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Nurturing Wings or Clipping them Off?

The Philippine Approach to Female Labor Migration and a Potentially Redeeming Role for the Commission on Human Rights

Introduction

The large-scale migration of Filipino workers started in the 1970's as inadequate local employment and livelihood opportunities pointed to overseas opportunities in the booming economy of oil-rich countries in the Middle East. Though initially dominated by male construction workers and seafarers, female migrant workers, mostly in the health care professions, in domestic services and in the entertainment industry, followed suit and, in the most recent available statistical report, have even slightly outnumbered the men. As of the end of 2014, 50.43% of the 2.32 million overseas Filipino workers are women.¹ Collectively, these overseas workers sent about 27 billion dollars in remittances in 2014,² equivalent to 10% of the country's gross domestic product.³ The Philippine economy has been kept afloat in the past decades by the said remittances prompting the government to hail overseas Filipino workers as the country's modern-day heroes.⁴

The economic benefits brought about by overseas employment to countless Filipinos notwithstanding, plenty of accounts have been written about the so-called "social

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costs” of migration - breakdown of families as the alteration of the traditional domiciliary arrangement often result in estranged spouses and unsupervised children.⁵ A few cases of workers coming home in coffins have also caused tremendous public outpouring of grief and rage over the magnitude of abuse endured by overseas workers, especially women.⁶

To protect the rights and promote the welfare of migrant workers and their families, the legislature enacted the Migrant Workers and Overseas Filipinos Act in 1995. While the Act recognized the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, it claimed that the State does not promote overseas employment as a means to sustain economic growth and achieve national development. It further stated that the existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated.⁷ It gave further emphasis on female overseas workers; recognizing their particular vulnerabilities and requiring the application of gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers in general.⁸

On June 7, 2015, the 20th Migrant Workers Day, an annual commemoration of the signing of the Act, the government renewed its commitment “to protect and care for our modern day heroes” and “to keep them away from danger and abuses especially illegal recruiters and bad elements”.⁹ In stark contrast, Migrante International, the largest progressive alliance of overseas Filipinos and their families, marked the occasion with protest, claiming that overseas workers “are more beleaguered than they ever were before.”¹⁰

This paper will analyze the Philippine government’s approach to female labor migration as reflected in policies contained in the Migrant Workers and Overseas Filipinos

Act and in the relevant Supreme Court rulings that unduly restrict women’s liberties in the guise of protecting their welfare. It will then look at a potentially redeeming role for the Commission on Human Rights in the light of its mandate to act as Gender and Development Ombud under the Magna Carta of Women.

The policy of skills enhancement

The Migrant Workers and Overseas Filipinos Act recognizes that “the ultimate protection to all migrant workers is the possession of skills”. Pursuant to this policy, the Act declared that deployment shall be limited, as soon as practicable, to skilled Filipino workers only.¹¹

The Philippine Overseas Employment Administration (POEA) immediately cast its attention on two groups of migrant Filipino workers perceived to be most vulnerable to abuse – entertainers and domestic servants - an overwhelming majority of which are women. The first move was a change in nomenclature as they began to be referred to as “overseas performing artists” and “household service workers”, respectively. The surface makeover was coupled with the implementation of a more rigorous system of training, testing and certification of overseas performing artists that was immediately challenged in court.

In the case of JMM Promotion and Management, Inc. v. Court of Appeals,¹² the Supreme Court lauded the government’s aim to rationalize the deployment of overseas performing artists by requiring satisfactory demonstration of specific educational and artistic skills before they are deemed adequately prepared for the unpredictable demands of foreign employment. Over claims that such onerous impositions were unjust and excessive restrictions on the right to travel and to seek better means of livelihood, the Supreme Court was convinced that the system will reduce the possibility of exploitation by unscrupulous individuals and agencies and, ultimately, keep overseas performing artists away from prostitution fronts and other worksites associated

with unsavory, immoral, illegal or exploitative practices.

In resolving the issues, the Supreme Court cited the earlier case of *Philippine Association of Service Exporters, Inc. v. Drilon*,¹³ where it upheld a temporary ban on the deployment of female overseas domestic workers after taking judicial notice of the exploitative working conditions that many migrant Filipina workers find themselves in. According to the Supreme Court, the confirmed reports of maltreatment, rape and various forms of torture constitute a compelling motive for urgent government action for the protection of such victims of abuse.

The Supreme Court was quick to justify that it was not adopting a chauvinist view and ratified the differential treatment in the absence of concrete evidence that male overseas workers have been afflicted with a similar predicament, hence, there was no need for the Government to act similarly with respect to them. The Court had no doubt that a ban on deployment of female overseas domestic workers will be for their own good and welfare.

The implementation of higher competency standards for household service workers would follow suit in 2006. Under the new regulations, a prospective household service worker must undergo 216 hours of training in four core skills competencies (i.e., house cleaning, laundry and ironing, preparation of hot and cold meals, and provision of hot and cold beverage services) and pass corresponding assessment procedures. They are also required to undergo a 3-day country specific language and culture orientation. The foregoing requirements form part of the Household Service Workers Protection and Welfare Enhancement Reform Package that likewise increased their minimum deployable age from 18 to 25, increased their minimum entry salary from USD 200 to USD 400 per month, prohibited collection of placement fees from them and required higher prequalification standards for foreign placement agencies and employers.¹⁴

Notwithstanding such comprehensive reform package in place, the POEA rolled out in 2012 a gradual plan to phase-

out the deployment of household service workers within the next five years.¹⁵ The strategy brings confusion as much as frustration as the program that was supposed to nurture their wings now seems to be a sham motivated by an ultimate goal to actually clip them off.

This unfortunate treatment of household service workers is not unprecedented because the POEA had long been discouraging the deployment of female overseas workers in an effort to avoid cases of abuse and reduce the social costs of labor migration which, it unfortunately believes, “can be achieved if more fathers than mothers landed jobs overseas” because “mothers should stay in the country to take care of their brood and not to rock the cradle of other nationalities”.¹⁶

The policy of gender (in)sensitivity

The POEA was supposed to apply “gender sensitive” criteria in the formulation and implementation of policies and programs affecting migrant workers, as provided for in the Migrant Workers and Overseas Filipinos Act,¹⁷ but it seems to be doing otherwise. A closer look at the definition of “gender sensitivity” in the same Act could possibly explain why –

“gender sensitivity shall mean cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interest of the sexes”.¹⁸

By assuming that men and women have “respective” instead of shared interests, the Act may have inadvertently endorsed differential treatment often based on unfounded stereotypes rather than promote a genuine concern for the welfare of all migrant workers regardless of gender. For instance, the responsibility of raising physically fit and morally upright children should not be thrown over the shoulders of women alone but should be acknowledged as a joint obligation of spouses and a collective commitment of the community. What we see instead is a society that vilifies female overseas workers for being absentee wives and mothers, tolerates financial

indiscretions and marital infidelity on the part of spouses left behind, and harbors indifference when children torn in between end up engaging in thoughtless vices and moral depravities.

Similarly, safety and security while working overseas is a shared interest of both female and male overseas workers. The government should intensify efforts to protect both sexes and not treat the former as pathetically frail and feeble that they must be tucked away and sheltered at home while neglecting the latter because they are presumed to be composed of much tougher physique and can therefore fend for themselves.

The policy of selective deployment

The Migrant Workers and Overseas Filipinos Act devised a remarkably convenient way to protect its presumably stronger brood that need not, or cannot, be stopped from venturing all over the world to earn a living - a policy of selective deployment that allows them to work only in countries where their rights can be amply protected by the host government. The Act enumerates three instances that it is prepared to recognize as adequate guarantee of such protection, *to wit*:

“(a) the receiving country has existing labor and social laws protecting the rights of workers, including migrant workers;

(b) the receiving country is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; or

(c) the receiving country has concluded a bilateral agreement or arrangement with the Philippine government on the protection of the rights of overseas Filipino Workers.”

The Act further requires that the receiving country should be taking positive and concrete measures to protect the rights of migrant workers in furtherance of any of the foregoing

guarantees.¹⁹ Finally, the Act provides that a ban on deployment may be imposed at any time in pursuit of the national interest or when public welfare so requires.²⁰

This is yet again another policy that suffers from a basic flaw as it relieves the Philippine government of its fundamental responsibility to protect its own citizens and passes the burden to their countries of destination. The anomalous situation becomes all the more revolting once the government threatens to wield its power to ban deployment as if the chance to work abroad is a prized privilege that Filipinos ought to beg their government to grant when as a matter of fact, it is the latter’s ineptitude that inhibited the growth of local opportunities and made it a sheer necessity to find greener pastures away from home. For the longest time, quality education, decent housing and adequate healthcare services have been far from affordable for a great majority of Filipino families, hence, the incessant lure of overseas employment.

Sociologists’ critiques

Anna Romina Guevarra opined that the policy of recognizing women’s particular vulnerabilities and the requirement of gender-sensitivity in the programs that affect them can be read in two ways:

“[o]n the one hand, such vulnerabilities stem from the fact that the occupations within which Filipino women dominate, such as domestic work and entertainment, show a propensity for labour violations and illegal trafficking activities. On the other hand, such vulnerabilities reflect the state’s concern about the perception of Filipinas as sexual objects.”

Guevarra further noted that over and above the avowed concern for the exploitative occupations female workers actually find themselves in, the state actually seems to be more apprehensive over the kind of workers who perform these jobs - uneducated, poor and young women - while at the same time less troubled by the structural environment

that facilitate physical and sexual exploitation such as unregulated working conditions, unbridled employer control, significant debts incurred due to numerous pre-employment processing fees and the proliferation of trafficking activities by illegal recruiters.

She concludes that while it appears that the state wants to claim that women's vulnerabilities as workers are not necessarily an off-shoot of their biology, its program of action speaks otherwise, that is, modification of workers' behavior (e.g., engaging in demeanor that negates sexual availability to their employers) in the guise of empowerment, deflecting the state's responsibility to protect onto the women themselves.²¹

On the other hand, Rhacel Salazar Parreñas argues that it is the gendered protectionist laws, in the first place, that lead Filipina hostesses in Japan to forced sexual labor.²² She explains that the recruitment system implemented by the government is saddled with layers upon layers of middlemen brokers that shave off a significant portion of the earnings of these Filipina entertainers forcing them to engage in paid sex to make the most of their stay in Japan. Nonetheless, she claims to have seen this situation of vulnerability to abuse as one that many Filipina hostesses willingly embrace because it rewards them with financial mobility that is not available if they were to stay in the Philippines where they would face a life of abject poverty. In fact, these women resent their categorization as victims of trafficking and the government's "rescue" strategy that result in the eradication of their occupation.

"Underlying the construction of trafficked persons as 'victims' in need of rescue is the moralistic view that women must stay close to hearth and home so as to protect their femininity... the conflation of migrant sex work and trafficking romanticizes female domesticity. Constructing migrant sex workers as trafficked victims in need of protection suggests that women migrate (i.e., leave the comforts of home) only when 'pushed, obligated, coerced, or

forced'."²³

The potentially redeeming role of the commission on human rights

The characterization of female overseas Filipino workers as victims in need of rescue is reinforced by the Supreme Court, no less -

*"[o]ur overseas workers constitute an exploited class. Most of them come from the poorest sector of our society. They are thoroughly disadvantaged. Their profile shows they live in suffocating slums, trapped in an environment of crime. Hardly literate and in ill health, their only hope lies in jobs they can hardly find in our country. Their unfortunate circumstance makes them easy prey to avaricious employers. They will climb mountains, cross the seas, endure slave treatment in foreign lands just to survive. Out of despondence, they will work under sub-human conditions and accept salaries below the minimum. The least we can do is to protect them with our laws in our land."*²⁴

Sadly, the two decades that passed since the enactment of the Migrant Workers and Overseas Filipinos Act bear witness to the inadequacy of government efforts to properly address the pressing needs of overseas Filipinos in general and female workers in particular. Indeed, there has to be another way.

The 1987 Philippine Constitution created a Commission on Human Rights with a mandate to provide appropriate legal measures for the protection of human rights of all persons within the Philippines, including Filipinos residing abroad²⁵ as in the case of overseas Filipino workers.

In 2009, the Philippine legislature passed the Magna

Carta of Women, which designated the Commission as Gender and Development Ombud.²⁶ As such, it was vested with authority to formulate and implement programs and activities related to the promotion and protection of the human rights of women including the conduct of investigation of cases involving discrimination and violations of their rights under the said statute and other related laws and regulations.²⁷ More specifically, the Magna Carta assured that the State shall promote the rights and welfare of women migrant workers regardless of work status and that they shall be protected against discrimination in wages, conditions of work, and employment opportunities in host countries.²⁸

Under the Implementing Rules and Regulations of the Magna Carta, the Department of Foreign Affairs, the Department of Labor and Employment, the Philippine Overseas Employment Administration and the Overseas Workers' Welfare Administration have been declared as the state agencies primarily responsible in protecting the rights and promoting the welfare of women migrant workers especially those classified under the vulnerable skills categories.²⁹ The Magna Carta has put the Commission on Human Rights at the helm of these state agencies with authority to monitor the latter's compliance with their duties under the statute and, upon finding that such obligations have not been fulfilled, to recommend appropriate administrative sanctions before the Office of the President and the Civil Service Commission.³⁰ More importantly, the Commission enjoys the clear mandate to hail to court all possible violators of the Magna Carta be they individuals, agencies, institutions or establishments.³¹

In the exercise of the foregoing powers, the Commission on Human Rights can rightfully challenge before the appropriate court the paternalistic measures imposed by the Department of Labor and Employment and the Philippine Overseas Employment Administration that unduly restrict the deployment of female migrant workers as well as hold such agencies responsible, together with the Department of Foreign Affairs, for their failure to effectively protect these workers once abroad.

Just a few months prior to the effectivity of the Magna Carta, the Commission on Human Rights had an opportunity to wield its power on behalf of overseas workers based in Nigeria who clamored for the lifting of a total deployment ban issued by the government on the said country due to the kidnapping of twenty-four Filipino sailors on a boat in the Niger Delta. Regrettably, the best that the Commission could do was to issue an "advisory" that recommended the "review of all existing travel bans, whether partial or total, with the object of evaluating their propriety and respect for human rights" despite its admission that overseas Filipino workers who possessed active working contracts in Nigeria were "in effect prevented from exercising their right to work" while those who were already in Nigeria but wanting to spend some time in the Philippines were "effectively prevented from coming home to be with their families" because they feared inability to return to work after their vacation.³²

It is submitted that the Commission on Human Rights can, and should, do a whole lot more than this.

Conclusion

In its declaration of policy, the Magna Carta, in no uncertain terms, ensured the substantive equality of women and men. It mandated the State to promote empowerment of women and pursue equal opportunities for women and men and ensure equal access to resources and to development results and outcome. It gave recognition to the fact that equality entails the abolition of the unequal structures and practices that perpetuate discrimination and inequality. It further mandated the State to provide the necessary mechanisms to enforce women's rights and adopt and undertake all legal measures necessary to foster and promote the equal opportunity for women to participate in and contribute to the development of the political, economic, social, and cultural realms. To ensure the full integration of women's concerns in the mainstream of development, the State shall provide ample opportunities to enhance and develop their skills, acquire productive employment and contribute to their families and communities to the fullest of their

capabilities.³³

It is submitted that the Commission on Human Rights should use this powerful mandate to rectify the government's approach towards female labor migration that swings from romantic paternalism that exalt women's divine role as mothers, to misogynist paternalism that treat them as naturally inferior to men in physical, intellectual and moral composition. In both cases, the misguided result had been to stifle rather than to improve overseas employment opportunities for women. The mechanism employed to protect their welfare should be supportive, instead of restrictive, of their pursuit of poverty alleviation, professional advancement and personal dignity.

Endnotes

¹ Philippine Statistics Authority, *National QuickStat – January 2016*, available at <https://psa.gov./content/national-quickstat-january-2016>.

² Bangko Sentral ng Pilipinas, *Overseas Filipinos' (OF) Remittances*, available at <http://www.bsp.gov.ph/statistics/keystat/ofw.htm>.

³ *Supra* note 1.

⁴ The accolade “bagong bayani” was first made by President Corazon Aquino in a 1988 speech at St. Margaret's Church in Hong Kong before an audience that consisted mostly of Filipino domestic workers. The “heroic” discourse is problematic according to Jean Encinas-Franco because while it seemingly elevates migrants, it makes natural the risks and sufferings of going abroad and downplays the very reasons why migrants are in the first place displaced by the Philippine economy. It allows the state to mute dissenting voices to its labor export strategy while maintaining the loyalty of its transnational subjects. Jean Encinas-Franco, *Overseas Filipino Workers (OFWs) as Heroes: Discursive Origins of the “Bagong Bayani” in the Era of Labor Export*, 12 *Humanities Diliman* 56, 72 (2015).

⁵ Social scientists have written extensively on the phenomenon of “parenting from a distance”. E.g., Rhacel Salazar Parreñas, *Children of Global Migration: Transnational Families and Gendered Woes*, Stanford: Stanford University Press (2005) and Rosemarie Edillon, *The Effects of Parent's Migration on the Rights of Children Left Behind in the Philippines*, UNICEF Working Paper (2008).

⁶ The classic example often cited is the case of Maricris Sioson who died while working as an entertainer in Japan in 1991. Her death certificate stated hepatitis as cause of death but upon arrival of her body in the Philippines, her family sought an autopsy due to traces of beatings and stab wounds. It was later confirmed by the National Bureau of Investigation in the Philippines that she did not die of hepatitis but of traumatic head injuries. Nonetheless, the Japanese government stood pat on its conclusion that her death was due to illness. See Equality Now, *Japan: The Death of Maricris Sioson* (December 1, 1993) available at <http://www.equalitynow.org/node/113>.

⁷ Republic Act No. 8042, Migrant Workers and Overseas Filipinos Act of 1995, Section 2(c).

⁸ *Id.* at Section 2(d).

⁹ Alexis Romero, *The Philippine Star*, *Palace Renews Vow to Protect OFWs* (June 8, 2015), available at <http://www.philstar.com/headlines/2015/06/08/1463490/palace-renews-vow-protect-ofws>.

¹⁰ Migrante International, *20th Nat'l Migrants' Day Marked With Protest* (June 5, 2015) available at <http://migranteinternational.org/2015/06/05/20th-natl-migrants-day-marked-with-protest/>.

¹¹ *Supra* note 7, at Sec. 2(g). The policy was rephrased when the statute was amended in 2009 with possession of skills now recognized as “most effective tool for empowerment”. The amendment further stated that the government shall provide free and accessible skills development and enhancement programs. Sec. 1, Republic Act No. 10022.

¹² 260 SCRA 319 (1996).

¹³ 163 SCRA 386 (1988).

¹⁴ Philippine Overseas Employment Administration, *HSW Protection and Welfare Enhancement Reform Package*, available at http://www.poea.gov.ph/hsw/q&a_hsw.html.

¹⁵ Jerry E. Esplanada, DOLE plans to End Deployment of Maids Overseas in 5 Years, PHILIPPINE DAILY INQUIRER, Aug.25, 2012, available at <http://global.nation.inquirer.net/48074/dole-plans-to-end-deployment-of-maids-overseas-in-5-years>

¹⁶ R.A. Dioquino, *POEA to Deploy More Male OFWs in 2012*, GMA NEWS ONLINE, Nov. 26, 2011, available at <http://www.gmanetwork.com/news/story/239752/pinoya-broad/poea-to-deploy-more-male-ofws-in-2012>.

¹⁷ *Supra* note 7, at Section 2(d).

¹⁸ *Supra* note 7, at Section 3(b).

¹⁹ *Supra* note 7, at Sec. 4, as amended by Republic Act No. 10022.

²⁰ *Supra* note 7, at Sec. 5, as amended by Republic Act No. 10022.

²¹ Anna Romina Guevarra, *Managing 'Vulnerabilities' and 'Empowering' Migrant Filipina Workers: The Philippines' Overseas Employment Program*, Social Identities 12:5, 523-541 (September 2006).

²² Rhacel Salazar Parreñas, *The Indentured Mobility of Migrant Women: How Gendered Protectionist Laws Lead Filipina Hostesses to Forced Sexual Labor*, Journal of Workplace Rights 15:3-4. 327-339 (September 2010).

²³ *Id.* at p. 336 (citations omitted).

²⁴ Chavez v. Bonto-Perez, 242 SCRA 73, 82 (1995).

²⁵ 1987 CONST., art. XIII, sec. 18.

²⁶ Republic Act No. 9710 (2009).

²⁷ *Id.* at Sec. 39(b).

²⁸ *Id.* at Sec 22(c).

²⁹ Sec. 25 (D), Implementing Rules and Regulations of the Magna Carta of Women (2010).

³⁰ *Supra* note 26, at Secs. 39(a), 39(e) and 41.

³¹ *Supra* note 26, at Sec. 39(d).

³² Commission on Human Rights, *Advisory on the Deployment Ban to Nigeria*, March 27, 2009, available at http://chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/advCHR4A20_09_006.pdf.

³³ *Supra* note 26, at Sec. 2.

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