

Inviting Investors and Importing Workforce: A Situationer on the Philippines' Employment Condition

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ABOUT THE PAPER

This position paper seeks to evaluate the implications of the present employment condition with regard to the local workers and in relation to their right to work which is engraved in the Universal Declaration of Human Rights and specifically, in the Philippine 1987 Constitution itself, guaranteeing the preference of Filipinos in any job.

The paper calls for the people in order to influence their mindset regarding the impact of the increasing number of Chinese people in the Philippines, by tolerance of the government itself, in connection with their right to work. It interposes the lawmaking body to enact or amend laws that would guarantee the security of the Filipinos to one's work; and the executive department to properly enforce and strengthen such laws.

INTRODUCTION

In 2018, a significant number of companies in the Philippines laid-off several of their employees. This resulted to an increase of 0.4 percent in the country's unemployment rate from 5 percent in October 2017¹ compared to the 5.4 percent released by Philippine Statistics Authority in 2018.²

To mitigate this, the Duterte Administration had proposed the massive "Build, Build, Build" program as one of the solutions that would help address several needs of the country, including job losses. It was projected to create an average of 1.1 million jobs annually. The "Build,

¹Philippine Statistics Authority "Employment Rate in July 2017 is Estimated at 95 Percent" (Philippine Statistics Authority, 12 December 2017) <https://psa.gov.ph/content/employment-situation-october-2017>

²Philippine Statistics Authority. "Employment Rate in July 2019 is Estimated at 94.6 Percent" (Philippine Statistics Authority, 5 September 2019). <https://psa.gov.ph/content/employment-rate-july-2019-estimated-946-percent>

Build, Build” treats infrastructure developments as projects that would provide sustainable job opportunities, lessen transportation and traffic woes, and lower the prices of goods and services. For several months from its launch, the program had achieved one of its goals--lessening unemployment rate up to 5.3 percent in July 2018.³

However, the Philippine Statistics Authority’s Employment Situation records as of July 2019⁴ showed that the unemployment rate of the Philippines increased again at 5.4 percent, which is similar to last year’s unemployment rate. Such percentage includes 2.43 million jobless Filipinos as compared to the 2.33 million jobless Filipinos as of July 2018.⁵ It can be said that there is an observable increase in the number of unemployed Filipino workers in the Philippines.

Meanwhile, an influx of the Chinese nationals has entered the Philippines since President Rodrigo Duterte had re-oriented its ties with the United States of America and People’s Republic of China resulting in 1,375,508 Chinese visitors as of 2018 which increased by 26 percent as per Bureau of Immigration’s *Statistical Data of Arrivals in the Philippines per Nationality*. On the other hand, the Department of Tourism (DOT) showed that there are 733,769 Chinese travellers who entered in the Philippines and acquired tourist visa through the visa-upon-arrival (VUA) privilege granted to them in 2017.⁶

The Philippines, through the President’s “Build, Build, Build”, has become more open not only to Chinese workers but also to the Chinese contractors, real estate developers, and gamblers.⁷ In line with this, the Chinese contractors and real estate developers, has been heading to the Philippines. However, instead of hiring Filipino workers, these Chinese contractors opted to hire Chinese workers. Due to such influx of Chinese travelers and workers, many Filipinos felt

³Philippine Statistics Authority. “2018 Annual Labor and Employment Status” (Philippine Statistics Authority, 28, December 2018) <https://psa.gov.ph/content/2018-annual-labor-and-employment-status>

⁴ Philippine Statistics Authority. “Employment Rate in July 2019 is Estimated at 94.6 Percent” (Philippine Statistics Authority, 5 September 2019). <https://psa.gov.ph/content/employment-rate-july-2019-estimated-946-percent>

⁵Villanueva, Joann, “‘Build, Build, Build to address job losses’: Diokno” (Philippine News Agency Manila, 14 February 2018). <https://www.pna.gov.ph/articles/1025214>

⁶ Ramirez, Robertzon, “Amid calls to amend visa policy, Chinese arrivals up”, (Quezon City, The Philippine Star, 4 August 2019) <https://www.philstar.com/headlines/2019/08/04/1940429/amid-calls-amend-visa-policy-chinese-arrivals-up>

⁷ Mourdoukoutas, Panos “Duterte Opens Up the Philippines to Chinese Workers, As Filipinos Seek Jobs Overseas” (Forbes, 23 December 2018) <https://www.forbes.com/sites/panosmourdoukoutas/2018/12/23/duterte-opens-up-the-philippines-to-chinese-workers-as-filipinos-seek-jobs-overseas/#372e15654b28>

threatened of their presence since many of them were being preferred more than the local workers and are receiving more compensation for the same work requirement and job description.

When this issue was raised by labor organizations, President Duterte, in his speech during the campaign rally of PDP-Laban in Laguna dated February 23, 2019 said “*iyong mga Chinese dito, hayaan mo ‘yan na dito magtrabaho. Hayaan mo*” “*Bakit? We have 300,000 Filipinos in China. Kaya hindi ako maka-sabihin, o umalis kayo dito, deport ka doon. Eh kung biglang paalisin ‘yun doon 300 of them.*”⁸ The statement had prompted the interest of the public, including the Philippines’ Vice President Leni Robredo who raised her concern on the special treatment given to the Chinese nationals in line with the Philippine-China friendship.

Robredo cited that several Filipinos were complaining that some jobs which are supposed to be for the Filipinos are given to the Chinese workers. Magdalo party-list representative Gary Alejano added that Filipinos are becoming “second-class” citizens in their own land due to the government heavily favoring Chinese nationals, thereafter dubbing Philippines a ‘Province of China’. Meanwhile, Former Solicitor General Florin Hilbay cited that the bilateral deals resulting therefrom are unfair to the Philippines.⁹ The increase in number of the Chinese citizens opting to work in the Philippines as well as those jobless Filipino workers posits extra competition for employment threatening local jobs. Notably, the Philippine President passively tolerating the scenario did not guarantee any concrete solutions.

Further, since 2015 up to 2018, the Department of Labor and Employment (DOLE) had issued 85,496 for the Chinese workers, out of the 169,893 Alien Working Permit¹⁰; and the Bureau of Immigration issued 72, 010 valid special work permits from January to November 2018 where 64,087 were given to the Chinese workers.¹¹

⁸ Adel, Rosette, “*Duterte on deporting Chinese Workers: Let them work here*” (Quezon City, The Philippine Star, 24 February 2019) <https://www.philstar.com/headlines/2019/02/24/1896389/duterte-deporting-chinese-workers-let-them-work-here>

⁹Ibid.

¹⁰ Fenol, Jessica, “*Rush of Chinese Workers Sparks Worry, Call for Caution*” (Manila, ABS-CBN News 25 February 2019) <https://news.abs-cbn.com/business/02/25/19/rush-of-chinese-workers-in-philippines-sparks-worry-call-for-caution>

¹¹ Rey, Aika “*Duterte does not favor deporting illegal Chinese workers*” (Manila, 23 February 2019) <https://www.rappler.com/nation/224221-duterte-no-deporting-illegal-chinese-workers>

The alien working permit issued by the DOLE is different from the special work permit issued by the Bureau of Immigration. According to DOLE Secretary Silvestre Bello III, the DOLE had no power to deport workers with special work permit due to DOLE order giving the Bureau of Immigration the power to issue such permit. Having no police authority over these Chinese workers with special work permit, the said issuance of permit may become more susceptible from being tainted with fraud and abuse.

LEGAL AND CONSTITUTIONAL BASIS

The 1948 Universal Declaration of Human Rights is not a treaty. It was first enacted as a resolution by the United Nation General Assembly but was later observed by the States as if it were a treaty. As such, it has evolved into becoming the general principles of international law.¹² The International Convention on Economic, Social, and Cultural Rights (ICESCR), on the other hand, was signed by the Philippines in 1966 and was ratified only in 1976. The two formed part as guidelines in the creation of the 1987 Philippine Constitution, having almost the same wordings in its provisions giving the same guarantees human rights.

Article 23 of the Universal Declaration of Human Rights provides that “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work.”¹³ Meanwhile, the ICESCR also recognizes such right declaring that:

Article 6. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.¹⁴

Article 7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

¹²Petralba, Pepita Jane A., Hornbook on International and Philippine Human Rights Laws 2013, page 42-43

¹³UNIVERSAL DECLARATION ON HUMAN RIGHTS, Article 23

¹⁴INTERNATIONAL COVENANT ON ECONOMICS, SOCIAL, AND CULTURAL RIGHTS, Article 6

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (b) Safe and healthy working conditions;
 - (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
 - (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays¹⁵

In line with this, Section 3 of Article XIII of the 1987 Constitution affirms that, "The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage xxx "¹⁶

Meanwhile, Section 12 of Article XII of the Philippine Constitution provides for the Filipino First Policy stating that "The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive."¹⁷ The policy aims to give preference or dominance to the Filipino workers in their own country especially in the grant of their rights and privileges as well as in making them competitive as against alien workers. The Filipino First policy does not prohibit alien workers to work in the Philippines, rather, it maintains that the alien workers are welcome to work in the country; but the jobs must be kept to the Filipinos as much as possible and practicable. In line with this, the DOLE and the Bureau of Immigration issues Alien working permits and Special work permits, respectively. As such, the Chinese can work in the Philippines but only when the job could not be done by Filipinos, through the issuance of the abovementioned permit.

¹⁵ INTERNATIONAL COVENANT ON ECONOMICS, SOCIAL, AND CULTURAL RIGHTS, Article 7

¹⁶ CONST., Sec 3, Article XIII.

¹⁷ CONST., Sec 12, Article XII.

BUILD BUILD BUILD PROGRAM: DISCRIMINATING OUR OWN LOCAL WORKERS

Included in the “Build Build Build” are different projects that are funded by several Chinese construction and engineering firms. In order to complete the projects under the “Build Build Build”, the government sought undertaking from China, creating easiest entry points for Chinese investments, and by Chinese workers in the Philippines.

The loan agreement entered into by the parties are often more onerous to the Philippines up to the extent that is totally disadvantageous to the people, especially our local labor force. For instance, under the loan agreement between the Chinese constructors and the Government for building the Kaliwa Dam, there exist a stipulation where the Chinese contractors can easily declare the Philippine in default of its obligation and the Philippines cannot invoke defense on the grounds of its sovereignty. Another example is the Chico River Pump Irrigation project whereby the Chinese contractors pays the Chinese workers \$58 per day in wages while the local workers themselves only get around \$6.75 per day on the same kind of job.¹⁸ Such stipulation under the loan agreement does not violate any provision under the Constitution, and neither the Labor Code, and the Revised Penal Code. There is nothing in the law which prohibits discrimination in wages based on race or nationality. The law only provides against the discrimination of wages based solely on sex, minority, or disability. Nevertheless, it is unjust on its face.

UNREGULATED POGOS: CAUSE OF THE INFLUX OF CHINESE WORKERS

The issuance of the Alien Working Permit issued by the DOLE and Special Working Permit issued by the Bureau of Immigration, as a general rule, apply only to those foreign workers with highly-specialized skills that the Filipino laborers are lacking. The permits are issued and valid for a period of three (3) years whereby the Foreign laborers do the job in case there are no local worker who can do the task.

Gambling is illegal in China and is opposed by their government. Hence, the Chinese nationals, in order to gamble, travel abroad. But with the emergence of online gambling,

¹⁸ Beltran, Michael. “Chinese Workers Flooding the Philippines Jeopardize Local Employment and Livelihood.” (The News Lens 12, August, 2019). <https://international.thenewslens.com/article/121991>

there is no need for them to travel. Gambling becomes one swipe away, they just simply log into the website and play.

The booming industry of online gambling paved the way for the Philippine Offshore Gambling Operations (POGO). It caters to all nationalities especially to Chinese online gamblers. According to the Philippine Amusement and Gaming Corporation (PAGCOR), tasked with regulating the gambling operations in the Philippines¹⁹, there are 57 authorized POGOs that are operating in the Philippines.²⁰

Most Chinese workers issued with Alien Working Permit or Special Work Permit work in various online gaming firms across the country. Labor Secretary Silvestre Bello III said that 35.9 percent of the Chinese workers with Alien Working Permit work under administrative and support services, the POGOs fall under this category.²¹ The job of Chinese POGO employees is usually to provide translation and Information Technology (IT) support, it is limited to clerical and desk jobs; while other job, such as webcam models are often performed by the Filipinos. There is nothing wrong with employing these Chinese workers in this line of work since many Filipino workers are not skilled in Chinese language in order to speak the language of the patrons. Meanwhile, the local workers are also lacking in numbers when it comes to IT support.

The problem arises when the PAGCOR fails to provide data on the concrete number of Chinese employees that are employed by the authorized POGOs operating in the Philippines. The reason for this, according to Offshore Gaming Senior Manager Victor Padilla Jr. in an interview conducted by Rappler, is because they are not issuing gaming employment licenses to POGO employees because its issuance is limited to casinos.²⁰ The undocumented data on the exact numbers of Chinese workers actually working in this industry posits problems such as the existence of illegal workers and possible evasion on taxes since even the Bureau of Internal Revenue (BIR) does not have data whether or not the operators are withholding taxes from its employees. Allowing these illegal workers not to be apprehended for overstaying or working without permit is

¹⁹ Executive Order No. 13

²⁰ No name. "3 Offshore Gaming Firms Close Shops on Tax Worries: PAGCOR Chief." (ABS-CBN News, 2 April 2019) <https://news.abs-cbn.com/business/04/02/19/3-offshore-gaming-firms-close-shop-on-tax-worries-pagcor-chief>.

²¹ Rey, Aika. "Government income and jobs for Filipino 'lost' to Chinese workers" (Rappler 21 February, 2019) <https://www.rappler.com/nation/224045-chinese-workers-influx-government-income-jobs-filipinos-lost>

²² Ibid.

akin to allowing the local workers to be robbed with their jobs and funds in their own country.

Aside from the existence the illegal workers in the POGO industry there have been sightings of Chinese workers employed as construction workers. By its nature, the construction industry is not included among those jobs contemplated under the Alien Working Permit and the Special Work Permits issued by the government. To allow the Chinese workers be preferred in construction works industry even if such is not under those job in need of “specialized-skills” contravenes the Constitutional provision on Social Justice with regards to the preference of Filipino labor. It is inequitable and harmful to the Filipino enterprise. However, even if these things are happening, the power of the DOLE is limited only to the imposition of fines. The statute did not provide them the power to deport these illegal workers. Furthermore, to allow the illegal workers to continue working in the Philippines makes the country more attractive to human traffickers. It is not only the Filipino laborers who are being disadvantaged for allowing the continued unregulated entry and stay of foreign workers, and thereby violating the right against slavery²² granted to the people by the Universal Declaration on Human Rights as well as the International Convention on Civil and Political Rights (ICCPR).

OTHER ISSUE: CHINESE WORKERS JACKING UP PRICES OF CONDOMINIUM RENTALS

The influx of Chinese nationals as a result of the “Build, Build, Build”, as well as the booming industry of the POGOs not only upended the local job market, but has also jacked up the prices of condominium rentals. The large number of Chinese nationals who migrated here in the Philippines by virtue of their work permits had also caused the inflation with regard to the prices of the properties such as in condominium rentals.

According to the report on Straits Times, “Condo rentals at the prime Manila Bay area, where many of the casinos and online gaming companies are headquartered, have risen by as much as 62 percent in the first six months of the year 2019. Property prices there now range from 45,700 pesos to 76,200 pesos per sq ft. The Chinese buyers made up almost 30 percent of

²³ UNIVERSAL DECLARATION ON HUMAN RIGHTS, Article 4 and INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS, Article 8.

residential reservation sales at SM Prime, the country's largest property developer, in the first quarter of 2018. and, the share of Chinese nationals who bought homes from Ayala Land, another real estate giant, jumped to almost half of all sales to foreign buyers, last year. The figure was 30 per cent in 2016.”²⁴ Locals have been complaining about the high rental rates of condominium place. The high rental rate puts the building owners at the advantage since the Chinese are willing to pay the elevated rental rates; but some locals are forced to stay in other places since they cannot afford the price increase.

Such influx of the Chinese nationals, although harmless at first glance, may be a threat to the national security. Justice Secretary Menardo Guevarra stated, "The influx of undocumented aliens, regardless of nationality, is a threat to national security, unless it appears that they are refugees seeking asylum in the Philippines."²⁵ The Chinese nationals dominating the building is a matter to worry about since we might not be able to guard their activities in our own country, giving a chance to these aliens to pursue activities that would put the people's right to be secured at stake.

CONCLUSION: THE CALL OF ACTION

The writer is not against the entry of these foreign workers especially when the Filipino labor force themselves are lacking, rather, the researcher is against the adverse effects of such entry with respect to the Filipinos being deprived of employment, livelihood opportunities and home; and their security being threatened.

The lack or absence of the statute which mandates governmental organization to sanction the abovementioned problems, as well as the lack or absence of laws to safeguard the protection of the Filipinos, especially the local workers, against discrimination in one's own country have paved the way for the inequalities that the Filipinos are experiencing now. The tolerance by the Government and its officials further aggravated the situation.

²⁴ Unite Betheena. "Labor groups: Illegal Chinese Workers in PH unfair for Filipinos" (The Straits Times, Manila 25 February 2019) <https://news.mb.com.ph/2019/02/25/labor-groups-illegal-chinese-workers-in-ph-unfair-for-filipinos/>

²⁵ Santos, Elmer. "Government officials see influx on Chinese Workers as Security Threat" (CNN Philippines 31 July 2019) <https://cnnphilippines.com/news/2019/7/31/influx-chinese-workers-philippines-security-threat.html>

As a final plea, the writer calls for both the legislative and executive department to provide and implement more proactive policies to cater for Filipino job securities. Specifically, probing the mass entry of Chinese or other Foreign workers and ensuring that they comply with the laws and do not place the locals of the Philippines at a disadvantaged position and in keeping with the Filipino-first policy. After all, it is the mandated by the Constitution, general principles under the International laws, and the International treaties where Philippines is a signatory to uphold the rights of the people enumerated therein, in this case, the right of the people to work.

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