

March 4, 2010

H.E. Gloria Macapagal-Arroyo  
President  
Republic of the Philippines

Dear Madame President:

Greetings of peace!

The undersigned are members of the Consultative Council on OFWs (CCOFW), representatives of migrant workers organizations, labor groups, trade unions, seafarers' organizations, policy and research institutes, and individual advocates of OFW rights.

We respectfully urge you to **VETO the AMENDATORY LAW on the Migrant Workers and Overseas Filipinos Act of 1995 (RA8042)** which was transmitted to your good office for your signature last February 2010.

We believe that these amendments, especially those on the expansion of the procedures on money claims and the compulsory insurance coverage for OFWs, are essentially **anti-migrant worker**, and serve only the interests of recruiters and insurance companies and related lobby groups.

Although some of the amendments are laudable in their intent, and some others are merely reactions to issues that have plagued OFWs in the recent past, we believe that, as a whole, this bill should receive your VETO for the following reasons:

- 1) The compulsory insurance provision will do more harm than good to our bagong bayani.
2. Many recruitment and manning agencies already, as a practice, provide insurance coverage for their workers , thereby making this provision unnecessary and irrelevant.
3. We believe that, should this bill become a law, the government agencies tasked with its implementation will not be able to properly implement, regulate and monitor it.
4. There are many other alternatives to legislating and privatizing OFW insurance coverage.

Finally, just as Congress approved the proposed mandatory insurance which benefits the recruiters more than the workers, it has failed to repeal Section 10 on Money claims which states that "In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract of for three (3) months for every year of the unexpired term, whichever is less."

In a landmark decision last March 2009, the Supreme Court rendered the provision unconstitutional. Supreme Court Justice Antonio Carpio in a separate concurring opinion said the provision is "unduly oppressive, unreasonable and repugnant to the Constitution" and an "invalid exercise of police power" over the OFWs. Yet, the provision as contained in the amendatory law remained intact and untouched in its original form.

With such a strong **multi-sectoral opposition** to the amendments, from the very people who will directly be affected by its provisions, should this bill then not receive a presidential veto and revert back to the Senate and the House of Representatives?

Thus, on the strength of our conviction that the amendatory law on RA8042 particularly the provisions on the compulsory insurance provision and the non-repeal of the particular provision on Section 10 on Money claims, will harm, not benefit, our migrant workers, we believe that you should VETO this bill.

Please find attached the document which elaborates our position.

We anticipate your positive response.

Thank you very much.

Signed,

**Members of Consultative Council on OFWs (CCOFW) and other migrants rights advocates**

Carmelita G. Nuqui  
President, Philippine Migrants Rights Watch (PMRW)  
Executive Director, Development Action for Women Network (DAWN)

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Roger Cordero  
Coordinator, Merchant Marine Operators Association

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Jose Valencia  
President, Kasapi-Hellas, Athens, Greece

Elizabeth Malonzo  
President, MaSSSFA-Davao

Dr. Mario Joyo Aguja  
Mindanao State university

Conrad Castillo  
Secretary General, Akbayan Citizens' Action Party

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Although some of the amendments are laudable in their intent, and some others are merely reactions to issues that have plagued OFWs in the recent past, we believe that, as a whole, this bill should receive your VETO for the following reasons:

**1) The compulsory insurance provision will do more harm than good to our bagong bayani.**

We strongly oppose the mandatory insurance provision, which states:

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

The proposed insurance amendment **applies only to OFWs deployed through recruitment agencies**. It excludes the bulk of Filipino workers composed of rehires, name hires, direct hires and government-to- government hires because the

proposal cannot be implemented on them simply because recruiters are NOT involved in the contracting of their jobs.

Data from the Philippine Overseas Employment Agency (POEA) covering the years from 1990- 2008 shows that only an average of 26.6% of the total number of OFWs are deployed through recruitment agencies. The bulk of our OFWs are rehires who renew their contracts on their own. Others are hired through government placement or are name/direct hires.

In the case of the seafarers, prior to sailing they are already enrolled by their employers in a comprehensive insurance policy, together with the vessels they work in. In the final version of the amendatory law, the proposed insurance is extended to seafarers. However, the benefits are far inferior to those enjoyed by seafarers under the current insurance scheme.

If this provision is intended as a measure to protect our overseas Filipino workers, then should it not apply to all of them, not only to the one-fourth who are hired through agencies? And yet, we face the conundrum: should the remaining 74% of non-agency hires pay for the insurance themselves, as an additional requirement, when they are already overburdened with excessive fees? This would then be unconstitutional, as it would violate Section 36 of RA 8042, which states that

Section 36. Non-increase of Fees; Abolition of Repatriation Bond. - Upon approval of this Act, all fees being charged by any government office on migrant workers shall remain at their present levels and the repatriation bond shall be abolished.

Moreover, the presence of a third party -the insurance companies- adds **more layers to the bureaucratic tangle** that the OFWs or their families have to unravel whenever they have money claims or damages claims against their agencies.

We believe that this insurance provision, therefore, does not directly benefit overseas workers. Rather, it benefits the recruitment agencies, whose responsibility towards the workers they send abroad will be eased by the presence of the insurance provision. Under our present laws, the migrant worker is already protected because the local recruitment agency is held solidarily liable with the foreign employer whenever a breach of contract or negligence is committed by the employer. Should this insurance provision be passed into law, the recruitment agency will no longer be answerable to any abuses that the OFW will face abroad: they are **passing their neglect to the insurance companies**.

In addition, we believe that, since the proposed insurance will cover a mere 26% of OFWs, or even less, then the premiums will prove to be **too prohibitive for the average migrant worker**, most of whom work in the service industry as household service workers and caregivers.

Does this not, then, make the amendment anti-OFW?

**2. Many recruitment and manning agencies already, as a practice, provide insurance coverage for their workers , thereby making this provision unnecessary and irrelevant.**

The proposal states that the agencies will pay the required premiums for the insurance coverage of the workers that they send abroad. But there are already recruitment/manning agencies who do this for the workers they send abroad, some with even **superior terms** to those in this proposed amendment.

In addition, government-to-government hiring schemes also guarantee better protection for overseas workers, including insurance coverage. For instance, South Korea's Employment Permit System (EPS), intended to curb illegal recruitment, tasked the Philippine Overseas Employment Administration (POEA) to be the only government agency authorized to implement this employment system in the Philippines. The implementation of the EPS is part of the Memorandum of Understanding between the Department of Labor and Employment (DOLE) and the Korea Ministry of Labor. The MOA between the DOLE and the Ministry of Labor, Republic of Korea on the Sending and Receiving of Workers under the Employment Permit System of Korea states that:

Paragraph 16.2, General Provisions: The parties will make effort to promote availment of benefits by the workers under the Departure Guarantee Insurance and Return Cost Insurance, through the regular procedures, before they leave Korea.

Other countries also ensure that foreign workers are covered by insurance policies before they are accepted. The rationale for the mandatory requirement is self-serving too – States do not want to be burdened with the welfare concerns of migrants. These countries, such as Singapore, Abu Dhabi in the UAE, and Saudi Arabia, require the employers in their countries to provide insurance coverage to their workers.

We believe that a similar insurance coverage for our OFWs, over and above existing ones, should be encouraged, not legislated. Recruitment/manning agencies must assume their role in protecting those they recruit, and **voluntarily** insure their workers against any harm that can befall them in the countries that they work in.

**3. We believe that, should this bill become a law, the government agencies tasked with its implementation will not be able to properly implement, regulate and monitor it.**

We highly doubt the capability of government agencies to effectively implement these amendments. Their track record in protecting the basic human rights of our

migrant workers has so far been unsatisfactory. We believe that additional provision will follow the fate of several others of its mandated tasks: be neglected, or suffer from poor implementation and monitoring, all at the expense of our overseas workers.

The POEA has not been living up to its mandate of OFW protection. For example, despite the provisions in RA 8042, **illegal recruitment** is still a major issue. In fact, the Philippines has been classified as Tier 2 Watchlist in the US Department of State's Trafficking in Persons Report for 2009, which concludes that "the Government of the Philippines does not fully comply with the minimum standards for the elimination of trafficking." It stated:

A significant number of Filipino men and women who migrate abroad for work are subjected to conditions of involuntary servitude in Bahrain, Brunei, Canada, Cote d'Ivoire, Cyprus, Hong Kong, Japan, Kuwait, Lebanon, Malaysia, Palau, Qatar, Saudi Arabia, Singapore, South Africa, Taiwan, Turkey, and the United Arab Emirates. Muslim Filipina girls from Mindanao were trafficked to the Middle East by other Muslims... Migrant workers were often subject to violence, threats, inhumane living conditions, non-payment of salaries, and withholding of travel and identity documents. (US Department of State's Trafficking in Persons Report, 2009)

The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families report for 2009 notes that The Committee recommends that the State party review its labour migration policy in order to give primary importance to human rights of migrant workers, in line with the State party's own professed goal as set out in RA 8042. (Consideration of Reports Submitted By States Parties Under Article 74 of the Convention, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families - The Philippines, April 2009)

The Department of Foreign Affairs has not been vigorously extending itself in securing rights-based bilateral labor agreements (BLAs) with countries which host our OFWs. To date, we have forged only 47 BLAs, with 25 countries in the last 30 years or so. There is also the general observation that the BLAs are too general and do not sufficiently promote and protect the rights of OFWs.

**The forging of rights-based labor agreements between the Philippines and the OFW receiving countries will do more to protect the rights of our workers than any legislated insurance coverage will.**

Job contracts are not thoroughly scrutinized, verified, documented and monitored by the POLOS (Philippine Overseas Labor Offices). This accounts for innumerable



cases of human trafficking, contract substitution, and abuse in the workplace. Only 88 embassies and consulates and 37 POLOS serve 4.13 million OFWs, 3.69 million Filipino immigrants and permanent residents and close to a million undocumented or irregular status workers, in some 238 countries and territories across the globe. There is only one Labor Attache serving from 5,600 to 100,000 OFWs. This is echoed by the assessment of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of the protection extended to Filipino workers abroad:

The Committee is concerned about the documented cases where embassy/consulate personnel abroad did not properly assist their nationals because the former were not sufficiently aware of processes in the host country. While noting the information provided by the delegation on the alternative dispute settlement mechanism, the Committee is concerned at information that Filipino migrants are unwilling to file cases of abuse by their employers abroad for lack of trust in the justice system for fear of retaliation and unfamiliarity with the redress possibilities. (Consideration of Reports Submitted By States Parties Under Article 74 of the Convention, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families – The Philippines, April 2009)

Many provisions of RA 8042, which was passed in 1995, have still not been implemented. We have yet to see the POEA implementing, for instance, the provision on Foreign Employers Guarantee Trust Fund (Section 3, Part IV, Rules and Regulations Governing Land-Based Workers), which will supposedly make the State, through the POEA, accountable for the workers that it recruits.

We believe that these government agencies should first be made to answer for their inefficiency and neglect of their mandates, as well as undergo an audit of how they use their funds, before they are given further fiscal responsibilities.

#### **4. There are many other alternatives to legislating and privatizing OFW insurance coverage.**

We believe that there is **no need to legislate** the practice of insuring overseas Filipino workers. This will merely constitute an **added financial burden** to them, while not assuring them of any protection.

The initiative of the recruiters to insure their workers should be at best on **voluntary basis** because there already exist various mandatory insurance programmes for OFWs. Some of these are:

a. The OWWA mandatory insurance coverage – death and accidental insurance, repatriation of warm body or human remains, training, scholarship and skills upgrading, predeparture, livelihood, reintegration and calamity loans; LOI 537 provides that each departing OFW is covered by the OWWA through the US\$25 contribution of the foreign employer and/or recruiter. The IRR of LOI further provides that the US\$25 contribution should IN NO WAY be collected from the worker. In reality however, most OFWs pay the US\$25 contribution especially after the promulgation of OWWA Board resolution on the Omnibus Policies in September 2003 making OWWA a membership-based, paying government agency where the benefits can only be availed of by paying OFW members. To date however, OWWA is besieged with problems in regard to delivery of quality service to the most number of OFWs who need its services;

b. There are provisions provided for in the POEA Standard contract which include leave with pay, medical and dental services, work-related compensation accident and death benefits, transportation and repatriation;

c. Health and Medical insurance through PhilHealth;

d. Onsite Coverage of the worker includes social security benefits and end-of-service benefits from employers except for domestic workers (Saudi Arabia and many other countries); mandatory health and medical benefits from employers (Abu Dhabi, UAE, Singapore and many other countries);

Unfortunately, these provisions are not followed and enforced to the letter. The OWWA benefits only paying members, and the availment of its programs and services is always an uphill battle. The provisions of the standard contract, particularly in reference to social protection are practically ignored and disregarded, or the entire contract is breached and/or substituted for another with far inferior terms of reference. Philhealth programs and ways of availment are yet to be promoted and disseminated following the transfer of Medicare from OWWA to Philhealth. And since many OFWs onsite are already covered by medical and health insurance, for the most part, the OFW PhilHealth enrolment is more for the benefit of their families left behind or when migrants finally return home for good.

Onsite insurance programs are also not followed to the letter because employers tend to evade and ignore their obligations despite these being mandatory as provided for by laws. Insurance mechanisms for the protection of OFWs are already in place. They, however, have not been well implemented or monitored. The failure of the above insurance schemes to work for the welfare and benefit of the OFWs and their families will not be addressed by the proposal for a mandatory insurance for OFWs. It does not make the system work. It does not address the question of why employers, recruiters and government agencies do not follow the policies. The State's failure to work cannot be addressed by passing on the burden to private insurance companies.

We believe that recruitment/manning agencies should instead be strongly encouraged to insure their workers, instead of requiring them to do so. Departing workers should also be encouraged to insure themselves and their families, with proper orientation of the benefits they and their families will accrue from it.

Our consultations with officials of government agencies such as the Department of Labor and Employment, the Philippine Overseas Employment Administration, and the Overseas Workers Welfare Administration revealed that they, themselves, have strong reservations about these amendments. The Commission on Filipinos Overseas has already transmitted their letter to Your Excellency to convey the same. Seafarer organizations have also expressed their desire to have this bill junked, since it completely disregards their rights. Even manning and recruitment agencies have also dropped their support for this bill.

Finally, just as Congress approved the proposed mandatory insurance which benefits the recruiters more than the workers, it has failed to repeal Section 10 on Money claims which states that "In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract of for three (3) months for every year of the unexpired term, whichever is less."

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With such a strong **multi-sectoral opposition** to the amendments, from the very people who will directly be affected by its provisions, should this bill then not receive a presidential veto and revert back to the Senate and the House of Representatives?

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Thank you.

Signed,

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Akbayan Citizens' Action Party  
Alliance of Progressive Labor  
Batis Aware  
Batis Center for Women  
Commission for Filipino Migrant Workers (CFMW), The Netherlands  
Economic Resource Center for OFWs (ERCOF)  
Fernando Crisosto, Saudi Arabia  
Filipino Community Services and Information Network-Hongkong  
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Filipino Domestic Workers Union - Hongkong  
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KOOP Natin, The Netherlands  
Marino  
Migrant Forum in Asia (MFA)  
Merchant Marine Operators Association (MMOA)  
Mike Bolos, Jr., Ex-OFW from Saudi, OFW Rights Advocate  
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Peoples Partner for Development and Democracy (PPDD), Thailand  
Philippine Alliance of Human Rights Advocates (PAHRA)  
PS Link  
Pusong Pinoy Association – Abuja, Nigeria  
Rashid Fabricante, OFW, Saudi Arabia  
RESPECT Network Europewide  
Ronnie Abeto, OFW in Khurais Saudi Arabia  
Samahan ng Manggagawang Pilipino sa Belgium  
Trusted Migrants, The Netherlands  
Women in Development Foundation  
YMCA Philippines



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