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*Republika ng Pilipinas*  
**Komisyon ng Karapatang Pantao ng Pilipinas**  
*(Commission on Human Rights of the Philippines)*

**ADVISORY ON THE DEPLOYMENT BAN  
TO NIGERIA  
CHR (IV)-A2009-006**

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The Commission on Human Rights, in its constitutional mandate to provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, seeks the intervention of the members of the House Committee on Overseas Workers Affairs, to examine the impact of the travel/deployment ban to Nigeria on OFWs who have active work contracts and residency permits.

The Commission requests the Committee, in behalf of OFWs in Nigeria, particularly the group, Pusong Pinoy, to exercise its oversight functions to provide OFWs recourse and a practical solution to the issue presented.

OFWs in Nigeria, particularly the land-based workers are seeking exemption from a travel/deployment ban to Nigeria because, in their view, has not been properly justified by the Government and taken without account of their informed opinion on the matter.

The travel/deployment ban is in effect in all parts of Nigeria. However, OFWs in Nigeria contend that not all of Nigeria is affected by kidnappings, and other lawless violence that is seen in the Niger Delta which is venue to a string of unfortunate events befalling Filipino Seamen.

The danger in this specific area of Nigeria has been acknowledged by the concerned OFWs. Land-based OFWs have been seeking the Government's attention to distinguish them from the Sea-based workers because the conditions and perilous situation obtaining in the Niger Delta is simply not present in all States of the country. Hence, the necessity to impose such a restriction on their right to leave the country to go to work in Nigeria has been negated.

In their various communications to the Commission, they have been negatively impacted by the ban which has prevented them from exercising their right to work and to reunite with their families in the Philippines. The ban has exposed them as targets for extortion. They have become vulnerable by pandering to corruption in their efforts to assert their right to leave the country and work abroad.

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At the fore of the ban are three government agencies which have the mandate to issue and enforce the travel/deployment ban. The Department of Foreign Affairs, the Department of Labor and Employment and the Bureau of Immigration.

A previous hearing of the House Committee has discussed exemptions to deployment bans: those who have active working contracts and those who possess residency permits. However, without guidelines ensuring that exemptions are present, the OFWs in Nigeria will continue to bear the brunt of an unclear policy that lends to corrupt practices, violating their right to work, and be reunited with their families in the Philippines.

Relevant to the Travel/Deployment Ban to Nigeria is the implementation of two human rights treaties to which the Philippines is State Party, to wit:

The Convention on Civil and Political Rights in Article 12 provides:

“2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

The Convention for the Protection of all Migrant Workers and Members of their Families in Article 8 also provides:

“1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.”

It is clear that the migrant workers' right to leave their own country or their state of origin, may be restricted with the fulfillment of three requirements:

First, is that the restriction must be provided by law.

The phrase 'provided by law' means that the power to restrict the right must be legislated and this must be publicly announced. The current law in place authorizing government to restrict the exit of Overseas Filipino Workers to Nigeria springs from Republic Act 8042 as follows:

“SEC. 4. Deployment of Migrant Workers - The State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as guarantee on the part of the receiving country for the protection and the rights of overseas Filipino workers:

- (a) It has existing labor and social laws protecting the rights of migrant workers;
- (b) It is a signatory to multilateral conventions, declaration or resolutions relating to the protection of migrant workers;
- (c) It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and
- (d) It is taking positive, concrete measures to protect the rights of migrant workers.

SEC. 5. TERMINATION OR BAN ON DEPLOYMENT - Notwithstanding the provisions of Section 4 hereof, the government, in pursuit of the national interest or when public welfare so requires, *may, at any time, terminate or impose a ban on the deployment of migrant workers.*”

Its Implementing Rules and Regulations elaborate on the above provisions:

“Section 3. **Guarantee of Migrant Workers Rights** - The Secretary of Labor and Employment shall deploy or allow the deployment of Filipino migrant workers only in countries where their rights are protected, recognizing any of the following as a guarantee for the protection of the rights of migrant workers:

- The country has existing labor and social laws protecting the rights of migrant workers;
- The country is a signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers;
- The country has concluded a bilateral agreement or arrangement with the Philippine Government on the protection of the rights of Overseas Filipino Workers; and
- The host country is taking positive, concrete measures to protect the rights of migrant workers.”

The POEA is mandated to process overseas employment contracts only for countries meeting any of the above criteria, as determined by the Secretary of Labor and Employment, to wit:

“Section 4. **Deployment of Skilled Workers.** - As soon as adequate mechanisms for determination of skills are in place and consistent with national interest, the Secretary of Labor and Employment shall allow the deployment only of skilled Filipino workers.

Section 5. **Ban on Deployment.** - Notwithstanding the provisions of Sections 3 and 4 of these Rules, the Secretary of Labor and Employment, in pursuit of the national interest or when public welfare so requires, may, at any time, terminate or impose ban on the deployment of migrant workers.

Section 6. **Travel Advisory** - The DFA through the POEA shall issue travel advisories or disseminate information on labor and employment conditions, migration realities and other facts, as well as adherence of particular countries to international standards on human and workers rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment. The POEA shall publish, at least once a month, such advisory in a newspaper of general circulation.”

The POEA may undertake other programs or resort to other modes of information and dissemination campaign, such as the conduct of nationwide, comprehensive and sustainable Pre-Employment Orientation Seminars.

The second requirement is the necessity to protect national security, public order, public health or morals or the rights and freedoms of others.

The enforcement of the ban purports to protect our fellow OFWs from the perilous situation in Nigeria – kidnappings, lawless order. However, OFWs in Nigeria, have asked government to re-examine the situation in other parts of Nigeria.

This necessity must be properly explained by the Government. To this we ask ‘what criteria does it use in deeming it necessary to issue the ban? Reasonable and Objective criteria? Clear and present danger? With whom does it confer with to arrive at the decision on the ban?’ The Commission looks to the following stakeholders: the Philippine Diplomatic Post, Nigerian Government and the OFWs in Nigeria

The third requirement is the consistency with other rights recognized in

the international human rights instruments to which the Philippines is a State Party such as the ICCPR and the CMW.

OFWs who possess active working contracts in Nigeria and have come home are in effect prevented from exercising their right to work. And those who are still in Nigeria are effectively prevented from coming home and be with their families to the Philippines because they are fearful that they will be prevented from leaving because of the ban.

The Commission calls on Congress to work with the Executive in clarifying further the role of agencies of government and elaborate the *raison d'etre* of the restrictions on the right to leave the country for work abroad.

### **Recommendations**

Hence, the Commission submits the following recommendations:

For the Legislature to establish and institutionalize through appropriate laws specific criteria and guidelines for the imposition, implementation and termination of travel bans enjoining meaningful participation by all stakeholders;

For the Legislature and the Executive to review existing rules and procedure on travel bans with the aim of ensuring proper coordination between and among line agencies tasked to promote and protect the rights of migrant workers and their families;

For the Executive to review the existing travel ban to Nigeria and reconsider its total application given the substantial distinctions in geographical and social milieu of Filipino migrants working there; and

For the Executive to review all existing travel bans, whether partial or total, with the object of evaluating their propriety and respect for human rights.

Respectfully submitted.

27 March 2009.

For the Commission:

  
**ATTY. LEILA M. DE LIMA**  
Chairperson 