

# A Critique of the new POEA Memorandum Circular No. 04 and the Ban on Direct Hiring

*Mission for Migrant Workers (MFMW) and  
Asia Pacific Mission for Migrants (APMM)*

30 January 2008

On December 18, 2007, the Philippine Overseas Employment Administration (POEA) issued Memorandum Circular No. 04, Series of 2007, entitled Guidelines on the Direct Hiring of Filipino Workers. The order took effect last January 15, 2008.

In a news release of the Department of Labor and Employment (DoLE), the agency directing the POEA, dated January 19, 2008, they said that MC-04 *“allows direct hiring of OFWs by foreign employers only upon approval by the Secretary of Labor and subject to screening of employers and employment contract verification by the Labor Attaché or the Philippine Embassy.”*

Additionally, it clarified that *“direct hiring may be allowed only for members of the diplomatic corps and of international organizations, government officials of ministerial level, and employers who are hiring on one-time or trial basis. The number of employees to be hired directly shall not exceed 5.”*

MC-04 puts more severe restrictions for name-hired or direct-hired OFWs. According to DoLE, if prospective employers do not wish to comply with the guidelines, they shall only be allowed to hire OFWs through recruitment agencies *“which are willing to assume responsibilities over the employees, including payment of salaries and other employment benefits.”*

Furthermore, DoLE Secretary and POEA Board Chairman Arturo Brion declared that the new policy for direct hires is aimed at *“strengthening the protection mechanisms for OFWs.”*

In the experience of Filipino migrant workers, when the government starts to drum up slogans of “protection”, it is time to be alert, vigilant and inquisitive. It was the same when they heaved upon OFWs the POEA Guidelines on the Deployment of Filipino Household Service Workers in 2007. It was also the same when they came out with the Overseas Workers Welfare Administration (OWWA) Omnibus Policies in 2003.

The two latter policies were eventually proven to be detrimental to the rights and wellbeing of Filipino migrants.

Memorandum Circular No. 04 deserves no less attention from migrant workers and advocates of the rights of migrants.

In studying the policy and analyzing its impacts to Filipino migrant workers, it can be seen that:

## **1. MC-04 will result to loss of jobs and employment opportunities**

The new guidelines provide for pre-qualification of employers wishing to direct hire a Filipino worker. It carries no distinction among the Filipino workers being hired that include current OFWs who are renewing their contracts and those with finished contracts or pre-terminated contracts and are transferring employers.

For employers who wish to direct hire a Filipino, **Part II, No. 3, Item d** of MC-04 said that the employer will submit an undertaking that will include the:

*ii. Provision of a **performance bond equivalent to the worker’s three months salary** to guarantee compliance of the employer with the provisions of the employment contract*

*iii. Provision of a **repatriation bond in the amount of US\$5,000 or its peso equivalent** to guarantee the following:*

*iii.a. actual cost incurred for the repatriation of remains and subsequent burial following death from any cause;*  
*iii. b. actual cost incurred for repatriation from other causes such as violation/non-compliance with the contract, rules and regulation of the company and Philippine laws as well as the laws of the host country, except when violation is attributable to the worker or when worker voluntarily resigns or returns to the Philippines*

This means that a prospective Hong Kong employer directly hiring a Filipino domestic worker, for example, has to shell out about US\$6,320 or approximately HK\$50,000 as bonds (US\$1,320 for the three-month salary performance bond and US\$5,000 for the repatriation bond).

For practical and financial reasons, no employer will be willing to put up this amount.

Thus, an OFW who just have to renew a contract with the same employer or has another employer already in line must still register with a recruitment agency in order for her papers to get processed. This will be a cause for massive confusion among the OFWs and the employers on top of the inconvenience that it will put in an otherwise simple process. What will happen to OFWs in Macau, for example, who are mostly directly hired? Or those in countries like Kuwait where a worker is allowed to directly seek an employer if the previous employer for at least two year permits him or her?

Even worse, this will lead to more unnecessary fees for OFWs for the recruitment agencies will surely charge them for a "service" that is not even needed in the first place.

With the additional hassle of passing through agencies, an employer who wants to direct hire a worker will be strongly discouraged to hire a Filipino. The potential loss of job opportunity is a greater tragedy for any OFW who could have been assured of an employer if not for the MC-04.

## **2. MC-04 puts Filipino workers under the control of recruitment agencies and makes them vulnerable to overcharging and other malpractices of unscrupulous recruitment agencies**

Since the new pre-qualification of employers for direct hires/ name hires is impossible to meet, all workers have to, by *force majeure*, go through recruitment agencies.

It should be noted that according to the announced procedure of the new program for direct hires by the Philippine Consulate General in Hong Kong (PCG-HK), "*Workers coming to Hong Kong on employment visa for the **FIRST TIME** are not allowed under this program.*" This means that **NO DIRECT HIRING** will be allowed for first time applicants at all.

This will mean that recruitment agencies will have a field day with overcharging. Not yet content with the floodgate for overcharging it has opened with the POEA Guidelines on the Deployment of Filipino Household Service Workers, the government has now completely given unscrupulous recruitment agencies the free rein to exploit for maximum financial benefit the desperation of Filipino migrants to work abroad.

In an initial survey of the MFMW among its clients, overcharging has remained rampant if not even worse than before.

Out of the initial 526 respondents surveyed from the MFMW clients, about 80% paid more than P25,000 to agencies. Of this, about 25% paid P60,000 to P100,000 while 31 of the respondents said that they paid more than P100,000.

In Taiwan, Filipino workers are charged by as much as P190,000. Even the Taiwan government has recognized the gravity of the problem of workers with recruitment agencies and, since the start of this year, has initiated moves to allow direct hiring for returning caregivers.

If a host government such as Taiwan acknowledges this problem, why is the Philippine still bent in shoving its own nationals to the mercy of recruiters?

How can the government still claim that putting OFWs in the hands of recruitment agencies is for their protection?

Following the government's logic, it appears that they consider direct hiring as the problem of OFWs and not overcharging. They cannot be more wrong.

It is widely-acknowledged by migrant workers and institutions serving distressed migrants that malpractices of unscrupulous recruitment agencies is the source of many serious problems of Filipino migrants. Overcharging of fees in particular has put Filipino migrants in a situation where they are unable to escape from the debt trap cycle. This condition has recently even worsened with the sliding value of OFW remittances that now cannot even meet the basic needs of their families in the Philippines.

Of the 743 cases handled by the MFMW last year, 492 indicated that their employment was facilitated by recruitment agencies. Ninety-six per cent (96%) of them experienced problems in their employment.

This just shows that incidence of abuse and rights violations is not tempered by the recruitment agencies' facilitation of employment. If the government believes that processing of employment through recruitment agencies will decrease violations of rights of OFWs – or vice versa, direct hiring of OFW by employers themselves increases violations of OFW rights – then this government is really not in touch with what is happening to their nationals abroad.

Hostaging of OFWs by recruitment agencies shall surely increase by leaps and bounds with the implementation of MC-04.

### **3. MC-04 belies the fact that recruitment agencies are not there to protect OFWs but are in fact accessories to, and even promoter of, many cases of abuse.**

When did recruitment agencies ever become champions of OFW services and protection? **Never!**

Aside from being the source of OFW woes, recruitment agencies even aggravate the situation of abused migrant workers. There have been many cases wherein a worker whose rights have been violated is dispatched back to the Philippines by the recruitment agency instead of being provided with the needed assistance.

Distressed migrants are oftentimes left to fend for themselves. If they approach the PCG, they will be directed to the agencies. If they go to the agencies, either they are directed to the airport or asked to seek help from the government.

Migrants' organizations and service institutions are the ones that take on the responsibility of providing assistance to distressed migrants. More often than not, it requires the determination of the distressed migrant worker and the support of migrants' organizations and service institutions to push the government to provide the assistance that the worker needs.

Recent concrete cases of these are those of Jocelyn Dunluan in Canada, Marilou Ranario in Kuwait and of Miriam Espiritu – an OFW who died in Hong Kong and was only repatriated by the OWWA after the pressure exerted by her family and the MFMW.

### **4. MC-04 negates the gains of Filipino migrants in previous struggles for their rights and wellbeing.**

In 1994, the POEA issued Memorandum Circular No. 41 that made passing through recruitment agencies mandatory for OFWs. This triggered a widespread outrage among OFWs especially in Hong Kong where the campaign was most intense.

In the face of such sustained opposition, the government was forced to revoke MC-41 at least for OFWs in Hong Kong.

Department Order No. 11 issued in October 26, 2001 by then DoLE Secretary Patricia Sto. Tomas entitled **Revoking POEA Memorandum Circular No. 41, Series of 1994**, stated that:

***“In line with the State policy to afford adequate protection to Overseas Filipino Workers, POEA Memorandum Circular No. 41, Series of 1994, is hereby revoked.***

*Employers in Hong Kong shall have the option to hire Filipino household workers either through licensed recruitment agencies or through the name hire facility of the Philippine Overseas Employment Administration (POEA).”*

**Ironically, the same line that the government used to repeal MC-41 and allow direct hiring is the same line that they are now peddling to justify MC-04 and practically ban direct hiring!** It is totally irrational and illogical to use a principle as basis to revoke one policy and then use the same principle to institutionalize a new one that is essentially the same as the repealed rule.

This alone makes the rationale behind MC-04 highly-suspect. The government dishes out the slogan of “protection” whenever it is convenient for them. It just shows how shallow their commitment is to actual, concrete and effective protection of OFWs.

Aside from the success of the campaign against MC-41, Filipino migrants were also victorious in the campaign against the collection of the Mandatory Insurance and Repatriation Bond (MIRB) implemented in 1991. OFWs then asserted the responsibility of the government in the repatriation of distressed migrant workers. Finally, the MIRB was scrapped in 1992.

MC-04 resurrects the horrors that policies like MC-41 and the MIRB have brought to migrant workers.

## **5. MC-04 translates to the deregulation of the Philippine labor export industry and relieves the government of its responsibility for protection and services to their nationals abroad.**

The deregulation of the Philippine labor export industry is a long-standing agenda of the government.

Simply put, deregulation means the erosion of the government’s regulatory powers in different aspects of the migration process and giving it to the private sector – such as recruitment agencies. Notably, the deregulation policy is focused on scheduling of fees and the provision of services and protection to OFWs. Government’s function is then limited to the “facilitation” of the migration process.

This plan was crystallized in the Republic Act 8042 or the Migrant’s Act of 1995 . Amidst the clamor against neglect, the government of then President Ramos swiftly passed the Magna Carta for OFWs that contained motherhood statements of protection and services while also slyly pushing through the deregulation agenda.

Filipino migrant workers, however, were not fooled. The campaign against deregulation was advanced. Recently, Articles 29 and 30 of the law that stipulated deregulation were repealed from the Magna Carta.

Deregulation assures the government of its steady income from OFWs – remittances and standard government charges to migrant workers – while divesting itself of the “burden” of providing services and protection such as shelter for and repatriation of its distressed nationals.

However, aside from earning from OFW themselves, the government is also set to harvest more income from the expansion of the recruitment industry.

The current Licensing and Regulation rules of the POEA for recruitment agencies stipulate that:

*Section 2. Payment of filing fee. Upon receipt of an application with complete requirements, the Administration shall require payment of a non-refundable filing fee of P10,000.00 and submission of proof of payment thereof.*

*Section 3. Action upon the application. Within fifteen (15) calendar days from receipt of an application with complete requirements including proof of payment of the filing fee of*

*P10,000.00, the Administration shall evaluate the pertinent documents, inspect the offices and equipment and determine whether or not to grant or deny the application. Denial of an application will result in the forfeiture of the filing fee.*

*Section 4. Payment of Fees and Posting of Bonds. Upon approval of the application, the applicant shall pay a license fee of P50,000.00. It shall submit an Escrow Agreement in the amount of P1,000,000.00, confirmation of escrow deposit with an accredited reputable bank and a surety bond of P100,000.00 from a bonding company acceptable to the Administration and accredited with the Insurance Commission.*

*Agencies with existing licenses shall, within four years from effectivity hereof, increase their Escrow Deposit to One Million Pesos .*

But similar to other businesses, recruitment agencies will likely pass on whatever it paid for in taxes, bonds and other charges of the government to its “consumers” who are the migrant workers. Again, it is the OFWs who will carry the ultimate burden.

Be it from recruitment agencies, employers or the OFWs themselves, the government has the most to gain from the deregulation of the labor export industry. If without the deregulation, the government is already bloated with monetary gains, what more if the extra expenses for the already mediocre services and protection they provide are taken off their hands?

With MC-04, the government is now again on top of its deregulation drive. By making it mandatory for OFWs to pass through recruitment agencies that will supposedly also provide OFWs the protection they needed, the government has practically concretized its deregulation plan.

In effect, this government is also violating its own laws. If the deregulation provisions of Republic Act 8042 have been repealed, then a mere circular by an adjunct agency of the executive branch should not be able to circumvent this.

Additionally, while the government divests itself of its responsibility of welfare provision and protection to OFWs, it also continuously collects fees for the “welfare fund” in the OWWA. As what have been exposed in the past, the OFW money that is in the OWWA Fund has been a rich source of corruption involving no less than whoever sits in Malacanang.

Now with the deregulation taking shape on one hand and the OWWA Omnibus Policies on the other, the OWWA Fund shall be a bottomless well of money for corruption and expenses not even remotely related to OFW welfare.

In summary, MC-04 is a policy that shall put Filipino migrant workers in a worse situation than before.

As migrant workers have put it, it is a policy that throws them to the wolves and opens them up to more exploitation, abuse and hardship. It plays right into the government’s plan of “unburdening” itself of its responsibility to its nationals abroad without grave impacts to its own gains – in fact, it stands to gain more – from the migration of Filipinos.

As institutions providing services to migrant workers and advocating for their rights, we urge the government to:

1. Immediately scrap POEA MC-04.
2. Scrap the POEA Guidelines on the Deployment of Filipino Household Service Workers.
3. Institutionalize effective mechanisms that will curb, if not finally stamp out, overcharging and other malpractices of recruitment agencies.
4. Improve the onsite services for and protection of Filipino migrant workers. Scrap the OWWA Omnibus Policies.
5. Stop the deregulation of labor export. Institute policies and mechanisms for effective and concrete protection of Filipino migrant workers.