



# PROTECTING MIGRANT WORKERS

An Analysis of Overseas Filipino Workers' Rights  
under the TPP

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## Chapter 1

### PURPOSE OF THE STUDY

The Trans Pacific Partnership (TPP) is a multinational Free Trade Agreement (FTA) negotiated among twelve Pacific rim countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. Member countries represent key markets for Philippine exports/imports, investments, and technology, and account for 40% of global trade. Of these, Singapore and Malaysia rank among the top 10 destinations for deployed overseas Filipino workers, accounting for 12% of total deployments in 2015. The considerable increase in migration (displacement) of workers that follow the implementation of FTAs has generated significant concern for the Philippines' inclusion in the Trans Pacific Partnership.

Known as a labor sending country, labor export is a defining characteristic of the Philippine's national development strategy, with 10% of GDP attributed to remittances alone in 2015<sup>1</sup>. The body of research on the TPP, spanning economic impact to workers' rights on the Philippines, employ models that exclude this feature of the labor market, creating a significant gap in analysis. The primary data sample used in this research is the Labor Force Survey, which does not include data on Filipinos employed overseas, or Overseas Filipino Workers (OFWs), as they are considered a part of the labor force of their country of employment. Further, it is estimated that 10% of the Filipino workforce abroad are trafficked individuals; however, due to the nature and inaccuracy of such data, it is important to recognize that relying on quantitative modeling is inadequate when assessing contexts that allow for the irregular movement of workers.

While this report does not seek to discount the importance of using economic modeling to analyze trade policies, it does challenge the sole use of Computer Generated Equilibrium (CGE) modeling as the primary decision making tool for the Philippines as it stands today. CGE projections do not provide any analysis on impact on outbound labor migration, or the impacts on the workers themselves. The permanence of the OFW program in the Philippines' development strategy as well as the significant economic contributions of remittances demands consideration in the overall impact of the TPP.

Building upon the body of research on the correlation between multilateral free trade agreements (FTAs) and displacement of low skilled workers in developing countries, this analysis focuses on the Philippine context of its Labor Migration Policy and asks: How would the TPP Labor provisions challenge the current protections under the OFW program framework? This paper provides a text analysis of the TPP labor chapter and discusses the state of OFW rights and protections under the agreement.

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<sup>1</sup> International Migration at All-Time High." World Bank. December 18, 2015. <http://www.worldbank.org/en/news/press-release/2015/12/18/international-migrants-and-remittances-continue-to-grow-as-people-search-for-better-opportunities-new-report-finds>

## Chapter 2

### LITERATURE REVIEW

The Philippine's history of trade liberalization policies has been criticized by scholars and activists alike as ineffective and unsustainable in its contribution to overall national development. Despite its engagement in the global market through free trade agreements, it has lagged in growth and competitiveness compared to its neighboring counterparts. The country is currently engaged in eleven Free Trade Agreements (FTAs), and has expressed serious interest in joining in the second round of negotiations for the Trans-Pacific Partnership (TPP). The Trans Pacific partnership is a multinational FTA negotiated among twelve Pacific rim countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. Notably, this bloc includes all major economies along the pacific rim with the exclusion of China.

Following seven years of negotiation, the finalized proposal was signed on February 12, 2016 and is awaiting ratification from all 12 countries. The Partnership aims to “promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty in our countries; and promote transparency, good governance, and enhanced labor and environmental protections.”<sup>2</sup> The 30-chapter agreement addresses trade and trade related issues, and is purported to be the most ambitious and comprehensive trade agreement to date. Several concerns have been raised by critics, particularly around the secrecy around its negotiation, the asymmetric power wielded to large corporations, and threats to workers' rights.

The TPP has included a chapter on labor, building upon landmark labor provisions in the North American Free Trade Agreement (NAFTA); however, experts from the United Nations as well as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) warn against the promise of increased worker protections in member countries. The Labor chapter (19) is based on the Basic Labor Standards in the May 10 Agreement<sup>3</sup> and requires that all parties abide by the 1998 International Labor Organization's Declaration on fundamental labor rights and practices (Box 1). For some countries, this means exhaustive amendments to national policy, or significant investment to create previously nonexistent infrastructure and oversight. To ensure compliance among countries with exhaustive track records of severe workers' rights violations, the United States has negotiated bilateral “consistency plans” with Brunei, Malaysia and Vietnam. As they are intended to motivate reform, there are no standardized measurements or instruments for implementation or enforcement.

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<sup>2</sup> Summary of the Trans-Pacific Partnership <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>

<sup>3</sup> The May 10 agreement refers to the Bipartisan Agreement on Trade Policy, incorporating internationally-recognized labor principles incorporated into trade agreements. See Office of the United States Trade Representative (2007).

[https://ustr.gov/sites/default/files/uploads/factsheets/2007/asset\\_upload\\_file127\\_11319.pdf](https://ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf)

The Philippines is significantly reliant on its policy of labor migration, attributing roughly 10% of its GDP to remittances alone, totaling about \$30 billion.<sup>4</sup> The flow of labor migrants is coordinated through a robust management model based in the Philippines, and through bilateral agreements with labor-receiving countries. TPP member countries Malaysia and Singapore receive 12% of all Overseas Foreign Worker (OFW) deployments from the Philippines. These countries are ranked at 4 and 3, respectively, on the ITUC Global Rights Index, the world's most comprehensive database on workers' rights violations (Burrow, 2016)<sup>5</sup> In comparison to countries admitted into the TPP, the Philippines has been given a score of 5- no guarantee of workers' rights. The given climate of inability to protect workers domestically warrants investigation on the Philippines' ability to adhere to TPP labor provisions for their citizens working abroad.

In anticipation for the opportunity to be included in the 2nd round of TPP negotiations, preliminary studies have been conducted to evaluate the impact of joining ex-ante; however, these studies employ economic models that neglect to accurately account for the weight of migrant labor, or address migrant labor as a variable at all. This aspect of the labor market cannot be ignored, as export labor has become an enduring feature of both the economic development and national security strategy of the Philippines. Labor migration has become an institutionalized employment model as well as a social norm within Filipino culture. Furthermore, a TPP readiness assessment undertaken by the USAID Trade-Related Assistance for Development (TRADE) Project identified issues of concern with current labor legislation, leading to questions of reform of the OFW program.

This report is divided into 5 parts. Chapter 1 outlines the purpose of the study, Chapter 2 will cover a literature review of the Social and Economic context behind the Philippines' phenomenon of mass labor migration, migration trends and characteristics, and an overview of the TPP's labor chapter. In Chapter 3 I will discuss the methodologies employed, resulting in Results and Discussion in Chapter 4. Chapter 5 will conclude with Recommendations for future study.

## **B. Social and Economic context**

The Philippines has a population of approximately 102 million people, with a labor force of about 43 million as of July 2016. According to the Labor Force Survey (LFS) from the Philippine Statistics Authority, the labor force participation rate was 63.3%. Comprised of qualified workers, ages 15-64, the labor force accounts for 63% of the total population<sup>6</sup>, with this ratio being attributed to the high population of children and elderly. 26% of the population lives below the poverty level, with an unemployment rate of 6.6% and an underemployment

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<sup>4</sup> Philippines <http://data.worldbank.org/country/philippines>

<sup>5</sup> The Index is based on information recorded in the ITUC Survey and covers violations in law and in practice. The ranking is based on 97 indicators ranking countries 1-5, 5 being the worst rating signifying high occurrences in worker's rights violations. [https://www.ituc-csi.org/IMG/pdf/survey\\_ra\\_2016\\_eng.pdf](https://www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf)

<sup>6</sup> Population ages 15-64 (% of total) <http://data.worldbank.org/indicator/SP.POP.1564.TO.ZS?locations=PH> 5  
Philippine Employment Trends 2015 Accelerating inclusive growth through decent jobs  
[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms\\_362751.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_362751.pdf)

rate of 17.5%. Among those employed, 38.6% were in vulnerable employment (own-account workers and unpaid family workers), and 36.4% of the employed were in part-time (less than 40 hours a week) employment.

The Philippines' economy has failed to attain long-term stability, with its economic performance characterized as boom and bust for the last four decades.<sup>7</sup> This, combined with high levels of ongoing corruption and a repressive dictatorship until the 1986 People Power Revolution slowed the country's development in comparison to its neighbor countries. Further, this led to a neglect in pursuing structural reforms in the agriculture and manufacturing sectors, leading to chronic development imbalances.<sup>8</sup> The oil crisis of the early 1970's proved promising in answering the lack of domestic infrastructure to employ a large young and educated population, spurring the movement to institutionalize overseas employment. Scarce local opportunities and a high demand for labor abroad created a strong incentive for the Philippines government to create a management model for sending workers abroad and capitalizing on remittances.

The Labor Code of the Philippines in 1974 was initiated as a stop-gap measure to address a national labor surplus temporarily until the country resolved its economic problems. However, due to the persistence of domestic 'push' factors, including unemployment in the double digits, a lack of economic and political stability, and a rapidly growing labor pool, the country has invested in a more robust management of the flow of overseas workers. Labor migration had become the country's solution to address the population growth that exceeded its economic growth. Amid the success of the policy to contribute to economic stability, exploitation trafficking of OFWs was rampant. Standards of OFW protections were implemented through The Migrant Workers and Overseas Filipinos Act, in response to growing public unrest to the government's complicity in the hanging of a Filipina domestic worker in Singapore. Prior to this, the government's only role was to promote and establish a program for overseas work.

The Migrant Workers and Overseas Filipino Act is one of several ambitious efforts the Philippines has taken towards protecting workers' rights, creating agencies and new policies dedicated to the wellbeing of OFWs. OFWs are Filipino citizens, protected under Philippine law; however, OFWs are excluded from specific legislation, the labor force database and are considered a part of the country of employment's workforce. Many destination countries exclude migrant workers and/or occupations commonly filled through migrant labor from major workers' rights legislation, creating the specificity of the OFW situation.

### **C. Labor Migration and Trade**

Per the Migration Policy Institute, the flow of overseas foreign workers (OFWs), totaled a few thousands per year in the early 1970s, and has since grown to millions. The Philippines Statistics Authority (PSA) estimated the total number of OFWs in 2005 to hit the one million mark, with current estimates of this population reaching 2.4 million in 2015. This group makes

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<sup>7</sup> Country Profile, Philippines <https://www.iom.int/files/live/sites/iom/files/Country/docs/CMReport-Philippines-2013.pdf>

<sup>8</sup> Ibid.

the Philippines the third largest recipient of remittances, forecasted to be \$29.7 billion by the World Bank.<sup>9</sup> Remittances constitute the largest source of foreign exchange income for the Philippines.

Looking at the 11 FTAs the Philippines is engaged in, only two, The Japan-Philippine Economic Partnership Agreement (JEPA) contains explicit labor provisions. Large stakeholders, including the United Nations and the World Bank cite several labor migration trends that are highly visible in the example of the JEPA. Notably, a mismatch of skills and 'brain drain'<sup>10</sup> were key issues in this, and many other sites of labor (Battistella, Liao, 2013). These, among others have received negative attention as effects of external migration from developing countries.

#### **D. The Trans Pacific Partnership Agreement Labor chapter**

The Trans Pacific Partnership (TPP) is a multinational Free Trade Agreement (FTA) negotiated among twelve Pacific rim countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. The main objectives of the TPP are to generate economic growth among member countries by moving to reduce tariffs and other barriers to trade and investment and improve market access to goods and services. Attitudes surrounding the TPP vary; in the United States, proponents argue that failure to reach a free trade agreement with Asian economies would allow China to set the global norms, fearing China's mercantilist foreign policy would neglect environmental standards, labor rights, and intellectual property rights, and set a low bar for global standards (Marston, 2015)<sup>11</sup> With this come understandings that the TPP will level the playfield by addressing market and labor conditions among member countries.

One of these mechanisms are labor protection provisions that address competition from other countries with poor working standards, undercutting and outcompeting the United States through cheap labor. Building upon the May 10 agreement, supporters of the TPP claim that it is the most ambitious trade agreement to date in advancing the labor agenda; however, labor advocates are skeptical of such provisions due to several issues such as compliance, the capacity and political will of a country to enforce the provisions, the relativity of a baseline for health and safety regulations, as well as vague language within the agreement that is subject to interpretation.

An example of such language is the discouragement of 'importation of goods from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.' The TPP also commits members to discourage imports of goods produced by forced labor through 'initiatives considered appropriate', left to the discretion of member countries to define the term 'appropriate'. Beyond ambiguous language is the omission of groups altogether, the TPP does not explicitly address migrant workers, an area

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<sup>9</sup> World Bank Migration and Remittances Fact Book.

<https://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/4549025-1450455807487/Factbookpart1.pdf>

<sup>10</sup> The loss of human capital to foreign labor markets. World Bank, International Migration, Remittances, and the Brain Drain

<sup>11</sup> Marston, H. (2015). What the Trans-Pacific Partnership Means for Southeast Asia. Retrieved November 13, 2016, from <http://thediplomat.com/2015/07/what-the-trans-pacific-partnership-means-for-southeast-asia/>

critical to the Philippines' labor force. The relativity of health and safety regulations in addressing workers' safety is concerning; Brunei, Vietnam and Malaysia are TPP member countries that are notably negligent in addressing human rights abuses. There is little progress made on implementing safety features for OFWs.

The TPP labor chapter obliges all members to ensure that national laws conform to the rights and principles of the ILO Declaration:

- freedom of association and the effective recognition of the right to collective bargaining
- elimination of all forms of forced or compulsory labor,
- effective abolition of child labor, and
- elimination of discrimination in respect of employment and occupation.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) criticizes the limits of the TPP labor provisions, advocating for the addition of the eight fundamental conventions (treaties voluntarily ratified by ILO members) that correspond to the ILO Declaration (the European Union's approach to labor in FTAs) (AFL-CIO, 2015). These fundamental conventions are:

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labor Convention, 1930 (No. 29)
- Abolition of Forced Labor Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labor Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Workers' rights advocates claim that only Declaration, and not the Conventions, are referenced in FTAs because the United States has ratified only two of the eight conventions.

## **F. CGE: the primary assessment tool**

Computable General Equilibrium (CGE) models have become standard tools among economists and stakeholders alike, leading the way for quantitative trade policy analysis. It has evolved since its theoretical foundations of economic interconnectivity (demand, prices, income), dating back to Leon Walras (1834-1910). To address the infinite dimension and possibilities of economic interconnectedness, modelers are forced to selectively focus on only a few factors, creating a set of assumptions based on the modeler's methodology. Computable General Equilibrium modeling has built upon this, attempting to specify all economic relationships in mathematical terms and put them together in a form that allows the model to predict the change in variables such as prices, output and economic welfare resulting from a change in economic policies, given information about technology (the inputs required to

produce a unit of output), policies and consumer preferences (Global Trade Analysis Project (GTAP), 2011).

Previous studies on trade liberalization in the Philippines were simulated through a CGE model, with each version having varying sets of assumptions. Current assessments of the Trans-Pacific Partnership include CGE models, as well as others, such as Comparative, Prospective and Interest Analyses, and Impact Assessments (Health, Environment, Sustainability, Human Rights), though the most prominent of these being CGE modeling. One of the main strengths of CGE models is their theoretical consistency; they assume that all exports are imported by another country, that the sum of sectors' employment does not exceed the labor force, or that all consumption be covered by production or imports (Hertel et al, 2007). Another strength of the CGE is its ability to explore and compute a much larger range and variety of variables than other econometric estimations. CGE has emerged as a powerful tool for policymakers to represent the complex interactions of mixed economies; however, research shows mixed reviews when CGE is applied to developing countries, such as the Philippines.

While CGE modeling has become as influential as it is comprehensive, its application and validity has been widely criticized. Among these criticisms are its utility, model limitations, as well as level of analysis. Jaime De Melo, a leading economist in international trade and development, claims that CGE modeling has a microeconomic focus in industrialized countries, which is unsuitable for developing countries for three reasons: lack of time-series data, inconsistencies in data, and the short timeframe that big changes in policy leave for testing hypothesis (De Melo, 1988). All three of these issues are apparent in the context of the Philippines. Rather than "borrowing" parameter estimates from industrialized countries, De Melo suggests that future modeling for trade analysis in developing countries would benefit from altering their CGE to use direct economic parameters, tailored to each country, calling for further consideration of a microeconomic approach. In contrast to De Melo's position, Petri & Plummer (2016) claim that CGE modeling is best suited for macroeconomic analysis calling for inclusion for a microeconomic focus.

Further, CGE models have been criticized as highly complex and restricted in their usefulness when policymakers are unclear about what they are, their purpose and how to interpret the results (Andriamananjara, 2013). Iqbal (2001) and Petri (2016) agree that CGE is, indeed, the best form of quantitative analysis for trade policy, but suggest that has limitations and is insufficient on its own to fully analyze socio-economic impacts. Iqbal & Siddiqi (2001) present these limitations in terms of data; CGE models work best with data-rich countries that have the resources and technologies to run accurate models. As such, CGE models are often inaccessible to researchers and audiences outside of formal economics. Despite the varying evidence for and against the use of CGE modeling in trade policy analysis, it is agreed upon that it has the potential to produce the most comprehensive, quantitative view of a trade policy's impact on a specific economy, but should be supplemented by some form of additional analysis.

As with most countries, the Philippines has relied on CGE models to assess the impact of previous FTAs, reporting net positive gains; however, the results of ex-post assessments fall short of projected gains (Clarete, 2005), suggesting that alternative ways of assessing trade agreements must be explored. Oversight on combined economic, environmental and social

impacts have resulted in slow poverty alleviation, a lack of an industrial structure and limited contribution to value added (Aldaba, 2013).

Additionally, the failure of the Philippines to industrialize at the rate of its counterparts has led to dependency on labor export as its comparative advantage, inextricably linking labor, trade and migration. It is critical to its assessment of the Trans-Pacific Partnership that the Philippines consider this context when choosing models of analysis. While quantitative forms of analysis, remain at the heart of international trade policy analysis, qualitative analysis models focus on environmental, social and other non-market considerations, yielding alternate impacts of a policy.

In response to this, qualitative analysis is imperative to creating a comprehensive picture of potential impacts. Data on overseas foreign workers is primarily derived from outbound OFWs during processing, and is supplemented with a survey administered to OFWs. The mode of administration is not clear on the Philippine Statistics Authority site, and can be assumed that such data is incomplete, leaving out Migrant Workers in an Irregular Situation (also known as irregular migrants; workers that have overstayed their contract duration, trafficked individuals, resulting in an illegal employment status)<sup>12</sup> and those without access to the survey. The inclusion of such assumptions to create numeric projections is highly favorable, however, there is no conclusive way to accurately account for irregular migrants.

A thorough analysis of “soft” variables, such as a country’s social, political and cultural history, is key in to depicting an accurate, robust view of potential impacts. Consideration of local knowledges in trade negotiations is conducive to improved public participation, perception and involvement, inclusion of widely considered social constraints, and less potential for restrictive or exclusionary policies- ultimately leading to better decision-making (Garcia de Brigard, 2006). Existing literature suggests that complimenting quantitative research with qualitative analysis is critical to constructing a more robust view of impact, specifically in developing countries.

## **G. Workers’ Rights-specific models**

Several models assess country-specific quality of workers’ rights, including the International Trade Union Confederation (ITUC) Global Rights Index, the International Labour Organization (ILO) Measurement of Decent Work, and the Center for Global Workers’ Rights (CGWR) Labour Rights Indicators<sup>13</sup>. These frameworks evaluate countries based on the rights of their workers, though multiple methods of in-depth analysis.

The ITUC Global Rights Index methodological framework includes a review of national legislation and a survey representing 176 million workers, resulting in ratings of workers’ rights violations in law and in practice. Per the ITUC, this survey provides information on violations of the rights to freedom of association, collective bargaining and strike as defined by ILO Conventions, particularly ILO Convention Nos. 87 (Freedom of Association and Protection of the

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<sup>12</sup> There is no international consensus on the definition of such key terms as “economic migrant”, “permanent migrant” and “irregular migrant” (Vittin-Balima, 2002)

<sup>13</sup> see Table 1

Right to Organize) and 98 (Right to Organize and Collective Bargaining Convention) as well as jurisprudence developed by the ILO supervisory mechanisms<sup>14</sup>.

Similarly, the CGWR Labor Rights Indicators uses multiple texts and databases to provide numerical and textual information on country-level compliance with conventions Nos. 87 and 98. Coded results translate into country scores and profiles, outlining workers' rights violation in law and practice. Lastly, the ILO's Decent Work Country profiles assess national level progress toward decent work. The creation of the profiles employ national data on indicators of decent work with accompanying legal framework indicators to provide a context-specific analysis of the pace and direction of change across the decent work landscape.<sup>15</sup> The profiles use statistical and legal frameworks to evaluate ten substantive elements corresponding to the four strategic pillars of the Decent Work Agenda (full and productive employment, rights at work, social protection and the promotion of social dialogue): employment opportunities; adequate earnings and productive work; decent hours; combining work, family and personal life; work that should be abolished; stability and security of work; equal opportunity and treatment in employment; safe work environment; social security; and, social dialogue, workers' and employers' representation.<sup>16</sup>

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<sup>14</sup> Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (2006); ILO General Survey on Freedom of Association and Collective Bargaining (1994)

<sup>15</sup> Decent Work Country Profiles. [http://www.ilo.org/asia/info/research-and-data/WCMS\\_204500/lang-en/index.htm](http://www.ilo.org/asia/info/research-and-data/WCMS_204500/lang-en/index.htm)

<sup>16</sup> Ibid.

## Chapter 3

### METHODOLOGY

The standard use of CGE modeling in trade policy analysis assumes that countries utilizing them have robust data, access to sophisticated modeling, and can find usefulness in implementing such results. In alignment with the current debate against the sole use of CGE modeling in developing countries, this research advocates for a more robust scope of impact by examining the impact to Filipino migrant workers under the TPP through text analysis. By providing nation-specific context and focusing on the rights of OFW under proposed TPP legislation, this work seeks to contribute to a larger, comprehensive TPP assessment for the Philippines.

My research is a text analysis of the TPP's Chapter on Labour (chapter 19), using qualitative content analysis to compare section 19.3 Labor Rights to two pieces of Philippine workers' rights legislation: the Philippines Labor Code and the Migrant Workers Act (1995). Due to time constraints, I limited the scope of my research to a small part of the chapter. Having read and conducting a preliminary analysis of the entire Labour chapter, it had become apparent that the section with the most inconsistencies with the legislative framework of the Philippines was section 19.3, outlining the fundamental concepts of "workers' rights" for the entirety of the TPP.

My legal analysis triangulates the methodologies and findings from all three frameworks (ITUC Global Rights Index, ILO Measurement of Decent Work, and the CGWR Labour Rights Indicators). Following their methods of determining what constitutes concepts such as "decent work", I evaluated the provisions of section 19.3 against Philippine legislation quite loosely. For example, violating freedom of association can manifest in many ways, from financial barriers to excessive requirements to legal personhood. Peripheral forms of discouraging freedom of association include vulnerabilities imposed by publicizing names and addresses of union leaders.

While the Labor Code includes all laws and regulations pertaining to all legally recognized working individuals, the Migrant Workers' Act addresses specificities pertaining to OFW rights. OFWs are granted rights as Filipino citizens, however they must abide by the legal framework of their country of employment. Including the Migrant Workers' Act in the analysis widens the scope of legal protections examined under the TPP.

## Chapter 4

### ANALYSIS

Article 19.3 of Chapter 19 is evaluated for compliance legislation as well as documented examples of worker's rights violations. This article presents the foundation for workers' rights under the TPP and thus is examined thoroughly with reference to the Labor Code of the Philippines, and the Migrant Workers Act.

#### **Article 19.3: Labour Rights**

*1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration:*

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and*
- (d) the elimination of discrimination in respect of employment and occupation.*

*2. Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.*

Article 19.3.1 delineates the baseline labor rights required of TPP signatories, as stated in the ILO Declaration on Fundamental Principles and Rights at Work (1998). Without the inclusion of specific Conventions or obligations, these are merely principals. The subjectivity of this matter results in vague metrics for compliance, and low likelihood of enforcement. Additionally, article 19.3.2 fails to clarify "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health." Under this provision, the Philippines must have laws in place regarding these subjects without providing clarity on standards of 'acceptable conditions'.

The Philippines has ratified all eight fundamental ILO Conventions under the Declaration, as well as additional conventions that protect workers in high-risk sectors, such as the service and entertainment industries. However, in examining the legislative framework of the Philippines, there are several inconsistencies in the adherence to these labor standards.

#### **A. Freedom of association and the right to collective bargaining**

The following articles of the Philippines' Labor Code restrict the ability of workers to organize freely and obstruct the right to collective bargaining.

1. **Article 231:** Excessive requirements including demonstration of majority support for the bargaining unit, and registration fees for collective agreements.
2. **Article 234:** This article presents requirements legal personality for labor organizations. Financial barriers (P50 registration fee), poses danger to union officers by requiring names and addresses of personal information, and a high minimum of participation (20%) limits the ability of workers to organize. The participation rate has been deemed excessive by the ITUC, and is raised to 30% for government sector occupations. Further, there is significant documentation on disappearances or murders of registered union leaders.
3. **Article 237:** creates obstacles for unions to formally establish branches, federations and affiliations with international organizations by imposing the following additional requirements: a) each chapter must have achieved a collective bargaining agreement, and b) full disclosure of members (not only leaders) is required.
4. **Article 239:** Provides ten grounds for cancellation of union registration, yielding absolute administrative power to unilaterally dissolve, suspend or de-register trade union organizations<sup>17</sup>
5. **Article 241:** Extensive rules and regulations, requiring stringent financial reporting, including signed statements accompanying every receipt of all union activity.
6. **Article 245:** Prohibits managerial staff from unionizing. Supervisory employees are also barred from union activities, but may organize amongst themselves.
7. **Article 253:** limits the duration, scope and application of collective agreements
8. **Article 269:** Prohibits union activities for non-nationals and migrant workers, unless they are working in a country with a valid permit from DOLE, and are allowed to unionize by that country's laws.

## **B. Elimination of all forms of forced or compulsory labor**

The following sections of Migrant Workers Act of 1995 create vulnerabilities for OFWs to fall into forced labor.

1. **Rule 1, Section 1.** OFWs shall only be deployed to countries that recognize at least one three guarantee of rights: a) It has existing labor and social laws protecting the rights of workers, including migrant workers; or b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; or c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers. There is no standard for what defines the rights of workers which vary country-to-country, often resulting in forms of forced labor.
2. **Rule 4, Section 1.** Provides regulations for recruitment agencies, defines illegal recruitment, persons responsible and penalties. With long periods between agency audits and documented backlogs of forced labor cases, many agencies that have their

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<sup>17</sup> Philippines. <http://survey.ituc-csi.org/Philippines.html#tabs-2>

licenses revoked continue to operate under the table as they are still well-connected with foreign employers. In 2009, the Philippine Overseas Employment Agency (POEA) reported a backlog of 1,400 illegal recruitment cases, and the arrest of 74 individuals.<sup>18</sup>

### C. Effective abolition of child labor

1. **Labor Code, Article 139-** the minimum employable age is 15, while the minimum age for hazardous work is 18. The US Chamber of Commerce finds this contrary to TPP labor laws<sup>19</sup>

### D. Elimination of discrimination

1. **Labor Code, Article 130, 131-** The prohibition of uncompensated pay for women involved in “nightwork<sup>20</sup>” with exceptions including: a) cases of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer; b) Where the woman employee holds a responsible position of managerial or technical nature, or where the woman employee has been engaged to provide health and welfare services; c) Where the nature of the work requires the manual skill and dexterity of women workers and the same cannot be performed with equal efficiency by male workers.

Specifically, in clause c, women in gendered occupations are at a high risk of discrimination and exploitation. There is no law determining work that requires manual skill or dexterity only possessed by women.

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<sup>18</sup> Omelaniuk, Irina (2012). Global Perspectives in Migration and Development. p 45.

<sup>19</sup> The Philippines and the Trans-Pacific Partnership: a Readiness Assessment. [https://www.uschamber.com/sites/default/files/2the\\_philippines\\_and\\_the\\_tpp\\_a\\_readiness\\_assessment.pdf](https://www.uschamber.com/sites/default/files/2the_philippines_and_the_tpp_a_readiness_assessment.pdf)

<sup>20</sup> refers to work taking place between 10pm-6am in industrial settings, and 12am-6am in commercial settings.

## Chapter 5

### RESULTS AND DISCUSSION

Of the four foundational workers' rights outlined in section 19.3 of the TPP, all four had violations in law and/or practice. My research found 13 instances where the TPP provisions were found inconsistent with Philippine labor law. The most problematic findings were that of enforceability and language. While the TPP includes workers' rights under the ILO Declaration, the text fails to clarify the obligations of the parties to adhere to these principals, jeopardizing the efficacy of implementation, monitoring and enforcement.

Freedom of Association is especially threatened under the Duterte administration. The administration's sweeping anti-drug campaign is internationally criticized for its mass human rights violations, not only for its lack of due process, but also for its brutality and link to politically motivated killings. With an extensive history of political corruption and the use of paramilitary forces against targeted people/organizations, disappearances among union or agricultural leaders have been met with insufficient investigation. No singular centralized union database for the country drives unions to implore the use of the media to call accountability to abductions and killings of labor leaders. In September of 2016, labor groups Partido Manggagawa (PM) and Philippine Airlines Employees Association (PALEA) called on the Department of Labor and Employment (DOLE) to stop political violence under the auspice of the anti-drug campaign. The groups reported the assassination of two labor leaders, six famers, and the abduction of a union officer.<sup>21</sup>

The analysis of legal texts and examples of violations show inconsistencies and contradictions at the domestic level; however, these partial protections are rarely enforced in practice abroad. In 2011, a class action suit was filled against a recruitment agency and its corresponding US employer for involuntary servitude of 500 OFWs trafficked into a fraudulent employment contact. Workers reported abusive and exploitative working conditions, including wage deductions of \$2,000 - \$3,500 monthly for living expenses and sharing 100 square foot rooms with up to six others.<sup>22</sup> Workers feared organizing as it violated their contract and made no legal effort to challenge their employer until a platform explosion that killed three OFWs and injured several others. After the explosion gained the attention of the media and public, the workers came forward and filled the suite under the Fair Labor and Standards Act

In instances like this, each fundamental right is violated and can only be protected when migrant workers have access to attaining legal protection. Additionally, challenging an employer may subject the worker to discrimination, abuse, or loss of employment. While OFW's are protected by both Philippine Law and TPP Labor Provisions, there are exclusions in US legislation for specific sectors, such as domestic work. The US is under no obligation to amend

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<sup>21</sup> Rallyists ask DOLE to act on killings of unionists, endo at PAL.

<http://partidongmanggagawa2001.blogspot.com.au/2016/09/labor-groups-calls-for-task-force-vs.html>

<sup>22</sup> Schleifstein, Mark. 2012. "Filipino ex-employees say Grand Isle Shipyard pressed them into 'involuntary servitude'" [http://www.nola.com/crime/index.ssf/2012/11/grand\\_isle\\_shipyard\\_charged\\_wi.html](http://www.nola.com/crime/index.ssf/2012/11/grand_isle_shipyard_charged_wi.html)

this as it does not affect trade or investment<sup>23</sup> OFW's are considered as a part of the workforce of their employer's country, making enforcement of rights nearly impossible overseas.

Similarly, countries with poor workers' rights records are held to vague TPP standards and are under no obligation to change existing legislation not explicitly outlined in the consistency plans. In Malaysia, The US Department of Labor (DOL) reports that child labor is prominent in sectors with high rates of forced labor, such a garment, electronics and palm oil sectors. Despite legal barriers, prevalence of child trafficking is still an area of high concern. The US Department of State 2015 Trafficking in Persons Report places Malaysia on a Tier 2 watch list, citing Malaysia as a destination country for men, women, and children subjected to forced labor, with women and children subject to sex trafficking (State.gov, 2015). The ILO's Decent Work Country Profile also sites issues with child labor in domestic and overseas work.

OFWs abroad in TPP Countries will continue to face discrimination despite the provisions in the labor chapter. For example, The Trade Unions Act in Singapore bans OFWs from a) serving as a national or branch officer of a trade union unless prior written approval is received from the Minister b) becoming an employee of a trade union without prior written agreement from the Minister, and c) serve as a trustee of a trade union without the Minister's written permission. Likewise, the National Wage Guidelines exclude all domestic workers, and is in full compliance with TPP labor provisions. Approximately 180,000 migrant domestic workers are estimated to be excluded from these protections guaranteed to other workers, such as a weekly day off, limits on working hours, annual leave, paid holidays, and caps on salary deductions (ITUC, 2016).

As the regulatory body of workers' rights, the ILO aims to protect "the interests of workers employed in countries other than their own with no qualification as to their immigration status. In principle, unless otherwise stated, all international labor standards cover all workers irrespective of their nationality or immigration status" (ILO, 2011). Similarly, the Philippine Constitution contains guarantees to afford "full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all".

Despite what may seem like a beneficial overlap in protections, the results suggest a lack of ability or political will from the Philippines to address the gap in protections of labor-receiving countries for OFWs, citing very little application of the ILO declaration to migrant workers. Furthermore, the Philippines has not sustainably strengthened its infrastructure to adequately handle cases against OFW rights violations. However robust the migration management network may be, it continues to struggle in its delivery of rights to its worker's abroad.

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<sup>23</sup> Article 19.5: Enforcement of Labour Laws. No Party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement.

## **Limitations of the study and future study**

The study was certainly limited in many regards; first, there was a lack of accurate data on OFWs, with most of the data based off estimates through outbound processing and surveys. Neither of these methods of data collection accounted for workers that are not legally recruited or have legal contracts, weakening the accuracy of OFW data in relation to ILO standards. Typically, the most vulnerable populations (children, women, domestic workers) are prone to the use of illicit employment channels, and are subject to employment without any working standards. One area of future study would be to identify advocacy organizations at the local level of member countries and create a data bank.

Another limitation was the varying methods of collecting information on OFW rights. Two of the workers' rights frameworks relied upon union representation, this assumes that a) worker's rights can only be enforced and monitored through unions, b) that union leaders provide accurate data for the groups they represent and c) that the unions included are a representative sample of the entire workforce. OFWs abroad often organize informally, with no association to formal unions, excluding this population from representation and access to union protections. Future inquiry into international organizing and data collection would contribute to a more accurate depiction of OFW rights.

Finally, the overseas documentation of migrant worker abuses is sparse and barely reported back to the workers' country of origin. Though documented cases of abuse exist, the Philippines government is hardly transparent in reporting these to the public and do not disclose any details on their website. Finally, additional research can be done in other labor receiving countries that are included in the TPP, providing a broader range of case studies, indicating long-term and cross-country trends.

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## APPENDIX

Table 1	Workers' Rights Analysis Frameworks
Box 1	Summary of 1998 ILO Declaration on Fundamental Principles and Rights at Work
Appendix i	Section 19.3 of the Trans-Pacific Partnership- Labour Rights
Appendix ii	Selected articles from the Labor Code of the Philippines
Appendix iii	Selected sections from the Migrant Workers' Act (1995)

**Table 1 Workers' Rights Analysis Frameworks**

Workers' Rights Analysis Frameworks			
Model	Data Sources	Methodology	Rights covered
International Trade Union Confederation (ITUC) Global Rights Index	Survey + legal research	Survey is distributed electronically to the 325 ITUC affiliates in 161 countries and territories. Legislative analysis done by legal researchers. Results coded for 97 indicators.	Freedom of association, collective bargaining, right to strike
The Center for Global Workers' Rights (CGWR) Labour Rights Indicators	Use of 9 textual sources (including legislation) documenting workers' rights violations	Texts are reviewed and coded for 108 indicators, grouped into five broader workers' rights categories	Fundamental Civil liberties, right of workers to establish and join organizations, other union activities, right to collective bargaining and right to strike
International Labour Organization (ILO) Decent Work Country Profiles	Statistical and legal framework indicators	Stemming from the Monitoring and Assessing Progress on Decent Work (MAP) Project of the ILO, decent work indicators relevant at the national level are identified. Profiles use "all available data" on these indicators, but not enumerated in the report.	Ten substantive elements corresponding to the four strategic pillars of the Decent Work Agenda (full and productive employment, rights at work, social protection and the promotion of social dialogue): employment opportunities; adequate earnings and productive work; decent hours; combining work, family and personal life; work that should be abolished; stability and security of work; equal opportunity and treatment in employment; safe work environment; social security; and, social dialogue, workers' and employers' representation

## Box 1 Summary of 1998 ILO Declaration on Fundamental Principles and Rights at Work

### **Box 1: Summary of 1998 ILO Declaration on Fundamental Principles and Rights at Work**

#### **a) Freedom of association and the right to collective bargaining**

\* All workers and employers have the right to freely form and join groups that support and advance their occupational interests. \* Freedom of association means workers can set up, join, and run their own organization without interference from the state. This includes the right to run their own activities, i.e., independently determine how best to promote and defend their interests, including recourse to strike, and independently affiliate with international organizations.

\* Collective bargaining is a process through which employers and trade unions or representatives of workers discuss and negotiate their relations and the terms and conditions of work.

#### **b) Elimination of all forms of forced or compulsory labor**

\* Forced labor occurs where work or service is exacted by the state or others with power to threaten workers with severe deprivations, such as withholding wages, physical violence or sexual abuse, and restricting people's movements. \* Labor tracking and debt bondage are widespread practices behind forced labor, whereby the worker becomes dependent on an intermediary and labors in slave-like conditions.

#### **c) Effective abolition of child labor**

\* The effective abolition of child labor is based on protection from economic exploitation, ensuring that children have the opportunity to develop physically and mentally to their full potential by eliminating work that jeopardizes education and development. \* To achieve effective abolition, a minimum age at which children can enter work should be enforced, typically not less than the age of completing compulsory schooling or 15 years. Certain types of work categorized as "worst forms of child labor" are to be fully prohibited for children under age 18, including slavery, tracking, debt bondage, prostitution, and forced military recruitment.

#### **d) Elimination of discrimination in respect of employment and occupation**

\* Discrimination at work denies opportunities and deprives societies of what workers can and could contribute. It can occur on the basis of sex, age, race, skin color, social origin, religion, political opinions, disability, or HIV status. \* Equality at work means all individuals are afforded opportunities to fully develop knowledge, skills, and competencies related to the economic activities they wish to pursue.

\* Eliminating discrimination entails dismantling barriers and ensuring equal access to training, education and resource use and ownership. It also involves the conditions for setting up and running enterprises and the policies related to hiring, work conditions, pay and benefits, promotions, and employment termination.

*Source: Cimino-Isaacs, Labor Standards in the TPP, from ILO, "Overview of the ILO Declaration on Fundamental Principles and Rights at Work"*

### **Article 19.3: Labour Rights**

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration<sup>24, 25</sup>:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

2. Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>26</sup>

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<sup>24</sup> The obligations set out in Article 19.3 (Labour Rights), as they relate to the ILO, refer only to the ILO Declaration.

<sup>25</sup> To establish a violation of an obligation under Article 19.3.1 (Labour Rights) or Article 19.3.2, a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation or practice in a manner affecting trade or investment between the Parties.

<sup>26</sup> For greater certainty, this obligation relates to the establishment by a Party in its statutes, regulations and practices thereunder, of acceptable conditions of work as determined by that Party.

## **Appendix ii- Selected articles from the Labor Code of the Philippines**

**Art. 231. Registry of unions and file of collective bargaining agreements.** The Bureau shall keep a registry of legitimate labor organizations. The Bureau shall also maintain a file of all collective bargaining agreements and other related agreements and records of settlement of labor disputes and copies of orders and decisions of voluntary arbitrators. The file shall be open and accessible to interested parties under conditions prescribed by the Secretary of Labor and Employment, provided that no specific information submitted in confidence shall be disclosed unless authorized by the Secretary, or when it is at issue in any judicial litigation, or when public interest or national security so requires.

Within thirty (30) days from the execution of a Collective Bargaining Agreement, the parties shall submit copies of the same directly to the Bureau or the Regional Offices of the Department of Labor and Employment for registration, accompanied with verified proofs of its posting in two conspicuous places in the place of work and ratification by the majority of all the workers in the bargaining unit. The Bureau or Regional Offices shall act upon the application for registration of such Collective Bargaining Agreement within five (5) calendar days from receipt thereof. The Regional Offices shall furnish the Bureau with a copy of the Collective Bargaining Agreement within five (5) days from its submission.

The Bureau or Regional Office shall assess the employer for every Collective Bargaining Agreement a registration fee of not less than one thousand pesos (P1,000.00) or in any other amount as may be deemed appropriate and necessary by the Secretary of Labor and Employment for the effective and efficient administration of the Voluntary Arbitration Program. Any amount collected under this provision shall accrue to the Special Voluntary Arbitration Fund.

The Bureau shall also maintain a file and shall undertake or assist in the publication of all final decisions, orders and awards of the Secretary of Labor and Employment, Regional Directors and the Commission. (As amended by Section 15, Republic Act No. 6715, March 21, 1989)

**Art. 234. Requirements of registration.** Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements.

1. Fifty pesos (P50.00) registration fee;
2. The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;
3. The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate; (As amended by Executive Order No. 111,

December 24, 1986)

4. If the applicant union has been in existence for one or more years, copies of its annual financial reports; and
5. Four (4) copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it. (As amended by Batas Pambansa Bilang 130, August 21, 1981)

**Art. 237. Additional requirements for federations or national unions.** Subject to Article 238, if the applicant for registration is a federation or a national union, it shall, in addition to the requirements of the preceding Articles, submit the following:

1. Proof of the affiliation of at least ten (10) locals or chapters, each of which must be a duly recognized collective bargaining agent in the establishment or industry in which it operates, supporting the registration of such applicant federation or national union; and
2. The names and addresses of the companies where the locals or chapters operate and the list of all the members in each company involved.

**Art. 239. Grounds for cancellation of union registration.** The following shall constitute grounds for cancellation of union registration:

1. Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification and the list of members who took part in the ratification;
2. Failure to submit the documents mentioned in the preceding paragraph within thirty (30) days from adoption or ratification of the constitution and by-laws or amendments thereto;
3. Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly elected/appointed officers and their postal addresses within thirty (30) days from election;
4. Failure to submit the annual financial report to the Bureau within thirty (30) days after the closing of every fiscal year and misrepresentation, false entries or fraud in the preparation of the financial report itself;
5. Acting as a labor contractor or engaging in the "cabo" system, or otherwise engaging in any activity prohibited by law;
6. Entering into collective bargaining agreements which provide terms and conditions of employment below minimum standards established by law;
7. Asking for or accepting attorney's fees or negotiation fees from employers;

8. Other than for mandatory activities under this Code, checking off special assessments or any other fees without duly signed individual written authorizations of the members;
9. Failure to submit list of individual members to the Bureau once a year or whenever required by the Bureau; and
10. Failure to comply with requirements under Articles 237 and 238.

**Art. 241. Rights and conditions of membership in a labor organization.** The following are the rights and conditions of membership in a labor organization:

1. No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;
2. The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and by-laws of the organization;
3. The members shall directly elect their officers, including those of the national union or federation, to which they or their union is affiliated, by secret ballot at intervals of five (5) years. No qualification requirements for candidacy to any position shall be imposed other than membership in good standing in subject labor organization. The secretary or any other responsible union officer shall furnish the Secretary of Labor and Employment with a list of the newly-elected officers, together with the appointive officers or agents who are entrusted with the handling of funds, within thirty (30) calendar days after the election of officers or from the occurrence of any change in the list of officers of the labor organization; (As amended by Section 16, Republic Act No. 6715, March 21, 1989)
4. The members shall determine by secret ballot, after due deliberation, any question of major policy affecting the entire membership of the organization, unless the nature of the organization or force majeure renders such secret ballot impractical, in which case, the board of directors of the organization may make the decision in behalf of the general membership;
5. No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity;
6. No person who has been convicted of a crime involving moral turpitude shall be eligible for election as a union officer or for appointment to any position in the union;
7. No officer, agent or member of a labor organization shall collect any fees, dues, or other contributions in its behalf or make any disbursement of its money or funds unless he is duly authorized pursuant to its constitution and by-laws;
8. Every payment of fees, dues or other contributions by a member shall be evidenced by a receipt signed by the officer or agent making the collection and entered into the record of the

organization to be kept and maintained for the purpose;

9. The funds of the organization shall not be applied for any purpose or object other than those expressly provided by its constitution and by-laws or those expressly authorized by written resolution adopted by the majority of the members at a general meeting duly called for the purpose;
10. Every income or revenue of the organization shall be evidenced by a record showing its source, and every expenditure of its funds shall be evidenced by a receipt from the person to whom the payment is made, which shall state the date, place and purpose of such payment. Such record or receipt shall form part of the financial records of the organization.

Any action involving the funds of the organization shall prescribe after three (3) years from the date of submission of the annual financial report to the Department of Labor and Employment or from the date the same should have been submitted as required by law, whichever comes earlier: Provided, That this provision shall apply only to a legitimate labor organization which has submitted the financial report requirements under this Code: Provided, further, that failure of any labor organization to comply with the periodic financial reports required by law and such rules and regulations promulgated thereunder six (6) months after the effectivity of this Act shall automatically result in the cancellation of union registration of such labor organization; (As amended by Section 16, Republic Act No. 6715, March 21, 1989)

11. The officers of any labor organization shall not be paid any compensation other than the salaries and expenses due to their positions as specifically provided for in its constitution and by-laws, or in a written resolution duly authorized by a majority of all the members at a general membership meeting duly called for the purpose. The minutes of the meeting and the list of participants and ballots cast shall be subject to inspection by the Secretary of Labor or his duly authorized representatives. Any irregularities in the approval of the resolutions shall be a ground for impeachment or expulsion from the organization;
12. The treasurer of any labor organization and every officer thereof who is responsible for the account of such organization or for the collection, management, disbursement, custody or control of the funds, moneys and other properties of the organization, shall render to the organization and to its members a true and correct account of all moneys received and paid by him since he assumed office or since the last day on which he rendered such account, and of all bonds, securities and other properties of the organization entrusted to his custody or under his control. The rendering of such account shall be made:
  1. At least once a year within thirty (30) days after the close of its fiscal year;
  2. At such other times as may be required by a resolution of the majority of the members of the organization; and
  3. Upon vacating his office.

The account shall be duly audited and verified by affidavit and a copy thereof shall be furnished the Secretary of Labor.

13. The books of accounts and other records of the financial activities of any labor organization shall be open to inspection by any officer or member thereof during office hours;
14. No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members in a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president.
15. Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction; and
16. It shall be the duty of any labor organization and its officers to inform its members on the provisions of its constitution and by-laws, collective bargaining agreement, the prevailing labor relations system and all their rights and obligations under existing labor laws.

For this purpose, registered labor organizations may assess reasonable dues to finance labor relations seminars and other labor education activities.

Any violation of the above rights and conditions of membership shall be a ground for cancellation of union registration or expulsion of officers from office, whichever is appropriate. At least thirty percent (30%) of the members of a union or any member or members specially concerned may report such violation to the Bureau. The Bureau shall have the power to hear and decide any reported violation to mete the appropriate penalty.

Criminal and civil liabilities arising from violations of above rights and conditions of membership shall continue to be under the jurisdiction of ordinary courts.

**Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees.** Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own. (As amended by Section 18, Republic Act No. 6715, March 21, 1989)

**Art. 269. Prohibition against aliens; exceptions.** All aliens, natural or juridical, as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, That aliens working in the country with valid permits issued by the Department of Labor and Employment, may exercise the right to self-organization and join or assist labor organizations of their own choosing for purposes of collective bargaining: Provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers. (As amended by Section 29, Republic Act No. 6715, March 21, 1989)

## **Appendix iii- Selected sections from the Migrant Workers' Act (1995)**

### **Rule 1, Section 1. Guarantees of Migrant Workers' Rights.**

The State shall allow the deployment of OFWs only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of OFWs:

- (a) It has existing labor and social laws protecting the rights of workers, including migrant workers; or
- (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; or
- (c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers;

Provided, that the receiving country is taking positive and concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b), and (c) hereof.

### **Rule 1, Section 6,7**

*Definition.* - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

- (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;
- (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;

(d) To include or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers' organization;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage; and

(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

(1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the

migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;

(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;

(3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter's employment contract has been prematurely terminated through no fault of his or her own;

(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

(5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;

(6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications; and

(7) For a recruitment/manning agency or a foreign principal/employer to pass on the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

In the filing of cases for illegal recruitment or any of the prohibited acts under this section, the Secretary of Labor and Employment, the POEA Administrator or their duly authorized representatives, or any aggrieved person may initiate the corresponding criminal action with the appropriate office. For this purpose, the affidavits and testimonies of operatives or personnel from the Department of Labor and Employment, POEA and other law enforcement agencies who witnessed the acts constituting the offense shall be sufficient to prosecute the accused.

In the prosecution of offenses punishable under this section, the public prosecutors of the Department of Justice shall collaborate with the anti-illegal recruitment branch of the POEA and, in certain cases, allow the POEA lawyers to take the lead in the prosecution. The POEA lawyers who act as prosecutors in such cases shall be entitled to receive additional allowances as may be determined by the POEA Administrator.

The filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations." *1avvphi1*

Section 6. Section 7 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

*SEC. 7. Penalties. –*

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) nor more than Two million pesos (P2,000,000.00).

(b) The penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein. Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

(c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00).

If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institutions, training school or medical clinic.