

*women  
overseas workers*

## AND THE LAW

PHILIPPINE  
LAWS



The first level of protection for the OCW is knowing their rights. Most of these rights, with provisions for women workers are based on International Labor Organization (ILO) conventions, The United Nations Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), the Philippine Constitution, and the Labor Code.

In November 1993, President Fidel Ramos signed The International Convention for the Protection of Migrants and their Families, which states that "the protection of human rights are

responsibilities of both sending and receiving states as well as states of transit." It would be ideal if the governments of receiving countries are signatories to the above conventions. If not, bilateral labor agreements would have to be arranged.

***Problems arise every step of the way from the moment a decision to work overseas is made until the worker arrives at the place of work. The first problem a prospective OCW encounters is the illegal recruiter. What is an illegal recruiter?***

Agencies not licensed by POEA, recruiting for non-existent jobs abroad, falsifying documents or charging excessive fees are illegal recruiters.

***Most victims of illegal recruiters are gullible men and women from remote provinces who are ignorant of the law. Are there laws against illegal recruitment?***

Art.39 of the Labor Code punishes illegal recruitment with imprisonment (4 to 8 years) or a fine of P20,000 to P100,000; both imprisonment and fine, if declared by the court.

If illegal recruitment is committed by 3 or more persons or by a single person who has victimized 3 or more workers, the penalty is life imprisonment and a fine of P100,000. Under Art.38 these constitute economic sabotage.

Recruiting "mail order brides" is against the law. There is a penalty of six to eight years in prison and a fine of P8000 to P20,000. (Free Press 7-4-92)



***Many young girls agree to falsify their age to be able to qualify (at least 25 years old) to work abroad. Filipinos are known the world over for fake passports. This causes holders of legitimate passports undue embarrassment and scrutiny. Is there a law against fake passports?***

At present there is no law that penalizes double or triple possession of passports. (DFA scam by Cynthia Balana, PDI, 4-15-93)

***The most important aspect in the process of getting a job abroad is the contract. The more detailed, especially job description and employer's responsibilities, the better. Herein lies the protection of the worker. What are the provisions of the standard contract for women OCWs?***

The POEA has prepared standard contracts for domestics bound for Canada, Saudi Arabia, Middle East, Hongkong Malaysia and Europe.

This applies to other household staff like drivers, cooks, governesses, beauticians, seamstresses, and gardeners. There are also contracts for entertainers (separate contract for Japan) and nurses.

Minimum contract terms: Minimum wage should not be less than US\$200 a month and must be paid on time and in full. (No deductions are to be made without written permission by the worker.) Working hours differ for entertainers, office workers and domestics but it should not exceed ten hours a day. Workers are entitled to 15 days vacation and 15 days sick leave with pay and off days at least once a week.

Working conditions must comply with internationally accepted safety requirements. For household workers, sanitary lodgings and nutritious adequate food or allowance for three meals a day should be provided.

**TIP** All these may be good on paper but in practice, many provisions are violated. Be sure to read the fine print of your contract. Contracts must be authenticated by POEA.

### ***What are the responsibilities of employers?***

Employers pay the POEA processing fee (US\$100) and the welfare fund contribution (US\$25 to US\$50). Transportation is shouldered by employers of medical professionals and skilled workers hired by government. Visa fees can be negotiated. (*See policies per country in this pamphlet*).

It is the responsibility of the employer and the recruiter to help the OCWs in remitting funds to their families.

Foreign promotion agencies and Philippine licensed agencies shall be jointly responsible to take care of the welfare of the artist at jobsite. This includes life and personal accident insurance coverage.

### ***What are the responsibilities of the recruiter?***

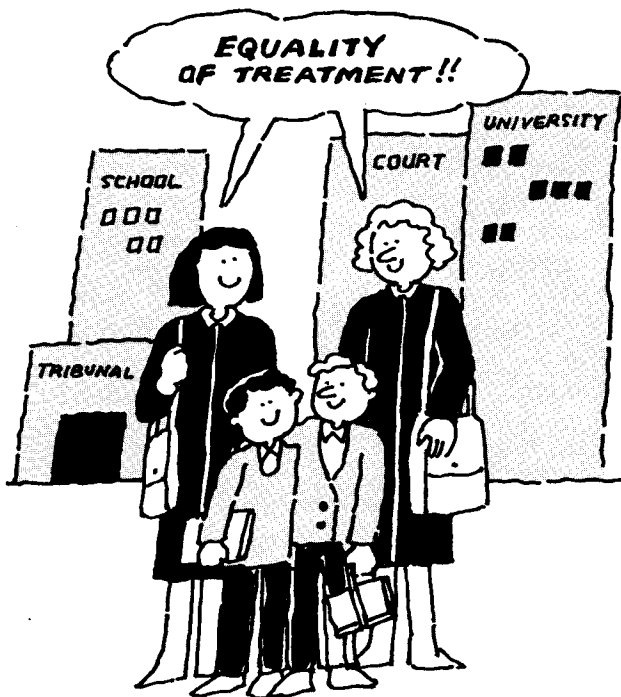
To see to it that both parties follow the contract. The agent's prime responsibility is the welfare of the OCW from sending to repatriation. For domestic workers, DOLE Department Order No. 25 (1993) requires recruiters to post additional P50,000 cash bond in escrow.

### ***What are the obligations of the OCWs?***

It is understood that the worker should fulfill the contracted job efficiently. POEA has enforced the following as requirements for job processing:

- Repatriation bond for all land-based, rehired and recontracted workers with contract duration of at least 6 months to cover airfare (P10,000 to 20,000 for a premium of P209.95 for Asia-bound workers and P399.90 a year for those bound for Europe, Middle East and USA); Seamen are exempted. In case of emergency, OWWA will advance repatriation costs then charge the employer or agent. Undocumented workers are not covered.
- Mandatory personal accident and life insurance coverage for all rehired or recontracted landbased OCWs (P50,000 and double that if death is due to accident, murder or assault at a premium of P204.20

a year). Returning OCWs required to pay the regular welfare fund contribution to OWWA get free insurance coverage. Insurance coverage takes effect upon payment of premium, extended worldwide, on or off the job plus 60 days after termination of the contract.



### ***What are the rights of workers abroad?***

Equality of treatment — They have the same rights as the workers of the host country in terms of employment, before courts and tribunals and access to education for their children. This is guaranteed by the International Convention for the Protection of Migrants and Their Families.

However receiving states retain the right to determine who is admitted to their territories and under which condition residency and work permits are given.

**TIP**

Every person is entitled to basic human rights. But to ensure labor rights abroad, go through the POEA system and inform the Philippine Embassy of your situation and location.

***Do OCWs have worker's compensation benefits abroad?***

They may file for medical and death benefits, either with the Philippines or the host country.

Members of the family are also provided with certain protections due to the OCW's death or dissolution of marriage according to the International Convention for the Protection of Migrant Workers and Their Families.

***Should OCWs pay taxes to the host country too?***

The ILO and the International Convention for the Protection of Migrants and their Families rule out double taxation.

Congress still has to amend the tax code to implement this provision.

In Japan today, Filipino OCWs still pay taxes to the Japanese government but the amount is deducted before any tax is paid to the Philippine government.

***What are the laws regarding remittances?***

Republic Act 7111, The "Overseas' Workers Investment (OWI) Fund Act or Romulo Law (Aug. 1991) assures prompt delivery of remittances within 48 hours.

It also aims to give the OCWs more financial gains by:

- pooling remittances coursed thru money couriers and other informal channels to purchase Philippine debt papers by issuing participatory debt reduction certificates (PDRC) up to 40% discount (in denominations of US\$ 100, 200, 300, 400, 500, 1000 and 2000);
- pooling remittances coursed thru the banking system for a peso loan and investment fund for OCWs and their families.

The balance of proceeds in the OWI Fund shall be used for 4-year scholarship grants for the OCW or family member who has remitted US\$10,000 worth of PDRC within 2 consecutive years; a housing program and health insurance for holders of 2000 usd PDRC.

(As of March 1994, this has not been implemented because members of the board have not been appointed yet.)

#### **TIPS**

- Open a bank account in the Philippine bank with a correspondent bank in the jobsite before leaving.
- Always get a remitter's copy.

### ***Are there laws ensuring equal rights for women workers?***

The Philippines is a signatory to ILO conventions such as "equal remuneration for men and women workers for work of equal value" and no "discrimination in respect to employment and occupation".



The Philippine Constitution assures gender equality before the law through a provision that implements the CEDAW adopted by the UN general assembly in 1979. It also provides safe and healthful working conditions for women, "taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."

The Labor Code renders unlawful the discrimination against any woman employee "with respect to terms and conditions of employment solely on account of her sex" such as lesser compensation, favoring males with respect to promotion and training opportunities.

***The broad term "entertainer" has led to the exploitation of thousands of women workers, (especially those bound for Japan -- "Japayukis", some of whom work under the thumb of the dreaded Yakuza) ...to the detriment of real performing artists, well respected and admired in their field. Most entertainers "perform" in prostitution dens in virtual slavery.***

***What are recent moves to protect entertainers?***

Entertainers must be at least 23 years old. In January 1994 DOLE ordered the Entertainment Industry Advisory Council (EIAC) to set guidelines on the training, testing, certification and deployment of performing artists: -

- Mandatory training to be handled by National Manpower and Youth Council (NMYC) certified trainers at accredited centers;

- After auditions, a Competency Certificate and Artist Record Book (ARB) valid for 3 years will be issued. The ARB is a requirement for contract processing and must be presented at the Labor Assistance Center at the NAIA. Group performers will be required to give a pre-departure showcase preview.

The EIAC, in coordination with the Overseas Labor Office, will tap a network of NGOs to help monitor entertainers at jobsite. Foreign and Philippine promoters are jointly responsible to take care of the welfare of the artists abroad. (DOLE Department Order Nos. 2 & 3, 1994)

### ***What are the new rules to safeguard Filipina Domestic workers?***

Household workers, 25 years old and above, trained and tested by NMYC or its accredited agencies will be allowed to work overseas.

Only employers that allow the household worker to notify immediately the



Philippine embassy of his/her arrival, regular visits by Philippine Overseas Labor Officers or POLOs, and attend skills training will be accredited.

Household Workers Centers (HWC) will centralize the accreditation of foreign employers and recruiters; conduct pre-employment and pre-departure seminars (where destination's socio-cultural environment and pertinent laws are discussed), skills training and trade testing.

OWWA shall prepare info materials for employers for better understanding of the Filipino worker. The Bureau of Local Employment (BLE) shall prepare a national registry of household workers.

POLOs shall accredit foreign placement agencies, monitor entry and departure of domestics, offer skills enhancement including basic foreign language courses and social welfare programs according to the needs of Filipina household worker in each country. (DOLE Department Order No. 25 of 1993)

#### **TIPS**

- Upon arrival, register at the Philippine embassy.
- Mail the Feedback Form after two or three months.

#### ***What of the above laws should be more responsive to the needs of OCWs?***

NGOs like Kanlungan and Batis are lobbying to revoke the mandatory repatriation and insurance bonds. They argue that these are the responsibilities of the employer and recruiter. Besides, these are already covered by the OWWA contribution of US\$25 - 50 per year paid by their employers which guarantees repatriation in war-torn areas and includes life and accident insurance worth P25,000 per worker.

The greater majority who need protection are undocumented workers. For runaways who do not have their passports in their possession, their repatriation is dependent on when employers release them and return their passports. Repatriation bonds are valid for a year, when most contracts last two years. This also affects the entertainers in Japan who must post the bond every six months.

*(Kanlungan statement)*

### ***What are the existing policies with receiving countries?***

Countries who are signatories to the ILO, CEDAW and the International Convention for the protection of Migrants and their Families can be persuaded to protect workers' rights based on these agreements. For non-signatories, we need a bilateral agreement.

The Middle East countries of Oman, Jordan, and Qatar have existing labor agreements with the Philippine government. Agreements with Papua New Guinea, Federated States of Micronesia, Iraq and Libya are under review. As of August 1993, there are pending agreements with Taiwan, South Korea and United Arab Emirates. Brunei, Singapore, and Saudi Arabia are not interested in forging labor agreements with any country, while Kuwait and Malaysia may consider it in the future. Proposals were submitted to Greece, Japan and the Trust Territories.

■ **Canada:** The Foreign Domestic Program which granted immigrant status after two years has been discontinued. The "live-in caregiver" program introduced in 1992 denies immigrant status. Requirements: grade 12 education, 6 months training, can speak, read and understand English or French. (Angeles, Country paper on Trafficking)

■ **Hongkong:** Employment contracts are effective for 2 years, the second year effective if the worker continues to work for the same employer. Contracts may be terminated by either the worker or employer with at least one month notice; without notice if with cause.

If the employer terminates the contract, the worker may remain in Hongkong for 2 weeks. This is the "two-week rule." Beyond that, visa expires and OCW should report to Immigration Department. The worker cannot seek another employer without going back to the Philippines to sign another contract. Since this entails another expense, some workers stay on as illegals.

If the OCW files maltreatment suit against the employer she/he may not work while it is pending. If the OCW wins the case, he/she may find another employer without having to go back to the Philippines.

Standard contract charges employer: US\$100 processing fee, US\$25 welfare fund contribution, P50,000 insurance, airfare to and from worksite, visa fee, medical fee and airport terminal fees. Suitable and furnished accommodation and food free of charge or food allowance of HK\$300 a month, free medical and dental treatment. Minimum monthly salary HK\$3200. (P11,200). If your salary is delayed, the employer may be fined HK\$5000 to 20,000.

The OCW pays for passport fees, skills training and upgrading, NBI/police clearance and the repatriation bond. (Myrna S. Feliciano, *Speaking out*, 1993)

**TIPS**

- Ask for country profile.
- HongKong recruiters charge only HK\$5.00 and 10% of first month's salary; some recruiters charge both

employer and worker airfare and other fees amounting to P20,000 - P40,000. Report overcharging to POEA.

- A re-entry visa is needed to return to HongKong. Before leaving, get it in HongKong for HK\$115. In Manila it will cost P3120 at the British Embassy.

■ **Singapore:** Foreign domestics are issued work permits good for two years, renewable for another two or a maximum of 4 years. No permanent residency status is given at the end of the term. Marriage with Singaporean national or permanent resident needs government approval. Permit to marry is given only to foreigners with "skills and qualifications...(that) will be of value to the nation". To monitor that no inter-marriage occurs, the domestic is required to undergo a pregnancy test every 6 months. (Kanlungan, 1993)

Employers are required S\$5000 security deposit which can be forfeited if the worker gets pregnant, marries, violates smuggling, drug and subversion laws, takes another job not in contract or remains in the country after contract expires. They are also required to pay a monthly tax of S\$250. Maid's salary is an average S\$300 (P5258). Singaporean employers are very strict because they tend to lose much if their houseworker violates any law. The common practice is for the employers to hold the OCW's passport.

The employer may terminate the contract any time without reason. The maid can transfer employment with the consent of the employer and have 4 weeks to look for another employer. If you run away, you can stay in the Household Workers Center only for 12 hours. The employer is fined S\$9 a day. Two days' absence is ground for dismissal even with cause.



Singapore is one of the “high risk” countries that has the highest incidence of suicide among foreign domestic helpers. Apart from contract violations, human rights violations are grossly committed since domestic workers are excluded from the provisions of Singapore’s Employment Act. (Kanlungan, “Women OCWs at what cost”, p.32)

#### **TIPS**

- Ask for country profile from POEA.
- Do not go on a tourist visa.
- Ask that salary be paid to a bank account which will show the amount and date.
- Renew work permit one week before contract expires.

■ **Japan:** Temporary working visas good for only 6 months are issued to the Filipina “entertainer” or “Japayukis” with no prospect of permanent residency status.

The “selective ban on the deployment of Filipino performing artists (after Sioson’s death in Japan, in 1991, is enforced by the new EIAC guidelines. Only qualified performance artists, 23 years old and above, with Competency Certificate and Artist’s Record Book will be processed.

Standard employment contract gives minimum compensation for entertainers of not less than Y200,000 for six hours of work a day and four restdays a month (singer, musician and instrumentalist: a maximum of four sets of performance per day or three hours per day out of 5.5 hours stay; dancer: a maximum of two working hours per day out of 5 hours stay and a minimum of two rest days a month) additional life and medical insurance must not be less than Y3 million; 40% deduction to cover board and lodging, cost of training, costumes and commissions or net take-home pay of not less than Y120,000 (US\$1164) on a six-month contract. This is roughly P5238/month. (POEA Memo Circular 39, 1991)

However, close to 70% get only US\$300 to US\$700 from contracts of US\$1500 . The practice is to give monthly food allowance. The salary is given at the end of six-month contract. Transportation and placement fees are employer’s expenses.

Domestic Helpers earn from US\$1000 - US\$1200/month but limited to diplomats and senior executives of multinationals. Japan requires OCWs to pay taxes. (*See primer*).

A step towards prostitution is the “dohan” or dating outside the club that earns extra fees. . After the death of Maricris Sioson in September 1991, DOLE issued a circular banning “dohans”, soliciting customers and performing in the nude. However, more than 80% of clubs practice



“dohan”. Some clubs give quotas like one “dohan” a day and a fine for every “dohan” missed.(A.Javate-de Dios)

The new immigration law penalizes illegal workers and employers with 3 years imprisonment and a fine of Y2 million. (Batis 1990) Illegals become kept prisoners of their own choice. They don't dare ask for help for fear of the penalties. This could be the reason, aside from the shock of being prostituted, why there are many mental cases in Japan among entertainers.

**TIP** Ask for country profile from POEA.

■ **Taiwan:** Physical examinations 3 days after arrival and 6 months after are mandatory requirements. Failure means deportation.

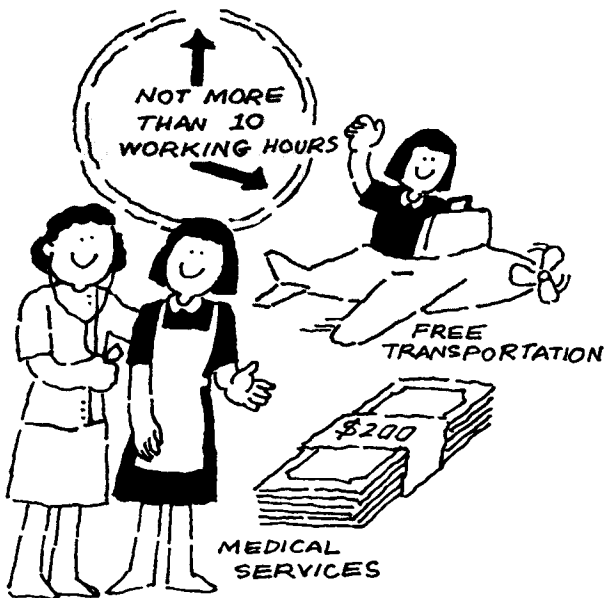
The maximum employment for OCWs is 1 year, with 1 year extension based on The Employment Services Law of 1992. OCWs were asked to leave voluntarily and return legally. Employers cannot hire foreign workers already in Taiwan. (Institute for Labor Studies News digest Oct 1992)

■ **Korea:** The estimated 12,000 Filipino illegal workers may continue to work in Korea until June 15, 1994. 20,000 trainee visas will be issued this year 1994. The program is for 2 years and entitles foreign trainees to labor protection, minimum wage and industrial calamity insurance. (Labor Market situationer, Dec 1993)

■ **Malaysia:** Freeze on hiring foreign workers except domestics, professional and skilled workers until the police has completed the nationwide crackdown on illegal immigrants.

Some 1000 Filipinos figured in an Easter Sunday raid in St. John's Cathedral in Kuala Lumpur. Only around 16 were found to be illegals. NGOs and a few senators protest the incident. (Labor Market Situation Dec 1993) There are about 40,000 Filipino maids in Kuala Lumpur. The foreign office estimates that there about 300,000 Filipino illegal workers in Sabah.

Standard contract for household workers in Malaysia provide not more than ten working hours with at least 8 hours of sleep, free accommodation and three square meals a day and working clothes, free transportation, free medical services, repatriation in case of illness or death. Minimum wage US\$200 a month (P5400). Passport in possession of worker or in case of dispute, with the Philippine Embassy for safekeeping. All labor laws in Malaysia favorable to domestic helpers applicable to Filipino OCW.



■ **Middle East:** Standard contract for household workers: The employer shall provide free transportation, medical and dental

services, one rest day a week and repatriation. The employer may not ask the domestic helper to work for other households or the employer's business establishment; or transfer the OCW to another employer.

There are no concrete policies towards domestics, and little or no penalties for violators. A domestic cannot leave her employer unless the employer signs a contract of release. The worker is at the mercy of her employer. Running away means being deported and paying her own way home. What's more, employment contracts are often written in Arabic.

■ **Kuwait:** Kuwait has the highest incidence of physical abuse to OCWs. Despite the ban on the deployment of domestic helpers there, Filipinas continue to go there even as illegals.

Residence certificates will be issued to expatriates effective December 1993. However, Kuwait's Private Sector Labor Law No. 38 of 1964 excludes domestics. (Free Press 8-14-93)

Recently the Kuwaiti government stopped issuing work permits to foreign workers. Those in the private sector were granted the right to change employment once within three months, provided their sponsor will release them or if their sponsor is found guilty of not paying salaries regularly. However, domestic helpers are not covered by this new policy.

■ **Jordan:** Employers should pay govt. work permits \$600 but often it is deducted from domestic's salary; complaints are not handled by their government but coursed thru an intermediary sent by the Labor Attache at the Philippine Embassy, Philippine Workers Association (POWA) and OWWA (Angeles, country report on trafficking 1991).

■ **Saudi Arabia:** OCWs who do not finish their two-year contracts will not be permitted to re-enter the Kingdom for a period of 3 years. Those who refuse to renew their contracts while sponsors still need their services cannot re-enter for one year. (Phil. Labor Jan 1993)

The visa is the complete responsibility of the employer. Household workers cannot leave without the employer's consent. Again this set-up leaves the OCW at a disadvantage.



If terminated or the domestic refuses to work, he/she can stay at the household Worker's Center in Riyadh for only 24 hours. After that the women will be moved to Social Welfare Administration while the men will be placed in immigration or foreign department office. If you want to leave your employer, the Philippine embassy can help prepare statements or

complaints in Arabic to the labor office but cannot interfere in the proceedings.

The labor laws of Saudi Arabia prohibit union organizing and staging of strikes, which are outright violations of several articles of the universal Declaration of Human Rights.(Arnel de Guzman "The protection of rights of migrant workers in the Phil") For domestics, the labor laws are not applicable since they are not considered regular workers. Minimum wage for domestics is SR 750 (US\$200) but the usual rate for Filipino domestics is SR560 (US\$150) or P4050 a month.

Sharia Law applies to all — Muslim or not. Possession of other religious articles (bible, rosary, crucifix, scapular, medals), talking to the opposite sex and improper dress code for women are strictly forbidden. Women are expected to wear a black, full-length coat or "abaya" over their dresses and a scarf over the head when going outside. Beware the religious police or "muttawa". Mere suspicion of improper conduct can merit jail terms and lashes.

#### **TIPS**

- Ask for country profile from POEA.
- Do not entertain suitors. Do not accept gifts or invitations to parties from men of other nationalities.
- Do not write to a male penpal.
- Do not go to Saudi if you are pregnant.

■ **Bahrain:** Filipino DH must be at least 30 years old. Filipino women contract workers are restricted to work in small restaurants, cafes, boutiques and cold stores. Filipino male contract workers are allowed to work in all skill categories regardless of age.(Labor Market situationer, Dec 1993)

## ***What laws in other countries discriminate against women migrants?***

Hongkong's "two-week rule" and no work while case against employer is pending makes it very difficult to complain against employers and costly to ask for a change of jobs.

The no release, no exit practice in the Middle East ties an OCW to an abusive employer. Japan and Germany makes it impossible for women to leave their husbands because they will lose their resident status even if they have children.

## ***What are the pending bills against illegal recruiters?***

- House Bill 8716 gives the victim 20 years (instead of three) within which to sue illegal recruiters.
- House Bill 79 allows OCWs to file complaints in their place of work or residence. It is now pending in the committee of labor and employment.
- HB 815 penalizes foreign service employees who recruit.
- This bill has been approved on second reading.
- HB 882 limits to Filipinos the management and operation of recruitment companies for foreign employment.
- HB 3764 provides penalties for illegal recruitment.
- HB 4428 establishes a guarantee fund by recruitment agencies for

cases of abuse, injury or damage to a worker.

- HB 5232 prohibits private employment agencies to recruit women OCWs. (as of April 1993)

### ***What are the bills that promote the welfare of OCWs?***

- HB 436 promotes and protect the rights of OCWs
- HB 2784 provides consular offices abroad with staff positions for labor
- HB 7264 overseas Filipino code
- HB 6596 expatriate voting rights
- Senate Bill 1503 mandatory aids test for returning OCWs

Awaiting ratification by the Senate are ILO conventions (118) that secure equal social security, (19) gives accident compensation and (157) grants pension rights to migrant workers and (165) social security for seafarers. The Philippines has ratified 32 out of more than 100 conventions. (Chronicle 1-14-93)

### ***What are the bills that provide financial assistance to OCWs?***

- HB 279 grants tax exemption to OCWs earning US\$10,000 or less a year who remit through the banks
- HB 2785 grants exemption from payment of certain fees and taxes
- HB 3019 credit assistance program (As of April 1993)

***How can I (and my organization) hasten the approval or amendment of these bills?***

Follow-up the status of the bill. Write the author of the bill, your Representative or Sectoral Representatives on labor and women. Send position papers from your organization. Publicize the issue at fora, NGO newsletters and media here and abroad.

Lobby for the ratification of the ILO conventions, the implementation of the OWI Fund and the International Convention for the Protection of Migrants and Their Families provision that eliminates double taxation. And press the government to forge bilateral agreements especially in countries where domestics are not protected by labor laws.

Network with NGOs in countries with laws that discriminate against women migrants and OCWs to work for its repeal.

