



## NEW ISSUES AND OLD STRUGGLES: THE EVOLVING RIGHTS OF FILIPINO OVERSEAS MIGRANTS

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The Filipino struggle for human dignity and sovereignty continues as illustrated by the extent to which the rights of innumerable workers now employed and living overseas are being violated. The paper will attempt to outline the evolution of the human rights of Filipino migrants overseas culminating in the formulation of the Overseas Filipinos and Migrant Workers Act of 1995 (Republic Act No. 8042). It will also describe the extent of human rights violations against migrant workers or overseas contract workers (OCWs) by receiving governments. Particular case studies would be domestic workers going to Singapore and Hongkong as well as entertainment workers going to Japan. In addition, the paper will try to trace the involvements of NGOs and POs in advocating the rights and welfare of Filipinos overseas and their families. The paper will argue that the difficulties encountered by Filipino revolutionaries at the turn of the century are the same problems confronting human rights advocates in the Philippines, namely that human rights advocacy must necessarily confront the powers of sovereign states including the restrictive economies of receiving countries.

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## **U**NDERSTANDING THE DIASPORA: The More Things Change, the More They Stay the Same

The Filipino struggle for human dignity and national sovereignty is undeniably and strongly evident in the country's long and dynamic history. Of late, a new challenge has confronted the Filipino people. It is a challenge that may change the nature and character of future struggles relative to the country's past. This is the challenge of the Philippine diaspora.

Philippine migration is not exclusive to the present time. At the turn of the century, thousands of Ilocanos travelled to the pineapple and sugar plantations of Hawaii to work. Even before that, a number of Filipinos made the voyage to the countries of Europe to seek higher (and more liberative) education. These Filipinos later came to be known as *ilustrados*. The exposure of the *ilustrados* to the "civilized" ways of the West eventually contributed in substantive terms to the furtherance of the revolutionary cause for Philippine sovereignty from Spain.

Today, a different form of enlightenment and a different kind of revolution is taking place. Millions of Filipinos can now be found taking on a variety of tasks and occupations in more than 120 countries worldwide. No longer are they confined to a few countries such as the US and Canada. The current phenomenon has become an extensive diaspora worth examining.

But while certain aspects of this diaspora have indeed changed, if not progressed (e.g., faster, more convenient and cheaper travel and

communication across borders), a great deal more still remain the same. For one, the Filipino motivation to cross the seas has not changed. Much of the reasons for the movement are still economic in nature (i.e., borne of worsening poverty and unemployment in the Philippines as well as the attraction of better opportunities in the countries of destination). Another matter which has not changed over the decades is the apparently worsening plight of Filipino migrants. Exposed to a rather unwelcome social and political environment, Filipino migrants overseas have had to contend with exploitative and sometimes racist employers as well as a seemingly uncaring government both within the receiving country and the Philippine foreign missions.

The trend towards greater integration of the economies, societies and polities of the world has certainly created a condition for the greater mobility of populations across existing national boundaries. The Philippines is one country that has come to play a major part in such types of movements, more specifically, with respect to the migration of Filipino workers for jobs overseas.

The immediate aim of this paper is to outline the evolution of contemporary notions of the human rights of Filipino overseas migrants in the context of the current labor migration situation from the Philippines to the rest of Southeast and West Asia and beyond. The issue of exploitation and discontentment has always been a matter of concern both for Filipino migrants at the turn of the century until now. Moreover, so as to lead to a better understanding of the human rights situation of Filipino migrant workers, the paper will also describe the extent of human rights violations being committed specifically on such migrants in the Asia and Pacific region. This attempt represents a serious but nevertheless indefinite effort to reexamine the historical linkage between past and current popular struggles especially in the context of human rights advocacy.

In response to these challenges, the Philippine government has recently established a set of policy mechanisms and programs intended to address such violations (i.e., in terms of their alleviation and prevention). One mechanism is the promulgation of the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042). The paper then juxtaposes this promulgation with other existing international covenants and conventions pertaining to the human rights of migrants and their families specified in the latest UN Convention on the Rights of Migrant Workers and Their Families (1993).

Cross-border migrations (both emigration and immigration flows) are deeply embedded in transnational social, political and economic relations, patterns and forces. Market conditions (and not just states), therefore, conflate the extent and direction of such transnational flows. State policies merely add emphasis and react to already existing economic conditions and imperatives such as unemployment, underemployment patterns, demographic transitions, poverty incidences, etc. However, while the conditions are generally market-determined, the issues that arise out of such migratory phenomena can and do extend beyond the market and can even include health, cultural and political concerns.

At the onset, the paper argues that in many receiving countries today, the human rights of migrants in general and migrant workers in particular are increasingly being linked with the acquisition of legal citizenship and statehood as opposed to ethnic-based nationality<sup>1</sup> creating conditions of misfortune for them and their families. Moreover, governments, especially the actions of past and current Philippine administrations, have not been enough to correct such misfortunes. In the final analysis, however, the possibility of the adoption of a common set of human rights standards for migrant workers and their families in the Asia-Pacific region in general and in the Philippines in particular appears to be immediately remote and difficult (but not entirely impossible).

## ASIA: A CHANGED AND CHANGING NEIGHBORHOOD

During the 1970s up to the mid-1980s, a substantial number of migrants from the Asia-Pacific region (e.g., South Korea, the Philippines, Malaysia, Thailand and Indonesia, among others) went to West Asia or the Gulf region.<sup>2</sup> Much of the work involved was brought about by the increased income of the countries in that region as generated by the oil crisis and the subsequent oil price boom. The inherent incapacity in these labor receiving countries to address the growing demand for domestic labor (caused by the high demand for infrastructure building in spite of increased oil revenues) compelled them to look elsewhere. Countries in Southeast Asia like the Philippines were all too willing to fill in the gap-demand. By the end of this period, however, the Gulf economies could no longer sustain the same level of infrastructure development in previous years due to a number of internal as well as external factors (e.g., the Gulf conflict, the decline in the world price of oil, etc.). Around this time though, demand had started to shift to countries within the Asia-Pacific region itself, especially toward Southeast and East Asia, brought about by the rapid pace of development taking place in that part of the continent. Contemporary labor movements within the Asia-Pacific region in general have thus taken on a new and more challenging nature.

Much of the population movements taking place within the Southeast and East Asian region itself and coming especially from the Philippines was no longer comprised of the same features as earlier migrations (e.g., migration for purposes of permanent settlement and project-tied migration). Migration from the Philippines in particular was now characterized by an increasing incidence of trafficking, feminization, labor differentiation and segmentation, as well as the prevalence of undocumented flows. (See Castles and Miller 1993) Much of the migrant flows to West Asia earlier were comprised mainly of unskilled as well as medium-skilled production process workers. Intra-Asia-Pacific migration patterns (i.e., those involving East and South-

east Asian countries), however, reveal a wider variety of occupations ranging from technology and services, to manufacturing and industry, and construction. (See Pongsapich 1995) Current estimates in 1990 on the stock of foreign workers located within the region indicate a figure no less than three million increasing almost tenfold from the previous decade. (Abella 1995: 5)

Japan, seen traditionally as a closed (i.e., homogenous) society, now has a foreigner population equivalent to almost 1.5 percent of its population (See Tigno 1995). Malaysia's foreign population was estimated at around one million in the early 1990s when its total population stood at some 18 million. If this is true, the foreign population can be somewhere between eight to ten percent of Malaysia's labor force (See Skeldon 1992). The foreign workforce in Singapore is estimated to be around 15 percent of the island's national labor population (UNFPA 1993: 19). Unfortunately, there are few sources that indicate the exact number of migrant stocks in the various receiving countries of ASEAN. Whatever migrant workers that are recorded are constrained by the existence of numerous other alternate flows or unofficial channels that render official statistics to be gross underestimations.

### THE PHILIPPINE EXPERIENCE

While the number of Filipinos overseas (either as permanently settled immigrants or temporary migrant workers) has yet to achieve a level that can be considered to pose a danger to the country's existing demographic structure, the situation still deserves serious attention. The rate of Filipino worker migration has intensified. Between 1975 and 1991, the number of processed contract migrants grew by 2000 times. (Carino 1992: 6) In 1991, almost 700,000 Filipinos left the country of which more than 90 percent were migrant (overseas contract) workers. (See NSO 1992a; and Rodriguez and Horton 1994) In another survey, it was estimated that around 500,000 households

had family members working abroad. (See Mangahas and Bautista 1991)

Considering the high degree of transmigration selectivity, Filipino overseas migrants (especially the migrant workers) constitute a highly productive and highly educated portion of the local population even as Filipino workers overseas make up no more than five percent of the country's workforce. About 80 percent of Filipino migrant workers had completed high school education while half had undergone college education prior to going abroad. By contrast, only 20 percent of locally employed Filipinos have actually completed high school. (See Carino 1992) Around 50 percent of these Filipino migrants are in their early 20s and 30s while this age-group comprises only 25 percent of the total population. (See Stahl 1986; and Carino 1992)

Quite a number of Filipino migrants have had at least two years of local work experience prior to overseas employment. Many are married while most (if not all) have sought overseas employment in order to support a family or some family members back in the Philippines. Roughly half of the current migrant population are now women. Majority of the official deployments for men are still toward the Gulf countries of Saudi Arabia, Kuwait and the United Arab Emirates among others while the women are found mostly in Singapore, Hongkong and Malaysia. Many are employed doing construction-related and production-process (i.e., manufacturing) work while a substantially growing number are involved in services (e.g., domestic work, entertainment, health, etc.).

These Filipino workers overseas play a significant role not only in the economies where they are currently employed but also for the Philippines as well. In a 1991 survey conducted by the country's National Statistics Office (NSO 1992b), 17 percent reported having received one form of income or another from overseas repre-

senting some eight percent of the total national household income. (See NSO 1992b; and Rodriguez and Horton 1994)

At the macro level, employment patterns in the Philippines suggest no substantive and recent improvements. The combined unemployment and underemployment rate hovers at 30 percent. The growth in labor supply is such that the country needs to provide an additional 650,000 jobs each year for those entering the labor force. Real wage rates have correspondingly stagnated if not declined rapidly in proportion to the country's inflation rate. This domestic labor market situation is aggravated by heightened political and social anxieties such as rising criminality and random violence, graft and corruption, poor basic social services among many others.

At the same time, however, employment opportunities and real wage rates in other countries in Southeast Asia and beyond have expanded and grown to the extent that many Filipinos see overseas work as the only immediate solution to their domestic problems and worries. In the developed country context, immigration is fueled by lower birth-rates (going below replacement level) and, consequently, the aging of the overall national population leading to a progressive contraction of the domestically active workforce. Such a trend is compounded by a number of socio-psychological changes such as greater inducements among members of the younger population not to seek employment in more labor-intensive occupations and the "concomitant proliferation of highly technical and white-collar occupations which require a continuous evolution in the skills and education of personnel, itself a product of advanced development." (Papademetriou 1988: 237-238) The economies of these receiving countries thus undergo an extreme form of restructuring where the domestic labor market tends to be disaggregated into secondary and primary sectors with their own distinct labor, skill and training requirements. This leads to a proliferation of jobs "which indigenous workers are increasingly reluctant to do be-



cause of low wages, poor working conditions and undesirable social status" thus generating the need to import foreign labor. (See Papademetriou 1988: 237-238)

Likewise, the income earned by this expatriate workforce and remitted to households in the Philippines represents a substantial contribution to the sending country's total income and balance of payments position. Since 1984, income remitted from abroad comprise some 50 percent of total recorded remittances in the country's balance of payments account. (Albuero 1993: 272) In 1995, Filipino migrant workers sent home some US\$ 4.7 billion in remittance income despite a nine percent drop in annual deployments for that year. (AFP 1996: 3)

#### HUMAN RIGHTS AND MIGRANT WORKERS IN ASIA

The critical areas of concern over migrants' rights in Southeast Asia in particular and Asia in general have to do with the following sectors: (a) construction workers, (b) workers in the entertainment sector, (c) domestic workers and (d) undocumented workers in general.

*Construction Workers.* The growth of the construction sector in the Asia-Pacific region has been no less than outstanding for the past decade or so. Fueled by rising incomes and the rapidly growing need to set up the infrastructure essentials that are expected to propel the Asia-Pacific region into the 21st century and beyond, the construction industry in Southeast Asia has become one of the fastest growing sectors of the region today. This construction expansion has created a huge demand for workers which are running in short supply for many newly developed countries.

About one-fourth of the 160,000 foreigners currently employed in Taiwan are in construction work coming mostly from Thailand, the Philippines, Malaysia and Indonesia as well as some other undocumented entrants from mainland China. At the same time, Malaysia's annual construc-

tion sector growth has not gone below 10% since 1991. (Hiebert 1995: 54-56) It is not surprising, therefore, that Malaysia now has some 475,000 foreigners (mostly Bangladeshis and Indonesians) working on various construction projects throughout the peninsula equivalent to 80% of all the workers in that sector. (Hiebert 1995: 54-56)

The demand for foreign construction workers appears to be evident for both developed and developing economies. Unofficially, Japan is said to have around 270,000 foreigners doing various types of construction work while Thailand contractors employ a number of Shans from Burma. (Hiebert 1995: 54-56) Between 1993 and 1994, the number of documented foreign workers in Japan's construction firms increased by 17 percent to 2,712 even as other sectors have noted their declines. (See Ikeya 1994)

The living and working conditions in these construction projects can hardly be said to be humane. As with most other migrants, foreign construction workers are also involved in dirty, difficult and dangerous (3D) work. Burmese migrants working on Thai construction projects reportedly get from one-half to one-third of the minimum Thai wage. The situation for foreigners doing construction labor in Taiwan is just as dismal except for the fact that their living conditions are slightly improved from their counterparts in Burma and their monthly wages range from NT\$ 20-40,000. (Hiebert 1995: 55) In Malaysia, foreign workers earn some US\$ 120 per month. (Cooke 1995: 3) For foreigners in this sector, there are very little or practically no provisions for social security and accident insurance so that accidents and deaths that occur in this sector usually go unreported.

*Entertainment workers.* Described as an industry that thrives on economic disparity, entertainment workers<sup>3</sup> are increasingly becoming an expression of progress for any economy. (Sherry, et al. 1995: 22-23) Rapid increases in purchasing capacities for the people in many developing and newly developed economies has created a huge demand

for sex workers and migrants are increasingly being brought in to do the job that locals might not be inclined to do. Organized criminal groups are increasingly realizing the profitability of the entertainment business to the extent that they now corner a substantial portion of the trafficking that takes place within the region. Taiwanese (the Bamboo Gang), Hongkong Chinese (the triads), Japanese (yakuza) gangs and even the Russian mafia are now involved in the largely illicit recruitment and deployment of entertainment workers within the Asia-Pacific region and beyond. Their tactics range from performing marriages of convenience, obtaining false documents and permits for their "cargo" and even forceful kidnapping and outright prostitution. And in many cases even the authorities themselves are deeply involved. (Fairclough 1995: 27-28)

*Domestic Workers.* As a more modern form of slavery, it is not uncommon for domestic workers to experience one form of abuse or another from their household employers. Fueled by rising incomes and the growing involvement of women in the labor force, more developed countries and economies (e.g., Hongkong, Singapore and Malaysia) now realize a growing demand for surrogate parents and housekeepers. Primarily because existing work standards are vague and hardly rendered applicable in reality, foreigners in this sector work very odd hours and do not receive overtime compensation. Many are forced to live under sub-human conditions and are made to work within more than one household. (D'Alessio 1995: 37)

*Undocumented Migrants.* Undoubtedly, irregular, illicit or undocumented migration flows have been intensifying over the last decade or so in ASEAN and elsewhere in the Asia-Pacific region. The United States has an estimated 10 million documented and undocumented immigrants. (UNFPA 1993: 17) The number of foreigners overstaying in Japan is estimated to be as high as 288,000. (See Tigno 1995) Conservatively, around half of the immigrants in Malaysia (totaling one

million) are estimated to be undocumented migrants. And when larger estimates are taken into account, especially including Sabah, the figure could be as high as two million. (Cooke 1995: 3) In Taiwan, the estimated number of undocumented migrants most of whom come from the Philippines, Mainland China and other Asian countries, runs at 30-40,000. (See Tsay 1992)

Undocumented migrants from and within ASEAN countries are now finding it increasingly difficult to regularize or legalize their status. Many receiving countries now hesitate in granting amnesty to undocumented migrant workers and overstayers. Some countries, including Singapore, have even introduced draconian sanctions on violators such as imprisonment and flogging. Germany has, since September 1995, embarked on a campaign to expel and/or repatriate up to 40,000 Vietnamese considered undocumented. (AFP 1995: 3) In another case, detention centers for apprehended migrants in Malaysia have been involved in some serious controversies particularly as regards the maintenance of minimum health and humane standards. Many of these detained migrants (comprised of some 70,000 Bangladeshis and other Asians) are said to suffer from physical abuse and are given limited access to medical attention and basic sanitary services. (AP 1995: 3) What is even more controversial is that the voluntary organization that has exposed such anomalies has itself become the target of government control and censure. (Mitton 1996: 26)

The problem for expatriates is oftentimes aggravated by their status of not being officially recognized by receiving state authorities (thus such authorities are not to be held accountable). Whatever recourse is available is mainly through the litigation of individual complaints with appropriate international agents. However, as circumscribed in accepted international practice, states cannot consider individual complaints by foreign nationals if they are not a party to the appropriate convention or standard being cited.

## THE RESPONSES OF BOTH SENDERS AND RECEIVERS: THE CURRENT MIGRATION POLICY REGIME

In political terms, the intensification of Philippine overseas migrant flows (as well as the diversification of the patterns of such flows) has led to a heightened sensitivity and response to the prospect and situation of migrants in these countries. Sending countries like the Philippines have now become more aware of the importance of labor migration to offset burgeoning unemployment and underemployment levels and in generating necessary foreign exchange through overseas workers' remittances as well as on the deteriorating conditions of their compatriots abroad. The concern is certainly over the medium- and long-term impacts (both positive and negative) that overseas employment may have on a nation's capacities. Some of these have to do with (a) whether any skills applied overseas can have significant domestic application (the skills transfer argument); or (b) whether household remittances are being sufficiently utilized for the achievement of national economic goals (the remittance argument); or (c) whether adequate mechanisms exist for returning migrants to stay in the Philippines (the reintegration argument). (See Tan 1993; and Vasquez 1992)

Consequently, governments have taken steps within the bounds provided for by international practice (and sometimes beyond) to remedy the plight of their expatriate population. (See Tigno 1995) The Philippine response below is certainly a case in point. For one, officials of the government of the Philippines (including organized sectors of its civil society) insist that migrants become entitled as well to the dignity recognized in and by international statutes as will be shown later on.

On the other hand, receiving countries in the region tend to hesitate extending (and at times outrightly deny) such rights to expatriates especially to those who perform menial and labor-intensive jobs. One

other sad but actual response is in the form of xenophobia and the outright injury and violence inflicted upon foreigners. A milder and more common (and institutionalized) form of response for those countries in the region is to simply impose stricter so-called gatekeeping measures. For many receiving countries, the overall policy agenda and response has been to (a) limit the access of migrants to tax-funded or government-subsidized services; and (b) tighten and discourage permanent settlement requirements and eventual claims to citizenship. Much of this response is based upon the premise that foreigners (especially those low- or semi-skilled) take away jobs from local workers and bring with them a significant rise in criminal and anti-social activities resulting in greater demands on state and societal authorities for basic services, e.g., education, health and housing, among others. (See Tigno 1995)

As regards the notion of human rights advocacy, the logic behind the response of the governments of many receiving countries is that violations on the human dignity of migrants can be avoided or minimized if migratory leaks themselves can be minimized or prevented altogether and limited only to appropriately-equipped expatriates (e.g., technical and managerial workers).

The rise in mobility in Southeast Asia and the corresponding resurgence in the phenomenon of rising expectations and anxieties towards a transnational workforce has led to the prevalence of illicit activities and practices that undermine both the capacities of state authorities (sending and receiving alike) as well as the bargaining competence and rights of labor. (See Tilly 1995) And undocumented migration is one key issue that deserves serious mention and attention whenever one talks about the human dignity of migrants as will be further discussed below. Such constitutes an alternative stream that can undermine efforts to uphold the human dignity of a growing expatriate community and workforce. Along with undocumented migra-

tion, one also needs to cite the important role that illicit traffickers and labor brokers play in such arrangements.

### THE PHILIPPINE RESPONSE: THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995

In June 1991, President Ramos signed Republic Act Number 8042 (otherwise known as the Migrant Workers and Overseas Filipinos Act) into law. RA 8042 contains a number of distinct features. It is the foremost substantive instrument for protecting the rights of migrant workers in particular and Filipinos overseas in general including their families.

*The Policy of the State.* All of its 43 sections conveys a sense that migrants' rights need to be protected and upheld in all respects. It mandates the state to "provide adequate and timely social, economic and legal services to Filipino migrant workers." (Section 2, Sub-section (a))

*Gender Equality.* RA 8042 affirms the state's responsibility to ensure "the fundamental equality... of women and men and the significant role of women in nation-building as well as "their particular vulnerabilities." (Section 2, Sub-section (d))

*Trafficking and Recruitment.* Those responsible for illegal recruitment and trafficking activities are to be severely sanctioned with imprisonment of up to 12 years and a fine of up to one million pesos for every violation. (Section 7) Likewise, officials and employees of the Department of Labor and Employment (DOLE), the Philippine Overseas Employment Administration (POEA), the Overseas Workers Welfare Administration (OWWA), the Department of Foreign Affairs (DFA) and other related agencies or their relatives "within the fourth civil degree of consanguinity or affinity" are restricted from engaging (either directly or indirectly) from any business of recruiting migrant workers. (Section 8)

*Popular Participation and Policy-Making.* In addition, it provides for a number of institutional changes in the manner in which the Philippine overseas employment program is being managed and promoted. Non-governmental organizations as well as migrant workers themselves are made to participate in the decision-making processes of the State and are allowed representation in the relevant bodies thereof. (Section 2, Sub-section (f))

*The Overseas Employment Policy.* The Act maintains that “the State does not promote overseas employment as a means to sustain economic growth and achieve national development.” (Section 2, Sub-section (c)) This is clearly a reversal of how the original policy has been formulated and operationalized especially during the time of Marcos when overseas employment was seen as a stop-gap measure to off-set the country’s unemployment and balance-of-payments problems and to prepare the country for eventual transfer of technology. In RA 8042, the policy to promote overseas employment “rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised or violated.” (Section 2, Sub-section (c)) The state shall deploy migrant workers “only in countries where the rights of Filipino migrant workers are protected.” (Section 4)

New institutions and offices have been set up under the law to assist in the protection and advocacy of migrants rights. One is the Migrant Workers and Other Overseas Filipinos Resource Center within the premises of the Philippine Embassy in countries where there is a significant concentration of Filipino nationals. (Section 19) The functions of such a Center are wide-ranging and include counseling and legal services, orientation programs, medical and hospitalization services, among many others. Another is the Legal Assistant for Migrant Workers Affairs under the DFA responsible for coordinating all legal assistance services to Filipinos in need. (Section 24)



Moreover, as an overall bureaucratic strategy, RA 8042 reiterates Executive Order Number 74 (1993) which directs all Philippine embassies and their personnel to adopt a so-called "country-team approach" whose mission is to provide for the protection of Filipino migrant workers and the promotion of their welfare and fundamental rights. (Sections 27 and 28)

### **INTERNATIONAL MIGRANT WORKERS INSTRUMENTS: THE GLOBAL REGIME**

Existing international and transgovernmental instruments for the protection and promotion of the rights of migrants deal with foreigners and their families as refugees, immigrants or settlers and finally as workers. Altogether, numerous migrant-relevant conventions and recommendations now exist formulated by both the International Labor Organization (ILO) and the United Nations (UN).

In the area of migrants as workers and their families, current statutes are guided by the ILO's principles which assert that migrant workers should have the same rights as nationals and that workers' rights (regardless of ethnic, religious or national origins) should be adequately protected and upheld. The latest addition is the UN Convention for the Protection of the Rights of All Migrant Workers and Their Families (December 1990).

One vital feature for most of these conventions is their attempt to include the plight of undocumented migrants or those involved in the illicit trafficking or transport of labor. ILO Convention No. 143 [Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975] is basically seen as a response to prevalent and rising instances of clandestine migration and illicit labor trafficking. It obliges state parties to respect the human rights of migrant workers and to include those undocumented migrants as well. Likewise, it advises states to take all necessary and appropriate measures to limit and prevent the clandestine movement and trafficking of mi-

grant workers. (See Nanda 1993) The UN Convention adopted by the General Assembly conveys a reaffirmation of already existing human rights standards and instruments. The main innovation that the Convention imparts has to do with its more formal extension of coverage to include even undocumented migrants and their families in its mandate. (See Penna 1993; Bosniak 1991; and Hune 1991) The inclusion of undocumented migrants in the latest UN Convention reveals a significant development in human rights doctrines. It represents the recognition by an international body of adapting to the changing international environment towards greater universality. (Bosniak 1991: 765) The Convention views migrants not just as economic entities but as human beings with social ties and families. (See Hune 1991: 808)

Another key element for most of these conventions is their promotion of the rights of women. The importance of women and the family in international human rights doctrines is placed in the context also of the growing number of documented and perceived abuses inflicted upon women in the home, the society and in the international setting as these relate to migration flows. As seen in the trends earlier, transnational migration flows tend to be highly selective. And the intensity of sex selectivity is greatly determined by the interplay of market, political and cultural forces. Immigration and labor policies, though not directly discriminating against the female sex, are nevertheless "often influenced by stereotypical images of the roles men and women played... [and] images that reinforced gender inequality and resulted in differential migration outcomes by sex." (Zlotnik 1991: 373)

The advent of the UN Decade for Women (1976-1985) laid the foundation "for the inclusion in human rights discourse of violations in the personal and familial spheres of a woman's life." (Rao 1996: 242) The Report of the World Conference of the UN Decade for Women in 1980 specifically called for governments to adopt necessary measures so that migrant women be given "the same access to edu-

cation, training, employment and support and health services as the national population.” (Par. 205 as cited in Hune 1991: 803) A similar report in 1985 alluded to the illegal trafficking of women and prostitution and called for the need for improving “international measures to combat trafficking in women for purposes of prostitution” as well as the “complex and serious problems of the exploitation and violence against women associated with prostitution.” (Par. 29 as cited in Hune 1991:804)

In 1993, as a result of the strong advocacy during the UN World Conference on Human Rights in Vienna, the General Assembly adopted the Declaration on the Elimination of Violence Against Women. The latest UN Convention on Migrant Workers and Their Families allows for the protection of women from discrimination and their protection from sexual and physical abuse and exploitation as well as forced prostitution and illicit trafficking.

#### IGNORING OR IMAGINING REALITIES? COMMON PHILIPPINE AND INTERNATIONAL RIGHTS STANDARDS

There are a number of issues worth raising as regards the responses of both the Philippines and inter-governmental organizations like the UN and ILO in coming up with instruments that uphold and enhance the human dignity of migrant workers particularly in South-east and East Asia.

One has to do with the notion of the relationship between international instruments (or for that matter, national instruments that tend to transcend territorial coverage) and the idea of national or state sovereignty. There are clear and intensifying contradictions between the notions of state sovereignty and the phenomenon of transnational labor migration including the idea of protecting the rights of migrant workers.

Much of the already existing human and labor rights instruments that are now in place are constrained by their “overriding commitment

to the norms and structures of sovereign states.” (Bosniak 1991: 737) At the outset though we are led to believe that substantive and sufficient protective mechanisms are in place as far as upholding the human dignity of migrants is concerned. In reality, however, immigration and emigration issues generally fall within the jurisdiction of individual and sovereign states. States have thus recognized undocumented migration flows as affronts on their sovereignty and have enacted legislation to reaffirm their control (if only at the legal and policy level) and to impose punitive sanctions on violators.

The problem with respect to international instruments is in their enforcement first by way of signing and eventual ratification and implementation. In relation to migration and migrant workers, human rights concerns have generally been excluded from the discussion and discourse of states. Rarely, if ever, have states acceded to these international instruments. Historically, the ratification rate for ILO-member states is only 8.3 percent (or only 469 conventions ratified out of 5,642). (Noriel 1993: 148) To date, no Asian country has ratified Conventions 97 [Migration for Employment, 1949] and 143 [The Migrant Workers Convention, 1975] which directly pertain to the well-being of migrant workers, with the exception of Malaysia which has ratified Convention 97. The success of the ILO’s ratification campaign is certainly not unmixed. (See Noriel 1993)

The state under current norms of international practice possess certain unique and sovereign prerogatives such as its claim to appropriate the rights and standards to be accorded to both its nationals and to foreigners under its jurisdiction. The state’s prerogative to deny landing or entry upon anyone it sees fit to exclude is one such choice that it usually makes.

States by and large have the option to discriminate against foreigners especially in the absence of international treaties prohibiting such (e.g., with respect to access to social resources and goods, prop-

erty ownership, self-organization and collective bargaining for workers among others). Minimal rights are usually addressed by relevant state authorities such as the right to a trial and the right against the arbitrary seizure of property. However, these basic rights concerning equality of treatment, etc. are usually accorded to recognized foreign nationals. Undocumented migrants and workers make up an entirely new undertaking where their presence is not even acknowledged by the competent authorities.

Still another issue has to do with the gender-related concerns raised earlier and the attempts of these international instruments to address them. What is perhaps not being addressed by the UN Convention on the Rights of Migrant Workers and Their Families is the fact that the work of men and women are generally different to the extent that "a dual labor market system has developed" creating different circumstances for men and for women. (Hune 1991: 812) Equality of treatment with nationals may be a key and radical principle in the Convention but it does not prevent women's work from being differentiated from men's or from the inequity in wages for men and women or their occupational segregation. (See Hune 1991)

The Philippine response in RA 8042 tends to ignore two basic realities: (1) that Philippine sovereignty can hardly extend beyond its borders to include Filipino nationals in other states; and (2) that to insist heavily on rights the way Section 4 of RA 8042 does is to completely ignore the reality of the market and the reality of conditions in the Philippines relative to most other sending countries.

For a long time, the idea of upholding human rights has always been seen in the Westphalian tradition that such concern is a matter internal to sovereign states. Accordingly, since states are presumed to be sovereign, then one is forced to accept the principle of non-intervention in matters relating to violations and the advocacy of the rights of nationals and even expatriates and foreigners.

Increasingly, however, human rights issues are now becoming international issues of concern not only for sovereign states but also for economies and other sectors of civil society. This is indicated in the use of human rights as an instrument of political pressure by some of the larger developed states like the US against their opponents (e.g., the erstwhile USSR, Cuba, China, Iraq, etc.) (See Hong 1996) Human rights issues and violations become the basis for most favored nation (MFN) status or form the basis for the granting of development assistance and the entry of foreign investments.

### **SOME PROSPECTS FOR AN INTERNATIONAL HUMAN RIGHTS REGIME FOR MIGRANT WORKERS**

The Philippine human rights struggle is a continuing process. It actually began at the time of the Philippine revolution at the end of the 19th century and remains a key issue for the government and the people until now. While the Philippine government is exerting some effort to protect and enhance the rights of Filipinos overseas, there is still much work to be done not just on the matter of legislation but also in terms of devoting more effort and resources to upholding the dignity of migrant work at foreign jobsites. This is so in spite of the enactment of RA 8042.

Efforts to construct a human rights regime for Asian migrant workers must not exclude the involvement of states and elites. Hence, it becomes an important concern for any one or any entity attempting to establish such a regime to build the confidence of such sovereign and distinct state actors so that they become more involved in setting common standards and parameters for upholding human rights and recognizing (as well as acting upon) human rights violations.

One way of building confidence is to further institutionalize intergovernmental arrangements for the regular, constant and timely exchange of migration-related information between and among states in the region, specifically and immediately, the members of ASEAN and

their dialogue partners in the Asia-Pacific region. Related to this, steps should be undertaken within ASEAN to adopt a common standard for monitoring migration flows within the region and beyond. The conduct of more bilateral and multi-lateral initiatives and fora (including those involving concerned academic institutions) which seek a deeper understanding of the dynamics of migration within the region can certainly go a long way in this regard.

Another related initiative can be the creation or strengthening or institutionalization of mechanisms and opportunities for the greater involvement of local non-governmental as well as inter-state actors and initiatives such as the International Organization for Migration (IOM); the Office of the United Nations High Commissioner for Refugees (UNHCR); and the International Labor Organization (ILO) in state deliberations concerning possible measures to adopt in the area of managing migration flows in the region.

In the final analysis, however, there is a need for all parties concerned (e.g., state actors, elites and members of civil society) to re-think and redefine the notion of immigration and emigration in the context of increasing globalization and transnational integration. The concept of citizenship in the context of so-called "primordial attachments" is under question particularly when it is necessarily linked with the idea of nationality or ethnicity. The phenomenon of intense migratory flows across borders in the Asia-Pacific region reflects the trend that "national citizenship is losing ground to a more universal model of membership, anchored in deterritorialized notions of persons' rights." (Soysal 1994: 3) This model of "postnational citizenship" can be one possible framework for the formulation of common and more specific parameters for the human rights of migrant workers.

## NOTES

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- <sup>1</sup> There is certainly a distinction between citizenship and nationality but for purposes of this paper, both terms shall initially refer to the legality attached to the status of entry and stay of foreigners.
- <sup>2</sup> These destination countries include Saudi Arabia, Kuwait, Iraq, the United Arab Emirates, Bahrain among others.
- <sup>3</sup> The term is actually a euphemism for sex workers although it cannot be denied that not all entertainment workers are sex workers.

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