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Exposing ENDO: Labor Abuse and Exploitation on Contractual Workers in the Philippines

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Abstract

Article 281 states that workers must be put on a probationary period for 6 months of employment before receiving benefits. ENDO-contracting is the situation where corporations hire workers on 5 to 6-month contracts to avoid paying their workers benefits. This research will be conducted using qualitative data from past research publications, court cases, and interviewing anti-ENDO advocates. The historical summary will explain the origins of this law and how it has progressed into common labor practice. ENDO- contracting disproportionately affects the low-wage workforce and deprives them of regular employee benefits. The lack of these benefits has created poor working conditions and low standards of living for contractual employees. This paper aims to educate readers on labor disparities in the Philippines and offer prospective solutions for policymakers and corporations.

Definitions

ENDO-contracting/contractualization refers to the situation where a company hires workers on contracts instead of being hired as regular employees with the intention to increase profits.

Martial Law- From 1972 to 1986, President Ferdinand Marcos dissolved Congress and assume both legislative and executive powers for himself to place the country under military control.

Contractual Employees refer to workers who are employed on contracts for a specific project or task for a duration of time.

Regular Employees or *Private Employees* are workers who are hired full-time and entitled to employee benefits and Social Security.

Probationary Employment is the status given to a new employee of a company while on their probationary period of 6 months. Probationary periods are trial periods to see the ability and competency of the employee.

Extra-judicial killings are the deliberate killing of a person without the lawful authority granted at a judicial proceeding.

Red-tagging refers to the blacklisting of individuals or organizations or publicly branding groups.

Introduction

As a dual citizen, I have noticed firsthand the little differences between Filipino and American cultures. If I go to a Starbucks in the U.S. every day for a year, I am most likely to be treated as a regular. In the Philippines, I have been going to the same Starbucks my whole life and I have never had my name spelled correctly on my drink. It was then I realized that it was always a different set of workers; no one seemed to work there for longer than a year. In 1972, Presidential Decree No. 442 executed Article 281 of the Philippines Labor Code which states that workers must be put on probationary employment for up to 6 months before they can receive social security, annual leaves, or health benefits. The Philippines Labor Code of 1974 is one of the original causes of the practice of *ENDO-contracting* or *contractualization*. In this paper, I will discuss the historical evolution and causes of ENDO-contracting, disparities among contract employees, labor unions, limitations on progress, and prospective solutions. This study will bring to light the issues of labor inequality in the Global South to bring to light the harsh realities of the proletariat experience in modern-day capitalism.

Background

Labor Types

In the Philippines, different types of employment have different labor benefits. *Regular employees* are hired full-time and receive benefits after a 6-month probationary period. Regular employees are entitled to statutory benefits such as paid annual leave, parental leave, worker's compensation insurance, and paid sick leave. Additionally, employers must pay a monthly contribution to the Social Security System that includes the benefits of maternity pay, sickness pay, pensions, disability benefits, salary loans, life insurance, and funeral grants. Regular and private employees are entitled to health insurance programs that are 3.5% of the employee's basic salary.¹ *Contract employees* have benefits but are not permanent employees. They must be hired to perform work for a specific project or task and are not entitled to any specific benefits. Any benefits are determined by the contractual agreement between the business and the contractor.²

Philippine Labor Since Martial Law

Article 281 was initiated during the Ferdinand Marcos Martial Law Order in 1974, introducing the concept of *probationary employment*. After the authoritarian rule in 1986, the Philippines transitioned to democracy while labor issues remained prominent. The provisions of the Marcos Labor Code formally restrict workers' collective rights and incite *tripartism* as a means of co-opting union leaders. Today, the Trade Union Congress of the Philippines is a legacy from the Marcos Era that is considered representative and a legacy union.³

¹ Torres (2016)

² Sigue (2019)

³ Hutchinson (2015)

The Filipino Proletariat Experience

In the Philippines, young adults are pressured by demographic, economic, and cultural expectations that compel them to enter the workforce. Filipino families continue to be overburdened by extending support to children, young adults, and the elderly.⁴ Filipino cultural attitudes have a large impact on their economic situation because children are trained to be nurturant and unselfish. Any display of anger is taken as a sign of disrespect. Parents are insistent on raising their children to share food and toys with other children or their siblings. Children are taught that any display of anger is taken as a sign of disrespect.⁵ As a child grows up and enters the workforce, they must remain unselfish because their earnings are intended to support the family. Therefore, there is limited autonomy over pursuing one's personal goals.

Methodology

I interviewed two individuals who were willing to speak on their knowledge of Philippine labor dynamics and specifically ENDO- contracting. These participants have all experienced and observed the impacts of this since the Martial Law Order under President Ferdinand Marcos. I asked these questions:

- I. Could you tell me about your experience with Philippines Labor Law and endo-contracting?
- II. Why was Article 281 of the labor law created in the first place? To whom was it intended to benefit?

⁴ Alipicio (2013)

⁵ Go (1994)

- III. What are the problems caused by ENDO-contracting and what are the possible solutions? If there are solutions, why haven't they been implemented?
- IV. Do you have any suggestions for court cases/ case studies I should investigate relating to Article 281 or ENDO- contracting? If so, could you provide an example?
- V. Do you have any colleagues that would be interested in providing information for my thesis?

These participants are both heavily against ENDO-contracting which may present a limitation on reliability since they are biased. Participant A has been practicing labor law for the past 23 years. He is an advocate against ENDO-contracting and has experience in ENDO court cases. Participant B, a former Engineering Supervisor at Unilever Philippines noticed ENDO-contracting firsthand.

History of the Philippines Labor Code

The Philippines Labor Code of 1974 and Article 281 allow corporations to hire workers on 6-month contracts that would give them some benefits but deprive them of long-term employee benefits.⁶ “The provision on probationary employment was created to address the need of employers to subject employees to a certain period of time to observe if they meet the standard need required for the job.”⁷ The article was intended to mitigate the problems corporations were having with the existing labor code. “If an employee steals, you cannot fire them right away. It must go through its code of conduct, verbal warnings, and written warnings.

⁶ Sigue (2019)

⁷ Participant A

A corporation would have to pay separation pay if they needed to decrease their workforce. Companies wanted to avoid that.”⁸ This provision is intended to benefit both parties as the employer can use the period to train and observe the employees while the worker learns how to do the job.⁹ Article 281 was implemented during martial law and remains valid today. It is the law that now condones ENDO-contracting.

Brent School v. Zamora

On February 5, 1990, a court case was held between an Athletic Director who was under a 5-year term was dismissed after the expiration of his contract and Brent School, a private K-12 institution. The Athletic Director maintained that he cannot be dismissed without a cause because he was already a regular employee, but the Supreme Court ruled that the contract was a valid contractual arrangement citing the Civil Code. According to the Supreme Court, fixed-term employment contracts are valid provided the following requisites concur.

- A. The agreement was entered into voluntarily without force or coercion and absent of any circumstances which would vitiate the employer’s consent.
- B. The employer and the employee dealt with each other on equal footing with no moral dominance by the employer over the employee.¹⁰

As a result, the Brent doctrine showed that contracts are valid as long as these guidelines are observed. “Employers had a field day and took advantage of the Brent doctrine.”¹¹

Contractualization in the Philippines has since been accelerating since the early 1990s. The amount of contract workers was 14-15% between the years 1990-1994 and increased to 21.1%

⁸ Participant B

⁹ Participant A

¹⁰ Brent School v. Zamora (1990)

¹¹ Participant A

by 1997.¹² As a result of the court decision, 5-month employment contracts evolved because anything beyond 6 months of probationary employment, made it difficult for the employer to justify that employees are indeed contractual employees. The problem is that the Brent School Doctrine remains valid law until today.

ENDO-contracting Disparities on Employees

19.99 million Filipinos lived below the poverty threshold in 2022.¹³ 2.37 million Filipinos are unemployed.¹⁴ ENDO-contracting disproportionately affects low-wage workers. According to the Department of Labor and Employment, between 2016 and 2018, 99,526 out of 900,000 establishments have been inspected and 2,610 have been suspected to be engaged in ENDO-contracting and 224,852 workers have been affected.¹⁵

Contractual workers have fewer rights than regular employees. Though this affects both men and women, female workers are disproportionately affected by gender bias in the workplace. Nursing working mothers are penalized by corporations for demanding 40-minute lactation breaks to express their milk at lactation stations in the workplace, for every eight hours of work.¹⁶ Contracts have accepted misogynistic and abusive standards such as using pregnancy as an excuse to fire a worker to avoid giving maternity benefits.¹⁷ Women workers also suffer from discrimination, sexual harassment, lack of sufficient toilet breaks, non-provision of breastfeeding rooms, and risks associated with the nature of work shifts such as commuting

¹² Cristobal et al. (2014)

¹³ Philippines Statistics Authority (2021)

¹⁴ Philippines Statistics Authority (2021)

¹⁵ Takumi (2018)

¹⁶ Manggagawa (2017)

¹⁷ Manggagawa (2017)

to/from work during the early hours of the morning.¹⁸ Furthermore, women face structural inequalities in the gender pay gap and equal opportunity for promotion. Women earn only 77% of what men earn which puts the gender pay gap at 23%. Additionally, 60% of workers are not entitled to maternity leave and 65% of retired women do not have regular pensions.¹⁹

In some ENDO-contracting scenarios, an employee is hired on several 5-month contracts.²⁰ Employers have been accused of requiring workers to reapply for the positions they hold.²¹ Though this is prohibited under the law, most ENDO victims tolerate abuse and exploitation because if they speak up, they will be fired. If an employee wants justice, they have limited access to a lawyer. A worker would have to wait for a final ruling which may or may not be in their favor, up to 5 years later.²² Typically, these cases do not work in favor of these workers because they sign the guidelines coded from the Labor Code when they are hired for these fixed-term contracts.

Pure Foods Corporation v. National Labor Relations Commission

On December 12, 1997, the court case *Pure Foods Corporation v. National Labor Relations Commission* determined whether private correspondents are regular employees of the petitioner company or mere contractual employees. The respondents were hired by Pure Foods to work for a fixed period of five months at its tuna cannery plant in General Santos City. After the expiration of their respective contracts of employment, their services were terminated. They executed a “Release and Quitclaim” stating that they had no claim against Pure Foods. Private respondents then filed before the NLRC-Sub-RAM, a complaint for illegal dismissal against the

¹⁸ Laguilles-Timong et al. (2020)

¹⁹ Purugganan (2022)

²⁰ Participant B (2023)

²¹ Von Spiegelfeld, M. (2018)

²² *Pure Foods Corporation v. National Labor Relations Commission* (1997)

petitioner. The Labor Arbiter dismissed the complaint on the ground that the private respondents were contractual workers and not regular employees, they could not avail of the law on security of tenure. The termination of their services by reason of the expiration of their contracts was, therefore, justified. The private respondents then appealed the decision. However, the NLRC rendered another decision holding that the private respondent and their co-complainants were regular employees. In the instant case, the private respondent's activities were considered performing activities that were necessary and desirable in the petitioner's business or trade. Contrary to the petitioner's submission, the private respondents could not be regarded as having been hired for a specific project or undertaking. It is declared in Article 280 of the labor code that an employee must be held for a specific project or undertaking for the duration of the contract. Since these workers were receiving, skinning, packaging, and casing up tuna- fish, their work was considered one of a regular employee. Therefore, the Supreme Court denounced the scheme of these repeated 5-month contracts to prevent contractual employees from attaining regularization.²³

In this case, the court first ruled that since these individuals were contractual employees and were rightfully terminated. The private respondents filed the case in 1991 and did not obtain justice until 1997.²⁴ Victims of ENDO are unmotivated to bring cases to court because obtaining justice is never guaranteed and the process takes several years. In the Philippines, 26% of courts are vacant of judges. As a result, existing courts must share judges with other courts, resulting in extremely slow trial procedures.²⁵

Threats to Labor Unions

²³ Pure Foods Corporation v. National Labor Relations Commission (1997)

²⁴ Pure Foods Corporation v. National Labor Relations Commission (1997)

²⁵ Conde (2016)

Labor Unions have begun to evolve to demand labor rights in the Philippines. However, labor leaders are attacked with vilification and red-tagging, assault on labor rights, shrinking democratic space, and extra-judicial *killings*. *Red-tagging* refers to the malicious blacklisting of individuals or organizations that criticize the actions of a government administration.²⁶ From 2001 to 2009, at least 95 workers, trade unionists, and worker advocates have been killed. In 2019, around 43 unionists have been killed since the beginning of the Duterte Administration. The Philippine affiliates of the Council of Global Unions have documented seven killings of trade unionists, sixteen cases of arrests and detention, twelve cases of forced disaffiliation, state interference with the right to self-organization, through threats, harassment, and intimidation, seventeen cases of red-tagging and two cases of other anti-union activities.²⁷ The violence that occurs limits labor union's effectiveness and makes collective bargaining difficult.

In the past 15 years, the increase in the proportion of contractual workers has been accompanied by shrinking union density rates and collective bargaining coverage in the Philippines. In 2000, there were 3.788 million union members from the public and private sectors. The amount of union members declined 105% percent to 1.945 million by 2014. The decline in union membership has been attributed to a combination of factors such as employers' labor cost-cutting strategies to attain competitiveness, technological innovations that shed labor, and the shrinking of the manufacturing sector. In a study to investigate the causes of labor union membership decline, a survey was conducted involving two groups of labor unions- one group from enterprise-based unions and the other from national federations. The results found that unions fear that these workers risk losing their jobs if they join a union. Many employers also

²⁶ Human Rights Watch (2022)

²⁷ (Council of Global Unions-Pilipinas. 2021)

restrict the unionization of these workers which causes difficulty to include these workers in a collective agreement.²⁸

Current Initiatives

SENTRO

SENTRO is a labor union that was formally established when it held its founding congress in August 2014. The organization is committed to taking social movement unionism to new heights by intensifying the organizing of industry and sectoral unions in the country. The founding members include unions in the automotive, metal, and metal-related industries, hotels, hospitals, beverages, broadcasting, electric power, and some others in the manufacturing sector. SENTRO vows to help strengthen international workers' solidarity and aligns with global union federations appropriate to their respective industries or sectors.²⁹ Labor groups advocate making direct hiring the norm and labor contracting an exception. This has had a positive effect on victims of ENDO by providing support and unification to protest the issue. However, the organization has been unsuccessful in advocating for effective policy changes.

Changes in Government Policy

During Rodrigo Duterte's presidential campaign, he promised to end ENDO- contracting and improve labor conditions. In his term as president, Duterte filed an Executive Order against ENDO- contracting. However, labor groups were disappointed since it did not reflect their negotiations with the Department of Labor and Employment. DOLE Department Order No. 174 fell short of expectations, as it did not end ENDO but rather provided rules under which ENDO

²⁸ Serrano, M. R. (2018)

²⁹ SENTRO (2014)

may be legally done, which past Department Orders have already provided for.³⁰ After the Executive Order was signed, 20 companies suspected of practicing ENDO were identified and urged to regularize employees on fixed contracts. Instead of fixing the problem, corporations laid off around 200,000 workers.³¹ The results of this bill only perpetrated negative effects on Filipino laborers. Duterte then certified the Security of Tenure Bill as urgent that deemed all employees as regular employees, except those defined under probationary, seasonal, or project employment.³² However, the law would make capital and management very difficult to adjust to a regularized workforce and would impose adverse consequences of higher unemployment rates for Filipino workers in the long term. Ultimately, the bill was vetoed after corporations said it was too difficult to follow. It has since then been refiled in Congress but is not scheduled for committee hearings.³³ The Philippines government has not applied the SENTRO initiative to their policies, therefore solutions have been unsuccessful.

Limitations on Progress

Philippines' Political Instability

The Philippine government has repeatedly introduced laws and policies that fail to reform ENDO- contracting. A law may close the loopholes that exploit employees but ultimately damage the economy. A study by the Philippine Institute for Development studies reported that ending contractualization altogether would be more expensive for companies by about 30 to 40 percent.³⁴ This would potentially lead to corporations limiting their production costs by reducing

³⁰ Sarmiento (2022)

³¹ Natividad (2020)

³² Natividad (2020)

³³ Sarmiento (2022)

³⁴ Natividad (2020)

their workforce. As a result, the Philippines would face high unemployment rates and higher barriers to entering the workforce. The dilemma is that, on the one hand, limiting government action to tightening enforcement might not be enough to eliminate ENDO, as promised by President Duterte. On the other hand, aggressive threats of government harassment, huge penalties, business closures, as well as the prohibition of all forms of temporary employment contracts to close “loopholes” could lead to unintended adverse consequences like a reduction in job opportunities and inclusive growth.³⁵

ENDO Victim Mentality

The labor dynamics of the Philippines have led to a normalization of hiring employees under 6-month contracts instead of hiring them as regular employees. 24.3% of laborers are contractual employees.³⁶ Though the law was initially intended to benefit both parties (the employer and the employee), it has resulted in employee exploitation. The poorest and least educated become contractual workers in the traditional industry sector.³⁷ Contractual employees have two mechanisms to cope with poor working conditions. They may quit their employment relationships and seek to improve their fortune elsewhere. Second, they may join a union and thereby acquire a collective voice.³⁸ The prevalent practice of contractualization has diminished their control over their working conditions and environment, as well as lowered job satisfaction and motivation.³⁹ As a result, workers who are disproportionately affected by ENDO tolerate the abuse. Filipino cultural attitudes manifest the idea of keeping quiet and hiding outbursts of anger

³⁵ Paqueo et al (2017).

³⁶ Natividad (2020)

³⁷ Sarmiento (2022)

³⁸ Cristobal et al (2014)

³⁹ Cristobal et al (2014)

because it is seen as disrespectful. This submissive behavior and fear of losing their job hinder the collective aggressive action necessary for labor reform.

Corporation Benefits and Risk

There has been limited progress because the government avoids holding corporations accountable. Employers would tend to practice ENDO if by doing so they would enjoy net savings for their enterprise. Net savings, in this case, is defined as the additional costs avoided for not regularizing a worker minus the expected cost of getting penalized for not complying with the law.⁴⁰ Corporations ignore ethical standards because it heightens their productivity and lowers their risk. It is complicated for corporations to fire regular employees because of the code of conduct that requires written notice that gives the employee a reasonable opportunity to explain his side, a hearing or conference that gives the employee the opportunity to respond to the charge and a written notice of termination served on the employee indicating that upon due consideration, grounds have been established to justify termination.⁴¹ This process takes time away from replacing the worker with a more productive one. Corporations do not have this risk if they hire employees under short-term contracts. Additionally, labor groups aim to normalize regular employment which would increase labor costs by 200 and 500 Philippines Pesos per month to cover the mandated Social Security premiums. Any increase in wages and benefits could translate to millions of pesos in expenses to the corporation, especially if it employs hundreds of employees.⁴² Correspondingly, the risk of hiring workers under contracts is less severe than hiring regular workers and risking corporate productivity.

⁴⁰ Paqueo et al (2017)

⁴¹ Caluva et al (2010)

⁴² Tolentino (2017)

Prospective Solutions

Corporate Accountability

First and foremost, legal action needs to be taken against the people who have made decisions to practice ENDO so that they can be held accountable. Corporations must be investigated and fined to pay reparations to every victim of ENDO within their company. This way, corporations face higher risks with hiring contractual employees rather than regular employees. The reparation costs must be more expensive than their prospective loss in profits from abolishing ENDO to incentivize corporations to normalize hiring regular employees. This regulation must be managed carefully with a tedious risk analysis to reduce negative spillover effects.

Adjusting Corporate Business Models

Policies must be passed to ensure that corporations who have been perpetrators of ENDO are consulted by business management professionals. When corporations have a new set of employees every 6 months, more time is wasted training these employees. When employees work past 6 months, they potentially become more productive over time. By providing career programs that assist workers to climb up the corporate ladder, individuals will be motivated to work harder so they can get a promotion. By having incentives for job security and promotion opportunities with increasing employee benefits, the overall efficiency of these corporations will increase. Corporations will face a higher cost of production which will limit profit in the short term. Consulting teams can adjust administration and programs within corporations to promote employee welfare and find solutions to minimize spending in other sectors to reduce their overall cost of production and increase efficiency. Philippine corporations can adopt strategies from sustainable corporations to reduce waste and energy costs. For example, Interface is a sustainable

carpet company that initiated QUEST Incentive Plan which was a program to eliminate waste. In 1994, waste in manufacturing alone cost \$70 million per year, while the company produced a sales volume of \$725,283 million. In the first year, 1995, the goal was a 10 percent reduction, then a 15 percent reduction in 1996, and a 25 percent reduction in 1997. Employees were offered bonus packages in accordance with how well they met these goals. As a result, the company saved \$50 million over three years.⁴³ Their goals were met because all employees were offered incentives that produced an inclusive and responsible corporate culture.⁴⁴ The 2021 Environmental, Social, and Governance Report highlights the importance of creating a connected culture. Employees are asked to complete a Global Culture and DEI Survey to analyze employee experience feedback and demographic data, establish DEI benchmarks and set ambitions for hiring and promotions, provide broader visibility internally into open roles across the organization, create processes that help meet hiring and promotion objectives, and continues to review and update policies to support fairness and inclusivity. By aligning the Philippines' corporate structure to Interface's business model, both employers and employees will be satisfied in the long run.

The Importance of Education

The harsh inequalities in the Philippines are reinforced by the lack of effective public services to mitigate them. Community, social, and citizen relations, instead, often take place in spaces defined by private interest.⁴⁵ Low-income Filipinos lack support from public services which explains why it is so easy for corporations to exploit them. The growth of contract labor is

⁴³ Dubose, J.R. (2000)

⁴⁴ Interface Environmental, Social and Governance (ESG) Report (2021)

⁴⁵ Cielo (2022)

reflected in the massive and chronic poverty of the country.⁴⁶ The socioeconomic condition of the Philippines imposes barriers to access education which results in an uneducated and low-skilled labor supply. Education is a social ladder connected to the labor market, where it plays a significant role in furnishing individuals with the basic knowledge and experience needed to participate in labor markets. Recent area and microeconomic studies in the Philippines show that education has a positive association with urban and rural income.⁴⁷ Therefore, education reform will produce a sufficient labor force that can improve corporate productivity and improve labor conditions. As mentioned earlier, the lack of unity results in the failure of labor unions and collective bargaining. Education contributes to social cohesion and mutual understanding among others and at the individual level. Therefore, enhancing basic education contributes not only to economic growth and poverty alleviation but also to social unity.

Legal Reform

The Philippines has been liberalized from Martial Law since 1981. There is absolutely no reason for Article 281, a previously authoritarian order to remain in effect today. Instead, the government must consider analyzing nations with a functional labor code to understand what policies can be applied to the Philippines. A new labor code must emphasize the importance of human rights and labor ethics as the framework for its labor system.

⁴⁶ Ofreneo, R. E. (2013)

⁴⁷ Okabe (2021)

Conclusion

Article 281 was initially created to benefit both corporations and employees because there were so many legal barriers when it comes to workers leaving or being fired. Initially, the law addressed the needs of employers to observe and train their workers to determine if they are productive enough to work for the company long term. Because of the difficulties of the termination process, hiring workers on contracts became a more desirable solution so they can be terminated once the contract expires. After the initiation of the Brent School Doctrine, corporations exploited this loophole in the labor laws to cut spending on providing benefits. As a result of Article 281 implementing the concept of probationary employment, there was a normalization of 5 to 6-month contracts.

Since 5 to 6-month contracts have become the norm for low-income workers, they sign off on these contracts because it is all they have access to. The long wait for court hearings imposes barriers on ENDO victims to take legal action. Additionally, speaking out against authority is seen as disrespectful and can damage one's family reputation. As a result, most cases are never brought to legal attention. If they are, an ENDO-contracting victim might wait up to 5 years for a final ruling. Labor Unions such as SENTRO have emerged to protest ENDO-contracting. However, labor union initiatives have shown to be unsuccessful because of declining membership, red-tagging and vilification, and the failure of the government to propose effective policies.

Policies to correct ENDO have raised concerns of damaging the Philippine economy and raising unemployment rates. Corporations will have to increase spending in their labor sector which leads to decreasing the workforce. The burden falls onto low-wage workers and places them closer to unemployment. Therefore, I propose solutions to investigate and hold

corporations accountable by fining reparation costs for each victim of ENDO within their company, adjusting business models to reduce spending in other sectors to balance the increased cost of labor, reforming education, and calling to amend a new labor code that promotes human rights. The most important takeaway of this research is to present the stark inequality of power between corporations and workers. ENDO-contracting is the result of ignorant business and government practices and can be corrected through ethical legal and socioeconomic reform.

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