

POSITION PAPER ON OVERSEAS FILIPINO WORKERS RETIREMENT SYSTEM ACT

The Commission on Human Rights (Commission), in the exercise of its constitutional mandate to recommend to Congress effective measures to promote human rights,¹ submits its position paper on the following legislative measures pending before the House Committee on Overseas Workers Affairs;

House Bill No. 176 “AN ACT MANDATING LAW ESTABLISHING THE OVERSEAS FILIPINO WORKERS SOCIAL SECURITY AND RETIREMENT SYSTEM AND APPROPRIATING FUNDS THEREFOR” (filed by Representative Caroline L. Tanchay and Representative Rodante D. Marcoleta on June 30, 2022); and

House Bill No. 8574 “AN ACT ESTABLISHING THE KABAYAN OVERSEAS FILIPINO WORKERS PENSION SYSTEM AND APPROPRIATING FUNDS THEREFOR” (filed by Representative Ron P. Salo on July 4, 2023).

Rep. Ron Salo of Kabayan Party-List stated that after his consultation with Overseas Filipino Workers (OFWs) in different parts of the world, it has become apparent that the establishment of a unique pension system for OFWs is one of their most enduring and urgent aspirations.² After years of working abroad and diligently sending their hard-earned money to their families in the Philippines, they find themselves without adequate social protection. That is why it is imperative to establish a separate and dedicated social security and pension system specifically tailored to the needs of our OFWs.

The proposal to establish social security and retirement system for our OFWs seeks to provide retirement benefits and welfare assistance to OFWs and their dependents. This system will provide comprehensive social protection and retirement fund, enabling the OFWs to secure social and financial protection in their old age.

The Right to Social Security

As a member of society, every person has a right to social security. Effective social security systems are powerful tools to provide income security, prevent and reduce poverty and inequality, and promote social inclusion and dignity. As an important investment in the well-being of workers and the

¹ 1987 Constitution, Article XIII, Section 18(6)

² New bill bats for creation of OFW pension system, available at <https://www.philstar.com/headlines/2023/07/07/2279401/new-bill-bats-creation-ofw-pension-system>, last accessed on (13 March 2024).

population at large, social security enhances productivity, employability and supports sustainable economic development, thereby contributing to a fair globalization with decent standards of living for all.³ The right to social security is laid down in Article 22 of the Universal Declaration of Human Rights (UDHR)⁴, and in Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR)⁵. Access to social protection for all, including migrant workers and their families, is also among the priorities of the United Nations (UN) 2030 Agenda for Sustainable Development, and the 2018 Global Compact for Safe, Orderly and Regular Migration. Under these international frameworks, States undertake to assist migrant workers at all skill levels. The UN Global Compact, in particular, recognizes key dimensions of International Labour Organization's (ILO) work and role in establishing non-discriminatory social protection systems including social protection floors and mechanisms for access and portability of social security benefits⁶.

Although everyone has the right to social security, significant coverage gaps persist. Overall, 53.1 percent of the world's population, including many migrant workers, lack access to social protection.⁷ When it comes to social security coverage and benefit eligibility, migrant workers frequently experience difficulties compared with workers who reside and work in one country. Many of these problems have their roots in inherent features of national legislations.

Principle of Territoriality

One of these inherent features is the *territoriality principle*,⁸ which states that the applicability of social security laws, like all national laws, is limited to the borders of the nation in which they were passed. This is a result of the administrative and legal challenges associated with executing mandatory legislation in another state, as well as the state's right to sovereignty. This principle means that migratory workers may lose coverage under the national social security system in their home country as well as the possibility of having little to no coverage in their new country of employment.

While the Universal Declaration of Human Rights states that “everyone has the right to leave any country, including his own, and to return to his country” (Art. 13), States may limit the right to enter into or stay in their territory. Policies and legislation in that regard, and the manner in which they are implemented, can result in the selective application of social security rights to certain persons, depending on their migratory status and on the contributory and residence requirements of the scheme.

Principle of Nationality

Migrant workers' social security rights may also be affected by the *principle of nationality*. While many nations acknowledge that national and

³ Social Security for Migrant Workers A Rights-Based Approach, available at https://www.ilo.org/public/libdoc/ilo/2011/111BoQ_342_engl.pdf, last accessed on (12 October 2023).

⁴ Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

⁵ “The State Parties to the present Covenant recognise the right of everyone to social security including social insurance”.

⁶ UN Global Compact for Safe, Orderly and Regular Migration, available at https://www.ilo.org/africa/areas-of-work/labour-migration/policy-frameworks/WCMS_671734/lang-en/index.htm, last accessed on (26 February 2024).

⁷ Extending Social Protection to Migrant Workers, Refugees, and Their Families, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_826684.pdf, last accessed on (26 February 2024).

⁸ Ibid.

non-national workers are treated equally under their social security laws, some discriminate against migrant workers by enacting national laws that bar certain migrant groups—or, in more extreme situations, all non-nationals—from receiving social security benefits or that otherwise treat them less favorably based on this principle.

Although the right to social security is protected by a well-defined international legal framework, not all migrant workers have effective access to social security and retirement benefits. Thus, the proposed bills aiming to establish a retirement system for OFWs are seen as steps toward fulfilling the government's obligation to uphold the people's right to social security.

ILO Standards on Social Security of Migrant Workers

The ILO has adopted specific instruments on the social security rights of migrant workers and their family members. The Conference has adopted instruments devoted exclusively to migrant workers and relating to all the aspects of protection required by the situation of migrant workers. One of which is the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), which guarantees to nationals of any member state that has ratified the Convention, and who suffer personal injury due to work accidents, equality of treatment with national workers without any condition as to residence. The Equality of Treatment (Social Security) Convention, 1962 (No. 118) sets forth the right to equality of treatment between national and non-national workers and their family members with a view to specifically addressing the situation of migrant workers in relation to social security.⁹

These Conventions establish five basic principles that form the backbone of all bilateral and multilateral agreements on social security.

- **Equality of Treatment**, which means that a migrant worker should have, as far as possible, the same rights and obligations as the nationals of the destination country;
- **Determination of the applicable legislation** to ensure, by establishing the rules for determining the applicable legislation, that the social security of a migrant worker is governed at any one time by the legislation of one country only;
- **Maintenance of acquired rights and provision of benefits abroad**, which means that any acquired right, or right in the course of acquisition, should be guaranteed to the migrant worker in one territory, even if it has been acquired in another, and that there should be no restriction on the payment, in any of the countries concerned, of benefits which the migrant has qualified in any of the others;
- **Maintenance of rights in the course of acquisition**, which means that where a right is conditional upon the completion of a qualifying period, account should be taken of periods served by the migrant worker in each country; and

⁹ Social Security for Migrant Workers A Rights-Based Approach, available at https://www.ilo.org/public/libdoc/ilo/2011/111B09_342_engl.pdf, last accessed on (13 March 2024).

- **Reciprocity**, which is an underlying principle of all these Conventions, means that each country which is a party to an agreement undertakes to apply the same mechanisms as every other party to make its social security benefits more accessible to migrant workers.¹⁰

Comments and Recommendations

Bearing in mind the objectives of House Bill Nos. 0176 and 8574, and the basic principles and Conventions discussed above, the Commission respectfully provides the Committee on Overseas Workers Affairs, its comments and recommendations for the Committee's consideration:

1. **Consolidation of the two House Bills.** First, to consolidate HB No. 0176 and HB No. 8574 into a single and harmonious bill that will give effect to the establishment of the retirement system;
2. **Definition of Terms (Sec.3 of HB 176 & 8574).** The Commission suggests adopting HB No. 8574's definition of "Overseas Filipino Worker", which includes non-documented OFW in relation to Sec. 12 of HB 8574 on Compulsory coverage.
3. **Compulsory Coverage (Sec. 10 of HB 176 & Sec 12 of HB 8574).** The Commission recommends the adoption of the compulsory coverage as expounded in House Bill No. 8574 as the latter gives non-documented OFWs the right to avail of the coverage under the OFW Pension System on a voluntary basis. This is to ensure that non-documented OFWs are not discriminated with regard to the benefits provided under this bill.

This is also in conformity with Art. III, Sec. 3 of the Philippine Constitution, which states that, *"The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all."* This statement is reaffirmed in Sec. 2 (b) of RA 8042 and is supported by the following:

"Sec. 2.d. The State affirms the fundamental equality before the law of women and men and the significant role of women in nation-building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition bodies tasked for the welfare of migrant workers."

"Sec. 2.e. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative, that an effective mechanism be instituted to ensure the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded."

¹⁰ Ibid.

The Commission also approves the part of HB No. 8574 that allows the OFW to continue to be a member of the Social Security System (SSS) or any similar entity. The contributions made by our OFWs to the OFW Pension System and SSS will result in several sources of benefits for them upon retirement.

4. Retirement Benefits (Sec. 12 of HB 176). In setting the age threshold at 45 years, the proponents should consider the different circumstances of our OFWs, including those who may have entered the workforce later or faced interruptions in their employment. Lowering the retirement age to 45 might be detrimental to the sustainability of the pension fund. In a study,¹¹ increasing retirement ages remains an effective instrument for improving sustainability of the pension fund. The reasons provided were:

a. Higher retirement ages promote higher employment levels and economic growth. By increasing lifetime working periods and earnings, raising the retirement age also boosts the growth of real consumption, even in the short term;

b. Raising the retirement age helps avoid even larger cuts in replacement of rates than those already legislated in many countries, thus reducing the negative impact of reforms on old-age poverty; and

c. Increases in the retirement age are easier to explain to the public in light of increasing life expectancy.

5. A key factor in the success of any social security fund or pension fund is that the monies contributed or collected are not only handled with care and transparency, but more importantly, that the same are invested in profitable ventures sufficient to sustain prospective benefit obligations.

Thus, to guide the prospective implementing agency, the proposed bill must provide parameters on the following important aspects of investment:

a. The employment of professional fund managers with sufficient experience in financial management and capital market, possessing the requisite reputation for probity and integrity.

b. Setting aside sufficient portion of the fund to pay maturing benefit obligations.

c. Setting aside the rest of the fund not intended to cover immediate maturing benefit obligations, to be invested in a diverse portfolio with a **reasonable expected return** sufficient to cover future benefit obligations and the purposes for which the fund was created.

d. The target annual income percentage must be set by Congress with the assistance of qualified actuarial mathematicians.

e. Sufficient safeguards must be set to avoid the investment of the fund in bogus or questionable investment schemes. This includes appointment of an internal auditor or “ombud.”

¹¹ Chapter 1. Equitable and Sustainable Pension Systems, available at <https://www.elibrary.imf.org/display/book/9781616359508/ch001.xml#Rcho1fn6>, last accessed on (13 March 2024).

f. The investment plan must focus on member-financing needs (i.e. extending loans to members rather than third parties), thereby reinforcing the ideal that members are benefiting from their own contributions, while also helping the fund earn to provide for his or her future retirement benefits.

Conclusion

In sum, the Commission reiterates its support for the passage of the proposed bills so that our migrant workers will finally have a separate and dedicated Social Security and Retirement System specifically tailored to the needs of our migrant workers. The Commission commends the proposed bills for ensuring that undocumented migrant workers will have the option to avail of the benefits of the Pension System in a voluntary basis.

The State must enhance social security coordination between nations for the well-being of millions of migrant workers and their families.

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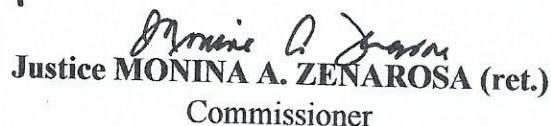
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