of their labor and skills to the development of foreign economies and their remittances sustain the Philippines' economy. Accessing social security is a basic human right and should be available to all migrants.

The Philippine government, as a signatory to the UN Universal Declaration of Human Rights, must ensure that migrant workers are able to access social security benefits. It is the duty of the state to provide social security as enshrined in Article 22 of the Declaration:

*“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”*

The UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families reiterates the equal right of migrant workers to social security vis- a-vis the citizens of the states of employment :

*With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties... (Article 27, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families)*

These international treaties highlight the importance of bilateral agreements as tools that set mechanisms and guidelines for ensuring the provision of social security services to stakeholders. Social security agreements (SSAs) as a form of bilateral agreement between states of origin and states of employment fine-tune the roles and responsibilities of duty bearers (state and non-state actors) and claim holders (migrants).

In addition, the International Labor Organization defines social security in its 2000 World Labor Report as:

*...the protection which society provides for its members through a series of public measures: to offset the absence or substantial reduction of income from work resulting from various contingencies (notably sickness, maternity, employment injury, unemployment, invalidity, old age and death of the breadwinner); to provide people with health care; and to provide benefits for families with children.*<sup>63</sup>

Social security may be provided to migrant workers by a variety of state agencies in the state of origin and in the state of employment. Compared to bilateral labor agreements which are broader in scope, SSAs are more focused on the management and distribution of social security benefits to migrant workers and deal mainly with long-term benefits such as disability, old-age and survivor pensions. Generally, SSAs do not include short-term benefits such as sickness and maternity assistance because they are better negotiated through BLAs and to some extent, already incorporated into the package of employee benefits that are required by law in the states of employment.<sup>64</sup>

Social security agreements, in working towards the provision of long-term benefits to migrant workers, should include the following features based on the ILO Convention 157 on the Maintenance of Social Security Rights.<sup>65</sup>

- 1) the equality of treatment, which allows migrants the same entitlement to benefits as nationals;
- 2) the provision of benefits abroad, which allows benefits to be paid to the worker's country of residence;
- 3) the determination of the applicable legislation, which consists of rules to determine which country's system will apply to the migrant worker;
- 4) the maintenance of rights in course of acquisition that allows periods of membership in both countries to be combined to determine eligibility for benefits; and
- 5) administrative assistance, a provision which guarantees the co-ordination of liaison offices to extend assistance to covered workers and implement the provisions

Countries who wish to enter the process of concluding bilateral security agreements can use international instruments. The International Labor Organization (ILO) Model Provisions for the Maintenance of Social Security Rights Recommendation 1983 (No. 167)<sup>66</sup> is a useful guide for formulating the contents of social security agreements. ILO conventions, when binding to states of employment, also offer the legal bases for pursuing an SSA.<sup>67, 68</sup>

**TABLE 2. Provisions in the International Labor Organization Model for the Maintenance of Social Security Rights**

Article 1: Definitions	Article 12,13 : Special Provisions concerning Invalidity and Survivors' Benefits
Article 2: Applicable Legislation	Article 14: Integration Linked with Residence
Article 3: Medical Care, Sickness Benefit, Maternity Benefit and Family Benefit	Article 15,16: Integration Linked with the Occurrence of Invalidity or Death
Article 4: Unemployment Benefit	Article 17,18: Determination of Benefits In Respect of Occupational Diseases
Article 5: Invalidity, Old-age and Survivors' Benefit	Article 19 to 24 : Maintenance of Acquired Rights and Provision of Benefits Abroad
Article 6: Common Provisions	Article 25 to 30: Regulation of Undue Plurality
Article 7 : Determination of Invalidity, Old-Age and Survivors' Benefit	Article 31 to 35: Miscellaneous Provisions
Articles 8 to 11 : Alternative Method of Apportionment	Article 36 to 38: Provisions Concerning The Maintenance of Rights Between or With Provident Funds

**TABLE 3. International Labor Organization Conventions Related to Social Security**

ILO Convention	Remarks	
<ul style="list-style-type: none"> <li>No. 118: the Equality of Treatment (Social Security) Convention, 1962</li> </ul>	Ratified by 38 countries including the Philippines	These are more recent ILO legal instruments that encompass branches of social security. <sup>69</sup>
<ul style="list-style-type: none"> <li>No. 157: the Maintenance of Social Security Rights Convention, 1982</li> </ul>	Ratified by three (3) countries, including the Philippines.	
<ul style="list-style-type: none"> <li>No. 19: the Equality of Treatment (Accident Compensation) Convention, 1925</li> </ul>	Ratified by 120 countries. While it deals only with specific aspects of social security, it may serve as a starting point for exploratory talks.	These are limited in scope and deal only with particular branches of social security.
<ul style="list-style-type: none"> <li><i>Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)</i></li> </ul>	Ratified by eight (8) countries; denounced by four (4); Philippines is not a State party.	

In addition to the ILO convention models on social security agreements, the UN International Convention on the Rights of all Migrant Workers and Members of their Families can be utilized strategically in the negotiation of social security agreements. Articles 25-28 of the Convention on the Equal Treatment to Nationals of the State of Employment outline the human rights of migrant workers and members of their families.

## **8. PHILIPPINE SOCIAL SECURITY AGREEMENTS**

The Philippines has signed thirteen SSAs with eight countries and the province of Quebec, Canada. Two SSAs are pending ratification and two have been drafted.<sup>70</sup> Negotiating SSAs with more states of employment is a high priority for the Philippine government in anticipation of the retirement of OFWs who started working abroad more than 30 years ago and the steady flow of retirees that is expected to follow as a result of the exponential growth in the number of migrant workers over the years.<sup>71</sup>

Of the three largest states of employment (Singapore, Japan, and Saudi Arabia),<sup>72</sup> only Japan has signified interest in starting exploratory talks for a social security agreement with the Philippines. An SSA with Japan is expected to benefit over 220,000 Filipinos living and working there, including nurses, caregivers, and seafarers, and the 20,000 Japanese who live and work in the Philippines.<sup>73</sup>

In the Philippines, “Only about 28 per cent of the labor force falls under the formal Social Security System (SSS) and its public sector counterpart, the Government Service Insurance System (GSIS).”<sup>74</sup> Unlike domestic employment for Filipinos, where the government and private sector employers are responsible for ensuring their employees’ memberships, enrolment, compulsory contributions and payments to both the SSS and PhilHealth, many insurance benefits are optional for migrant workers. PhilHealth, a government corporation, provides health insurance coverage for migrant workers and their families. PhilHealth membership is mandatory and migrants pay an annual fee of Php 900 (or approximately \$21 at the time of the report). On the other hand, membership in the Social Security System, (SSS), which provides pensions and survivor benefits, is currently voluntary for land-based workers. For sea-based workers, this coverage is mandatory upon the signing of their contracts.<sup>75</sup>

An examination and critique of the Philippines’ experience of developing, negotiating, implementing and monitoring social security agreements is necessary to allow all government and non-government stakeholders to understand the process and to advocate for changes that can make this system more effective.

### **8.1 Process of Negotiating a Social Security Agreement**

The Philippine government, as a state of origin, has always initiated the process of negotiating for an SSA with states of employment, except in the case of Switzerland, which was proactive in requesting for exploratory discussions.<sup>76</sup> The Philippine government and the Social Security System (SSS) have prioritized the forging of SSAs<sup>77</sup> to decrease the number OFWs who are not covered by social security.

Negotiating an SSA involves the following process.

1. Before the Philippines decides to enter into a social security agreement with a state of employment, the implementing agencies associated with the initiation of the agreement must determine whether that specific state is an appropriate target for conducting an SSA. Initially, the Social Security System studies the social security legislation of the prospective state. Statistics from the Department of Foreign Affairs are taken into account in order to decide which states to approach. The private sector can also provide data on the number of migrants and contract workers in a particular state and the views held by migrants in relation to the proposed SSA.<sup>78</sup> In order for a state to be targeted by the Department of Foreign Affairs for an SSA negotiation it must have at least 3,000 OFWs.<sup>79</sup> The DFA analyzes the social security needs of migrants through informal consultations.<sup>80</sup>
2. The DFA verifies a state's ratification of the ILO conventions concerning the equality of treatment of migrant workers.<sup>81</sup> The Philippine Government can remind the state of employment that negotiating an SSA aligns its social security policies with the ILO conventions they have signed.<sup>82</sup> A list of countries that have signed these conventions may be used to determine which countries to approach for the negotiation of an SSA.
3. The SSS studies the social security legislation of the state of employment to determine whether coordination with its social security system is feasible.<sup>83</sup> When both systems are found to be compatible, the SSS requests the Department of Foreign Affairs to direct the on-site Philippine Embassy to officially communicate to the government of the state of employment about the Philippine government's desire to enter into an SSA. In some instances, migrant workers have suggested the negotiation of an SSA. Migrant Filipinos in Denmark and Greece have requested the Philippine government to initiate SSA negotiations with their states of employment. A draft SSA with Greece is currently under negotiations<sup>84</sup>.
4. Upon favorable reception by the state of employment, preliminary discussions are held in which both countries exchange information on their respective social security programs. On this basis, a draft of the agreement that will serve as a starting point for negotiations is prepared by either of the parties involved. This draft should include provisions outlined in the ILO convention 157 on the Maintenance of Social Security Rights.<sup>85</sup> Drafts of the SSA are exchanged between the two parties.
5. In the Philippines, the draft is submitted to the SSS, which then forwards it to the concerned geographic office within the DFA. The geographic office then considers the implications of the policy and decides whether it is beneficial for the Philippines to enter into an agreement. Once the decision to conclude an SSA is made, the Department of Foreign Affairs enters into inter-agency

consultations on the working draft(s). Government agencies and offices, including the Office of Legal Affairs and Philippine Overseas Employment Administration, are invited to provide feedback and recommendations. The Office of Legal Affairs' role in this process is to ensure that the agreement is in line with domestic and international laws, and consistent with the international agreements signed and ratified by the Philippines. Once the Office of Legal Affairs has approved the agreement, the geographic office forwards it to the foreign representatives abroad to begin formal negotiations of the agreement

6. Negotiations of bilateral social security agreements are done by technical panels of government officials from the implementing agencies of both countries. For the Philippines, the SSS and GSIS are the main implementing agencies.
7. Once negotiations are concluded, the agreement is finalized and signed. The competent authority, which is mandated to sign the agreement, is usually "the head of state, head of government or minister of foreign affairs."<sup>86</sup> The agreement then enters into the process of meeting the legal requirements in both countries for the agreement to enter into force. For the Philippines, the agreement is first ratified by the President and then forwarded to the Senate for concurrent ratification.<sup>87</sup> When these processes have been completed, instruments of ratification are exchanged and the agreement enters into force on a date specified within the agreement itself.
8. The framework for the legal implementation of the SSA is provided within a subsidiary instrument known as the administrative arrangement. Administrative arrangements are legal contracts between the social security authorities and institutions involved in the implementation and maintenance of the SSA. The administrative agreements also outline how these agencies will work together to implement the SSA and the corresponding legislation.<sup>88</sup> Additionally, the administrative arrangement designates liaison agencies in charge of the implementation of the agreement for each country. For the Philippines, the designated liaison office for all SSAs is the International Affairs and Branch Expansion Division of the SSS, which is tasked to jointly monitor with its foreign counterpart, the number of claims processed and benefits paid.

## **8.2 Challenges in Developing, Negotiating, Implementing, and Monitoring Social Security Agreements**

This section takes a critical look at the experience of the Philippine government in forging social security agreements with states of employment and the initial results of these efforts.

### **8.2.1 Different eligibility criteria to access social security benefits**

Differences in social security systems are major barriers to negotiating SSAs. These differences include gender disparities in the qualifying age for retirement benefits. In the Philippines, the SSS grants contribution-based pension to a person above 60 years old who has accumulated membership payments for a minimum of 120 months. Belgium's eligibility and entitlement to a retirement pension requires contributions for men until age 45 and age 44 for women. The gender difference in eligibility rules for retirement pension was also noted in Switzerland, where continuous yearly contributions from age 21 until age 65 was required of men and until age 64 for women, respectively.<sup>89</sup> In France, the qualifying criteria for retirement pension benefits are 160 quarters or 12.5 years of contributions, irrespective of sex. The gender dimensions of social security has not yet been fully studied, although there are ongoing debates in Europe on whether allowing women to retire ahead of men as a form of pay off for their unpaid reproductive roles (i.e., childbirth, childcare, home management, etc.) actually levels the playing field, or works to their disadvantage because they are forced to leave the labor force at a younger age than men.<sup>90</sup>

### *8.2.2 Migrant workers' rights to social security are not recognized or prioritized in some countries*

The Philippine government's experience shows that states of origin find it difficult to invoke reciprocity in negotiating an SSA because the flow of migrants is not reciprocal. It is also difficult for the Philippines to begin negotiations on a social security agreement with a country that is lacking an encompassing social security system for their own workers or does not recognize the importance of extending social security to migrant workers.<sup>91</sup> The national legal framework on the protection of rights of migrant workers of a state of employment that has not signed any of the ILO conventions may be inadequate, undeveloped, or averse to migrants' rights. When a country has signed ILO conventions which assure equality of treatment to migrant workers, the initiating agency is able to reference these conventions in order to apply political pressure on the government of the country in question to honor these conventions and formally extend social security coverage to Filipino migrant workers.

States of employment see few advantages in forging an SSA compared to the costs that they would incur. The success of pursuing an SSA highly depends on the state of employment's goodwill and resolve to protect migrant rights. In order to extend social security to migrant workers, the Philippines established foreign offices in the Middle East to cover Filipino migrant workers under Philippine social security legislation. Moreover, the Social Security System, with assistance from the Department of Labor and Employment and Department of Foreign Affairs, is currently working to systematize voluntary social security coverage of OFWs. Filipinos who are recruited and deployed legally can contribute monthly remittances to foreign banks or remittance centres that grant workers the benefits and privileges of voluntary Social Security System membership.<sup>92</sup> However, this

service is open only to documented OFWs, again excluding undocumented migrants.

In other countries, there is recognition of migrant workers' rights but application is confined to skilled workers, leaving the low-skilled workers (most of whom are women) to fend for themselves.<sup>93</sup> With the notable exception of Hongkong, many states of employment like Singapore, the UAE, Saudi Arabia and Malaysia do not recognize domestic work as work under their labor and social laws. This gap highlights the lack of protection of migrants in the low-skilled workers' category. Migrants and advocates have launched a global campaign for the adoption of an ILO Convention on Decent Work for domestic workers.

### *8.2.3 Limited social security benefits*

A review of existing Philippine social security agreements reveal variations on the adequacy of social security benefits that are guaranteed and the exclusion of some migrant groups from accessing such benefits. A majority of the social security agreements were in accordance with the guidelines set by the ILO and met the minimum standards of an SSA: equality of treatment, provision of benefits abroad, determination of the applicable legislation, maintenance of rights in course of acquisition, and administrative assistance. An exception is the executive agreement on social security with the government of Netherlands, which outlines the guidelines for administrative cooperation and assistance in validating documents, monitoring and verifying Dutch pensioners residing in the Philippines and SSS pensioners in the Netherlands, but does not meet the minimum standards of an SSA.<sup>94</sup> Another exception is the draft agreement with Israel, which is limited only to hospitalization, maternity and family benefits, and work injury insurance.

### *8.2.4 Exclusion of seafarers, self-employed and undocumented migrants*

Some SSAs are silent on social security coverage of specific migrant groups, namely seafarers, self-employed migrants and undocumented workers. The SSA with Austria, the Netherlands, and the United Kingdom do not include provisions relating to seafarers, while those with Austria, Belgium, France and the Netherlands do not have provisions to protect the right of self-employed migrants.

The applicability of SSAs is limited to migrant workers who are categorized as 'documented'. An undocumented worker is excluded from claiming the rights and entitlements guaranteed in the SSAs by the Philippines with states of employment. However, undocumented migrant workers are the most vulnerable and in most need of assistance among migrant groups. It was for this reason that the UN Convention on the Rights of All Migrant Workers and their Families bound treaty parties to ensure the rights of workers, regardless of immigration status. However, states of employment maintain their immigration laws and assert

regularization as a requisite to the inclusion of undocumented migrant workers in their social security system.

#### *8.2.5 Lack of gender perspective in accessing social security benefits*

As the global economy expands and increases the labor markets' demand for female migrant laborers, the conditions for abuse, sexualized violence, and exploitation is also amplified. Women engaged in the process of labor migration are leaving their country, their homes, and their children, and as a result are breaking away from traditional gender roles. Female migrants are also leaving behind their access to the protection provided by their families, social networks and the legal protection offered by their state of origin. The feminization of labor migration makes it imperative to have a gendered analysis that accounts for the varied experiences and specific needs of women involved in labor migration, including the drafting of social security agreements with specific provisions promoting gender equality.

The specific needs of women migrants remain understudied and unaddressed by existing SSAs including the voluntary membership to the Philippines' SSS. All of the SSAs reviewed were silent on social security concerns specific to migrant women, such as their low savings capacity to accumulate a sufficient retirement fund. Most women migrant workers need old-age, disability, parental and emergency social security benefits because of poor savings capacity due to their low incomes as unskilled workers. There exists a significant gender wage gap between Filipino male and female migrant workers, hence the advocacy for migrant domestic workers to be covered by minimum wage laws of the states of employment.

#### *8.2.6 Low level of awareness about social security among migrant workers*

Migrant workers' low level of awareness about social security weakens potential support for SSA advocacy and their utilization. In the Philippines, only 28 per cent of the labor force is covered by the SSS, indicating that experience with social security membership prior to working abroad is also low among OFWs. Despite a voluntary membership program that was opened for OFWs, intake has been slow and in 2006 it was estimated that between 3.4 and 3.9 million Filipino migrant workers were still not covered by PhilHealth or the SSS. Information campaigns undertaken by these agencies have yet to produce the desired results. The low level of awareness affects the demand and utilization of this mechanism, even when they are already made more accessible by SSAs.

#### *8.2.7 Uneven utilization of benefits*

In terms of the sheer number of benefits granted by a labor-receiving country through an SSA, the agreements with Canada may yet be the most successful. According to the SSS, the number of benefit claims granted (3,650 within the

period 2004-2008) reflects the large number of Filipino migrants in Canada and at the same time reveals an efficient and accessible system for filing of claims through the SSS liaison agencies.

In the case of agreements with insignificant numbers of processed claims, such as Belgium, France, and Switzerland, these statistics correctly reflect the low concentration of qualified Filipino migrants in these areas. These statistics also indicate the more restrictive eligibility and entitlement requirements to avail of benefits in these countries. In the case of Belgium, eligibility and entitlement to a retirement pension requires 45 and 44 years of contributions for men and women, respectively, to qualify for a retirement pension. For France, the qualifying period for retirement benefits is 160 quarters or 12.5 years of contributions. For Switzerland, it requires continuous yearly contributions from age 21 until age 65 and 64, for men and women, respectively.<sup>95</sup>

#### *8.2.8 Lack of specific data and documentation on utilization of benefits*

An analysis of migrant worker utilization of social security benefits over time needs to be undertaken including the impact on migrants by profession, income, sex, destination country, and other socio-economic factors. This report does not include such an analysis due to the lack of data.

#### *8.2.9 Lack of clear guidelines and mechanisms for stakeholder participation in SSA negotiations*

Efforts by the Philippine government to include migrant groups and civil society organizations in consultations were noted<sup>96</sup>. But the process and adequacy of mechanisms for eliciting multi-stakeholder input are areas that need improvement.

Stakeholder participation is essential in confirming appropriateness of the SSA to address the needs of migrants, and without migrants' support, an SSA cannot be successfully implemented. For example, the SSA that was negotiated with the government of South Korea faced opposition from Filipino migrants who said they were not consulted on the agreement that would negatively impact their claim to the Lump Sum retirement benefit in the South Korean social security system. In September 2008, the Filipino Employment Permit System (EPS) Workers Association and other Filipino organizations in South Korea launched a signature campaign and sent a petition letter to Filipino senators asking them to defer ratification of the SSA with South Korea.<sup>97</sup> The migrant workers expressed their preference to remain under the Korean pension system, and considered the SSA provision on mandatory membership to the SSS as disempowering. The SSA has not yet been ratified because of the resistance from migrant workers.

#### *8.2.10 Lack of staff capacity in government agencies*

The Department of Foreign Affairs' (DFA) has limited capacity to implement its

functions. It has only one employee for every 60,000 migrants abroad. The DFA's Office of Legal Affairs, which has a major role in the negotiation of the agreement, has a very limited number of full time staff. Recently, the Philippine government approved an additional 500 staffpersons in the Department of Foreign Affairs, but this is expected to only partially meet the existing need<sup>98</sup>.

### *8.2.11 Lengthy Process*

Another problem with social security agreements is the amount of time required from the initiation of negotiations up to implementation. The minimum amount of time required to complete this process is a year and a half. A considerable longer period is often needed, especially when one of the countries involved has had minimal experience in negotiating social security agreements because the first SSA that a country negotiates sets a precedent for succeeding agreements.<sup>99</sup> In 2004, discussions on negotiating SSAs were initiated with Cyprus, Denmark, Germany, Greece, Israel, Italy, Libya, the United States, and Sweden.<sup>100</sup> Some six years later none of these negotiations have resulted in an SSA.

Not all SSA negotiations reach a positive conclusion. For example, the Philippines and Italy began talks more than 20 years ago but the government of Italy withdrew for several reasons. The political, legal and financial support which existed at the start of the negotiations eroded through the years. With the global economic crisis, the Italian government became concerned about the affordability of paying retirement benefits to a large number of Filipino migrant workers<sup>101</sup>. Italy's migrant workforce is comprised of laborers from many states of origin and providing social security benefits to one group of laborers may lead to other groups demanding the same which the government of Italy is unprepared to meet. In addition, Italian employers were aware that the Philippines is not the only state of origin and they could always find migrants from other countries who would be willing to work without any social security benefits.

## **8.3 Recommendations**

Based on the experience of the Philippines in forging social security agreements, the following are recommended to address the challenges in developing, negotiating, implementing, and monitoring SSAs.

**8.3.1 Pursue adoption of SSAs which include the ILO provisions.** These provisions include (1) the equality of treatment, which allows migrants the same entitlement to benefits as nationals, (2) the provision of benefits abroad, which allows benefits to be paid to the worker's country of residence, (3) the determination of the applicable legislation, which consists of rules to determine which country's system will apply to the migrant worker, (4) the maintenance of rights in the course of acquisition that allows periods of membership in both countries to be combined to determine eligibility for benefits, and (5)

administrative assistance, a provision which guarantees the co-ordination of liaison offices to extend assistance to covered workers and implement the provisions of the agreement.<sup>102</sup>

### **8.3.2 Pursue adoption of regional social security standards for migrants.**

Create regionally specific model provisions for bilateral social security agreements that countries within the ASEAN region are able to use as a framework in the construction of their own social security agreements, both regionally and globally. The model provisions created by the Council of Europe may be one of the reasons why the Philippines has many agreements with European countries, and why these agreements encompass the SSA objectives recommended by the ILO.<sup>103</sup> There are already several model provisions for social security, such as those created by the ILO. However, the development of regionally specific provisions would have several advantages, as suggested by the ILO's 2008 report on the development of the Association of Southeast Asian Nations' (ASEAN) social security entitled "Strengthening Social Protection to ASEAN Migrant Workers through Social Security Agreements." Developing a regionally specific model would allow for the agreement to encompass issues that are relevant to the ASEAN community, encourage the creation of structurally similar agreements within the region, and the exercise itself would provide social security officials within the region with hands-on knowledge specific to the drafting of social security agreements.<sup>104</sup>

### **8.3.3 Incorporate social security provisions in bilateral labor agreements.**

In the event that it is impossible to negotiate a social security agreement, social security provisions should be incorporated in bilateral labor agreements.<sup>105</sup> This may be a preferable option for a state of employment that is hesitant to commit to all of the provisions in a social security agreement. Bilateral labor agreements could include provisions pertaining to contract workers and seafarers to ensure state of origin coverage or coverage under the SSS to enable these workers to accumulate creditable periods to qualify for benefits.

Qatar is an example of a country that has recently agreed to a bilateral labor agreement which included social security benefits for migrant workers. The 2008 agreement entitled "Additional Protocol to the Agreement between the Government of the Republic of the Philippines and the Government of the State of Qatar" amends the original agreement, signed in March of 1997. The additional protocol includes a model contract which incorporates "Medical Care and Social Welfare" that specifies the employer's obligation to provide medical treatment and compensation for work-related accidents. This agreement could lead to future SSA negotiations.<sup>106</sup>

### **8.3.4 Sharpen gender analysis in SSA preparation and in monitoring its impact.**

Promote gender equality in social security agreements by responding to specific needs of women which are identified through gender analysis. In

monitoring and evaluating SSA implementation, it is imperative to establish mechanisms for the collection and analysis of sex-disaggregated data.

**8.3.5 Promote social security for undocumented migrants.** Social security of migrants, regardless of their immigration status, should be promoted. The government of the Philippines is reminded to exercise due diligence in negotiating SSA provisions for undocumented workers and their families.

**8.3.6 Ensure stakeholder participation in the SSA process.** Migrant workers should be able to participate in the development, negotiations, implementation and monitoring of agreements. Government agency collaboration with the private sector, civil society and stakeholders' groups is essential. It would be helpful for the DFA to draft guidelines for participation of stakeholder groups in the SSA process based on principles of transparency and accountability. Mechanisms should be developed or re-evaluated that would allow for full participation of migrant workers and civil society organizations.

**8.3.7 Increase informational activities on social security.** Low level of awareness and appreciation of social security benefits can be addressed by an information-education drive that aims to increase voluntary membership of migrant workers in the SSS. At the same time, migrant workers must be provided with clear instructions on how to access social security benefit claims when and if they are available. When SSAs exist between countries, OFWs need to be informed during pre-departure orientation seminars on how they may access these benefits.

**8.3.8 Educate the public about the contributions of migrants to the states of employment.** To gain support of the states of employment and their citizens on the rights of migrants to social security, the government of the Philippines, especially through its on-site diplomatic missions, must seek to promote the role of OFWs in the host country at every opportunity. An information campaign on the value of migrant workers could help establish a positive public opinion of migrants and a receptive government that facilitates the conclusion of SSAs.

**8.3.9 Mandate an inter-agency mechanism to monitor SSA preparation and implementation.** Poor communication between government departments and between government and non-governmental organizations is a major barrier in the provision of adequate support to migrant workers. The development of a committee composed of officials from a wide variety of agencies would be essential in developing long-term strategies to address the root causes of issues related to migrant workers.

The Consultative Council on OFWs, an inter-agency committee first organized in 2004 under the auspices of the Department of Labor and Employment is composed of non-governmental organizations and secretary-level government officials who meet bi-monthly to provide feedback to the government on issues

related to migrant workers. This inter-agency mechanism may be tapped to develop SSAs and track their implementation. A barrier to the effectiveness of the Council is that attendance is not obligatory. Government officials may choose not to attend or may send lower ranking government who may have little knowledge of migrant issues or may not have the decision making authority. The Consultative Council on OFWs should be evaluated to see if it can provide the space for government representatives and other stakeholders to discuss the concerns of migrant workers.

## 9. CONCLUSION

Bilateral agreements, especially on labor and social security, have the potential to enhance protection, equal treatment and non-discrimination of overseas Filipino workers in the states of employment. International conventions and treaties provide a framework in developing bilateral labor agreements and social security agreements that protect the rights of migrant workers.

After almost four decades of labor migration, there is an urgency to guarantee social protection as migrants' age, get sick, retire, or return to the Philippines after spending their most productive years abroad. There are many challenges in developing, negotiating, implementing, and monitoring bilateral labor agreements and social security agreements. In this report, the recommendations are principally addressed to the Philippine government.

Migrant workers and rights advocates can:

- Inform the public and stakeholders about the importance of bilateral agreements, particularly on labor and social security.
- Advocate for a human rights based framework which is in accordance with United Nations conventions. A human rights based framework ensures the protection of the rights of migrant workers, identifies the obligations and responsibilities of governments of states of origin and employment, and establishes clear implementation, monitoring and review mechanisms.
- Advocate for the participation of stakeholders, especially migrant workers and rights advocates, in developing, negotiating, and implementing bilateral labor agreements and social security agreements

With the participation of all stakeholders, the bilateral labor agreements and social security agreements can truly be mechanisms in protecting the rights of migrant workers.

**APPENDIX 1: PHILIPPINE BILATERAL LABOR AGREEMENTS**

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
1	Middle East	Bahrain	Unknown	1997	MOU on the establishment of joint commission on manpower, economic, commercial, educational, cultural and technical cooperation		Records division DFA
2	Middle East	Bahrain	For ratification, according to Philippine Bilateral Agreements by DOLE (2006)	2003	MOU on technical education	TESDA	ILS library
3	Middle East	Bahrain	In force	2007	MOU on health services cooperation	DOH	ILS library /POEA CD
4	North America	Canada, Alberta	In force	2008	MOU Concerning Cooperation in HR Deployment and Development	DOLE, (and will include attached agencies: (i) POEA, (ii) OWWA, (iii) TESDA, and (iv) PRC)	POEA labor kiosk/ ILS library
5	North America	Canada, British Columbia	In force	2008	MOU Concerning Cooperation in HR Deployment and Development	DOLE, (and will include attached agencies: (i) POEA, (ii) OWWA, (iii) TESDA, and (iv) PRC)	POEA labor kiosk/ ILS library

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
6	North America	Canada, Manitoba	In force	2008	MOU Concerning Cooperation in HR Deployment and Development	DOLE, (and will include attached agencies: (i) POEA, (ii) OWWA, (iii) TESDA, and (iv) PRC)	POEA labor kiosk/ ILS library
7	North America	Canada, Saskatchewan	In force	2006	MOU between RP (DOLE) and her Majesty the Queen in the Right of the Province of Saskatchewan as represented by the Minister Responsible for Immigration and the Minister of Advanced Education and Employment (hereinafter referred to as AEE) (2006)	DOLE	POEA labor kiosk/ ILS library
8	Europe	France	Unknown	2007	Joint statement between the ambassador of the Republic of the Philippines and the Secretary General of the Inter-Ministerial Committee on Immigration Control of the Ministry of Immigration, Integration, National Identity and co-development of the Republic of France		DFA FSI
9	Asia and the Pacific	Great Britain, for North Borneo	Unknown	1955	Agreement (on) migration of Filipino labor employment in British North Borneo	National Employment Service	UP Law library
10	Asia and the Pacific	Great Britain, for North Borneo	Unknown	1955	Sample contract of employment for 1955 Borneo Agreement	National Employment Service	UP Law library
11	Asia and the Pacific	Indonesia	Unknown	2003	MOU Concerning Migrant Workers	DOLE, OWWA (Focal Implementing Agency)	ILS library/PO EA CD

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
12	Europe	Italy	In force	2004	Agreement on the Assisted Return and Readmission of Persons	Department of Justice	UP Law library (DFA Philippine Bilateral Agreements 2003-2004)
13	Middle East	Iraq	Expired, according to Philippine Bilateral Agreements by DOLE (2006)	1982	MOU Relating to Mobilization of Manpower	DOLE, POEA (Focal implementing agency)	Records division DFA/POEA CD
14	Asia and the Pacific	Japan	In force	2006	Economic Partnership Agreement		POEA labor kiosk/CM A website
15	Middle East	Jordan	Expired, according to Philippine Bilateral Agreements by DOLE (2006)	1981	MOU	POEA	POEA CD
16	Middle East	Jordan	Unknown	1988	Agreement on manpower	POEA	Records division DFA
17	Middle East	Jordan	In force	2010	MOU on Labor Cooperation	DOLE, POEA	POEA
18	Asia and the Pacific	Korea	Replaced by 2006 EPS	2004	MOU on the Sending of Workers to the Republic of Korea	DOLE, POEA (Focal implementing agency)	POEA labor kiosk
19	Asia and the Pacific	Korea	In force	2006	MOU on the Sending and Receiving of Workers under the Employment Permit System	DOLE, POEA (Focal implementing agency)	POEA labor kiosk
20	Middle East	Kuwait	In force	1997	MOU on Labor and Manpower Development	POEA	ILS library/POEA CD
21	Asia and the Pacific	Laos	For ratification 2005	2005	MOU on Technical Cooperation on Labor and Employment	DOLE	ILS library/POEA CD

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
22	Middle East	Libya	Unknown	1979	Agenda for Cooperation in the Field of Labor, Employment and Manpower Development	DOLE	POEA CD
23	Middle East	Libya	In force	2006	MOU	POEA	ILS library/POEA CD
24	Asia and the Pacific	Myanmar	Unknown	1998	MOU on the package of assistance for Human Resource Development for the Union of Myanmar		DFA FSI
25	Asia and the Pacific	Northern Marianas Islands	Unknown	2007	MOU	DOLE, POEA (Focal implementing agency)	ILS library/POEA CD
26	Asia and the Pacific	New Zealand	Unknown	2008	MOA on Labor Cooperation	DOLE	POEA CD
27	Europe	Norway	Expired, according to Philippine Bilateral Agreements by DOLE	2001	Agreement on Transnational Cooperation for Recruiting Professionals from the Health Sector to Positions in Norway	POEA	ILS library/POEA CD
28	Asia and the Pacific	Papua New Guinea	Expired, according to Philippine Bilateral Agreements by DOLE (2006)	1979	MOU in relation to the Employment of Filipino Citizens for the Performance of Duties Under an Employment Contract as Non-Citizen Contract Employees in the State Services (in) PNG	POEA	POEA CD
29	Middle East	Qatar	In force	1997	Agreement Concerning Filipino Manpower Employment in the State of Qatar	DOLE, POEA (Focal implementing agency)	ILS library/POEA CD
30	Middle East	Qatar	In force	2008	Additional Protocol to 1997 Agreement	POEA	POEA labor kiosk
31	Middle East	Saudi Arabia	In force	2005	MOU For Cooperation in the Field of Technical Vocational Education and Training	TESDA	ILS library
32	Europe	Spain	In force	2006	MOU on Cooperation for the Management of the Migratory Flows	POEA	ILS library/POEA CD

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
33	Europe	Switzerland	In force	2002	Agreement, exchange of professional and technical trainees	DOLE and Department of Justice through Bureau of Immigration	POEA labor kiosk
34	Europe	Switzerland	Unknown	2002	Agreement between RP and the Swiss Confederation on the Readmission of Persons with Unauthorized Stay	DFA	UP Law library (DFA Philippine Bilateral Agreements 2003-2004)
35	Asia and the Pacific	Taiwan	Replaced	1999	MOU regarding Special Hiring of Workers	DOLE, MECO, TECO, POEA	POEA CD
36	Asia and the Pacific	Taiwan	Replaced	2001	MOU on Special Hiring Program for Taiwan	DOLE, MECO, TECO, POEA	POEA CD
37	Asia and the Pacific	Taiwan	Replaced	2003	MOU on Special Hiring Program for Taiwan	DOLE, MECO, TECO, POEA	ILS library/POEA CD
38	Asia and the Pacific	Taiwan	Replaced	2006	MOU on Special Hiring Program for Taiwan	DOLE, MECO, TECO, POEA	POEA
39	Asia and the Pacific	Taiwan	In force (pursuant to 2006 MOU)	2008	MOU Between TECO and MECO (Joint Implementing Guidelines)	DOLE, MECO, TECO, POEA	POEA labor kiosk
40	Middle East	United Arab Emirates	In force	2007	MOU In the Field of Manpower	DOLE, POEA (Focal implementing agency)	POEA labor kiosk
41	Middle East	United Arab Emirates	In force	2007	Implementation of the UAE Employment Agreement for Domestic Workers and Sponsors	DOLE, POEA (Focal implementing agency)	POEA labor kiosk
42	Europe	United Kingdom	Unknown	2002	Recruitment Agreement	POEA	ILS library /POEA CD
43	Europe	United Kingdom	In force	2003	MOU, Health Care Cooperation	DOLE, DOH	ILS library/POEA CD

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
44	North America	United States	Unknown <sup>107</sup>	2003	Partnership for distressed Filipino nationals in the United States of America signed between the Department of Foreign Affairs and the National Federation of Filipino-American Bar Association of Greater Washington DC	DFA	UP Law library (DFA Philippine Bilateral Agreements 2003-2004)
45	North America	United States	Unknown	1989	Agreement between the US and the Philippines relating to the employment of Philippine nationals in the US military bases in the Philippines. (MOA amending agreement of 1985 and 27 May 1968)	DOLE	The Library of Congress
46	North America	United States	Unknown	1985	MOU amending May 27 1968 agreement	DOLE	The Library of Congress
47	North America	United States	Unknown	May 27 1968	Agreement, employment of Filipino Citizens by US military in US military bases in the Philippines	DOLE	UP Law library (Philippine Treaty Series Vol VI)
48	North America	United States	Expired, according to Philippine Bilateral Agreements by DOLE	1982	Agreement on Employee's compensation and medical care programs	DOLE, SSS	Records division, DFA
49	North America	United States	Expired, according to Philippine Bilateral Agreements by DOLE (2006)	Dec 28 1968	Agreement relating to the recruitment and employment of Filipino citizens of the US military forces and contractors of military and civilian agencies of the US Government in certain areas of the Pacific and South Asia and the Pacific	DOLE	UP Law library (Philippine Treaty Series Vol VI)/ POEA CD

For a list of existing BLAs and the status of the provisions based on the ILO Convention 97 Recommendation 86 Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons (1949), please see CMA website, [www.pinoy-abroad.net](http://www.pinoy-abroad.net).

**APPENDIX 2: PHILIPPINE SOCIAL SECURITY AGREEMENTS**

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
1	Europe	Austria	In Force April 1982	1980	Convention Between the Republic of the Philippines and the Republic of Austria in the Field of Social Security	Unspecified	SSS
2	Europe	Austria	In Force April 1982	1980	Agreement for the Implementation of the Convention Between the Republic of the Philippines and the Republic of Austria in the Field of Social Security	SSS	SSS
3	Europe	Austria	In Force - 2004	2000	Supplementary Convention Amending the Convention Between the Republic of Austria and the Republic of the Philippines in Social Security	Unspecified	SSS
4	Europe	Austria	In Force		Protocol of exchange of instruments of ratification pertaining to the supplementary convention	N/A	N/A
5	Europe	Belgium	In Force	March 2002	Joint Declaration on Social Security	N/A	N/A
6	Europe	Belgium	In Force – March 2002	Dec. 2001	Convention	SSS	SSS
7	Europe	Belgium	In Force – March 2002	Dec. 2001	Administrative Arrangement Concerning the Terms of Application of the Convention on social security between the Republic of the Philippines and the Kingdom of Belgium	SSS	N/A
8	North America	Canada	In Force – March 1997	Sept. 1994	Agreement on Social Security Between the Republic of the Philippines and Canada	SSS	SSS
9	North America	Canada	In Force – March 1997	Sept. 1994	Administrative Arrangement for the Implementation of the Agreement on Social Security between Canada and the Republic of the Philippines	SSS	SSS
10	North America	Canada	In Force – July 2001	1999	Supplementary Agreement to the Agreement on Social Security between the Republic of the Philippines and Canada	SSS	SSS

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
11	North America	Canada (Quebec)	In Force – Nov. 1998	Oct. 1996	Understanding on Social Security Between the Republic of the Philippines and Quebec	SSS	SSS
12	North America	Canada (Quebec)	In Force – Nov. 1998	Oct. 1996	Administrative Arrangement for the Implementation of the Understanding on Social Security Between the Republic of the Philippines and Quebec	SSS	SSS
13	North America	Canada (Quebec)	In Force	2000	Amendment to the Understanding on Social Security Between the Republic of the Philippines and Quebec	SSS, GSIS	SSS
14	Europe	France	In Force – Nov. 1994	Feb. 1990	Convention on Social Security Between the Government of the Republic of the Philippines and the Government of the French Republic	SSS	SSS
15	Europe	France	In Force – Nov. 1994	Feb. 1990	Administrative Arrangement Relevant to the Implementation of the Convention	SSS	SSS
16	Middle East	Israel	Pending	March 2009	Agreement on Social Security Between the Government of the Republic of the Philippines and the Government of the State of Israel.	SSS	DFA (OMEAA)
17	Middle East	Israel	Pending	March 2009	Administrative Arrangement for the Implementation of the Agreement	SSS	DFA
18	Asia	Korea	Pending	Sept. 2006	Agreement on Social Security Between the Government of the Republic of the Philippines and the Government of the Republic of Korea	SSS	SSS

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
19	Asia	Korea	Pending	Sept. 2006	Administrative Arrangement for the Implementation of the Agreement	SSS	SSS
20	Europe	Netherlands	In Force	2001	Agreement between the Republic of the Philippines and the Kingdom of the Netherlands on the Export of Social Insurance Benefits (Not a Social Security Agreement)	SSS, GSIS	SSS
21	Europe	Netherlands	In Force	2001	Procedure for Verification of Claims and Ongoing Entitlement of AOW – Pensions and ANW and AKW – benefits by the Social Security System for the Private Sector Workers of the Republic of the Philippines (SSS) (Not a Social Security Agreement)	SSS, GSIS	SSS
22	Europe	Spain	In Force – Oct. 1989	May 1988	Convention on Social Security Between the Republic of the Philippines and the Kingdom of Spain	SSS, GSIS	SSS
23	Europe	Spain	In Force – Oct. 1989	May 1988	Administrative Agreement for the Implementation of the Convention	SSS	SSS
24	Europe	Switzerland	In Force – Sept. 2001	March 2002	Agreement on Social Security Between The Republic of the Philippines and the Swiss Confederation	SSS	SSS
25	Europe	Switzerland	In Force – Sept. 2001	March 2002	Administrative Arrangement for the Implementation of the Agreement on Social Security between the Republic of the Philippines and the Swiss Confederation of September 17, 2001	SSS	SSS

	Region	Country	Status	Year signed	Title	Implementing Agency	Source
26	Europe	United Kingdom	In Force – Sept. 1989	1985	Convention	SSS	SSS
27	Europe	United Kingdom	In Force – Sept. 1989	1985	Arrangements for the Implementation of the Convention	SSS	SSS
28	Europe	Greece	Under negotiations		SSAs	SSS	SSS

**APPENDIX 3:  
PHILIPPINE CONVENTIONS/ AGREEMENTS ON SOCIAL SECURITY:  
DATE SIGNED AND RATIFIED**

(Source: International Affairs Division, Social Security System)

<b>Country</b>	<b>Date Signed</b>	<b>Date Ratified</b>
1. Austria	01 Dec. 1980	01 April 1982
2. United Kingdom & Ireland	27 Feb. 1985	01 Sept. 1989
3. Spain	21 May 1988	01 Oct. 1989
4. France	07 Feb. 1990	01. Nov. 1994
5. Canada	09 Sept. 1994	01 March 1997
6. Quebec	23 Oct. 1996	01 Nov. 1998
7. Switzerland	17 Sept. 2001	04 March 2002
8. Belgium	07 Dec. 2001	04 March 2002
9. Korea	15 Sept. 2006	Pending Ratification
10. Netherlands		01 October 2003
11. Israel	23 March 2009	Pending Ratification
12. Greece –Draft SSA	20 May 2009	
13. Portugal –Draft SSA	28 May 2010	

#### APPENDIX 4: CLAIMS RECEIVED

The following chart outlines the number of Filipino claimants processed per year for the years 2004 through to 2008. These statistics were provided by the International Affairs Division, Social Security System

	2004	2005	2006	2007	2008	Total
Austria	86	155	188	379	546	1,354
Belgium	0	0	3	10	8	21
Canada	575	648	682	908	837	3,650
France	40	28	9	18	38	133
Quebec	32	40	59	63	94	288
Spain	41	73	25	21	42	202
Switzerland	0	0	69	6	11	86
U.K.	41	62	57	59	75	294
Total	815	1,006	1,092	1,464	1,651	6,028

## **APPENDIX 5: RESEARCH PROJECT IMPLEMENTATION**

### **Methodology**

Data gathering included collection of bilateral labor agreements and social security agreements from the Center for Migrant Advocacy's archives, internet, and implementing agencies such as the Philippine Overseas Employment Administration, Social Security System, Institute of Labor Studies of the Department of Labor and Employment and the Foreign Service Institute of the Department of Foreign Affairs. Officials from Philippine government and international agencies were also interviewed.

A roundtable discussion was held on 28 July 2009 at the Sulo Hotel, Diliman, Quezon City. The participants from government agencies and civil society organizations undertook a preliminary review of all known Philippine bilateral labor agreements. The discussion showed that most of the bilateral labor agreements did not use a labor and human rights-based framework and focused more on deployment and recruitment arrangements. The bilateral agreements did not also address the issues related to the feminization of labor migration. There was a lack of consultations with other stakeholders, especially civil society organizations. It was also not clear whether the agreements were binding or served only as guidelines.

A working group composed of representatives from the Philippine Overseas Employment Administration, Institute of Labor Studies of the Department of Labor and Employment, Commission on Human Rights, UP Asian Center, and the Center for Migrant Advocacy, was created to provide input for this report. On September 1, 2009, the working group met and discussed the editing of the first draft of the report.

### **Limitations of the research**

The report reviews and analyzes all known bilateral labor agreements and social security agreements of the Philippines with states of employment, including a Memorandum of Understanding with another state of origin, Indonesia. Bilateral maritime transport and merchant shipping agreements are not included in the report because they are undertaken only with states that are already parties to the International Convention on Standards of Training, Certification and Watch keeping for Seafarers (1978) which prescribes the minimum standards in training, certification and watch keeping for seafarers.

This report provided a brief introduction to bilateral trade agreements and the issues related to migrant workers. A more comprehensive study would be needed to analyze their impact on migrant workers. Additional study is also needed on the perspective of states of employment.

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### **PUBLIC EVENTS AND WORKING GROUP MEETINGS**

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