



Commission on Human Rights of the Philippines
Inputs to the report of the Special Rapporteur on the human rights of migrants
Gender-responsive migration laws, policies and practices
74th Session of the UN General Assembly, September 2019

10 June 2019

1. The Commission on Human Rights of the Philippines (hereinafter the Commission)¹ submits its inputs to the forthcoming report of the Special Rapporteur on the human rights of migrants at the 74th session of the General Assembly on good practices or initiatives of gender-responsive migration legislation, policies and practices.
2. This submission utilized the Commission's own documentation of independent monitoring activities and statements which were subjected to the internal deliberations of the Commission En Banc. It also took into consideration local and international reports from government, civil society, the media, and international non-government organizations.

Background

3. The Philippines is a predominantly sending country of migrant workers, ranking ninth worldwide in terms of global migrants from the country; an estimated 5 million or about 2.025% of the 247 million total migrants in 2015,² while official data from the Philippine government show that there are 10.2 million overseas Filipinos.³ This number is divided into 4.9 million permanent migrants, 4.2 million temporary workers, and 1.2 million irregular workers, where

¹ As the National Human Rights Institution (NHRI) of the Philippines, the Commission on Human Rights has the mandate vested by the 1987 Philippine Constitution and the Paris Principles to promote and protect the full range of human rights including civil and political rights, and economic, social and cultural rights. It has the responsibility to regularly report and monitor human rights situations and violations, and recommend steps in advancing the realization of human rights and dignity of all. The Commission has "A"-status accreditation from the Sub-Committee for Accreditation and a member of the Global Alliance of National Human Rights Institutions (GANHRI).

² McKinsey Global Institute, *People on the Move: Global migration's impact and opportunity*, December 2016, page 14, at <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Employment%20and%20Growth/Global%20migrations%20impact%20and%20opportunity/MGI-People-on-the-Move-Full-report.ashx> (last visited 7 June 2019)

³ Commission on Overseas Filipinos, *Stock Estimate of Overseas Filipinos as of Dec. 2013*, <http://www.cfo.gov.ph/downloads/statistics/stock-estimates.html> (last visited June 7, 2019).

the latter two are those usually referred to as overseas Filipino workers (OFWs).⁴ Filipinos dominate the global seafaring industry, accounting for 25 to 30 percent of the world's seafarers.⁵ OFWs particularly go through the process of circular migration, their employment and residency status are temporary, and arbitrarily determined by receiving States, recruiters and employers. Majority of these OFWs are employed in the semi- and low-skilled sectors, such as fishing, construction work, factory work, agriculture/forestry, service industry (hotel and retail) and domestic work.

4. The PSA's Survey of Overseas Filipinos (SOF), using household survey data, reports 2.2 million overseas Filipino workers in 2016, of which a little over half (54%) are female.⁶ Feminization of migration has been a phenomenon in the Philippines and has normalized due to de facto labor migration policies of the State. "While women used to predominately migrate for the purposes of reunification with their families or to accompany their husbands abroad for work, the majority of women now migrate independently. In general, female migrant workers tend to dominate certain sectors and are usually employed for reproductive labor or within the service sector."⁷
5. There is dearth of information on the human rights situations of other marginalized gender groups and gender-non-conforming individuals in the context of labor migration in the Philippines, because of lack of disaggregated data, underreporting of their conditions or the stigma attached to individuals with diverse sexual orientation and gender identity and expression (SOGIE). Regardless, gender-responsive laws and policies on migration, and their effective implementation, monitoring and evaluation are crucial in the protection of all migrants (and their families) and in reducing or even eliminating vulnerabilities and rights violations.

I. How do/es the country/ies on which your organisation is working define "gender responsiveness"?

6. While the Philippines does not have a straightforward definition of "*gender-responsiveness*", Republic Act No. 9710 or the Magna Carta of Women is a human rights law enacted in 2008 "that seeks to eliminate discrimination through the recognition, protection, fulfilment and promotion of the rights of Filipino women, especially those belonging in the marginalized sectors of the society. It conveys a framework of rights for women based directly on international law, [particularly the Convention on the Elimination of All Forms of Violence Against Women (CEDAW).]"⁸ The Magna Carta of Women mandates all government agencies to adopt gender and development (GAD) policies and gender mainstreaming in their

⁴ National Anti-Poverty Commission (NAPC), Reforming Philippine Anti-Poverty Policy, 2017, page 21, available at [www.napc.gov.ph/sites/default/files/documents/articles/Reforming Philippine Anti-Poverty Policy.pdf](http://www.napc.gov.ph/sites/default/files/documents/articles/Reforming%20Philippine%20Anti-Poverty%20Policy.pdf) (last visited June 10, 2019).

⁵ Maruja M.B. Asis, Migration Policy Institute, "The Philippines: Beyond Labor Migration, Toward Development and (Possibly) Return," 12 July 2017, available at <https://www.migrationpolicy.org/article/philippines-beyond-labor-migration-toward-development-and-possibly-return> (last visited June 7, 2019).

⁶ NAPC, *supra* note 10.

⁷ Center for Migrant Advocacy, The Feminization of Migration in the Philippines, September 2014, available at <https://centerformigrantadvocacy.files.wordpress.com/2014/04/feminization-of-migration-v-1-0-021315.pdf> (last visited June 7, 2019).

⁸ Philippine Commission on Women, Republic Act 9710, available at <https://pcw.gov.ph/law/republic-act-9710> (last visited June 7, 2019).

operations and implementation of their programs and projects. The law defines gender and development as:

(h) ... the development perspective and process that are participatory and empowering, equitable, sustainable, free from violence, respectful of human rights, supportive of self-determination and actualization of human potentials. It seeks to achieve gender equality as a fundamental value that should be reflected in development choices; seeks to transform society's social, economic and political structures and questions the validity of the gender roles they ascribed to women and men; contends that women are active agents of development and not just passive recipients of development assistance; and stresses the need of women to organize themselves and participate in political processes to strengthen their legal rights.⁹

7. While gender mainstreaming,

(i) ...refers to the strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programs in all political, economic, and societal spheres so that women and men benefit equally and inequality is not perpetuated. It is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programs in all areas and at all levels.¹⁰

8. Chapter V of the law provides for the rights and empowerment of vulnerable groups including migrant workers (and women migrant workers). The law has put institutional mechanisms in place to ensure gender-responsiveness in all of government's planning and implementation of activities; such mechanisms include Gender Focal Point Officer in Philippine Embassies and Consulates¹¹ ; designation of the Philippine Commission on Women (PCW) as the primary policy-making and coordinating body for women and gender equality concerns under the Office of the President¹² ; GAD budget¹³ ; setting up of violence against women's desks in local government units ¹⁴ ; and comprehensive health care services.¹⁵
9. Prior to the enactment of the Magna Carta of Women, the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022, has been "Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of

⁹ § 4, The Magna Carta of Women (RA 9710).

¹⁰ Id.

¹¹ § 37 states that, *An officer duly trained on GAD shall be designated as the gender focal point in the consular section of Philippine embassies or consulates. Said officer shall be primarily responsible in handling gender concerns of women migrant workers. Attached agencies shall cooperate in strengthening the Philippine foreign posts' programs for the delivery of services to women migrant workers.*

¹² § 38, The Magna Carta of Women (RA 9710).

¹³ *The cost of implementing GAD programs shall be the agency's or the local government unit's GAD budget which shall be at least five percent (5%) of the agency's or the local government unit's total budget appropriations, § 36(a), The Magna Carta of Women (RA 9710).*

¹⁴ § 9(d), The Magna Carta of Women (RA 9710).

¹⁵ § 17, The Magna Carta of Women (RA 9710).

migrant workers.”¹⁶ The Migrant Workers and Overseas Filipinos Act defines “*gender-sensitivity*” as “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.”¹⁷

II. Good practices on how to empower migrants, including children, women, persons with disabilities, older persons and migrants belonging to minorities, to seek and obtain remedy for human rights violations;

10. The Philippine government in its second periodic report to the UN Committee on Migrant Workers stated that the State had,

*strengthened on-site services for OFWs under the one-country-team approach by (a) streamlining procedures for handling anti-illegal recruitment and anti-human trafficking in persons; (b) rationalizing procedures for accessing legal assistance funds; and (c) providing revised guidelines on operations of the Department of Labor and Employment-Philippine Overseas Labor Office (DOLE-POLO) such as the management of the Filipino Migrant Workers Resource Centers, handling of OFW cases involving contract violation and illegal recruitment, repatriation procedures, facilitating conduct of skills training and capacity building for workers on-site, and preparing them for return and reintegration.*¹⁸

11. The government strives to improve its services to migrants including women migrant workers, such as through additional budget to the Department of Foreign Affairs. There has been a PHP1 billion increase to ATN and PHP 200 million to the legal assistance fund (LAF) under the DFA 2018 budget. As of December 15, 2018, data from the DFA-Office of the Undersecretary for Migrant Workers Affairs (OUMWA) showed a total of 99,674 Filipinos have benefited from the ATN Fund and an additional 3,396 from the LAF. Repatriation of 17,375 Filipinos in distress and 290 Filipinos who died abroad, and those in risk of imprisonment due to illegal working status in the receiving countries have benefited from the funds.¹⁹

12. The Commission on Filipino Overseas (CFO) continuously strives to address the particular vulnerabilities and situations of the predominantly female migrating spouses or partners of foreign nationals, in every stage of the migration cycle, such as pre-departure preparedness and marriage migrants’ integration to the host country. Thus, CFO had been conducting various and country specific pre-departure orientation services for them, such as (a) Guidance and Counseling Program (GCP) for marriage migrants; (b) Peer Counseling Program for youth migrants; (c) Country Familiarization Seminar (CFS) for Au Pair Participants; (d) Pre-departure Orientation Seminar for US-bound Exchanger Visitor Program participants; (e)

¹⁶ Rule 1 § 1(d), Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act Of 1995, as amended by Republic Act No. 10022. The Migrant Workers and Overseas Filipinos Act has been cited in Chapter V of the Magna Carta of Women.

¹⁷ Rule 2 § 1(q), Omnibus Rules and Regulations.

¹⁸ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Consideration of reports submitted by States parties under article 73 of the Convention pursuant to the simplified reporting procedure, Second periodic reports of States parties, The Philippines, CMW/C/PHL/2, March 27, 2014.

¹⁹ Philippine News Agency, 2018 a year full of 'wins' for PH: DFA, December 27, 2018, available at <https://www.pna.gov.ph/articles/1057495> (last visited June 7, 2019).

Community Education Program; (f) Fight Against Human Trafficking; and (f) Financial Literacy Program.²⁰

13. Department of Justice - Inter-Agency Council Against Trafficking (DOJ-IACAT) has the power and function to formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons, for the monitoring of strict implementation of the shared government information system for migration established under Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995" with data on cases of trafficking in persons.²¹
14. The Department of Labor and Employment (DoLE) has established an Operations Command Center under the International Labor Affairs Bureau (ILAB) which has jurisdiction over labor attaches. This 24/7 Command Center will accept and act upon requests for help referred by OFW families, civil society groups, fellow government agencies and the OFWs themselves. This is a good practice because most OFW families are at a loss on how to file complaints or requests for repatriation of their loved ones overseas. All such requests received by DoLE offices in the different regions will be coursed through the Command Center for immediate action.²²
15. As mentioned in the Implementing Rules and Regulations of the Magna Carta of Women, the Commission on Human Rights of the Philippines is designated by the law as the Gender Ombud, specifically tasked to "establish guidelines and mechanisms that will facilitate access of women to legal remedies under the Act and related laws, and enhance the protection and promotion of the rights of women, especially marginalized women."²³
16. In pursuit of this mandate, and to serve as guide for the Commission's investigators, lawyers, officers, the general public and partner national government agencies and local government units, the "CHR Gender Ombud Guidelines: Promoting Gender Equality and Women's Empowerment under the Magna Carta of Women (RA 9710) and related laws" has been developed. The guidelines include protocols for the investigation of human rights issues and violations against women, children and persons with diverse SOGIE.²⁴
17. In connection with the mandate of the Commission as the Gender Ombud, the NHRI is establishing a Gender-Based Violence (GBV) Observatory, which shall be a research and advocacy hub with the aim of collecting and analyzing information on gender based violence, monitoring the progress of efforts addressing GBV, pursuing research and advocacy agenda towards improved policies, mechanisms, and access to justice for victim-survivors of GBV.

²⁰ Commission on Filipino Overseas, *available at* <https://www.cfo.gov.ph/about-us/transparency/gender-and-development-gad-corner.html#cfo-s-gender-mainstreaming-efforts> (last accessed May 29, 2019).

²¹ Inter-Agency Council Against Human Trafficking, *available at* <http://iacat.gov.ph/powers-and-functions/> (last accessed May 29, 2019).

²² Department of Labor and Employment, *available at* <https://www.dole.gov.ph/gad/> (last accessed May 29, 2019).

²³ § 40, The Magna Carta of Women (RA 9710).

²⁴ Commission on Human Rights of the Philippines, CHR Gender Ombud Guidelines: Promoting Gender Equality and Women's Empowerment under the Magna Carta of Women (RA 9710) and related laws" April 21, 2015, *available at* <http://chr.gov.ph/wp-content/uploads/2018/09/CHR-Gender-Ombud-Guidelines.pdf> (last accessed May 27, 2019).

The Observatory shall aim for a grounded grasp of GBV through ensuring participation of the most vulnerable and marginalized, mindful of the GBV experienced by women facing multiple and intersecting forms of discrimination. The GBV Observatory shall collectively raise visibility of gender based violence, particularly as experienced by those facing multiple and intersecting forms of discrimination, and in specific contexts such as armed conflict, emergency and disaster situations and development aggression. The Observatory shall deliver relevant and translatable research evidence to drive policy and practice leading to a reduction in the levels of gender based violence and compliance by the State of its obligations under domestic and international human rights law.

18. The Commission is also embarking on the establishment of a migrant workers' rights observatory that would systematically monitor the Philippine government's compliance with human rights and labor rights treaties relevant to migration, and working with the government and civil society in the country and in the receiving countries to facilitate access to justice for migrants and their families, as well as establishing a case referral mechanism and cooperation agreements for NHRIs in the sending and receiving countries.
19. Migrants rights groups, civil society organizations, trade unions, international organizations such as the International Labour Organization (ILO) and UN Women to name a few are also instrumental in facilitating access to justice for migrants and their families, including direct services for women migrants and at-risk groups.
20. Disaggregated data and gender audit are needed however to identify how the above-mentioned government services, policies and programs impact the protection of rights of women migrant workers and marginalized gender groups in the context of migration.

III. Please indicate any challenges and/or obstacles in the implementation of gender-responsive migration legislation and/or policies

21. Weak or lack of proper and efficient implementation of legislation and policies are often cited setbacks in realizing gender-responsiveness towards the protection and promotion of the rights of women migrant workers and gender-non-conforming individuals. In the 2016 Concluding Observations of the Committee on the Elimination of Discrimination against Women to the Philippines, the Committee raised its concern on "the widespread exploitation and abuse of Filipina migrant workers working abroad, in particular as domestic workers, and the insufficient support provided to reintegrate those who return. The Committee also notes that the protection of migrant workers under ASEAN migration policies does not cover unskilled migrants, who constitute the majority of Filipina migrant workers." The Committee then recommended the State party to,

(a) Enhance its efforts to effectively protect the rights of Filipina migrant workers abroad, through bilateral agreements and memorandums of understanding with countries and regions to which Filipinas migrate in search of work;

(b) Strengthen the regulation and inspection of recruitment agencies for migrant workers and the sanctions applicable in case of breaches of relevant regulations;

(c) Continue its efforts to raise awareness among women migrant workers about their rights, the risks that they may face and the channels that they can use to seek remedies in case of violations of their rights, through pre departure briefings and public information campaigns;

(d) Investigate, prosecute and punish perpetrators of exploitation and abuse of women migrant workers, in particular domestic workers, who are under its jurisdiction;

(e) Provide gender-responsive support to returning women migrant workers for their reintegration.²⁵

22. Draconian laws and policies in transit and receiving countries go against any existing gender-responsive efforts that the Philippine government or other sending countries aim to implement. Host countries should also reform legislation and practices that negatively affect the rights of women and gender-non-conforming individuals, including migrant women and marginalized gender groups. Employer-tied employment and the Kafala system mainly impact migrant women working as domestic workers, often resulting to human rights abuse and labor exploitation, hence these practices should be reformed, centering on the human rights and labor rights of individuals and eliminating the abuse in the system.

IV. Based on the experience accumulated with these interventions so far; as well as the lessons learned, what would have to be done differently to maximise the gender responsive impact of these interventions?

23. The concluding observations of the Treaty Bodies particularly the CEDAW Committee and the Committee on Migrant Workers should be enforced by the Philippines, the former's recommendations, including gender-responsive programs and trainings, have been provided in 2014 and 2016 respectively, and the next periodic reports of the State party have been due on May 2019 for CMW and in 2020 for CEDAW.

24. The GAD and gender-mainstreaming activities of government agencies are worthy of recognition but regular monitoring and evaluation of such initiatives and accessibility of gender audit reports are encouraged.

25. Gender Focal Point Officers in the Philippine embassies and consulates, as well as in migrant workers resource centers and violence against women's desks should be empowered and provided with regular and sustainable capacity building and gender-sensitivity trainings so they can better respond to protecting the rights of women OFWs and persons with diverse SOGIE.

²⁵ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of the Philippines, CEDAW/C/PHL/CO/7-8, July 25, 2016.

V. What support could other stakeholders (other than governments) provide to make migration policies, legislation, and practices more gender responsive?

26. Ensuring that national human rights institutions independently implement their mandates can facilitate enforcement of gender-responsive legislation, policies and practices. The Commission, as the NHRI and Gender Ombud entrusted by the constitution and laws, can advise and assist the government in achieving its gender and development plans and gender-mainstreaming initiatives. Their recommendations aim to guarantee that rights of women OFWs and other marginalized gender groups are being protected and promoted based on adherence to human rights and labor rights treaty obligations of the State. Empowering NHRIs in the receiving countries can further strengthen the protection mechanism and access to justice for all migrants and their families.
27. Civil society working for and with women migrants and persons with diverse SOGIE should also be empowered to assist the government in attaining its GAD and gender-mainstreaming targets.
28. Treaty Bodies and the Special Procedures who independently and constructively scrutinize the compliance of States with international human rights treaties should continue providing more concrete concluding observations and recommendations for the Philippines towards the government's actual and more active implementation of gender-responsive legislation, policies and practices.