



SENATE
S. No. 1466

20 MAY -4 P12:10

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Introduced by **SENATOR LEILA M. DE LIMA**

**AN ACT
REDEFINING THE CRIME OF ILLEGAL RECRUITMENT COMMITTED
BY A SYNDICATE, AMENDING FOR THE PURPOSE ARTICLE 38 OF
PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE
“LABOR CODE OF THE PHILIPPINES,” AS AMENDED AND SECTION 6
OF REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE “MIGRANT
WORKERS AND OVERSEAS FILIPINOS ACT OF 1995,” AS AMENDED**

EXPLANATORY NOTE

Illegal recruitment is a great menace to our society. It is one of the most detestable crimes a Filipino can commit to a fellow Filipino; a crime that has brought about sufferings to thousands of poor and innocent victims and their families. Their victims, who dreamed of landing high paying jobs abroad, instead find themselves financially and emotionally distressed. Some of them landed in jails as a consequence and others faced deaths in the arms and eyes of a foreign country with little to no help from their mother land.

Filipinos are also considered to be vulnerable to illegal international recruitment because of our fair grasp of the English language, ability to adapt and understand other languages, access to internet-based information and our “positive disposition” and “unassuming behavior which acquire less attention from police of airport authorities.”¹ The process of illegal recruitment is a grooming process and most are shown with various attractive offers such as free plane tickets and hotel accommodations by these recruiters. Said offers are increased depending on the success of the drug transaction. They also leave the country disguised as tourists which

¹ Hofilena, Chay F. Rappler. 1 May 2015. *Drug syndicates use social media for recruitment*. Retrieved from <https://www.rappler.com/newsbreak/in-depth/91706-drug-syndicates-social-media-recruitment>

make it hard to distinguish who are already victimized by recruitment crimes and who are simply wanting to travel abroad. Although these seem to be familiar tactics, illegal recruitment still persists in the Philippines.

Illegal recruitment is generally perpetrated by a syndicate, a term defined in our jurisdiction as a group of three or more persons formed with the intention of carrying out any or illegal transaction, enterprise or scheme.

Over the years, collective efforts against illegal recruitment has been one of the major activities of several government offices, particularly, the Department of Labor and Employment (DOLE), the Philippine Overseas and Employment Administration (POEA), the Philippine National Police (PNP) and the National Bureau of Investigation (NBI), and the Non-Government Organizations (NGO). They work hand in hand to eradicate illegal recruitment activities.

For its part, Congress enacted Republic Act No. 8042 which broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties, especially for those that constitute economic sabotage, i.e., Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate. Thus, at present, the crime of illegal recruitment is deemed committed by a syndicate, both under Art. 38 of PD 442 or the "Labor Code of the Philippines" and RA 8042 or the "Migrant Workers and Overseas Filipinos Act of 1995," if carried out by a group of three (3) or more persons conspiring or confederating with one another.

While the Philippines fully meets the minimum standards for the elimination of trafficking and maintains its status as Tier 1, it was reported that the government "did not vigorously investigate and prosecute officials allegedly involved in trafficking crimes, consistently criminally prosecute labor traffickers, or increase the availability of specialized protection and assistance services for child victims of sex trafficking or services for male victims." ² This statement urges the State to remain vigilant given that despite all these government campaigns and stiffer penalties imposed, this crime continues to thrive in our country and, every year, hundreds of victims still fall prey to illegal recruiters. Every year, we see and read stories of Filipinos being maltreated and left alone in foreign lands with no recourse for help. One of them is the incarcerated

² Trafficking in Persons. Department of State. United States of America. June 2019. Retrieved from <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

Mary Jane Veloso who continues to be at the brink of death to this date. Last 11 October 2019, the Supreme Court reversed the Court of Appeals' ruling and allowed her to testify via a deposition in a local trafficking case against her recruiters.³ Veloso's recruiters were likewise convicted for large-scale illegal recruitment, not in the case of Veloso, but in a case of three other Filipina complainants – Lorna Valino, Ana Marie Gonzales, and Jenalyn Paraiso. The recruiters were ordered to pay a fine of ₱2,000,000.00.⁴ This is perhaps just one of the most heart wrenching realities of some of our countrymen who fly abroad, dreaming of better futures for their families but instead finding themselves trapped and helpless in a foreign country.

Under the present set up, persons accused of illegal recruitment by a syndicate may evade the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) nor more than Five million pesos (₱5,000,000.00) as provided under R.A. No. 8042, as amended by R.A. No. 10022, by simply alleging that the victim failed to establish that the crime was carried out by a group of three (3) or more persons conspiring or confederating with one another.

Thus, this proposed bill seeks to amend the definition of syndicate by lowering the number of perpetrators from three to two persons to qualify the act as illegal recruitment by a syndicate. With this bill, our Overseas Filipino Workers (OFWs) shall have greater and mightier shield from injustice.

Early the passage of this bill is requested.


LEILA M. DE LIMA

³ Buan, Lian. Rappler. *Saved at the last minute: SC allows Mary Jane Veloso to testify local case*. 12 October 2019. Retrieved from <https://www.rappler.com/nation/242315-supreme-court-allows-mary-jane-veloso-testify-local-case>

⁴ CNN Philippines. *Court convicts Mary Jane Veloso's recruiters in separate case*. 30 January 2020. Retrieved from https://cnnphilippines.com/news/2020/1/30/Mary-Jane-Veloso-recruiters-large-scale-illegal-recruitment-separate-case.html?fbclid=IwAR2_0OwQX2n_jGWQ8DewA57GzxVJiTwX3_85xNNblxbBo3HFBdLodvEfvPbA



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“LABOR CODE OF THE PHILIPPINES,” AS AMENDED AND SECTION 6
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WORKERS AND OVERSEAS FILIPINOS ACT OF 1995,” AS AMENDED**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. Article 38 of Presidential Decree No. 442, otherwise known as the
2 “Labor Code of the Philippines,” as amended is hereby further amended to read as
3 follows:

4 “Article 38. Illegal Recruitment. – (a) Any recruitment
5 activities, including the prohibited practices enumerated under
6 Article 34 of this Code, to be undertaken by non- licensees or non-
7 holders of authority, shall be deemed illegal and punishable under
8 Article 39 of this Code. Department of Labor and Employment or any
9 enforcement officer may initiate complaints under this Article.

10 “(b) Illegal recruitment when committed by a syndicate or in
11 large scale shall be considered an offense involving economic
12 sabotage and shall be penalized in accordance with Article 39 hereof.

13 “Illegal recruitment is deemed committed by a syndicate if
14 carried out by a group of **TWO (2)** ~~{three-(3)}~~ or more persons
15 conspiring and/or confederating with one another in carrying out any
16 unlawful or illegal transaction, enterprise or scheme defined under
17 the first paragraph hereof. Illegal recruitment is deemed committed

1 in large scale if committed against three (3) or more persons
2 individually or as group."

3 "(c) The Secretary of Labor and Employment or his duly
4 authorized representatives shall have the power to cause the arrest
5 and detention of such non-licensee or non-holder of authority if after
6 investigation it is determined that his activities constitute a danger to
7 national security and public order or will lead to further exploitation
8 of job-seekers. The Secretary shall order the search of the office or
9 premises and seizure of documents, paraphernalia, properties and
10 other implements used in illegal recruitment activities and the closure
11 of companies, establishments and entities found to be engaged in the
12 recruitment of workers for overseas employment, without having
13 been licensed or authorized to do so."

14 Sec. 2. Section 6 of Republic Act No. 8042, otherwise known as the "Migrant
15 Workers and Overseas Filipinos Act of 1995," as amended by R.A. 10022, is hereby
16 further amended to read as follows:

17 "SEC. 6. *Definition.* - For purposes of this Act, illegal
18 recruitment shall mean any act of canvassing, enlisting, contracting,
19 transporting, utilizing, hiring, or procuring workers and includes
20 referring, contract services, promising or advertising for employment
21 abroad, whether for profit or not, when undertaken by non-licensee
22 or non-holder of authority contemplated under Article 13(f) of
23 Presidential Decree No. 142, as amended, otherwise known as the
24 Labor Code of the Philippines: Provided, That any such non-licensee
25 or non-holder who, in any manner, offers or promises for a fee
26 employment abroad to two or more persons shall be deemed so
27 engaged. It shall likewise include the following acts, whether
28 committed by any person, whether a non-licensee, non-holder,
29 licensee or holder of authority:

30 "(a) To charge or accept directly or indirectly any amount
31 greater than that specified in the schedule of allowable fees prescribed
32 by the Secretary of Labor and Employment, or to make a worker pay

1 or acknowledge any amount greater than that actually received by him
2 as a loan or advance;

3 x x x

4 "(m) Failure to reimburse expenses incurred by the worker in
5 connection with his documentation and processing for purposes of
6 deployment, in cases where the deployment does not actually take
7 place without the worker's fault. Illegal recruitment when committed
8 by a syndicate or in large scale shall be considered an offense
9 involving economic sabotage; and

10 "(n) To allow a non-Filipino citizen to head or manage a
11 licensed recruitment/manning agency.

12 "Illegal recruitment is deemed committed by a syndicate if
13 carried out by **TWO (2)** ~~three (3)~~ or more persons conspiring or
14 confederating with one another. It is deemed committed in large scale
15 if committed against three (3) or more persons individually or as a
16 group.

17 x x x

18 "The filing of an offense punishable under this Act shall be
19 without prejudice to the filing of cases punishable under other
20 existing laws, rules or regulations."

21 *Sec. 3. Separability Clause.* – If any provision or part hereof, is held invalid or
22 unconstitutional, the remainder of the law or the provision not otherwise affected shall
23 remain valid and subsisting.

24 *Sec. 4. Repealing Clause.* – Any law, presidential decree or issuance, executive
25 order, letter of instruction, administrative order, rule or regulation contrary to or is
26 inconsistent with the provision of this Act is hereby repealed, modified, or amended
27 accordingly.

1 Sec. 5. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
2 publication in the *Official Gazette* or in two (2) newspapers of general circulation.

Approved,