

SIXTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
Second Regular Session )



'15 APR 29 P2:15

SENATE  
S. No. **2739**

RECEIVED BY: *J*

Introduced by Senator Miriam Defensor Santiago

AN ACT  
EXPANDING THE USE OF THE LEGAL ASSISTANCE FUND, AMENDING FOR THE  
PURPOSE SECTION 26 OF REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS "THE  
MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995", AS AMENDED

EXPLANATORY NOTE

Republic Act No. 8042 (R.A. 8042), also known as the "Migrant Workers and Overseas Filipinos Act of 1995", was enacted to protect and promote the rights and welfare of Filipino migrant workers.

One of the policies it sets out under the Declaration of Policies in Section 2 restates the constitutional provision on the State's duty and responsibility to protect labor (Declaration of Principles and State Policies, Article 11, Section 18; and Social Justice and Human Rights, Article 13, Section 3), to wit:

(b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote all employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.

It further asserts in Section 2 (e) that:

(c) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any persons by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant

workers, in particular, documented or undocumented, are adequately protected and safeguarded.

In line with these policies, Sections 25-26 of the same Act put forth the establishment of a legal assistance fund for migrant workers:

SEC. 25. LEGAL ASSISTANCE FUND – There is hereby established a legal assistance fund for migrant workers, herein after referred to as Legal Assistance fund, in the amount of One hundred million pesos (P100,000,000.00)....

SEC. 26. USES OF THE LEGAL ASSISTANCE FUND. – The Legal Assistance Fund created under the preceding section shall be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress in accordance with the guidelines, criteria and procedures promulgated in accordance with Section 24 (a)<sup>1</sup> hereof. The expenditures to be charged against the Fund shall include the fees for the foreign lawyers to be hired by the Legal Assistance for Migrant Workers Affairs to represent migrant workers facing charges abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses.

The use of the legal assistance fund under Section 26 was further amended in Republic Act No. 10022:

Section 19. Section 26 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

SEC. 26. USES OF THE LEGAL ASSISTANCE FUND. – .... Provided, further, That the hiring of foreign legal counsels, when circumstances warrant

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<sup>1</sup> SEC. 24. LEGAL ASSISTANT FOR MIGRANT WORKERS AFFAIRS. - There is hereby created the position of Legal Assistant for Migrant Workers Affairs under the Department of Foreign Affairs who shall be primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers as well as overseas Filipinos in distress....

Among the functions and responsibilities of the aforesaid Legal Assistant are:

(a) To issue the guidelines, procedures and criteria for the provisions of legal assistance services to Filipino migrant workers;....

urgent action, shall be exempt from the coverage of Republic Act No. 9184 or the Government Procurement Act.

While the language of the law appears to have expanded the use of the legal assistance fund by exempting it from the coverage of procurement laws in urgent cases warranting the hiring of foreign legal counsels, the Omnibus Rules and Regulations Implementing R.A. No. 8042, as amended, seems to have limited its application by providing a specific set of instances wherein the Legal Assistance Fund may be accessed:

Sec. 3. Legal Assistance Fund. The Legal Assistance Fund created under the Act shall be used exclusively to provide legal services for Migrant Workers and Overseas Filipinos in distress in accordance with approved guidelines, criteria and procedures of the DFA. It shall be used *inter alia* for the following specific purposes:

(a) In the absence of a counsel *de officio* or court-appointed lawyer, payment of attorney's fees to foreign lawyers for their services in representing migrant workers facing criminal and labor cases abroad, or in filing cases against erring or abusive employers abroad, provided, that no amount shall be disbursed for the appeal of cases except when the penalty meted is life imprisonment or death or under meritorious circumstances as determined by the Undersecretary for Migrant Workers Affairs;....

The limiting language of the Omnibus Rules and Regulations makes the Legal Assistance Fund accessible only upon the absence of a *counsel de officio* or court-appointed lawyer or, at all instances, upon conviction and the penalty meted is life imprisonment or death. Other than these two instances, access to it is not mandatory and may only be under meritorious circumstances as determined by the Undersecretary for Migrant Workers Affairs. The absurdity of such guidelines has led to some of our OFWs facing criminal charges to either *a.)* entrust their fates in the hands of foreign *counsels de officio* or court-appointed lawyers who most likely cannot sufficiently communicate to the OFWs in distress the charges that the latter are facing in a language that the OFWs know; or, worse, *b.)* be left to fend off for themselves completely without competent legal

assistance at the time of their arrest all the way to trial proper – a crucial period where legal assistance is most needed.

The sooner distressed migrant workers get the legal assistance they need, the higher the chances that their rights are respected, rule of law is followed and true justice is dispensed. If the country is to continue to allow the export of our labor force, it is imperative that we do not abandon distressed OFWs to a life behind foreign bars or even death without giving them the competent and timely legal assistance they need and deserve.

  
MIRIAM DEFENSOR SANTIAGO  
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*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

1 AN ACT  
2 EXPANDING THE USE OF THE LEGAL ASSISTANCE FUND, AMENDING FOR THE  
3 PURPOSE SECTION 26 OF REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS "THE  
4 MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995", AS AMENDED

5 SECTION 1. Section 26 of Republic Act No. 8042, otherwise known as the "Migrant  
6 Workers and Overseas Filipinos Act of 1995", as amended by R.A. No. 10022, is hereby  
7 amended to read as follows:

8 SEC. 26. *Uses of the Legal Assistance Fund.* – The Legal Assistance Fund  
9 created under the preceding section shall be used exclusively to provide legal  
10 services to migrant workers and overseas Filipinos in distress in accordance with  
11 the guidelines, criteria and procedures promulgated in accordance with Section 24  
12 (a) hereof. The expenditures to be charged against the Fund shall include the fees  
13 for the foreign lawyers to be hired by the Legal Assistant for Migrant Workers  
14 Affairs to represent migrant workers facing charges or in filing cases against  
15 erring or abusive employers abroad, bail bonds to secure the temporary releases  
16 and other litigation expenses;

17 **PROVIDED, THAT THE LEGAL ASSISTANCE FUND SHALL AT**  
18 **ALL TIMES BE MADE AVAILABLE AT THE TIME OF THE ARREST**  
19 **OR CHARGING ALL THE WAY TO THE TRIAL PROPER AND AT ALL**  
20 **LEVELS OF APPEAL FOR MIGRANT WORKERS FACING CHARGES**  
21 **WITH THE PRESCRIBED PENALTY OF LIFE IMPRISONMENT OR**  
22 **DEATH;**

1           *Provided, That at the end of every year, the Department of Foreign Affairs*  
2           *shall include in its report to Congress, as provided for under Section 33 of this*  
3           *Act, the status of the Legal Assistance Fund, including the expenditures from the*  
4           *said fund duly audited by the Commission on Audit (COA);*

5           *Provided, further, That the hiring of foreign legal counsels, when*  
6           *circumstances warrant urgent action, shall be exempt from the coverage of*  
7           *Republic Act No. 9184 or the Government Procurement Act.”*

8           SECTION 2. *Repealing Clause.* - All laws, orders, issuances, rules and regulations or part  
9           thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified  
10          accordingly.

11          SECTION 3. *Effectivity Clause.* - This Act shall take effect within fifteen (15) days after  
12          its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation,  
13          whichever comes earlier.

Approved,

/rapt29April2015