

A TICKING BOMB IN THE HANDS OF FILIPINO MIGRANT WORKERS

Position on R.A 8042, or Migrants' Act of 1995

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Twenty-two years after the enactment of R.A. 8042 or the Migrants' Act of 1995, to say that the plight of Filipino migrant workers has worsened is a gross understatement.

Even though foreign remittances from overseas Filipinos have continuously saved the Philippines from economic collapse, the rising number of overseas Filipino workers (OFWs) forced to seek employment abroad still cannot expect protection from the Philippine government and its laws. On the contrary, the various laws, regulations, executive orders and memorandums of instructions issued by the Philippine government, with the Migrants' Act of 1995 as basis, have persistently scourged the sector with unjust fees, bureaucratic red tape and a more sophisticated labor export program.

The Migrants' Act of 1995 is a two-faced law riddled with embellishments of so-called migrants' rights but treacherously traps us into the worst possible scenario of commodification. It allowed past and present regimes to renege responsibility for the protection of our rights and welfare while permitted the continuance of government financial exaction. More so, this Act throws us to the dogs – those profit-hungry and usurious private recruitment agencies and their greedy foreign contractors – without any defense.

Suffice to say, the labor export industry was fully deregulated in 1995, when the Act was enacted. Since then, potential and current OFWs witnessed the explosive situation of wage reduction, service and other fee increase, illegal recruitment, human trafficking, and all forms of abuses and exploitation. Since then, because of its own law, the Philippine government has been legally extricated to turn a blind eye.

It is this treachery of the Act that we want to expose through this paper. Filipino migrant organizations fighting for their rights everywhere need to understand the danger posed by this seemingly pro-migrant law. The Migrants' Act of 1995 has been a time-bomb ticking inconspicuously, rendering migrant workers complacent and dull by its reformist phrasemongering, and then double-crossing us into more intense commodification and exploitation.

This paper is divided into four parts: (a) The Reality of Philippine Laws; (b) The Migrants' Act of 1995; (c) Full Deregulation of Recruitment Activities Benefits the Government, the Local Ruling Class and the Neoliberal Imperialist Doctrine; (d) Our Line and Particular Tasks.

A. The Reality of Philippine Laws

We subscribe to the fact that economic power makes political power. And in any class-divided society like the Philippines, those who wield the greatest economic power define the character of the state and control and dictate upon it.

According to Prof. Jose Ma. Sison in *Anatomy of Politics (Stand for National Democracy)*:

"The present state in the Philippines signifies the long- drawn rule of certain classes over other classes. The class interests that today dictate the state are those of the imperialists, compradors and landlords. The theory is bandied about that it is the "ordinary citizens" who have created the present state and who can use it as their own instrument. But this is contrary to the fact that the state is merely the executor of the will and interests of those exploitative classes ruling our society today."

Therefore, in the current semi-colonial and semi-feudal Philippines, the state serves foreign and feudal interests and opposes the national and democratic interests of the Filipino people. And the state commands this service from us through instruments of violence – the armed forces, police, courts and prisons.

The state will, of course, try to donate the possibilities of legal reform, of parliamentarian to persuade the oppressed sectors to abandon their quest for justice. The government will even use “revolutionary” slogans to confuse the poor. They will not cease to employ reformist tricks to dissuade the masses from revolting against the daily violence of foreign and feudal exploitation.

But Prof. Sison continues:

“When all assuasive means have failed to mislead or appease the oppressed people, the coercive power of the state is ruthlessly used by the exploiting classes to pacify the national and social unrest that arises.”

In fact, all these laws, even the Constitution, promulgated by the Philippine government simply serve to profit the elite and preserve their domination over the Filipino masses. These laws simply legalize and legitimize the ruling classes’ exploitation and oppression. Look at the Visiting Forces Agreement, and consequently, the Enhanced Defense Cooperation Agreement (EDCA). Look at the various laws and decrees promoting bogus land reform. Look at the Mining Act of 1995. Look at the endless amendments of the Constitution. Look at the Herrera Law and other untold numbers of labor rules and laws. It is not the workers, peasants, the intelligentsia, the petty property-owners and nationalist businessmen who will benefit from these but the imperialists, bourgeois compradors and landlords.

The Migrants’ Act of 1995 does not differ from the rest of these anti-people legislation. The purpose, characteristics and nature of the Act serves the very basis and objectives of the above principles.

B. The Migrants’ Act of 1995

The Migrants’ Act of 1995 was hastily enacted by the Ramos government on June 07, 1995 to dampen the intense social unrest as a result of the Philippine government’s neglect over the death of Flor Contemplacion. This was a ‘midnight law’ passed after Ramos administration used the Gancayco Commission to evade responsibility of its injustice and neglect and to iron out anew severed diplomatic relations with Singapore – one of the best “markets” for OFWs.

If we analyze all the provisions, sections and content of the Act, these are mere eclectic compilations of “rules and regulations” of the Philippine Overseas Employment Administration (POEA) and the brochures of the Overseas Workers Welfare Administration (OWWA). The enactment of the Act was just a ploy to pretend that the Philippine government was concerned with the rights and welfare of migrants.

At first glance, the law appears to be enforcing strict rules and promoting genuine protection for migrant Filipinos and their families. However, if we consider the sorry reality of millions of our OFWs abroad, and their families in the homeland, these provisions become simply a testimony of inutility.

Let us uncover some of their deception and double-speak:

1. In Section 2. (Declaration of Principles), the Act puts down a litany of motherhood statements. It talks about unquestionable avowals for human dignity, protection of labor, equality of women, ensuring participation in decision-making, providing legal assistance, accrediting NGOs as partners for migrant concerns and the like.

Our many experiences, however, belie these claims. Time and again, the government has been feigning helplessness despite lip-service concern about the daily reports of abuse and exploitation of migrant workers.

Despite these well-documented realities, the Philippine government ignores these injustices and tries to cover up its policy of turning Filipinos into a commodity with the claim that OFWs go abroad on their own, without any encouragement or push from it.

2. The Act even denies the government’s labor export policy, to wit:

Section 2 (c) While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development.

Yet ex-President Estrada himself thanked the countless “new economic heroes” for saving the Philippine economy from the Asian financial crisis and wooed them to continue their “noble” service for the country via being industrious and dutiful in their remittances. Such hypocrisy!

His successor President Gloria Macapagal-Arroyo even had the gall to tell overseas Filipinos to “stay put abroad and continue to send their dollar remittances until the Philippine economy stabilizes:

“Jobs here are difficult to find and we are depending on people outside the country. If you can find work there and send money to your relatives here, then perhaps you should stay there” (Philippine Daily Inquirer, July 28, 2001)

President Benigno Aquino III’s six years in office can only be characterized by the further intensification a labor export policy that proved more detrimental to the lives, rights and welfare of Filipino migrants and their families. His administration recorded the biggest number of OFW deployment since the Philippines started contract workers’ deployment in the 1970s.

Now, barely a year after President Rodrigo Duterte assumed office, there remains no indication that he will resolutely divert from the labor export policy. Despite his pronouncements and posturing, the Duterte government’s perpetuation of a semi-feudal semi-colonial economy through its refusal to implement genuine land reform and national industrialization to generate decent domestic employment will undoubtedly further fully entrench the labor export policy to continue to produce and commodify cheap Filipino labor for the global market.

The Philippine economy continues to rely heavily on foreign investment, export-import dependence, debt and the so-called free market. President Duterte’s 10-Point Economic Agenda is clear-cut: strict adherence to neoliberal globalization by continuing, and advancing, the previous administration’s economic programs, through the proposal for a charter change to further pave the way for an unparalleled surrender of sovereignty and imperialist plunder of national patrimony, and through its hard-headed refusal to address the economic root causes of forced migration.

3. Letter (l) of Section 2. of the Act states: *“Government fees and other administrative costs of recruitment, introduction, placement and assistance to migrant workers shall be rendered free without prejudice to the provisions of Section 36 hereof.”*

This provision pretends to unburden the OFWs of government exactions. Actually, it legalizes the already heavy financial burdens imposed on OFWs by the government. Section 36 states:

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.”

These two provisions show how the government will not, especially through its own law, allow its source of earnings to be cancelled in the name of migrants’ rights.

In fact, scheme upon scheme to swindle migrant workers has been imposed over the years. There is the illegal collection of the so-called Voluntary OWWA membership fee (USD25 per contract). This fee is illegal under the Act (for it was imposed after the Act had been approved) yet government agencies abroad continue to collect it in the guise of being “voluntary.” Only in Hong Kong is this fee not collected due to the persistent protests of

migrant organizations. This policy has been recently institutionalized in the passing of the OWWA Charter Law in 2016.

Republic Act 10022 amended the Migrants' Act of 1995 and made it worse. Faithful to its full deregulation agenda, RA 10022 obligated and further burdened OFWs by imposing the Mandatory Insurance for OFWs.

The most happy with this, of course, are big monopoly insurance companies recognized by the POEA.

Since President Duterte took office, a plethora of fees are also threatening to barrage OFWs, namely, the mandatory SSS coverage, VAT on remittances, among others.

This is the logic of the Migrants' Act of 1995, for this is also the basic and essential logic of the Labor Export Policy. **For the government, remittances and state exactions and unjust collections from OFWs and their families are more important than protecting their rights. The Labor Export Policy is a scheme to provide export income and levies for the government, while attempting to alleviate the unemployment situation and prevent social unrest in the country.**

There are four funds created by the Migrants' Act of 1995:

- a. Emergency Repatriation Fund amount to one hundred million pesos (P100,000,000)
- b. Migrant Workers Loan Guarantee Fund amounting to P100M
- c. Legal Assistance Fund amounting to P100M
- d. Congressional Migrant Workers Scholarship Fund amounting to P200M.

The allocation for these funds come from the General Appropriations Act (the National Budget), the OWWA fund, the Contingency Fund of the President, the Presidential Social Fund, the Countrywide Development Fund and the Philippine Charity Sweepstakes Office.

Experience again has shown us that migrant Filipinos do not get to benefit from these funds.

Then DBM Secretary Butch Abad deleted the P89.6-million budget initially penned in the proposed 2015 budget for the implementation of the overseas absentee voting (OAV). Meanwhile, only P30-million has been allocated for the Legal Assistance Fund since Aquino became President in 2011.

Every year, P100 million is supposedly allotted for the Legal Assistance Fund of the Department of Foreign Affairs (DFA) to give legal services for the OFWs, but in the case of Mary Jane Veloso, the government did not provide for her legal counsel when she was arrested in 2010. It was only on her appeal before the Indonesian Court of Appeals that the government provided for Veloso's legal aid.

Based on DFA disbursement reports, the DFA have at least P6-billion unused funds from 2010 to 2013, years when the anomalous Disbursement Allocation Program (DAP) was implemented. The large chunk of the so-called "savings" were from the "underspent" allocations for the Overseas Absentee Voting (OAV) and the Assistance to Nationals (ATN).

From 2010 to 2013, only 34% of the appropriations for the OAV were used up. As for the ATN budget, disbursement totaled only to P741-million while P19-billion was allocated for the budget item "protection of national interest of Filipino nationals abroad."

C. Full Deregulation of Recruitment Activities Benefits the Government, the Local Ruling Class and the Neoliberal Imperialist Doctrine:

Deregulation is the third element of the monstrous trio of neoliberal schemes under imperialist globalization. Together with liberalization and privatization, deregulation ensures the full play of big and foreign business into the economic spheres of many countries now under the rule of the World Trade Organization (WTO) and other multilateral trade

agreements such as Asia Pacific Economic Cooperation (APEC), North American Free Trade Agreement (NAFTA), Multilateral Agreement on Investment (MAI) and the Asia-Europe Meeting (ASEM).

The policy of deregulation removes any government monitoring and control over the procurement, sale and prices of commodities. It grants foreign big business and monopolies with the power to dictate over the market of goods and services. It leaves everything to the destiny of the "free market." To the ordinary people, deregulation means jacking up of prices of basic commodities according to the whims of the foreign monopolists and their local agents in the country.

The most vivid example of the exploitative effects of deregulation is with rice and oil. The food and oil industries have been targets of full deregulation as soon as there was the General Agreement on Tariffs and Trade (GATT). And what has this done to the Filipino people? With diminishing government control over the supply and prices of these commodities, the Filipino people fell prey to oil and rice price increase one after another. Multinational corporations and owners of food, grain and oil monopolies are able to further dictate the supply and prices of these basic needs and have their economic gain.

The past and now the present government are loyal promoters of these policies. And it is they who benefit through their connections with foreign multinational corporations and local landlords and compradors. They remain to be in power because their class supporters are raking monstrous profits from victimizing the mass of the Filipino people.

With the Migrants' Act of 1995, the deregulation of overseas recruitment activities came full force, subjecting Filipino workers to the vagaries of the international market as ordinary commodities. Article 7, Section 29 and 30 of this Act expresses the intention to deregulate recruitment of OFWs:

Section 29. Comprehensive deregulation Plan on Recruitment Activities. Pursuant to progressive policy of deregulation whereby the migration of workers become strictly a matter between the worker and his foreign employer, the DOLE, within one (1) year from the effectivity of this Act, is hereby mandated to formulate a five-year comprehensive deregulation plan on recruitment activities taking into account labor market trends, economic conditions of the country and emerging circumstances which may affect the welfare of migrant workers; and,

Section 30. Gradual Phase-out of Regulatory Functions. Within a period of five (5) years from the effectivity of this Act, the DOLE shall phase out the regulatory functions of the POEA pursuant to the objectives of deregulation.

This means that the whole issue of recruitment and employment overseas is left between the private recruitment agencies and the principal or employer on one side, and the migrant worker on the other. The Philippine government is unconcerned and not duty-bound to be responsible. Whatever happens to the migrant worker is strictly a private/contractual issue between him/her and the agency and the employer. It would solely be the accountability and responsibility of the latter.

Worse, with the deregulation of recruitment and monitoring activities, the wage levels of migrant workers has been surely forced down. Without regulation by the government, the migrant worker is forced to accept ridiculously low wages and other oppressive working conditions for the promise of employment abroad. Since negotiations between the employer or agency and the migrant worker take place more privately now, and the government does not need to monitor, the end result is the the tragedy of lower wages and more oppressive working conditions than ever before.

The Philippine government, through the Migrants' Act of 1995, has surrendered the rights of migrant workers to bargain for better wages and working conditions to private recruitment agencies. How can one expect protection from private recruitment agencies that thrive and prosper through violating our rights? How can we expect these agencies to protect our rights if they profit from exporting us cheaply and without defenses?

Whereas before, deregulation covers the removal of government monitoring and control over the supply and prices of commodities, with the Act, it now covers people. OFWs are treated as commodities in this high stakes game of labor export. The receiving countries, where foreign capital requires a massive force of cheap labor, benefit with the removal

of any restrictions to the mobility and further cheapening and devaluation of migrant labor. Through private recruitment agencies, multinational corporations can directly deal with the “price” (read: wages) of migrant labor without interference from the Philippine government.

By enforcing full deregulation of recruitment activities, the government has taken away every trace of pretensions as being pro-poor and has exposed itself to be truly anti-national and pro-big business, as well as anti-migrant.

The government bears no shame in expanding the labor export industry, i.e., legalizing the inhuman act of selling people as commodities overseas. With the deregulation scheme, the Labor Export Policy is further made blatant as a flourishing business for both local and foreign businessmen hungry for profit.

In fact, these private recruitment agencies play the role of big compradors, ferrying people, supplying people, profiting from the sale of people – to augment the need for cheap labor of foreign capitalist countries. They promote and export people as goods as they export other high-quality raw materials and products.

The Philippine government benefits immensely from this arrangement. While private recruitment agencies directly deal with workers to exact the greatest of profits, the government is saved from accountability and responsibility in protecting the rights and welfare of overseas Filipinos.

With deregulation, the government saves money by renegeing from its responsibility towards OFWs. Deregulation does not also affect government’s direct earnings from the fees and taxes collected from OFWs, nor from taxes and other fees and other fees paid by recruitment agencies (provided that no corruption attends such transactions). And deregulation ensures that the remittance of migrant workers would continue to flow as the main source of income for the government.

In the final analysis, OFWs and their families are the collateral damage. OFWs are milked dry not only by private recruitment agencies and their foreign employers, but also by their own government. And when OFWs in distress are in need, they have nowhere to run to because the government puts the blame on recruitment agencies, while recruitment agencies shamelessly withdraw from the scene or otherwise ask for a hefty sum for additional services.

The Migrants’ Act of 1995 is a malicious law that aims to deceive us into believing that the government protects the interests and welfare of migrant workers. Actually, it ensures the continued exploitation and oppression of migrant workers. It is nothing but a sham that ensures that the cycle of labor export continues.

D. Our Line and Particular Tasks

The Migrants’ Act of 1995 unequivocally reflects the nature of the semi-feudal semi-colonial state that enacted it.

Since this is a state that promotes the export of labor, the Act lays down the mechanisms to facilitate labor export. Since this is a state that coddles private recruitment agencies, the Act ensures the profit and privileges of these agencies and of their foreign contractors. Since this is a state that treats people as commodities, the Act condones the labor export policy of the government and legitimizes the fees and other exactions to earn from them.

To summarize:

1. The Migrants’ Act of 1995 intensified the commodification of people as it continues to promote the Labor Export Policy and the extraction of unfair taxes and unjust fees from migrant workers. The government does not and will not provide real protection for migrants and, with the Act, only abated and encouraged the heightened exploitation and oppression of migrant Filipinos for the benefit of neoliberal globalization dictates and the local ruling classes which it serves.
2. More so, the Migrants’ Act of 1995 took away the responsibility of the Philippine government towards OFWs and their families and passed this on to private recruitment agencies and employers abroad.

The Migrants' Act of 1995 intensified the commodification of people through labor export. Worse, it offered migrant workers "wholesale" to the greedy hands of private recruitment agencies and their foreign contractors.

Intensifying commodification heightens the exploitation of migrant Filipinos. Deregulation, as sanctioned by the Act, only lowered wages of OFWs and increased the cases of injustice and abuse against them. _With the government extricated from its responsibility to protect the interests of the Filipino migrant workers, it can continue to profit from exaction upon exaction without fear of being held accountable for the worsening exploitation and oppression of overseas Filipinos.

We reject the Migrants' Act of 1995 as we reject the commodification of migrant workers in the unjust Labor Export Policy of the government.

Junk the Migrants' Act of 1995!

Stop forced migration!

Junk the labor export policy!