

# **Migrants Rights Groups and Trade Unions say NO to the Proposed Compulsory Insurance Coverage for OFWs in RA8042! YES to OFW Protection!**

November 18, 2009

To the Honorable members of the Bicameral Conference Committee to Amend RA 8042

Sen. Jinggoy Estrada

Cong. Manuel “Way Kurat” Zamora

Sen Gregorio Honasan

Cong. Edcel Lagman

Sen. Ramon Revilla, Jr.

Cong. Rex Gatchalian

Sen. Allan Peter Cayetano

Cong. Luz Ilagan

Cong. Arthur Pinggoy

Cong. Jonathan De la Cruz

We, the undersigned, would like to express our strong opposition to the proposed compulsory insurance amendment to RA 8042, for the following reasons:

## *1) Who will the compulsory insurance provision benefit?*

The proposed mandatory insurance provision 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.

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 name 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.

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: their neglect can be passed on to the insurance companies.

*2. What is the current practice among migrant workers and their employers with regards to insurance, and how does this practice make the provision 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.

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, Switzerland, Abu Dhabi in the UAE, and Saudi Arabia, require the employers in their countries to provide insurance coverage to their workers.

We believe that instead of insurance coverage for our OFWs 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. Should this provision be passed into law, are the government agencies tasked with the implementation of the provision up to the task of effectively implementing and monitoring this provision?*

We highly doubt the capability of government agencies to effectively implement this insurance scheme, particularly the Philippine Overseas Employment Administration (POEA). 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 other 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, 2009)

The Department of Foreign Affairs has not been vigorously extending itself in securing rights-based bilateral labor agreements 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. 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 more than 193 countries and destinations 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 or 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, 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 should first be made to answer for their inefficiency and neglect of their mandates, as well as an audit of how they use their funds, before they are given further fiscal responsibilities.

#### *4. Is there an alternative to legislating compulsory insurance?*

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 exists 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, pre-departure, 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 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.

We believe that government agencies such as the POEA, the OWWA, and the DOLE should be made accountable for their dismal performance in implementing RA 8042.

We believe that the State, through its agencies, should not abandon its responsibility towards the citizens that it sends abroad.

**We say NO to the Proposed Compulsory Insurance Coverage for OFWs, YES to OFW Protection!**

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