

**Preparing for the Treaty Reporting
Process of the Convention on the
Protection of the Rights of All Migrant
Workers and Members of their Families**



It is with great honor and pleasure that the Commission on Human Rights presents this treaty series publication on the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families [UNCMW].

Acting on our constitutional mandates to monitor government compliance with international human rights treaties, and to provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, the Commission has joined hands with the Center for Migrant Advocacy-Philippines to constructively engage in the treaty reporting process under the UNCMW.

Currently, the Philippine Government has submitted its initial implementation report to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families last January 2008 and will be considered by the Committee in its 10th Session in April of 2009.

How will the Philippine Government fare *vis á vis* UNCMW? Will it live up to its 'global model' image in terms of promoting, protecting and fulfilling the human rights of Overseas Filipino Workers and their families? To enable all stakeholders to respond to these questions, we must revisit the UNCMW in terms of its relevance in the Philippine setting and language of its provisions. We aim to disseminate the state report, civil society submissions and the UN Committee's List of Issues in order to sustain the continuing constructive dialogue among all stakeholders to raise the plane of rights enjoyment by our prized heroes in the country, the Overseas Filipino Workers.

In essence, this publication is a companion, geared primarily for both Government and Civil Society actors' reference in obtaining a comprehensive account of the enjoyment of the rights of migrant workers and their families as enshrined in the Universal Declaration of Human Rights and elaborated in the Convention.

In this occasion of the 60th Anniversary of the Universal Declaration of Human Rights, the celebration of International Migrants' Day and Overseas Filipino Month, we share the ideal of raising the level of dialogue in preserving human dignity and justice for all migrant workers and their families.

LEILA M. DE LIMA
Chairperson

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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹

Adopted by General Assembly resolution 45/158

of 18 December 1990

Entered into force on 1 July 2003

PREAMBLE

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105),

Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

1 Source: http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are

frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

PART I : SCOPE AND DEFINITIONS

Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

Article 2

For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2.

(a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

(b) The term "seasonal worker" refers to a migrant worker whose work by its character

is dependent on seasonal conditions and is performed only during part of the year;

(c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;

(d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

(e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(g) The term "specified-employment worker" refers to a migrant worker:

(i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or,

(iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;

(h) The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

Article 3

The present Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons

sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

(f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

Article 4

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

Article 5

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

Article 6

For the purposes of the present Convention:

(a) The term "State of origin" means the State of which the person concerned is a national;

(b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term "State of transit," means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

PART II : NON-DISCRIMINATION WITH RESPECT TO RIGHTS

Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

PART III : HUMAN RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Article 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

Article 9

The right to life of migrant workers and members of their families shall be protected by law.

Article 10

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term "forced or compulsory labour" shall not include:
 - (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
 - (b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

Article 12

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.
2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputation of others;
- (b) For the protection of the national security of the States concerned or of public order (order public) or of public health or morals;
- (c) For the purpose of preventing any propaganda for war;
- (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Article 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

Article 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective

protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefore;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they

shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.

7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

Article 18

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:
 - (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
 - (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
 - (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
 - (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against themselves or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.
6. When a migrant worker or a member of his or her family has, by a final decision,

been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

Article 19

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

Article 20

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

Article 21

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.
2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.
3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.
4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.
5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.
6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.
7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.
8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.
9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

Article 23

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

Article 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

Article 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

Article 26

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

Article 29

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

Article 31

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.
2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

Article 32

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

Article 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:
 - (a) Their rights arising out of the present Convention;
 - (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.
2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.
3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

Article 34

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in part VI of the present Convention.

PART IV : OTHER RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION

Article 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

Article 38

1. States of employment shall make every effort to authorize migrant workers and members of the families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article 41

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

Article 42

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

Article 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

- (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
- (b) Access to vocational guidance and placement services;
- (c) Access to vocational training and retraining facilities and institutions;
- (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
- (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
- (f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;
- (g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

Article 44

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

Article 45

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

Article 46

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(a) Upon departure from the State of origin or State of habitual residence;

(b) Upon initial admission to the State of employment;

(c) Upon final departure from the State of employment;

(d) Upon final return to the State of origin or State of habitual residence.

Article 47

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.
2. States concerned shall take appropriate measures to facilitate such transfers.

Article 48

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:
 - (a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;
 - (b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.
2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

Article 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.
2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.
3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

Article 50

1. In the case of death of a migrant worker or dissolution of marriage, the State of

employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.

3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

Article 51

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

Article 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

Article 54

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

- (a) Protection against dismissal;
- (b) Unemployment benefits;
- (c) Access to public work schemes intended to combat unemployment;
- (d) Access to alternative employment in the event of loss of work or

termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

Article 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

Article 56

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.

2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

Part V: Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families

Article 57

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part m and, except as modified below, the rights set forth in part IV.

Article 58

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by

reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

Article 59

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

Article 60

Itinerant workers, as defined in article 2, paragraph 2 (A), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

Article 61

1. Project-tied workers, as defined in article 2, paragraph 2 (of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 45, paragraph I (b), and articles 52 to 55.

2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate

measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

Article 62

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

Article 63

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.

2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

PART VI : PROMOTION OF SOUND, EQUITABLE, HUMANE AND LAWFUL CONDITIONS CONNECTION WITH INTERNATIONAL MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES

Article 64

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members

of their families involved, as well as to the consequences of such migration for the communities concerned.

Article 65

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

- (a) The formulation and implementation of policies regarding such migration;
- (b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;
- (c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;
- (d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

Article 66

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

- (a) Public services or bodies of the State in which such operations take place;
- (b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;
- (c) A body established by virtue of a bilateral or multilateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

Article 67

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.
2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

- (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
- (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
- (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-a-vis their employer arising from employment shall not be impaired by these measures.

Article 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.
2. Whenever States Parties concerned consider the possibility of regularizing the

situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

Article 70

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

Article 71

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.
2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

PART VII : APPLICATION OF THE CONVENTION

Article 72

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.
2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal system. Each State Party may nominate one person from among its own nationals;

(b) Members shall be elected and shall serve in their personal capacity.
3. The initial election shall be held no later than six months after the date of the entry

into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 73

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

Article 74

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and organs of the United

Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

Article 75

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 76

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State

Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

(i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States

Parties concerned any views that it may consider relevant to the issue between them. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph I of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 77

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 78

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

PART VIII : GENERAL PROVISIONS

Article 79

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

Article 80

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

Article 81

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

- (a) The law or practice of a State Party; or
- (b) Any bilateral or multilateral treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

Article 82

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

Article 83

Each State Party to the present Convention undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 84

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

PART IX : FINAL PROVISIONS

Article 85

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 86

1. The present Convention shall be open for signature by all States. It is subject to ratification.
2. The present Convention shall be open to accession by any State.
3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 87

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

Article 88

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

Article 89

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification writing addressed to the Secretary-General of the United Nations.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.
3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is

already under consideration by the Committee prior to the date at which the denunciation becomes effective.

4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 90

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

Article 91

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 92

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date

of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

Article 93

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

New York, 18 December 1990.

Status of Ratification²

Last update: 1 October 2008

Entry into force: 1 July 2003, in accordance with article 87 (1).

Registration: 1 July 2003, No. 39481.

Status: Signatories: 30, Parties: 39.

Text: Doc. A/RES/45/158.

Note: The Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, was adopted by Resolution 45/158 [1](#) of 18 December 1990 at the forty-fifth session of the General Assembly of the United Nations. The Convention is open for signature by all States in accordance with its article 86 (1).

Participant	Signature, Succession to signature (d)	Ratification, Accession (a), Succession (d)
Albania		5 Jun 2007 a
Algeria	.	21 Apr 2005 a
Argentina	10 Aug 2004	23 Feb 2007
Azerbaijan	.	11 Jan 1999 a
Bangladesh	7 Oct 1998	.
Belize	.	14 Nov 2001 a
Benin	15 Sep 2005	.
Bolivia	.	16 Oct 2000 a
Bosnia and Herzegovina	.	13 Dec 1996 a
Burkina Faso	16 Nov 2001	26 Nov 2003
Cambodia	27 Sep 2004	.
Cape Verde	.	16 Sep 1997 a
Chile	24 Sep 1993	21 Mar 2005
Colombia	.	24 May 1995 a
Comoros	22 Sep 2000	.
Congo	29 Sep 2008	
Ecuador	.	5 Feb 2002 a
Egypt	.	19 Feb 1993 a
El Salvador	13 Sep 2002	14 Mar 2003

2 <http://www2.ohchr.org/english/bodies/ratification/13.htm>

Gabon	15 Dec 2004	.
Ghana	7 Sep 2000	7 Sep 2000
Guatemala	7 Sep 2000	14 Mar 2003
Guinea	.	7 Sep 2000 a
Guinea-Bissau	12 Sep 2000	.
Guyana	15 Sep 2005	.
Honduras	.	9 Aug 2005 a
Indonesia	22 Sep 2004	.
Jamaica	25 Sep 2008	25 Sep 2008
Kyrgyzstan	.	29 Sep 2003 a
Lesotho	24 Sep 2004	16 Sep 2005
Liberia	22 Sep 2004	.
Libyan Arab Jamahiriya	.	18 Jun 2004 a
Mali	.	5 Jun 2003 a
Mauritania	.	22 Jan 2007 a
Mexico	22 May 1991	8 Mar 1999
Montenegro 2	23 Oct 2006 d	.
Morocco	15 Aug 1991	21 Jun 1993
Nicaragua	.	26 Oct 2005 a
Paraguay	13 Sep 2000	23 Sep 2008
Peru	22 Sep 2004	14 Sep 2005
Philippines	15 Nov 1993	5 Jul 1995
Sao Tome and Principe	6 Sep 2000	.
Senegal	.	9 Jun 1999 a
Serbia	11 Nov 2004	.
Seychelles	.	15 Dec 1994 a
Sierra Leone	15 Sep 2000	.
Sri Lanka	.	11 Mar 1996 a
Syrian Arab Republic	.	2 Jun 2005 a
Tajikistan	7 Sep 2000	8 Jan 2002
Timor-Leste	.	30 Jan 2004 a
Togo	15 Nov 2001	.
Turkey	13 Jan 1999	27 Sep 2004
Uganda	.	14 Nov 1995 a
Uruguay	.	15 Feb 2001 a



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**COMPILATION OF GUIDELINES ON THE
FORM AND CONTENT
OF REPORTS TO BE SUBMITTED BY
STATES PARTIES TO THE
INTERNATIONAL HUMAN RIGHTS
TREATIES**

Addendum

This document contains the Provisional Guidelines regarding the form and contents of initial reports to be submitted by States parties under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

INTRODUCTION

1. Article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families provides that States parties undertake to submit to the Secretary General of the United Nations for consideration by the Committee a report on the measures they have taken to give effect to the provisions of the Convention. The Committee has agreed to the following guidelines in order to give indications to States parties on the form and contents of their initial reports.
2. Those States parties whose initial reports are already in preparation at the time of transmittal of these guidelines can complete and submit their report to the Committee even if the report has not been prepared in conformity with the present guidelines.

A. PART I. INFORMATION OF A GENERAL NATURE

3. This part should:

- a) Describe the constitutional, legislative, judicial and administrative framework governing the implementation of the Convention, and any bilateral, regional or multilateral agreements in the field of migration entered into by the reporting State party.
- b) Provide quantitative and qualitative information, as disaggregated as possible, on the characteristics and nature of the migration flows (immigration, transit and emigration) in which the State party concerned is involved.
- c) Describe the actual situation as regards the practical implementation of the Convention in the reporting State and indicate the circumstances affecting the fulfilment of the obligations of the reporting State under the Convention.
- d) Include information on the measures taken by the State party for the dissemination and promotion of the Convention and on the cooperation with civil society in order to promote and respect the rights contained in the Convention.

B. PART II. INFORMATION IN RELATION TO EACH OF THE ARTICLES OF THE CONVENTION

4. This part should provide specific information relating to the implementation by the reporting State of the Convention, in accordance with the sequences of the articles and their respective provisions. In order to facilitate the reporting procedure for the States parties, the information may be provided per clusters of articles as follows:

a) GENERAL PRINCIPLES:

- Articles 1(1), 7: non discrimination;

- Article 83: right to an effective remedy;
- Article 84: duty to implement the Convention.

b) PART III OF THE CONVENTION: Human rights of all migrant workers and members of their families:

- Article 8: Right to leave any country including own and to return.
- Articles 9, 10: Right to life; prohibition of torture; prohibition of inhuman or degrading treatment.
- Article 11: Prohibition of slavery and forced labour.
- Articles 12, 13 & 26: Freedom of opinion and expression; freedom of thought conscience and religion; right to join a trade union.
- Articles 14, 15: Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property.
- Article 16 (§1-4), 17 & 24: Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law.
- Articles 16 (§5-9), 18, 19: Right to procedural guarantees.
- Article 20: Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation.
- Articles 21, 22, 23: Protection from confiscation and/or destruction of ID and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection.
- Articles 25, 27, 28: Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical care.
- Articles 29, 30, 31: Right of a child of a migrant worker to a name, registration of birth and nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families.
- Articles 32, 33: Right to transfer in the state of origin their earnings, savings and personal belongings; right to be informed on the rights arising from the Convention and dissemination of information.

c) PART IV OF THE CONVENTION: other rights of migrant workers and their families who are documented or in a regular situation:

- Article 37: Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activity.
- Articles 38, 39: Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose the residence in the territory of the State of employment.
- Articles 40, 41, 42: Right to form associations and trade unions; right to participate in public affairs of their State of origin and to vote and be elected at election of that State; procedure and institutions taking care of

the needs of migrant workers and possible enjoyment of political rights in the State of employment.

- Articles 43, 54, 55: Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity.
- Article 44 & 50: Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage.
- Article 45 & 53: Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects and measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family.
- Articles 46, 47, 48: Exemption from import and export duties and taxes in respect of particular belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation principle.
- Articles 51, 52: Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity.
- Articles 49 & 56: Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion.

d) PART V OF THE CONVENTION: Provisions applicable to particular categories of migrant workers and members of their families

The State party should indicate the provisions or measures adopted for the particular categories of migrants indicated in articles 57 to 63 of the Convention, if any.

e) PART VI OF THE CONVENTION: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

The State party should indicate the measures taken to ensure promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families. In particular:

- Article 65: Establishment of appropriate services to deal with question concerning international migration of workers and members of their families.
- Article 66: Authorized operations and bodies for the recruitment of workers for employment in another State.
- Article 67: Measures regarding the orderly return of migrant workers and

members of their families to the State of origin, their resettlement and cultural reintegration.

- Article 68: Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation.
- Article 69: Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party and circumstances to take into account in case of regularization procedures.
- Article 70: Measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness safety, health and principles of human dignity.
- Article 71: Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death.

PRESENTATION OF THE REPORT

5. The report should be accompanied by sufficient copies (if possible in English, French or Spanish) of the principal legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted, however, that they will not be reproduced for general distribution with the report. It is desirable therefore that, when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it.

6. States parties may wish to present their initial report under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in conjunction with the Common Core Document referred to in document HRI/MC/2004/3 which contains draft guidelines for its preparation. This option has been encouraged by the third inter-committee meeting held in Geneva on 21-22 June 2004 (see document A/59/254, Report of the Sixteenth Meeting of the Chairpersons of the Human Rights Treaty Bodies).

7. Initial reports under article 73 of the Convention should be submitted in electronic form (on diskette, CD-rom or by electronic mail), accompanied by a printed paper copy. The report should not exceed 120 pages (A4-size paper, with 1.5 line spacing; and text of 12 points in the font Times New Roman).



COMPILATION OF RULES OF PROCEDURE ADOPTED BY HUMAN RIGHTS TREATY BODIES

Addendum

This document contains the Provisional Rules of Procedures of the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families and the amended version of Rule 65 of the Rules of Procedure of the Committee on the Elimination of Racial Discrimination.

CONTENTS

I. PROVISIONAL RULES OF PROCEDURE OF THE COMMITTEE
ON THE PROTECTION OF THE RIGHTS OFF ALL MIGRANT WORKERS
AND MEMBERS OF THEIR FAMILIES

II. RULE 65, RULES OF PROCEDURE OF THE COMMITTEE ON THE
ELIMINATION OF RACIAL DISCRIMINATION

Chapter 1

PROVISIONAL RULES OF PROCEDURE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

PART ONE. GENERAL RULES

I. SESSIONS

Meetings of the Committee

RULE 1

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as “the Committee”) shall hold meetings as may be required for the satisfactory performance of its functions in accordance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as “the Convention”).

Regular sessions

RULE 2

1. The Committee shall normally meet annually.
2. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General of the United Nations (hereinafter referred to as “the Secretary-General”), taking into account the calendar of conferences as approved by the General Assembly.

Place of sessions

RULE 3

Sessions of the Committee shall normally be held at the United Nations Office at Geneva. Another venue for a session may be designated by the Committee in consultation with the Secretary-General, taking into account the relevant rules of the United Nations.

Notification of opening date of sessions

RULE 4

The Secretary-General shall notify the members of the Committee of the date and place of the first meeting of each session as early as possible.

II. AGENDA

Provisional agenda

RULE 5

The provisional agenda of each session shall be prepared by the Secretary-General in consultation with the Chairperson of the Committee.

Adoption of the agenda

RULE 6

The first item on the provisional agenda of any session shall be the adoption of the agenda, unless the election of officers is required under Rule 12, in which case the elections shall be the first item on the provisional agenda.

Revision of the agenda

RULE 7

During a session, the Committee may revise the agenda and may, as appropriate, defer or delete items.

Transmission of the provisional agenda

RULE 8

The provisional agenda shall be transmitted to the members of the Committee by the Secretariat as early as possible.

III. MEMBERS OF THE COMMITTEE

Beginning of term of office

RULE 9

The term of office of the members of the Committee shall begin on 1 January of the year after the date of their election and, in accordance with article 73, paragraph 5 of the Convention, shall expire on 31 December four years later, except for those members elected at the first election and the first election following the entry into force of the Convention for the forty-first State party who was chosen by lot to serve for two years whose terms shall expire on 31 December two years after their election.

Filling of casual vacancies

RULE 10

1. In accordance with article 72, paragraph 6, of the Convention, if a member of the Committee dies or resigns or declares for any other cause that he or she can no longer perform his or her duties as a member of the Committee, the Secretary-General shall immediately request the State party that nominated the expert to appoint within two months another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

2. The Committee shall be asked to approve the appointment of the replacement member in writing when the Committee is not in session. The name and curriculum vitae of the expert so appointed shall be transmitted by the Secretary-General to the Committee for approval. Upon approval of the expert by the Committee, the Secretary-General shall notify the States parties of the name of the member of the Committee filling the casual vacancy.

3. Where the Committee declines to approve the appointment of a replacement under the first paragraph of this rule, the State party that nominated the expert shall be invited to appoint another expert from among its own nationals.

4. Except in the case of a vacancy arising from a member's death or disability, the Secretary-General shall act in accordance with the provisions of paragraph 1 of the present rule only after receiving, from the member concerned, a written declaration of his or her decision to cease to function as a member of the Committee.

Solemn declaration

RULE 11

Before assuming her/his duties after her/his first election, each member of the Committee shall make the following solemn declaration in open Committee:

“I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Protection of the Rights off All Migrant Workers and Members of Their Families honourably, faithfully, impartially and conscientiously.”

IV. OFFICERS

Election of officers

RULE 12

1. The Committee shall elect from among its members a Chairperson, three Vice-Chairpersons and a Rapporteur; these officers together shall constitute the Bureau of the Committee, which shall meet regularly.

Conduct of elections

RULE 13

1. Where there is only one candidate for election of one of its officers, the Committee may decide to elect that person by acclamation.

2. Where there are two or more candidates for election as one of its officers, or where the Committee otherwise decides to proceed with a ballot, the person who obtains a simple majority of the votes cast shall be elected.

3. If no single candidate receives a majority of the votes cast, the members of the Committee shall endeavour to reach a consensus before holding a further ballot.

4. Elections shall be held by secret ballot.

Term of office of elected officers

RULE 14

1. In accordance with article 75, paragraph 2, of the Convention, officers shall be elected for a term of two years.

2. No officer of the Committee may hold office if he or she ceases to be a member of the Committee.

Functions of Chairperson

RULE 15

1. The Chairperson shall perform the functions conferred upon her/him by the Committee and by these rules of procedures.

2. In exercising her/his functions as Chairperson, the Chairperson shall remain under the authority of the Committee.

Acting Chairperson

RULE 16

1. If, during a session, the Chairperson is unable to be present at a meeting or any part thereof, he or she shall designate another member of the Bureau, to act in her or his place.

2. Any member acting as Chairperson shall have the same powers and duties as the Chairperson.

Replacement of officers

RULE 17

If any of the officers of the Committee ceases to serve or declares her/his inability to continue serving as a member of the Committee or for any reason is no longer able to act as an officer, a new officer shall be elected for the unexpired term of her/his predecessor.

V. SECRETARIAT

Statements

RULE 18

The Secretary-General or her/his representative shall attend all meetings of the Committee and, subject to Rule 24 of the present rules, may make oral or written statements at those meetings.

Financial implications of proposals

RULE 19

Before any proposal which involves expenditures is approved by the Committee, the Secretary-General shall prepare and circulate to its members, as early as possible, a written estimate of the cost involved in the proposal. It shall be the duty of the Chairperson to draw the attention of members to this estimate and to invite discussions on it when the proposal is considered by the Committee.

VI. LANGUAGES

Official and working languages

RULE 20

1. Arabic, Chinese, English, French, Russian and Spanish shall be the official languages of the Committee.

2. All formal decisions of the Committee shall be issued in the official languages.

VII. PUBLIC AND PRIVATE MEETINGS

Public and private meetings

RULE 21

The meetings of the Committee shall be held in public, unless the Committee decides otherwise.

VIII. DISTRIBUTION OF REPORTS AND OTHER OFFICIAL DOCUMENTS OF THE COMMITTEE

Distribution of official documents

RULE 22

Documents of the Committee shall be documents for general distribution, unless the Committee decides otherwise.

IX. CONDUCT OF BUSINESS

Quorum

RULE 23

Six members of the Committee shall constitute a quorum for the adoption of formal

decisions. When the number of members of the Committee rises to 14 in accordance with article 72, paragraph 2(a), of the Convention, eight members of the Committee shall constitute a quorum.

Powers of the Chairperson

RULE 24

1. The Chairperson, in accordance with these rules, shall control the proceedings of the Committee and ensure the maintenance of order at its meetings. She or he shall ensure that the Committee proceeds with its work efficiently, including through limiting time allowed to speakers.
2. The Chairperson shall rule immediately on points of order, which may be raised by a member at any time during the discussion. A member raising a point of order may not speak on the substance of the matter under discussion.
3. The Chairperson may call a speaker to order if his or her remarks are not relevant to the subject under discussion.
4. The Chairperson may propose to the Committee to adjourn or close the debate, or to suspend or adjourn the meeting.
5. Any member may request that a decision regarding the conduct of the Committee's business be immediately put to the vote.

Adoption of decisions

RULE 25

1. The Committee shall attempt to reach all of its decisions by consensus. If consensus cannot be reached, decisions shall be put to a vote.
2. Bearing in mind paragraph 1 above, the Chairperson at any meeting may, and at the request of any member shall, put the proposal to a vote.

Voting

RULE 26

1. Each member of the Committee shall have one vote.
2. Any proposal or motion put to the vote shall be adopted by the Committee if it has the support of a simple majority of the members present and voting. For the purpose of these rules, "members present and voting" means all members casting an affirmative or negative vote; members who abstain from voting are considered as not voting

X. PARTICIPATION OF SPECIALIZED AGENCIES AND OTHER UNITED NATIONS BODIES, INTER-GOVERNMENTAL ORGANIZATIONS AND OTHER CONCERNED BODIES

International Labour Office

RULE 27

1. In accordance with article 74, paragraph 2, of the Convention, the Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by State parties concerned and information relevant to the consideration of these reports in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the Convention and falling within the sphere of competence of the International Labour Organization. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

2. In accordance with article 74, paragraph 5, of the Convention, the Committee shall invite the International Labour Office to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

Submission of information, documentation and written statements by other bodies

RULE 28

In accordance with article 74, paragraph 4, of the Convention, the Committee may invite specialized agencies and organs of the United Nations, as well as inter-governmental organizations and other concerned bodies (including national human rights institutions, nongovernmental organizations, and other bodies), to submit, for consideration by the Committee, written information on such matters dealt with in the Convention as fall within the scope of their activities.

XI. ANNUAL REPORT OF THE COMMITTEE

Annual report

RULE 29

1. In accordance with article 74, paragraph 7, of the Convention, the Committee shall submit an annual report on the implementation of the Convention to the General Assembly, containing its considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States parties.

2. In accordance with article 74, paragraph 8, of the Convention the Secretary-General shall transmit the annual reports of the Committee to the States parties to the present Convention, the Economic and Social Council, the Commission on Human Rights, the Director-General of the International Labour Office and other relevant organizations.

PART TWO. RULES RELATING TO THE FUNCTIONS OF THE COMMITTEE

XII. REPORTS FROM STATES PARTIES UNDER ARTICLE 73 OF THE CONVENTION

Submission of reports

RULE 30

The Committee may adopt guidelines regarding the form and contents of the reports to be submitted under article 73 of the Convention.

Consideration of reports

RULE 31

1. The Committee shall consider reports, submitted by States parties under article 73 of the Convention, in accordance with the procedure set out in the article 74 of the Convention.

2. The Committee may adopt more detailed rules of procedure relating to the submission and consideration of reports submitted by States parties under the Convention.

RULE 32

No member of the Committee shall participate in the examination of state party reports or the discussion and adoption of concluding observations if they involve the State party in respect of which she or he was elected to the Committee.

XIII. PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER ARTICLE 76 OF THE CONVENTION

Since the procedure under article 76 of the Convention has not yet entered into force, the Committee will consider rules relating to it at a later stage.

XIV. PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER ARTICLE 77 OF THE CONVENTION

Since the procedure under article 77 of the Convention has not yet entered into force, the Committee will consider rules relating to it at a later stage.

PART THREE. RULES RELATING TO INTERPRETATION

XV. INTERPRETATION

Headings

RULE 33

For the purpose of interpretation of these rules, the headings, which were inserted for reference purposes only, shall be disregarded.

Amendments

Rule 34

The rules of procedure may be amended by a decision of the Committee, without prejudice to the relevant provisions of the Convention.

Chapter 2

RULE 65, RULES OF PROCEDURE OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

XIV. ANNUAL REPORT OF THE COMMITTEE

Request for additional information

RULE 65

1. If the Committee decides to request an additional report or further information from a State party under the provisions of article 9, paragraph 1, of the Convention, it may indicate the manner as well as the time within which such additional report or further information shall be supplied and shall transmit its decision to the Secretary-General for communication, within two weeks, to the State party concerned.
2. In order to further the implementation of the above paragraph, the Committee shall appoint a coordinator for a period of two years. In fulfilling his/her tasks, the coordinator shall cooperate with country rapporteurs..

- - - - -

. This new paragraph to Rule 65 was adopted by the Committee on the Elimination of Racial Discrimination at its sixty-fourth session (23 February- 12 March 2004).

A GUIDE FOR NON-GOVERNMENT ORGANIZATIONS ON THE IMPLEMENTATION OF THE UN MIGRANT WORKERS' CONVENTION³

“More must be done to ensure the respect of the human rights of migrant workers and their families – be they regular or irregular, documented or undocumented. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families established for its ratifying countries the obligation to respect the core human rights and fundamental freedoms of migrant workers and members in their State of immigration. It is a vital part of efforts to combat exploitation of migrant workers and their families.”

Kofi Annan, Secretary General, United Nations
18 December 2003, International Migrant's Day

3 Excerpts from this publication are printed with permission from the IPMWC. The full publication is also available online at www.december18.net

About this Publication

A Guide for Non-Governmental Organisations on the Implementation of the UN Migrant Workers' Convention is a handbook prepared by December 18 for the International NGO Platform on the Migrant Workers' Convention (IPMWC).

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About the IPMWC

The International NGO Platform on the Migrant Workers' Convention is a coalition of non-governmental organisations that aims at facilitating the promotion, implementation and monitoring of the UN Migrant Workers' Convention.

The founding IPMWC member organisations are:

- Amnesty International (AI)
- Anti-Slavery International (ASI)
- December 18
- Fédération Internationale des Ligues des Droits de l'Homme (FIDH)
- Franciscans International (FI)
- Human Rights Watch (HRW)
- International Catholic Migration Commission (ICMC)
- International Movement Against All Forms of Discrimination and Racism (IMADR)
- Jesuit Refugee Service (JRS)
- Migrants Rights International (MRI)
- Organisation mondiale contre la torture (OMCT)
- Public Services International (PSI)
- World Council of Churches (WCC)

An updated list of members can be viewed on the following web page:

<http://www.december18.net/web/general/page.php?pageID=530&menuID=36&lang=EN#two>

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1. Introduction

This Guide aims at enabling national or regional non-governmental organisations (NGOs), coalitions and individual organisations to effectively use the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (hereinafter referred to as “the Convention”)⁴ as a tool for the promotion and protection of the rights of migrant workers and their families.

The Guide is produced by December 18 for the International NGO Platform on the Migrant Workers’ Convention (IPMWC) and is modelled partially along the lines of the Guide published by the NGO Group for the Convention on the Rights of the Child.

The Convention entered into force on the 1st of July 2003. Although the number of ratifications is still limited, the members of the IPMWC strongly feel that this is the right time for civil society to engage actively with the nascent UN Committee (which will oversee the implementation of the Convention); with the State Parties to the Convention; as well as with the other human rights Treaty Bodies.⁵

It is also crucial for the NGO sector to build and strengthen coalitions at all levels in order to enhance our impact and to learn from each other.⁶

The Treaty Bodies system is unique. Committees of independent experts monitor the implementation of the seven core international human rights treaties.⁷ They are created in accordance with the provisions of the respective treaty that they monitor. The reporting system provides a non-confrontational platform for in depth examination of States Parties performance in specific human rights areas. The flaws and weaknesses in the procedure should not offset the impact at the national level. Numerous administrative entities and ministries are involved in collecting data and statistics for the preparation of national reports on the implementation of human rights conventions. This provides governments with information they would not otherwise collect in such a focused and systematic manner. In doing so, strengths and weaknesses in national

4 This Convention is also referred to as the Migrant Workers’ Convention or the Migrants Rights’ Convention.

5 Treaty bodies are sometimes referred to as Treaty Monitoring Bodies.

6 For more information on ratification strategies see, for example: Achieving Dignity – Campaigner’s Handbook for the Migrants Rights Convention, Migrants Rights International (Geneva, November 2002). http://www.migrantwatch.org/pages/mri_resources/documents_manual_eng_doc.htm

7 <http://www.ohchr.org/english/law/index.htm> Two new conventions have been adopted recently: The Convention on the Rights of Persons with Disabilities was adopted by consensus by the Plenary of the General Assembly on 13 December 2006. Its Article 34 sets for the creation of a Committee on the Rights of Persons with Disabilities; The International Convention for the Protection of All Persons from Enforced Disappearances was adopted on 20 December 2006 by the General Assembly. Its Article 26 sets for the creation of a Committee on Enforced Disappearances. They will become the eighth and ninth core human rights conventions when they enter into force after 20 ratifications by States.

policies and practices are highlighted. Thus, the reporting process, in and of itself, is a powerful tool for awareness raising and a catalyst for change.

We hope that this Guide will be an easy-to-use and practical tool for NGOs interested in the implementation of the Convention. The format will allow for regular updates, based on inputs from members of the IPMWC and other interested stakeholders.⁸

2. Context for and Approaches to Protecting the Human Rights of Migrant Workers

Studies and reports continue to highlight the global character of international migration. Increasingly migrant workers - documented as well as undocumented – become victims of a broad range of human rights abuses by various actors and agencies during the migration process. This has been documented by the relevant United Nations (UN) human rights mechanisms as well as local and international NGOs. Protection of the human rights and dignity of these migrant workers and their families has therefore become a central concern of migrant workers organisations and human rights groups. The issue of migration has been brought to the top of the political agenda in many countries, with some governments and some media time and again employing a discriminatory and often xenophobic discourse to vilify and target migrants. Hundreds of organisations across the world are involved on a daily basis in the struggle for migrant workers rights, building coalitions with trade unions, religious groups, women's groups, research institutions, international/multilateral agencies and sometimes government agencies. The growing prominence of International Migrant's Day⁹ as well as the large number of conferences and publications dedicated to this subject demonstrate that migration is centre stage. Whilst this trend is generally positive, vigilance is needed to ensure that migration policies and practices are framed within a rights-based framework.

The Convention provides such a framework: a set of human rights standards against which the treatment of migrant workers and their families can be measured.¹⁰ However, the Convention is not the only available legal tool. Other UN Conventions/Covenants, including those adopted by the International Labour Organisation (ILO), regional human rights treaties and mechanisms and national legislation should be used by civil society organisations to protect the human rights of migrants.

Apart from using legal protection mechanisms, NGOs can and do use a whole range of other approaches in their work for promoting and protecting the rights of migrant workers and their families. However, it is not the purpose of this Guide to provide the user with such a range of advocacy tools. There are plenty of resources available, ranging from standard approaches to civil society advocacy, to specific examples of

8 Contributions and/or comments should be sent to ipmwc@december18.net

9 For an introduction to the Convention, see chapter 4 of this Guide.

10 For an introduction to the Convention, see chapter 4 of this Guide.

interventions based on the experiences of migrant rights organisations worldwide.¹¹

With its entry into force in 2003, a number of activities around the Convention shifted from a focus on campaigning for ratifications to one of implementation.¹² To this extent, civil society members of the International Steering Committee for the Global Campaign for the Ratification of the Convention on the Rights of Migrants started exploring how to ensure the effective implementation of the Convention. As a result, the International NGO Platform on the Migrant Workers' Convention (IPMWC) was formally launched on 19 April 2005, following a series of consultations and discussions. The task of the IPMWC is to facilitate the promotion, implementation and monitoring of the Convention.¹³

3. The International Framework for the Protection of the Human Rights of Migrants

International human rights law primarily applies to State Parties. However, there are opportunities for nonstate actors such as civil society organisations and individuals to actively engage with the process and use the international mechanisms to push for the respect of human rights based on the standards agreed by the international community and voluntarily assumed by states.¹⁴

3.1 UN Human Rights Conventions or Treaties

The entry into force of the UN Migrant Workers' Convention completes and reinforces a series of other provisions under the main human rights treaties. These are: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination (CERD), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). Together, these seven instruments form the core human rights treaties.¹⁵

11 The bibliography and directory section includes a list of useful web site addresses and other references which we believe will help the reader to explore this further.

12 The number of ratifications, however, remains very low. In particular, the absence of signatories from major Western countries of destination is of great concern. Campaigns for ratification such as the one launched by the European Platform for Migrant Workers' Rights are therefore absolutely necessary.

13 See Chapter 10

14 Two new conventions have been adopted recently: The Convention on the Rights of Persons with Disabilities was adopted by consensus by the Plenary of the General Assembly on 13 December 2006. Its Article 34 sets for the creation of a Committee on the Rights of Persons with Disabilities; The International Convention for the Protection of All Persons from Enforced Disappearances was adopted on 20 December 2006 by the General Assembly. Its Article 26 sets for the creation of a Committee on Enforced Disappearances. They will become the eighth and ninth core human rights conventions when they enter into force after 20 ratifications by States.

15 International human rights law does have its limits. Formal enforcement mechanisms, for

Whilst migrant workers are by the very nature of their position, non-nationals of the states in which they are employed, the human rights guaranteed under international human rights law do apply to them, unless it is specifically stated otherwise.¹⁶ It is therefore necessary for migrants' rights activists, interested in using the international human rights mechanisms, to make sure that they pay attention to the full range of international human rights instruments, since many of these include provisions applicable to the situation of migrant workers and members of their families.¹⁷

One of the stated objectives of the IPMWC is to encourage, facilitate and strengthen input and follow up to the work of the six other human rights Treaty Bodies, precisely because these offer additional opportunities for civil society interventions. Readers who are interested in doing so are encouraged to contact the IPMWC and its members for further information. The following publications provide good starting points:

- The International Catholic Migration Commission (ICMC) produced in 2004 a “do-it-yourself kit”, with a concise and cross-referenced collection of information comparing the various Treaty Monitoring Bodies.¹⁸
- In the 2nd edition of the UN Road Map, published by the Canadian Human Rights Foundation in 2004, the reader will find a list of potential human rights abuses, organised format to reflect the stages in the migration process. These abuses are then linked to relevant articles in the UN human rights instruments.¹⁹
- The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat, a joint study published by the International Catholic Migration Commission and December 18 (November 2004) gives a detailed overview of how these bodies are dealing with migrant workers issues.²⁰

example, can be inadequate. Although international human rights treaties are legally binding, it often remains difficult to ensure that states comply with their international obligations. Domestic remedies as well as regional human rights mechanisms may therefore provide a better avenue. In some cases, exhaustion of domestic remedies is a formal requirement. For more details see UN Road Map, published by the Canadian Human Rights Foundation.

16 See Human Rights Committee, General Comment No 15: “The position of aliens under the Covenant”; Committee on Economic, Social and Cultural Rights, General Comment 14: “The right to the highest attainable standard of health”; Committee on the Elimination of Racial Discrimination, General Recommendation 30: “Discrimination against non-citizens”

17 Also, the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) contain provisions designed to protect migrants. The ILO is the primary UN specialized agency for the protection of the labour rights of migrant workers. See the International Labour Migration section on the ILO website

18 See: Strengthening Protection of Migrant Workers and their Families with international Human Rights Treaties - A Do-it-yourself- Kit, Second Edition, April 2006, <http://www.icmc.net/e/publications/publications.htm>.

19 See: <http://www.chrf.ca/downloads/UN-Road-Map-2ed.zip>

20 See: <http://www.december18.net/web/docpapers/doc1940.doc>

4. Introduction to UN Human Rights Conventions

4.1 What is a 'convention'?

- Conventions, also known as “instruments” or “treaties” set out norms or standards, which are legally binding upon states that ratify or accede to those instruments, thereby creating an obligation for those states to comply with and implement the norms included in them.
- Some conventions set out human rights standards. These are commonly referred to as ‘human rights instruments’ or ‘human rights treaties’. The instruments are statements of the minimum legal principles upon which states are able to agree. They are the basic standards to which States should comply upon ratification or accession. States that are party to a treaty – also referred to as State Parties – must incorporate these fundamental human rights standards in their national law.

4.2 What does it mean for a state to 'sign' a convention?

- Signature constitutes a preliminary and general endorsement of a convention by the state in question. It is not a legally binding step, but is an indication that the state intends to undertake a careful examination of the treaty in good faith to determine its position towards it. While signing the Convention does not in any way commit the state to proceed to ratification, it does create an obligation to refrain from acts that would defeat the objectives of the Convention, or to take measures to undermine it.

4.3 What does it mean for a state to 'ratify' or to 'accede' to a convention?

- A state can become a Party either by ratification or accession. Both signify an agreement to be legally bound by the terms of the convention. Accession has exactly the same effects as ratification. Most commonly, a state in favour of a convention signs shortly after it has adopted the instrument and follows up with ratification when all procedures required by domestic law have been fulfilled. Governments that have not signed first can become States Parties through accession.

4.4 What formalities are involved in ratification and accession?

- Ratification and accession involve two steps.
 - Step One: The appropriate organ(s) of the state (whether it be the Parliament, the Senate, the Crown or the Head of State/Government) take(s) a formal decision to be a Party to the Convention in accordance with the relevant domestic constitutional procedures.
 - Step Two: As required by UN Human Rights conventions, the Government (normally the Ministry of Foreign Affairs) deposits the instrument of ratification or accession with the Secretary-General of the UN.

This means:

- a formal letter, under seal, referring to the relevant decision, signed by the responsible authority in the country is prepared. This is the instrument of ratification or accession; this document in original is submitted to the UN Office of Legal Affairs in New York. The date of receipt of the document is then registered as the date of ratification or accession for the country in question.

A convention usually becomes legally binding in the state after one to three months following the 1st day of the next month after reception of the instrument of ratification or accession. The exact period between the deposition of the instrument and the entry into force varies from convention to convention.

4.5 What precedes ratification or accession?

- The formal procedures vary in different countries when ratifying or acceding to an international treaty.

- In some countries, the Head of State/Government is constitutionally empowered to ratify or accede to a treaty of his or her own accord. In others, the agreement of the legislative authorities is required. In many cases, a combination of these two systems is used.

- Usually, before actually ratifying or acceding to a convention, a country undertakes a detailed review of the convention's requirements and gives careful consideration to the most appropriate and effective means to promote compliance, particularly in terms of amending national legislation. In some cases, this may also include consultations with the principal social partners in the society such as trade unions, employer groups and other NGOs.

4.6 Must compliance be assured before a state can ratify or accede to a convention?

- It is not obligatory for countries to adopt in advance all of the legislative and other measures foreseen by a convention before ratifying or acceding to it.

- Nevertheless, a country is expected to be in compliance with the convention's obligations within a reasonable time after ratification or accession. The question of how long is "reasonable" remains open to debate.

4.7 What is customary international law?

- Customary international law results when states follow certain practices generally and consistently out of a sense of legal obligation; when enough states have begun to behave as though something is law, it becomes law "by use".

- The UN General Assembly adopts a convention after an extensive process, usually with a large number of countries having been actively involved. Through its adoption a convention represents an international consensus on a particular issue.

- Although a convention becomes legally binding on Member states through the process of ratification, non-ratified Conventions can also be used as models for national legislation or as a point of reference to establish international consensus on issues addressed in the instrument.

4.8 What does it mean if a state has made a reservation?

A reservation is a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.

4.9 What are individual and inter-state complaints?

See Chapter 9.

4.10 Who monitors the implementation?

When a state ratifies one of the conventions, it assumes a legal obligation to implement the rights recognised in that treaty. But this is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. State Parties thus incur an additional obligation to submit regular reports to the monitoring committee set up under that treaty on how the rights are being implemented. Governments collect relevant information from their relevant ministries and administrative units in order to draft the initial and subsequent periodic reports. This exercise prompts them to take stock and analyse their legislation and practices in relation to a given treaty. In addition to the reporting procedure, some of the Treaty Bodies may perform additional monitoring functions through three other mechanisms: the inquiry procedure, the examination of inter-state complaints and the examination of individual complaints.

This system of human rights monitoring is common to most of the UN human rights treaties. It is operated by the Treaty Bodies.

They include the:

- Human Rights Committee (which monitors implementation of the ICCPR) (see chapter 11.2),
- Committee on Economic Social and Cultural Rights (see chapter 11.1),
- Committee on the Elimination of Racial Discrimination (see chapter 11.3),
- Committee on the Elimination of Discrimination against Women (see chapter 11.4),
- Committee against Torture (see chapter 11.5) and
- Committee on the Rights of the Child (see chapter 11.6),
- Committee on the Protection of the Rights of All Migrant Workers and Members

of Their Families (see chapter 5)

As clearly shown in the joint ICMC-December 18 study ‘The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat,’ each Treaty Body does refer to specific reporting on migrant rights. Therefore, it is important for civil society organisations to monitor the State Party obligations under each human rights treaty.

Contact address of the United Nations Office of Legal Affairs, Treaty Section
Treaty Section Telephone: +1 212 963 5047
Office of Legal Affairs Fax: +1 212 963 3693
United Nations E-mail (general): treaty@un.org
New York, NY 10017, USA Web site: <http://untreaty.un.org>

4.11 Treaty Bodies Reform

Since the establishment of the first Treaty Body, the Committee on the Elimination of Racial Discrimination (CERD), the system has grown to include seven Treaty Bodies, and will soon count an eighth and a ninth one. As the system has been growing, it has confronted challenges. These include delays in submission and/or consideration of reports, non-reporting, and duplication of reporting requirements among Treaty Bodies.

Improving the effectiveness of the human rights treaty system has been an ongoing interest of individual Treaty Bodies, the annual meeting of chairpersons of human rights Treaty Bodies, the Commission on Human Rights and the General Assembly. As part of on-going discussions on the Treaty Bodies’ reform initiated in 2002, the UN is presently examining draft guidelines on one expanded core document per country and smaller but focused treaty-specific targeted reports.

More recently, and based on suggestions made by the Secretary-General in two of his reports, *Strengthening the United Nations: an agenda for further change* and *In Larger Freedom: towards development, security and human rights for all* (A/59/2005), the High Commissioner, Louise Arbour, made a proposal for a Unified Standing Treaty Body that would replace the current seven core Human Rights Committees. This proposal was made to the Committees’ members in June 2005, and was later developed in a Concept Paper. The IPMWC is following these discussions through its member organisations and will adapt this NGO Guide to include any future changes.²¹

More information about the Treaty Bodies reform can be found on the following websites (in English only):

21 See: <http://www.ohchr.org/english/bodies/icm-mc/docs/HRI.MC.2006.2.pdf>.] It is currently under discussion.

Amnesty International
<http://web.amnesty.org/pages/treaty-reform-eng>

International Service for Human Rights – UN Reform
<http://www.ishr-sidh.ch/hrm/UNreform/contents.htm>

Office of the High Commissioner on Human Rights
<http://www.ohchr.org/english/bodies/treaty/reform.htm>
<http://www.ohchr.org/english/bodies/treaty/CCD.htm>

4.12 Annual Meeting of the Chairpersons of the Treaty Bodies and the Inter-Committee Meetings

The Chairpersons of the seven human rights Treaty Bodies meet annually to discuss their work and to consider ways to enhance the effectiveness of the Treaty Bodies system as a whole. Issues dealt with at these meetings have included, among other things, the streamlining and overall improvement of human rights reporting procedures, harmonisation of the committees' methods of work, follow-up to World Conferences, and financial issues. Since 2002, an Inter-Committee Meeting, consisting of the chairpersons plus two members of each of the committees, has been convened to focus even more on the harmonisation of working methods among the different Committees.

For further details, please see: <http://www.ohchr.org/english/bodies/icmc/index.htm>

5. The UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The human rights of migrant workers and relevant applicable standards have been consolidated in one international human rights treaty: the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as “the Convention”).²²

The Convention is the first legally binding international instrument to incorporate the full range of human rights – civil and political rights as well as economic, social and cultural rights for all migrant workers and members of their families. The UN's concern for the protection of migrant workers and their families commenced in earnest in 1972. In 1979, the UN General Assembly decided to create an open-ended Working Group to elaborate the Convention. It was drafted over the course of 10 years (1980-1990).

As for the other international human rights treaties, UN member states meeting at the General Assembly adopted the Convention on 18 December 1990 without a vote.

22 Also referred to as the Migrant Workers' Convention or the Migrants Rights' Convention.

While the Convention is primarily addressed to governments it also deals with the responsibilities of all members of society. Overall, its standards can be realised only when they are respected by everyone – members of the community, employers, all public and private institutions including schools, in services for the general public, in the courts and at all levels of government administration – and when each of these individuals carries out his or her unique role and function based on the respect of these standards.

5.1 Core elements of the Convention

This Guide is not meant to provide a detailed analysis of the Convention.²³ The importance of this Convention may, however, be highlighted by these six points:²⁴

- The Convention bridges a gap in protection due to the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment.²⁵
- Migrant Workers are viewed as more than labourers or economic entities.
- The Convention provides, for the first time, an international definition of the migrant worker, categories of migrant workers, and members of their families.
- Minimum universal human rights standards are guaranteed for all migrant workers, both documented and undocumented. Further rights are extended to documented migrant workers and members of their families, notably in the equality of treatment with nationals of states and in employment in a number of legal, political, economic, social and cultural areas.
- The Convention promotes inter-state collaboration to prevent and eliminate the exploitation of all migrant workers and members of their families, and sanctions for violence against migrant workers or members of their families in an irregular situation.
- The Convention is a tool to encourage States to harmonise their legislation with recognised international standards.

5.2 Status of Ratification of the Convention

An updated list of ratifications, accessions and signatures of the Convention can be viewed on the following web page:

<http://www.december18.net/web/general/page.php?pageID=79&menuID=36&l>

23 The following two publications should help you with your further reading: Handbook on Migrant Workers, Franciscans International (Geneva, 2004) and Achieving Dignity – Campaigner’s Handbook for the Migrants Rights Convention, Migrants Rights International (Geneva, 2002 – fourth printing).

24 Taken from a leaflet produced by the Steering Committee of the Global Campaign for the Ratification of the Convention on the Rights of Migrants.

25 See preamble of the Convention

ang=EN#eleven

5.3 Reservations

State Parties have the right to make reservations to the Convention. However, according to article 88 of the Convention, they may not exclude the application of any Part of it (the Convention consists of 9 Parts or chapters), or exclude any particular category of migrant workers from its application.

An updated list of reservations made by the State Parties can be viewed on the following web page:

<http://www.ohchr.org/english/countries/ratification/13.htm#reservations>

6. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

6.1 Introduction

For the purpose of monitoring the Convention, article 72 establishes a Committee – the Treaty Body of the Convention. Accordingly, after entry into force of the Convention, each State Party had the right to nominate one person from among its own nationals. Ten experts were elected on 11 December 2003, six months after the entry into force of the treaty.²⁶

At this first election, it was also decided that half the Committee members would only serve a two-year mandate. The remaining five would serve for a term of four years. This provision ensures continuity in the work of the Committee and avoids that all ten members are elected at the same time. Elections are held every second year; the first election was held in December 2005 and the next one is scheduled for December 2007.²⁷ Members of the Committee are eligible for re-election if re-nominated by the relevant States Parties.

6.2 Who can be a Committee Member?

Committee Members must be of high moral standing, impartial and have a recognized competence in the fields covered by the Convention. They serve in their personal capacity and must be nationals of one of the States Parties. Being nominated by a State Party, Committee Members are at times government officials or academics. However, the appointment of individuals who simultaneously hold positions in government is a conflict of interest, even if they do not participate in the consideration of their own government's periodic reports. The fact that a government official sits on a committee to scrutinise another government's human rights record can be enough to undermine the credibility of the committee. Women are poorly represented across the Treaty Bodies and States Parties should consider

26 At the time of entry into force, having less than 40 States Parties, the Committee can only consist of 10 experts. Four more experts must be elected as soon as the 41st ratification is received.

27 Terms: <http://www.ohchr.org/english/bodies/cmw/members.htm>

appointing individuals who meet the criteria contained in the treaty, and who have expertise in gender issues. NGOs can play a useful role in advising States Parties to refrain from nominating individuals holding government posts, and to put in place transparent and public processes for selection and nomination of independent experts at the national level.

The budget of the Treaty Bodies only covers the travel and accommodation costs of the Committee members; experts do not receive UN remuneration for their contribution. There is at least one three-week meeting a year (this can be split up in two meetings, see point 6.7), which takes place in Geneva, together with an annual meeting of all Treaty Body chairpersons. This does not include possible field missions. Without support from a university or government agency, the lack of funds is often an obstacle for the individual members to fully participate in the work of the Committee.

Furthermore, many people cannot afford to put themselves forward as candidates, because of the financial or time constraints. This issue should be discussed as part of the reform of the system, as this is an impediment to the independence of experts.

6.3 List of Present Committee Members²⁸

	Country	Until	Sector
Mr. Francisco ALBA	Mexico	2007	Academic
Mr. Jose Serrano BRILLANTES	Philippines	2009	Governmental
Mr. Francisco CARRIÓN-MENA	Ecuador	2007	Governmental
Ms. Ana Elizabeth CUBIAS MEDINA	El Salvador	2007	Governmental
Ms. Anamaría DIEGUEZ	Guatemala	2009	Governmental
Mr. Ahmed Hassan EL-BORAI	Egypt	2007	Academic
Mr. Abdelhamid EL JAMRI	Morocco	2007	Civil Society
Mr. Prasad KARIYAWASAM	Sri Lanka	2009	Governmental
Mr. Mehmet SEVIM	Turkey	2009	Governmental
Mr. Azad TAGHIZADE	Azerbaijan	2009	Academic

The Chairman of the Committee is Mr. Prasad KARIYAWASAM from Sri Lanka.²⁵

6.4 Working Languages

Arabic, Chinese, English, French, Russian and Spanish are the official languages of the United Nations. This Committee uses mainly English, French, Russian and Spanish, but most Committee members understand either English or French.

²⁸ CVs of all Committee members are available on the following site:
<http://www.ohchr.org/english/bodies/cmw/members.htm>

6.5 Conduct of Business

The Committee will usually reach its decisions by consensus. If consensus could not be reached, decisions would be put to a vote. Each member has one vote. Simple majority counts. Members abstaining from voting are considered as not voting. Six members of the Committee constitute a quorum for the adoption of formal decisions.

Information about the Committee's deliberations is available on the website of the OHCHR at <http://www.ohchr.org/english/bodies/cmw/index.htm>

6.6 Venue of Sessions

Sessions of the Committee are normally held at the Office of the High Commissioner for Human Rights at the Palais Wilson in Geneva.²⁹

6.7 Yearly Sessions

An annual three-week session was budgeted for. It was, however, agreed to hold two shorter sessions of five working days: one in April-May and one in October-December, which was approved by the 60th General Assembly.

At the April session of 2005, it was agreed to hold two one-week sessions in 2006: one in April- May and one in November-December. At the April session of 2006, it was decided by the Committee to request again two one-week sessions in 2007.

6.8 Role of the ILO

The Convention foresees a special role for the International Labour Organisation (ILO) in the work of the Committee and invites it to assist the Committee with relevant expertise and to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6.9 NGO Access to Committee Meetings

All Committee meetings are public, unless the Committee decides otherwise.³⁰ All NGOs are welcomed as observers to the public meetings. NGOs working on migrant rights issues related to the country under examination are invited, or can request the Committee Secretariat to be so, to the relevant private meetings (see point 8.5). To date, the agenda of the past Committee meetings always included a separate session with NGOs during which these organisations get the opportunity to contribute to the issues on the agenda. NGO representatives can also be invited as resource persons, for example to present a study they made that is useful to the work of the Committee.³¹

29 52 Rue de Paquis, CH-1201 Geneva 10, Switzerland

30 The practice so far has been that the sessions are private when the Committee hears additional information before drafting the list of issues and when it deliberates on lists of issues and recommendations. At such time as the Committee receives and considers individual communications, these will also be considered in private.

31 At the informal session in October 2004, ICMC and December 18 were invited to present the outcome of their joint study on the treatment of migration issues in all treaty bodies' conclusions since 1994.

In the April 2006 session, it has been decided by the Committee that NGOs would also be heard during the session of the final examination of the official report so that they can present updated information on the country under examination (one-hour meeting).

No official accreditation to the UN is necessary. However, non-UN accredited NGOs wishing to attend Committee meetings need to apply for a temporary accreditation from the Secretary of the Committee before the start of the opening session.

6.10. Secretariat for the Committee

Ms. Carla Edelenbos was designated as the UN Secretary for the Committee. She communicates in English, French and Spanish. Other staffs working with the Committee are Mr. Ugo Cedrangolo and Ms. Catherine Phuong. All communications should be addressed to:

E-mail: cedelenbos@ohchr.org and cmw@ohchr.org

Fax: 0041 22 917 90 22

Tel: 0041 22 917 92 41

Postal address: Office address:

United Nations Palais Wilson

Office of the High Commissioner for Human Rights 52 rue de Paquis

Secretary for the Committee on the Protection CH-1201 Geneva 10

of the Rights of All Migrant Workers and Switzerland

Members of Their Families

Palais des Nations

CH-1211 Geneva 10

Switzerland

6.11 Committee Meetings – Proceedings and Future Sessions

At the time of publishing this Guide, the Committee held three meetings:

Informal Meeting of the Committee

1-5 March 2004

Introduction of Committee members to the UN system, including the UN Treaty Bodies

First Meeting of the Committee

11-15 October 2004

Outcome: Adoption of Provisional Guidelines

Report of the meeting:

<http://www.ohchr.org/english/bodies/cmw/docs/CMW.C.2004.L.4.doc>

Second Meeting of the Committee
25-29 April 2005
Outcome: Adoption of the Working methods
Report of the meeting: :
<http://www.ohchr.org/english/bodies/cmw/cmws02.htm>

Third Meeting of the Committee
12-16 December 2005
Outcome: Adoption of the list of issues for Mali, adoption of a press release on the GCIM report and adoption of views on the Treaty Body reform process.
Report of the meeting:
http://www.ohchr.org/english/bodies/cmw/docs/cmw3rd_4th.doc

Fourth Meeting of the Committee
24-28 April 2006 Outcome: Adoption of concluding observations on Mali , adoption of a list of issues on Mexico, adoption of the CMW input to the High Level Dialogue and adoption of its annual report to the GA.
Report of the meeting:
http://www.ohchr.org/english/bodies/cmw/docs/cmw3rd_4th.doc

Fifth Meeting of the Committee
30 October-3 November 2006
Outcome: Adoption of concluding observations on Mexico, adoption of a list of issues on Egypt.
Report of the meeting: not yet available
Future sessions³² are scheduled for:
23-27 April 2007, November 2007, April-May 2008

7. Reporting Procedure by States Parties

Under Article 73 of the Convention, States Parties undertake to submit to the Committee a report on legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the Convention. State reports must also indicate factors and difficulties affecting the implementation of the Convention.

7.1 Provisional Guidelines

According to Article 73, the Committee shall decide any further guidelines for the form and content of the reports by States Parties. Provisional guidelines were discussed and agreed upon during the session of 11-15 October 2004.³³

States Parties can present their initial report in conjunction with the Common Core Document referred to in document HRI/MC/2004/3 that contains draft guidelines

32 <http://www.ohchr.org/english/bodies/cmw/sessions.htm>

33 See Annex 1.

for its preparation.³⁴

The present provisional guidelines consist of three parts:

1. Introduction
2. Request for information of general nature
3. Request for information in relation to each article of the Convention

Part two asks for a description of the constitutional, legislative, judicial and administrative framework governing the implementation of the Convention, and any bilateral, regional or multilateral agreements in the field of migration entered into by the reporting State Party.

Governments are requested to provide quantitative and qualitative information on the characteristics and nature of the migration flows (immigration, transit and emigration) in which the State Party concerned is involved.

They are also asked to describe the actual situation with regard to the practical implementation of the Convention in the reporting State. Governments must indicate the circumstances affecting the achievement of the obligations of the reporting State under the Convention.

The Committee requests governments to include information on the measures taken to promote and respect the rights contained in the Convention and cooperate with civil society in this regard.

7.2 Submission of the State Party Reports

The Committee has decided that initial reports under article 73 of the Convention should be submitted in electronic form (on diskette, CD-Rom or by electronic mail), accompanied by a printed-paper copy.³⁵

Sufficient copies of the principal legislative and other texts referred to in the report itself should accompany the report. All should – if possible – be written in English, French or Spanish. These documents will be made available to all ten members of the Committee but it should be noted that these would not be reproduced for general distribution with the report. It is therefore desirable that, when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it.

7.3 Terms for Submission

The initial report must be submitted within the first year after ratification or accession and thereafter every five years and whenever the Committee requests the State Party to do so. At times, it may take the States at least two to three years

34 See 4.11 and <http://www.ohchr.org/english/bodies/icm-mc/documents.htm>
<http://www.ohchr.org/english/bodies/icm-mc/documents-system.htm>

35 The report should not exceed 120 pages (A4-size paper, with 1.5 line spacing; and text of 12 points in the font Times New Roman).

before they deliver their first report and many governments do not adhere to the five-year reporting cycle. Good reporting will increase the chances for the Convention to develop into a useful tool, and ensure that the Committee builds a body of useful conclusions. Across the treaty system as a whole, several hundred reports are overdue. The Treaty Body reform process will address this issue. In the meantime, it is important for NGOs to push their governments to fulfil their obligations and produce comprehensive and timely reports.

The IPMWC maintains a timetable of submitted States Parties' Reports and the expected examination date by the Committee.

7.4 Examination of the States Parties' Reports

Upon completion of the report, the State Party sends it to the Secretariat of the Committee. At least three months are required for the translation into the official UN languages used by the Committee members. With the present Committee, all texts need to be made available in the following four languages: English, Spanish, French and Russian.

The Committee strives to examine the reports within one year of receipt, based on the order in which they were received.

Working methods

Upon receiving a report, the Committee seeks written information from other sources, such as nongovernmental and inter-governmental organisations, as foreseen by Article 74.4 of the Convention.

It conducts a preliminary review of the report and examines all available information, including that submitted by NGOs. Representatives of NGOs and some UN agencies are able to make oral presentations to the Committee at this time. The Committee then prepares a list of issues, which is submitted to the government in advance of the public consideration of the report and by way of beginning the process of dialogue.

Governments are requested to respond to these questions in writing before the plenary session. At the plenary session, the Committee continues this dialogue with representatives of the government who should be persons directly involved at the national level with the implementation of the Convention. The government representatives are invited to answer the questions and comments posted by Committee members in order to discuss more fully the actual situation in the country. At the end of the exchange, the Committee prepares concluding observations, which reflect the main points of the discussion and indicate concerns and issues that require specific follow-up at the national level.

Use of Rapporteurs

The Committee will indicate among its members two rapporteurs per report. At least one of the rapporteurs must know the language of the State Party presenting

its report. These two rapporteurs take the leading role on the review of the respective report.

7.5 How to get a Copy of the State Party Report?

States Parties commit themselves under Article 73 (4) of the Convention to “make their reports widely available to the public in their own countries.” These reports are posted on the website of the High Commissioner for Human Rights. NGOs (individual NGOs or national NGO coalitions) actively working for the protection of migrants’ rights and interested in preparing written information or submissions for the Committee should study the State Party report. The IPMWC will keep NGOs informed of the publication of reports.

7.6 Recommendations and Follow-up by the Committee

Treaty Body recommendations constitute an important tool with which to hold governments to account since they are based on legally binding treaties, and are legally binding documents themselves.

The Treaty Bodies issue their "recommendations" or "concluding observations" at the end of each session. The terminology varies, but for the purpose of this guide we will refer to them as "recommendations".

Usually, the recommendations follow this format:

- a short section identifying positive factors regarding the implementation of the treaty
- factors impeding implementation of the treaty
- matters of concern
- recommendations

In terms of quantity and quality, the recommendations can vary between Treaty Bodies - or even within the same Treaty Body on different countries. Factors that affect the quality of the recommendations include the level of detailed information received from the State Party, from NGOs and others (e.g. UN agencies) as well as the competence of individual members of the Treaty Body.

The Treaty Bodies have recently developed ways to look more closely at the steps taken by governments to implement their recommendations. They sometimes issue time bound recommendations, giving the state a deadline by which it must report on the implementation of particular recommendations. Also, the Office of the High Commissioner for Human Rights has created a dedicated mechanism, the Treaty Body Recommendations Unit, which will gather information on and help states with the implementation of Treaty Body recommendations at the national level.

However, the Treaty Bodies are hampered by a chronic lack of resources to perform this task consistently. Because of this, and because the Treaty Bodies have no enforcement mechanism, it is all the more important for governments to

be held to account by NGOs and others.

8. Submissions by NGOs

8.1 The Committee and Civil Society

The Migrant Workers' Convention does explicitly refer in Article 74.4, to the possibility for the Committee to “invite the specialized agencies and organs of the UN, as well as intergovernmental organisations and other concerned bodies to submit written information.” At the time of drafting of the Convention, the phrase “other concerned bodies” was used to include NGOs. The Committee has clearly underlined on several occasions the importance of input from civil society. Further, practice established by all other Treaty Bodies means that NGOs regularly contribute to the process.

The Committee has encouraged NGOs to submit reports, documentation and other information in order to provide Committee members with as comprehensive a picture as possible about the implementation of the Convention in a particular country.

The guidelines for the preparation of State reports explicitly ask States to include information on cooperation with civil society regarding promotion and respect for migrants' rights as described in the Convention. This approach to NGO participation and cooperation has been reflected in the Committee sessions to date.

The Committee welcomes written information from international, regional and national organisations, be they individual NGOs or national coalitions or NGO committees. The Committee also welcomed the creation of the IPMWC, which aims to support NGOs wishing to provide input to the Committee.

Why should NGOs give input to the Committee? NGOs, be it as practitioners, as service providers or as research and advocacy organisations, have first-hand experience of the situation of migrant workers and members of their families and of the nature of the human rights violations they suffer. Governments will inevitably be tempted to offset problem areas. Likewise, they often report on policies and measures adopted, but more rarely on actual practice and implementation.

8.2 NGO Contributions to the Reporting Process

In some countries, it may be possible for NGOs to hold consultations with their government in preparation of the State Party report. NGOs can write to their government and ask for information on the implementation of the Convention, offer to meet to solicit their views or to discuss the content of the draft report or, if appropriate and does not endanger their independence, agree to participate in a joint government- NGO review committee. In most countries however, NGOs do not have the possibility to contribute to the reporting process or their views are not taken into account satisfactorily. In addition, NGOs need to be cautious about

maintaining their independence. Reporting to the Committee is an obligation of the State Party. NGOs should not write the report for their government.

8.3 Drafting an NGO Submission

The Committee seeks specific, reliable, objective and synthesized information from NGOs in order to obtain a comprehensive and independent assessment of the progress and difficulties with the implementation of the Convention. In general, State reports tend to present/focus on the legislative framework and often do not include references to the specific context within which the implementation of the Convention takes place or the impact of the treaties in real terms. Furthermore, since many of the present States Parties to the Convention see themselves solely as sending countries, their reports may tend to be overly positive about their performance and present only one side of the picture. It will be difficult for the Committee to obtain a complete picture of the situation of migrants in the concerned State Party.

Hence, the consideration of NGO information is an essential element in the monitoring process. The Committee seeks information, which deals with all the different areas covered by the Convention in order to effectively monitor its implementation in a country. The Committee is also interested in receiving information on areas where the government report does not give sufficient information and on areas of concern not covered or, in the opinion of the NGOs, covered incorrectly or misleadingly.

Sometimes, NGO submissions prepared by coalitions rather than individual NGOs are more difficult to disregard or discredit and tend to lend greater legitimacy to information submitted on human rights violations. Governments can easily claim that the information submitted by one NGO should not be taken seriously because that particular NGO is allegedly politically motivated, linked to the opposition, not reliable or is basing its criticism on fantasy rather than fact. It is much more difficult for a government to discredit a report prepared by a group of NGOs. By working together, NGOs contribute information in their specific area of expertise e.g. labour rights, health, education, legal counsel, women and children issues, non-discrimination, detention.

In addition, a single comprehensive report allows Committee members who are under intense time pressure to familiarise themselves with the relevant issues by studying only one NGO document produced by, for example, twenty organisations, rather than twenty separate reports.

For the same reason, it is also opportune to use a similar framework presenting concrete issues and recommendations (see suggested framework further).

Factors to take into account in the preparation of an NGO Submission:

Only cover those issues and provisions you have expertise on.

Do not wait until the State Party has submitted its report to the Committee before establishing a structure/process to monitor the implementation of the Convention. Monitoring and analysis is an ongoing process that needs to start early.

It is important to publicise the NGO submission nationally in order to get domestic support for its recommendations and for subsequent implementation of the Committee recommendations.

In principle, the Committee considers State Party reports within a year following receipt by the Secretariat.

Due the translation requirements and the number of reports submitted, the Committee can decide to consider a report at a later session. NGO submissions should preferably be sent to the Committee immediately following the submission of the government report. However, NGOs must take time to include into their submission a reaction to the State Party report.

- It is worth thinking about having the submission translated into more than one of the working languages, preferably English, Spanish and French. As NGO submissions are not official UN documents, they do not benefit from UN translation services. Some key members of the Committee may not understand the language in which the briefing is written, and will not use the NGO information. An abstract or a summary of the submission in English is essential.
- Submissions should be no longer than 20 pages.
- Consider what media interest you can galvanize before and during the consideration of the report, particularly from national media.

8.4 Format Suggestions for NGO Submissions

NGOs should work in two phases:

Phase 1: Preparatory work – collection and compilation of relevant data

Phase 2: Analysis of the data and recommendations

PHASE 1

In order to set up an initial framework for monitoring the implementation, the IPMWC suggests that NGOs use a uniform schematic format for the comparison of the present legislation, international obligations and the provisions provided by the Convention. The written submission containing elaborations on implementation and recommendations is based on the schematic format.

The advantages of such a format are multiple:

- Uniform system
- Based on the requirements made by the Committee for the States Parties'

Reports, see Provisional Guidelines, Annex 1

- Easy to update, also in between reporting
- Easy access by the Committee and other stakeholders (governments and NGOs)
- Includes clear references to the analysis and recommendations
- Different groups with different expertise can work on different clusters of provisions
- Bringing together the different schematic formats provides a uniform picture of the situation of migrants' rights in one country
- Makes it possible to compare developments in different countries.

An example of the suggested format is available in Annex 4. The table consists of six columns.

1. A first column provides the number of the article.
2. The second column provides the text of the article of the Convention.
3. The third column provides references for the related national legislation and/ or relevant international obligations. If no legislation is available, indicate: "no legislation available".
4. The fourth column contains a +, - or = mark that stands for
= the national legislative provision is equal to the Convention + the national legislative provision provides a better protection than the Convention
= the national legislative provision provides less protection than the Convention
5. The fifth column provides a brief description of the actual situation/case study and synthesis of the analysis elaborated in the written submission.
6. The sixth column provides a reference to the recommendations elaborated in the written submission.

PHASE 2

Based on the suggested schematic format, one should describe the actual situation, make an analysis of the data and provide recommendations. Here it is important to be brief and to the point. Only cover situations you know best. Providing a specific case as an example is always helpful. Note that the Committee members might receive a lot of information: only the submissions showing expertise are likely to get their attention.

Provide the Committee with concrete recommendations. Do not ask your government for "a better protection of the human rights of migrant workers", but rather ask for specific, concrete changes, whether legislative and/or about the way the law is implemented.

Also mention successful examples of implementation.

Include very briefly information on the measures taken by the State Party for the dissemination and promotion of the Convention and on the cooperation with civil society in order to promote and respect the rights contained in the Convention.

The IPMWC strongly recommends that all NGOs providing submissions add a recommendation for their government to ratify Article 77.³⁶ Under this, a State Party may recognize the competence of the Committee to receive and consider communications (i.e. complaints relating to human rights violations) from or on behalf of individuals living in their jurisdiction. As no State Party has made a declaration under Article 77, NGOs should request it whenever possible.

8.5 Attendance at the Session

The Committee adopted the following working methods for interacting with NGOs during the April 2005 session:

- The NGOs are invited to submit written information at any time prior to the Committee's initial review of the State Party report.
- NGOs are welcomed to attend all public meetings as observers and to be involved in General Discussion Days. Non-UN accredited NGOs wishing to attend Committee meetings need to apply for a temporary accreditation from the Secretary of the Committee before the start of the opening session. NGOs working on migrant rights issues related to the country under examination can be invited, and can request the Committee Secretariat to be so, to the relevant private meetings.
- At each session, the Committee aims at having a special meeting with the NGOs at which they are given the opportunity to make oral presentations.

The main points to remember when preparing your submission are:

1. Follow the Committee guidelines¹ and suggested clusters of articles.
2. Use the suggested schematic format as a framework.
3. Only cover those issues and provisions you have expertise on.
4. Keep it brief and to the point.
5. Add a case if appropriate.
6. Submissions should be no longer than 20 pages.
7. Submissions should if possible be made available in English, French or Spanish.
8. An abstract or a summary of the submission in English is essential.
9. Make concrete recommendations for specific measures that the government can take to implement the provisions of the Migrant Workers' Convention.
10. Do not address the recommendations to the Committee but to the Government, e.g. "The government should"... and not "The Committee should call on the government to..."
11. Ask your government to make a declaration under Article 77.

The practice so far has been that NGOs - along with UN agencies and intergovernmental organisations – were invited to the private preparatory meeting on the list of issues. During the April 2006 session, the Committee decided that before the formal examination of the country report, it would have an extra one-

36 See 9.2 When comparing to other Treaty Bodies, dialogue on a State Party report tends to take place over the course of two 3-hour meetings, starting with a presentation by the government delegation, followed by a question-answer period between the Committee Members and the government officials. NGOs can attend these public meetings as observers.

hour public meeting with the NGOs. It gives the NGOs another opportunity to share their comments with the members of the Committee on the country under examination. NGOs can also send responses to the list of issues and include additional information.

This can be done up to maximum 3 weeks before the official examination of the government report. NGOs can also organise parallel events and have informal contacts with the Committee members during the sessions.

When comparing to other Treaty Bodies, dialogue on a State Party report tends to take place over the course of two 3-hour meetings, starting with a presentation by the government delegation, followed by a question-answer period between the Committee Members and the government officials. NGOs can attend these public meetings as observers.

8.6 Follow up of Concluding Observations or Recommendations

The Committee issues concluding observations or recommendations after it has considered a State Party report – these might be available shortly after the consideration or right at the end of the session. The recommendations usually identify positive factors, obstacles to effective implementation and recommendations for future action to ensure compliance. Some Treaty Bodies prioritise their concluding observations and ask the State Party to report back within a short time period on implementation of those, which are of greatest concern (usually within a year). These reports are then posted on the OHCHR website.³⁷ This practice is to be encouraged, as it maintains some level of dialogue between Committee and government, and should make implementation of the priority recommendations more rapid.

As the Treaty Bodies have no enforcement mechanism, NGOs and others can play an important role in holding governments to account for their implementation of both the treaties and the recommendations made by Treaty Bodies.

NGOs can participate in this process by taking the following steps:³⁸

- Providing media contacts with the concluding observations and offering to give interviews to explain what the government's treaty obligations are and what steps the Committee is now recommending
- Asking the government how it will incorporate the recommendations in its activities. Try to be specific about finding out how the government will proceed
- by asking e.g. if it will incorporate the recommendations into its ongoing plans; how it will decide on time-frames; how it will prioritise; whether it will consult with NGOs; whether it plans to make such consultation an ongoing dialogue;

37 See 9.2 When comparing to other Treaty Bodies, dialogue on a State Party report tends to take place over the course of two 3-hour meetings, starting with a presentation by the government delegation, followed by a question answer period between the Committee Members and the government officials. NGOs can attend these public meetings as observers.

38 See: http://web.amnesty.org/pages/treaty_ngofollowup

what money is being earmarked for implementation; and who in the government will be responsible for overseeing the implementation of the recommendations?

- Asking the government how it plans to disseminate the findings of the Treaty Body in relevant languages (if appropriate), within the relevant government bodies and to the general public.
- Trying to engage as many interested parties as possible at an early stage so that they can also ask questions. These parties might include your local Member of Parliament, professional associations (e.g. bar associations, trade unions) or representatives of national institutions.
- Keeping the Committee informed on steps taken by the government on implementation, including respecting the Committee's own deadline in the case of priority recommendations.

9. Additional Monitoring Mechanisms

In addition to the reporting procedure described above, the Committee may perform additional monitoring functions through two other mechanisms: the examination of inter-state complaints and the examination of individual complaints.

9.1 Examination of Inter-State Complaints

Under article 76 of the Convention, a State Party considering that another State Party is not fulfilling its treaty obligations, has the right to send it a communication to this effect. The State receiving the communication is obliged to respond. If within six months the matter is not resolved, either State may refer it to the Committee. It is the role of the Committee to find a solution acceptable to both States.

This article, however, requires a separate declaration by all concerned States Parties. Furthermore, before the inter-state complaints system for this Convention enters into force, it needs at least 10 ratifications. In 40 years time, it has never been used under any other treaty. To date, no State Party has ratified this article.

9.2 Examination of Individual Complaints

Under article 77, a State Party may recognise the competence of the Committee to receive and consider communications from or on behalf of individuals under their jurisdiction. If a State Party has recognised the competence of the Treaty Body to consider such complaints, any individual under its jurisdiction who claims to be a victim of a violation under the international human rights treaty may submit a complaint to the Treaty Body.

This article requires a separate declaration by the State Party. Before the individual complaints system enters into force, it needs at least 10 ratifications. To date, none of the States Parties has ratified this article. NGOs should continue to lobby their government to do so.

ANNEX 4 – Suggested Format for NGO Submissions

SUGGESTED FORMAT FOR NGO SUBMISSIONS

Complete in capital letters.

Date:
Organisation:
Full name of contact person:
Postal address:
Email address:
Website address:
Phone (include country codes):
Fax (include country codes):
Language of original text:
Translations available in (please mark with x):
. English
. Spanish
. French
. Other (please specify):

SUGGESTED FORMAT

Clusters as available in the Convention: See also enclosed Provisional Guidelines, annex 3.

PART I AND II: General principles

Articles 1(1), 7

Articles 83 and 84

PART III: Human rights of all migrant workers and members of their families (including undocumented migrant workers and members of their families)

Articles 8 to 33

PART IV: Other rights of migrant workers and their families who are documented or in a regular situation:

Articles 37 to 56

PART V: Provisions applicable to particular categories of migrant workers and members of their families

Articles 57 to 63

PART VI: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

Articles 65 to 71

How to fill out the format?

1. Only focus on the cluster(s) of provisions or parts of these clusters your

organisation or coalition has expertise on.

2. Fill out the format for these provisions by putting

- in the first column the number of the corresponding article or sub-article of the Convention

- in the second column the text of the article or sub-article of the Convention

- in the third column the references to the existing national legislation and/or international obligations

- in the fourth column a +, - or = mark that stands for:

= the national legislative provision is equal to the provision/s in the Convention

+ the national legislative provision provides a better protection than the provision/s in the Convention

- the national legislative provision provides less protection than the Convention

- in the fifth column the reference to the brief description of the actual situation/case and analysis elaborated in the written submission.

• in the sixth column the reference to the recommendations elaborated in the written submission.

SUMMARY IN PREPARATION FOR THE INITIAL NGO SUBMISSION

Example of a Completed Suggested Model

Mark

= : The national legislative provision is equal to the one in the Convention.

• : The national legislative provision goes further than the provision in the Convention.

• : The national legislative provision does not reach the provision in the Convention.
(see comments above)

No. Article	Text Convention	Reference to National Legislation and/or International Obligations	Mark	Reference to Brief Description of the actual situation/ case study and analysis elaborated in the written submission	Reference to the recommendations elaborated in the written submissions
III	Part III-Human Rights of All Migrants and Members of Their Families (including undocumented migrant workers)				
28	Migrant workers and members of their families shall have the right to receive medical care that is urgently required for the preservation of their	--	--	No legislation available with regard to undocumented migrant workers and members of their families. There is no law but a practice.	The government should provide legislation on this matter that takes into account the different medical needs of irregular

	life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused to them by reason of any irregularity with regard to stay or employment			See page....	migrant workers. See recommendation on page ...
29	Each child of a migrant worker shall have the right to a name, to registration of birth and a nationality	Law XX Article YYY	=	The law was first adopted in 1999. Implementation is still lacking in certain regions for specific groups of migrant workers. See page....	See recommendation page....
		Our government is a State party to the International Convention of the Rights of a Child. See article....			
	PART IV -Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families				
65.2	States parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and	Law XX dd XXXX	=	In most destination countries, the government has no accessible consular services. The staffs often have an inadequate knowledge	See recommendation page....

	other needs of migrant workers and members of their families			of the specific needs of migrant workers and their families. See page....	
71.1	States parties shall facilitate, whenever necessary the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families	No legislation available	-	Case see page....	See recommendation page ...
71.2	As regards compensation matters relating to the death of a migrant worker or a member of his/her family, States parties, as appropriate, shall provide assistance to the persons concerned with a view to the prompt settlement of such matters. Supplement to these matters shall be carried out on the basis of applicable law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.	No legislation available	-	See page	See page ...

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**COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES**

**CONSIDERATION OF REPORTS
SUBMITTED BY STATES PARTIES
UNDER ARTICLE 73 OF THE CONVENTION**

Initial reports of States parties due in 2004

PHILIPPINES^{*}

[25 January 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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LIST OF ACRONYMS

AEP	-	Alien Employment Permit
AFP	-	Armed Forces of the Philippines
ATN	-	Assistance to Nationals
BSP	-	Bangko Sentral ng Pilipinas
CA	-	Commonwealth Act
CFO	-	Commission on Filipinos Overseas
DepED	-	Department of Education
DFA	-	Department of Foreign Affairs
DILG	-	Department of Interior and Local Government
DOF	-	Department of Finance
DOLE	-	Department of Labor and Employment
DSWD	-	Department of Social Welfare and Development
EO	-	Executive Order
IACAT	-	Inter-Agency Council Against Trafficking
ILO	-	International Labor Organization
LAF	-	Legal Assistance Fund
LGUs	-	Local Government Units
NSB	-	National Seamen Board
OEDB	-	Overseas Employment Development Board
OFWs	-	Overseas Filipino Workers
OWWA	-	Overseas Workers Welfare Administration
OUMWA	-	Office of the Undersecretary for Migrant Workers Affairs
PCHR	-	Philippine Human Rights Commission
PHIC	-	Philippine Health Insurance Corporation
PD	-	Presidential Decree
PDOS	-	Pre-Departure Orientation Seminar
PHIC	-	Philippine Health Insurance Corporation
PNP	-	Philippine National Police
POEA	-	Philippine Overseas Employment Agency
PEOS	-	Pre-employment Orientation Seminar
PEOP	-	Pre-employment Orientation Program
POPCOM	-	Commission on Population
RA	-	Republic Act
SC	-	Supreme Court of the Philippines
SSS	-	Social Security System

INTRODUCTION

1. This initial report on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was prepared in accordance with the general guidelines adopted by the Committee on the Protection of All Migrant Workers and Members of their Families regarding the submission of initial implementation reports.
2. This report consists of two (2) parts. The first part provides information on the constitutional, legislative, judicial and administrative framework governing the implementation of the Convention as well as agreements in the field of migration entered into by the Philippines. Also, the first part provides information on the characteristics of the migration flow in the Philippines, and the actual situation as regards the practical implementation of the Convention. The second part, on the other hand, provides specific information relating to the implementation of the provisions of the Covenant.
3. The report was prepared by the Departments of Foreign Affairs (DFA), Labor and Employment (DOLE), Education (DepED), Social Welfare and Development (DSWD), Interior and Local Government (DILG), Philippine Overseas Employment Agency (POEA), Overseas Workers Welfare Administration (OWWA), Bureau of Immigration and Deportation (BID) and the Commission on Population (POPCOM).

PART 1: GENERAL INFORMATION

- A. Constitutional, legislative, judicial and administrative framework governing the implementation of the Convention
4. The Republic of the Philippines is a democratic and republican State with a presidential form of government.
5. Executive power is exercised by the President of the Philippines with the assistance of his Cabinet. The President is both the head of State and of the Government. The Vice-President assists the President in the performance of his duties and responsibilities and may also be appointed as the head of one of the executive departments.
6. Legislative power is vested in the Congress of the Philippines consisting of the Senate and the House of Representatives. The Senate is composed of 24 senators elected at large for a term of six (6) years. The House of Representatives is composed of members elected from legislative districts and through a party-list system.
7. Judicial power is vested in the Supreme Court of the Philippines and lower courts. The decisions of the Supreme Court are binding on all lower tribunals. The other courts under the Supreme Court are: the Court of Appeals composed of 51 Justices with one Presiding Justice; Regional Trial Courts; the Municipal Circuit Trial

Courts, which have jurisdiction over one or more municipalities grouped together; and the Municipal Trial Courts established in every city not forming part of the metropolitan area.

8. The democratic structure and processes are further enhanced by the constitutional provisions on social justice and human rights, protection of labor, women and children and the strengthening of local autonomy of the local government units (LGUs). Republic Act (RA) No. 6710, otherwise known as The Local Government Code of 1991, devolves the responsibility and budget for the delivery of basic services in agriculture, health, social welfare and development, public works, environment and natural resources to the LGUs.

9. At sub-national levels, governance is assumed by the local LGUs in each administrative area, i.e. province, city, municipality and barangay. Each local government office is composed of both elective and appointive officials. The elective officials include the head and vice-head in each administrative area, i.e. governor and vice-governor for the province, mayor and vice-mayor for the city and municipality, and chairman for the barangay; and the members of the councils, i.e. Sangguniang Panlalawigan (Provincial Council), Sangguniang Panlungsod (City Council) and Sangguniang Barangay (Village Council).

10. Legislative power at the sub-national levels is vested in the Sanggunian (Council) at each level. Each LGU has a development council which assists the Sanggunian in formulating their respective comprehensive and multi-sectoral development plans.

11. The basic constitutional statement on labor is Section 18, Article II of the Constitution which provides, “The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.”

12. Section 3, Article XIII elaborates on the provision in Art. II by specifying who are protected by the Constitution, what rights are guaranteed, and what positive measures the State should take in order to enhance the welfare of labor. More specifically, Sec. 3 states,

“The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of 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. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

“The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

“The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.”

13. Republic Act 2468, passed in 1915, was the first law adopted by the Philippine Legislature relating to overseas employment. This law essentially provided rules on license issuance, license fee and welfare regulations. It includes provisions which prohibit minors to work abroad without the parent’s written consent, prohibit the recruitment of non-Christians for exhibition or display and provide for transportation for returning workers who are physically unfit or have finished serving the contract. The law became the basis of the Government’s policy on overseas employment from 1915 up to the advent of the Labor Code of the Philippines.

14. The Labor Code of the Philippines was signed into law on 1 May 1974 as Presidential Decree (PD) No. 442. The Labor Code consolidated the then 60 scattered existing pieces of legislation and reoriented these laws to the needs of economic development and justice. Books I to IV of the Code deal largely with labor standards while Books V to VI cover labor relations. Labor standards law is that set of laws which sets out the minimum terms, conditions and benefits of employment that employers must provide or comply with and to which employees are entitled as a matter of legal rights. Labor relations law, on the other hand, is that which defines the status, rights and duties, and the institutional mechanisms, that govern the individual and collective interactions of employers, employees or their representatives.

15. The seven (7) basic principles which permeate the entire composition of the Labor Code are:

- Labor relations must be made both responsive and responsible to national development;
- Labor laws or labor relations during a period of national emergency must substitute rationality for confrontation; therefore, strikes, or lock-outs must give way to rational process which is arbitration;
- Laggard justice in the labor field is injurious to the workers, the employers and the public; labor justice can be made expeditious without sacrificing due process;

- Manpower development and employment must be regarded as a major dimension of labor policy, for there can be no real equality of bargaining power under conditions of severe mass unemployment;
- There is a global labor market available to qualified Filipinos, especially those who are unemployed or whose employment is tantamount to unemployment because of their very little earnings;
- Labor laws must command adequate resources and acquire capable machinery for effective and sustained implementation, otherwise, they may breed resentment not only of the workers but also of the employers. When labor laws cannot be enforced, both the employers and the workers are penalized, and only a corrupt few – those who are in charge of implementation – may get the reward they do not deserve; and
- There should be popular participation in national policy-making through what is now called tripartism.

16. The Labor Code provided for the creation of the Overseas Employment Development Board (OEDB) and the National Seamen Board (NSB) to implement a more systematic deployment of land-based and sea-based workers to other countries. PD 442 initially aimed at giving the government complete control of the overseas employment program.

17. In the early 1980s, to cope with the great demand for workers in the Middle East, the Government was forced to revive private sector participation in the recruitment and placement of overseas Filipino workers (OFWs). As such, PD 1412 was passed into law.

18. In 1982, Executive Order (EO) No. 797 was passed to streamline operations in the overseas employment program. The OEDB, NSB and the overseas employment program of the Bureau of Employment Services were united in a single structure – the POEA. In 1987, EO 247 was signed into law reorganizing the POEA.

19. The POEA is the government agency responsible for processing workers' contracts and pre-deployment checks. It primarily controls, monitors and regulates the operation of private recruitment agencies. As the government agency responsible for optimizing the benefits of the country's overseas employment program, the POEA's mission is "to ensure decent and productive employment for OFWs."

20. The POEA has overall claims arising out of or by virtue of any law or contract involving Filipino workers.

21. It also has the power to impose restrictions and regulations on recruitment and placement of workers. An example in point is the Supreme Court decision in *Philippine Association of Service Exporters vs. Drilon* (30 June 1988, 163 SCRA

386), where the Court upheld the validity of DOLE Order No. 1, series of 1988, temporarily suspending the deployment of female domestic workers abroad. DOLE Order No. 1, s. 1988, was assailed for discrimination against female workers.

22. The Supreme Court, in upholding the validity of the questioned issuance, said,

“There is no question that Department Order No. 1 applies only to ‘female contract workers,’ but it does not thereby make an undue discrimination between the sexes. It is well-settled that ‘equality before the law’ under the Constitution does not import a perfect identity of rights among all men and women. It admits of classifications, provided that (1) such classifications rest on substantial distinction; (2) they are germane to the purposes of the law; (3) they are not confined to existing conditions; and (4) they apply equally to all members of the same class. The Court is satisfied that the classifications made – the preference for female workers – rests on substantial distinctions.

‘The same, however, cannot be said of our male workers. In the first place, there is no evidence that, except for isolated instances, our men abroad have been afflicted with an identical predicament x x x x What the Court is saying is that it was largely a matter of evidence that women domestic workers are being ill-treated abroad in massive instances and not upon some fanciful or arbitrary yardstick that the Government acted in this case.’”

23. Although the Labor Code contains most of the Philippine labor legislations, there are other sets of law touching on the subject of employment.

24. The Civil Code describes the nature of labor-management relations. Thus, Art. 1700 states,

“The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.”

Article 1701, on the other hand, states,

“Neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public.”

Lastly, Art. 1703 of the Civil Code states,

“No contract which practically amounts to involuntary servitude, under any guise whatsoever, shall be valid.”

25. Article 289 of the RA 3815, also known as The Revised Penal Code (RPC),

punishes the use of violence or threats by either employer or employee. It states,

“The penalty of *arresto mayor* and a fine not exceeding P300 pesos shall be imposed upon any person who, for the purpose of organizing, maintaining or preventing coalitions of capital or labor, strike of laborers or lockout of employers, shall employ violence or threats in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work, if the act shall not constitute a more serious offense in accordance with the provisions of this Code.”

26. Other major pieces of legislation related to the subject of employment are as follows –

- EO 180 series of 1987 governing the right of public sector employees to organize.
- RA 6715 or the 1989 New Labor Relations Law.
- RA 6727 or the 1989 Wage Rationalization Act.
- RA 6971 or the 1990 Productivity Incentives Act.
- RA 7641 or the 1992 New Retirement Law.
- RA 7655 prescribing a minimum wage for house helpers.
- RA 7699 which mandates the limited portability scheme in Social Security Insurance Systems.
- RA 7877 or the 1995 Anti-Sexual Harassment Law.
- RA 7875 or the 1995 National Health Insurance Act.
- Department Order No. 26 series of 1995 providing for integrated guidelines in accessing the funds of the workers organization and development program.
- RA 8187 or the 1996 Paternity Leave Act.
- RA 8291 or the 1997 New Government Service Insurance System Act.
- RA 8282 or the 1997 New Social Security Act.
- RA 8972 or the Solo Parents Welfare Act of 2000
- RA 9231, entitled, “Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for the Purpose, RA 7610, otherwise known as “The Special Protection of Children Against Child Abuse, Exploitation and Discrimination”
- RA 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003.

27. Jurisprudence emphasizes that in carrying out and interpreting the provisions of labor laws, the working man’s welfare should be the primordial and paramount consideration. The Supreme Court has consistently held that the policy of the law is to extend the decree’s applicability to a greater number of employees to enable them to avail of the benefits under the law, in consonance with the State’s avowed policy to give maximum aid and protection to labor. (*Abella v. National Labor Relations Commission*, G.R. No. 71812, 20 July 1987)

28. Consistent with the policy of the State to bridge the gap between the

underprivileged workingman and the more affluent employers, the balance in favor of labor should be tilted without being blind to the concomitant right of the employer to the protection of his property. (Gelmart Industries Phils, Inc. v. National Labor Relations Commission, G.R. No. 55668, 10 August 1989)

Structure of overseas employment

29. The following are the government agencies attached to the DOLE that handle functions relating to the employment of Filipino workers overseas:

30. The POEA, as mentioned above, is primarily responsible for managing the country's overseas employment program.

31. The OWWA provides support and assistance to migrants and their families. While all processes and requirements up until the point of departure are handled by the POEA, it is OWWA that assumes responsibility for the workers' welfare while they are employed abroad. OWWA's primary task is to develop and implement responsive programs and services, while ensuring fund viability, towards the protection of the interest and promotion of OFWs.

32. Membership in OWWA may be obtained in either of two (2) ways. One is through registration via the contractor or employer; the second is by voluntary enrolment at job sites. For a US\$25.00 membership contribution, an OWWA member is entitled to benefits such as health care insurance, loan guarantee funds which financially aid the OFW and their families, training programs and social welfare for the OFWs and their families.

33. The TESDA provides technical education and skills development and training to Filipino workers.

34. The ILAS provides staff support and policy guidelines to the Secretary of Labor and Employment in the supervising, monitoring and reporting of the activities of the corps of Labor Attaches assigned to posts.

35. Labor attaches head and manage labor offices that provide employment and welfare services to Filipino workers on-site. These offices, which are also staffed with Welfare Officers, are part of the structure of the Philippine embassies/consulates.

B. Quantitative and qualitative information on the characteristics and nature of the migration flows

36. Today, the Philippines is among the largest migrant-sending countries in the world. According to an inter-agency report of the Commission on Filipinos Overseas (CFO), DFA, and POEA, overseas Filipinos live in 194 countries and territories all over the globe, as of December 2004. The stock of overseas Filipinos include some 3.2 million permanent settlers, the majority of whom are in the United States; about 3.6

million temporary labor migrants, with Saudi Arabia hosting to a million; and an estimated 1.3 million emigrants in an unauthorized situation.

37. Over the years, the volume of Filipinos leaving the country for temporary contract work is greater than those who leave to reside permanently abroad. The number of documented OFWs exceeded the 1 million mark in 2005, registering a total of 1.205 million, a 2.25% increase over the previous year's figure. Out of this total, 898,565 or 75% were land-based workers and 306,297 or 25% were sea-based workers.

38. While the number of documented new hires was noted to fluctuate and lag behind that of the rehires in the previous years, it was observed to significantly grow and stabilize at 50% of the total documented workers since 2003. The number of rehires who were documented in 2005 to work for the same employer almost equaled that of the number of workers who were employed for the first time by their employers.

39. By type of hiring, 93% or 415,903 newly hired land-based OFWs were documented through licensed land-based agencies. The rest of the new hires were name hired (4.5%) or were hired through the Government Placement Branch of the POEA (2.5%).

40. The deployment in 2005 of 988,615 OFWs worldwide marked a 5.89% increase over the 2004 figure of 933,588 and 12% hike over that of 2003 data. This is translated to a daily deployment average of 2,709 which is 6.18% higher than the 2004 figure. Land-based workers, consisting of newly hired (new hires) and rehire workers (rehires) represent the bulk (74.89%) of the total deployment, where the rehires accounted for 61% (450,651) and new hires, 39% (289,709). The deployment of seafarers, on the hand, represented the remaining 25.08% of the total (247,983).

41. The impressive growth in deployment in 2005 may be attributed to the significant increase in the number of deployed rehires which consistently maintains its two third share of the land-based workers' deployment for the last five years. Another contributing factor is the steady growth of in the number of deployed seafarers averaging 3% from 2000 to 2003; 6% in 2004 and 8.3% in 2005.

42. While there was only a minimal 1.68% increase in the deployment of new hires in 2005 compared to that of 2004, it did help push the deployment level to nearly one million. This modest increase can be attributed to the increase in the volume of hiring by some countries in the Middle East, which are among the top ten OFW destinations. The Kingdom of Saudi Arabia topped the list with 194,350 workers, representing 26.3% of the total. Hong Kong was second with 94,568 (12.8%), followed by United Arab Emirates with 82,039, Taiwan with 46,737, Japan with 42,633, Kuwait with 40,306, Qatar with 31,421, Singapore with 28,152, Italy with 21,267, and United Kingdom with 16,930.

43. From deploying production, transport, construction, and related workers in the seventies and mid-eighties, Filipino migrant deployment has shifted to an ever-increasing proportion of service workers. The household work category topped the list in 2005 representing 29% of the total new hire with 85,088. Overseas Performing Artists (OPAs) was dislodged to number two with 39,495. Factory workers came in third with 39,477, followed by construction workers (30,077), caregivers and caretakers (16,146), medical workers, building caretakers, hotel and restaurant workers, engineers and tailors/dressmakers in that order.

44. Females dominate the labor migration stream since the eighties. Female new hires totalling 205,206 comprised 72% of deployment in 2005. Male OFWs totalled 79,079 or roughly 18% only. The increase in the female OFW deployment maybe attributed to the sizeable increase in the deployment of household workers and female OPAs since 1992.

45. Although the Philippines is largely a country of emigration, it also attracts some foreigners to its shores. Traditionally, the foreign population in the Philippines is composed of people of Chinese origin and some people of Indian origin who came to settle in the country years ago. Presently, there are 36,150 foreign nationals working and residing in the Philippines.

46. Much of the country's attention and policies, though, are focused on emigration. In the last 30 years, a "culture of migration" has emerged, with millions of Filipinos eager to work abroad, despite the risks and vulnerabilities they are likely to face. Reasons for migration are varied. It could be viewed as an opportunity to grow, receive significantly higher pay, experience better working and living conditions abroad, and live in an environment with better climate. However, among the many reasons for migrating to other countries, economic difficulty in the Philippines is considered as the number one reason.

47. OFWs remit around US\$12 billion annually through the banking channels, which is roughly equivalent to 13 percent of the Gross Domestic Product (GDP) of the country. Remittances are used by families of OFWs for basic subsistence needs, house construction and renovation, purchase of land, cattle or consumer durable goods, dowry, or education fees for family members. Only a small percentage of remittance is dedicated to savings and so-called "productive investments" income and employment generating activities. This increase in spending of households contributes to the communities' productivity. Remittances of OFWs have a significant share in keeping the current account deficit manageable and in stabilizing the economy as reported by the CFO.

48. This cultural migration development in the Philippines has been greatly aided by migration's institutionalization. The Government facilitates migration, regulates the operations of the recruitment agencies, and looks out for rights of its migrant workers. More importantly, the remittances workers send home have become a pillar of the country's economy.

C. Actual situation regarding the practical implementation of the Convention as well as circumstances affecting the fulfillment of obligations under the Convention

49. The rights of Filipino migrant workers have been a frequent advocacy effort in many host countries. The issues that migrants face are a result of the non-recognition of the rights of migrants and their families in both origin and sending countries.

50. In many situations there is a gap between the rights which migrants, both legal and undocumented, enjoy under international law, and the difficulties they experience in the countries where they live, work, and across which they travel. This gap between the principles agreed by governments, and the reality of individual lives, underscores the vulnerability of migrants in terms of dignity and human rights.

51. It is estimated that in 2004, there are 1,296,972 Filipino migrants with irregular status in the world. Fifty percent can be found in the Americas and its trust territories followed by East and South Asia and Europe.

52. Undocumented workers who go through formal or informal channels are among the most vulnerable among migrant groups. Their situation poses a bigger challenge given the absence of mechanisms and measure to reach and identify them. Being undocumented also means they have a very little access to health services and information, as well as protection from abuse and exploitation.

53. Vulnerability is also higher in the case of migrant women. The realities that women face in the whole migration process are utterly disturbing. They are often placed in working and living situations that expose them to violence, exploitation and abuse. They also became easy prey to trafficking and forced prostitution. The systematic labor segmentation of women in the economically and socially undervalued job categories of domestics and entertainers have caused serious attacks on the reputation of Filipinos in general, and Filipino women in particular, further damaging their self-worth and morale.

54. Migration is blamed for the brain drain and loss of skills being experienced by the Philippines, which has lost many of its talented medical, information technology, and technically skilled workers to other countries.

55. The problem represents not just a loss of talent, but also a loss in terms of “return of investments” as the country loses the product of its investment in the training and education of its citizens to another country.

56. Targeting brain-drain is an important policy direction for the country as the returning labor migrants can infuse greater productivity and capital into the domestic economy. Hence, a strategic reintegration program is crucial to complement the strengths of the domestic economy and augment the limitations of the domestic labor force.

57. Many of the challenges spawned by migration are also social and not purely economic. The prolonged separation brought about by migration has contributed to the disintegration of families, a traumatic event that leaves family members, especially children, traumatized and more prone to crime and other social ills.

58. Remittances have also encouraged consumerism and a culture of dependency among its recipients.

59. Another social impact has to do with “social remittances” such as the transfer of customs, practices, behavior patterns, and even diseases from the home country, or from the host country.

D. Measures undertaken for the dissemination and promotion of the Convention

60. The Philippine government has adopted several migration policies since 1974, including policy instruments for migrants and international covenants on migration and the welfare of migrants which covers the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. As a consequence, it has created offices in the bureaucracy, strengthened its labor laws, passed RA 8042, otherwise known the Migrant Workers and Overseas Filipinos Act of 1995, and implemented programs to protect the rights and promote the welfare of the OFWs and their families.

61. The principles and provisions of the Convention were integrated in the mandatory pre-departure seminars conducted by the POEA for outbound migrant workers.

62. Various training courses and seminars for government workers are regularly being organized and conducted by the POEA, DOLE, OWWA, DFA, in coordination with the International Labour Organization (ILO), to promote awareness on the provisions of the Convention.

63. Informational and educational materials on the Convention, such as primers, posters, brochures, newsletters, and other publications have also been developed by concerned government agencies as well as by non-government organizations which cater to migrants’ rights.

PART 11: GENERAL PRINCIPLES

A. Articles 1 and 7: Principle of non-discrimination

64. The 1987 Philippine Constitution ensures non-discrimination and observance of equal protection to all. Section 1, Art. III of the Bill of Rights, clearly provides,

“No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of laws.”

65. Even the preliminary statement of the Preamble of the 1987 Constitution clearly declares a policy that “equality” shall be one of the criteria for its independence and democracy.

66. Corollary to this, as to the promotion and protection of the labor force, Sec. 3, Art. III of the Constitution mandates:

“The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.”

67. The above statement is reaffirmed in Sec. 2 (b) of RA 8042 and is supported by the following:

“Sec. 2.d. The State affirms the fundamental equality before the law of women and men and the significant role of women in nation-building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition bodies tasked for the welfare of migrant workers.”

“Sec. 2.e. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative, that an effective mechanism be instituted to ensure the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.”

68. Legislative measures intended to give teeth to the constitutional provision against discrimination include the following:

- PD 633 which created the National Commission on the Role of Filipino Women;
- RA 6275, entitled An Act Strengthening the Prohibition of Discrimination Against Women with Respect to Terms and Conditions of Employment;
- RA 6738, otherwise known as the Wage Rationalization Act of 1989, which spelled out the manner of determining the minimum wage rates for workers in general, regardless of sex;
- RA 7877, or the Anti-Sexual Harassment Act of 1995, makes unlawful all forms of sexual harassment in the employment, education or training environment on the basis of the principle that sexual harassment constitutes an act of discrimination. The law penalizes all acts of sexual harassment

committed by an employer, his or her immediate family, manager, supervisory officers and other high ranking officers, against employees, union officers and members, applicants for employment, customers, clients, agents of the employers, or any other person transacting business within the employment environment in both public and private sectors;

- RA 6725 which mandates the DOLE to raise awareness and advocacy prohibiting discrimination against women employees
- RA 7277, entitled An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society;
- RA 8972, or Solo Parents Welfare Act of 2000, protects “solo” parents against discrimination with respect to terms and conditions of employment on account of their status;
- RA 8371, or Indigenous Peoples’ Rights Act of 1997, defines, protects and promotes the rights of indigenous peoples and indigenous cultural communities within the framework of national unity and security;
- RA 7875, or the National Health Insurance Act of 1995, establishes the Philippine Health Insurance Corporation and aims to improve the implementation and coverage of the old Medicare Program by including the self-employed and the poor who cannot otherwise avail of health insurance. This law sets the priority for the needs of the underprivileged, sick, elderly, women and children.

69. Recent legislation and policy issuances reinforce the constitutional provision of equality between the sexes and pay special attention to women’s special needs. Laws on women’s health, economic and political participation, those that seek to protect them from violence and prostitution, safeguard their marital and material welfare and laws that seek to protect the girl-child have been passed in the past few years.

RA 6955, or An Act to Declare Unlawful the Matching of Filipino Women to Marriage to Foreign Nationals on a Mail-Order Basis of 1990, bans the practice of marriage matching for a fee and the exportation of domestic workers to certain countries that cannot ensure the protection of their rights. All Filipino fiancées are required to attend guidance and counselling sessions through the CFO in order to minimize potential interracial marital problems.

RA 8371 provides that indigenous cultural communities and indigenous women shall enjoy land rights and opportunities with men in all spheres of life. It provides for her participation in the decision-making process in all levels as well as full access to education, maternal and childcare, health, nutrition, housing services, and training facilities.

RA 7941, or the Party-List System Act, is the enabling law for the constitutional provision (Art. VI, Sec 5(2)), which states that there shall be party-list representatives and the women sector shall be allocated a seat therein. Under this law, the election of party-list representatives includes the women sector, whereas before women sectoral representatives were appointed by the President.

Presidential MC 8, (1999), or the Policy on Equal Representation of Women and Men in Third Level Positions in Government, was issued to increase the number of women in the career executive service.

An Inter-Agency Committee on Intermarriages was created in 1998 to strengthen the mechanisms to address the problem of trafficking of Filipino women. The CFO Foreign Sponsor Watchlist System was put in place to facilitate access to information on foreign partners who have racist backgrounds or may have petitioned Filipino women more than once, especially those with a history of domestic violence. The CFO Case Monitoring System effectively documents and monitors cases involving Filipinos overseas referred to CFO for assistance. The CFO Information System, on the other hand, develops and maintains gender-sensitive system to generate sex-disaggregated data.

The Migrant Advisory and Information Network (MAIN) was established in September 1995, where ten government agencies signed a Memorandum of Agreement with the view of harmonizing the approaches and system by which information on migration concerns can be effectively disseminated to the public. MAIN Desks at the regional, provincial, city, municipal and barangay levels provide access to services at the grassroots.

To complement the MAIN, the Migrant Advisory and Information System (MAIS), a computer-based information tool designed to address the information needs of Filipinos who are considering migration as an option, seeks to make information on migration readily available to the public so as to help people appreciate the realities of migration and guide them toward an informed decision.

The CFO provides the Nationwide Guidance and Counselling Service to the fiancées, fiancés and spouses of foreign nationals for the purpose of assisting Filipino Women involved in interracial marriages and migration. The service is intended to help them cope with difficulties inherent in interracial marriages and settlement overseas, by providing them with information about migration laws affecting them, marriage concerns, and ways of coping with difficult situations, available welfare and support services abroad, and of their individual and conjugal rights. From 1989 to 1998, a total of 162,286 fiancées, fiancés and spouses of foreign nationals were provided services. Of this figure, 91.2% were women.

During the UN Special Session of the General Assembly for the Review of the Implementation of the Platform for Action, one of the concerns the RP delegation strongly pushed for in the Further Actions and Initiatives to Implement the Beijing Declaration and the Platform for Action (Outcome Document) was the reference to women migrant workers for all paragraphs that contain the word migrants: Paragraph 132 b. “Promote and protect the human rights of all migrant women and implement policies to address the specific needs of documented migrant women and , where necessary, tackle the existing inequalities between women and men migrants to ensure gender equality...”

The RP delegation also worked hard towards strengthening international cooperation and measures to address trafficking in women and girls, as contained in paragraphs 104a, 104b, 104c, 104d, 131a, 131b, 131c of the Outcome Document.

70. Sarah B. Vedana vs. Judge Eudalio B. Valencia, (Adm. Matter No. RTJ-96-1351, September 3, 1998). The Supreme Court ruled, thus: “Before closing, it is apropos to discuss the implications of the enactment of RA 7877, or the Anti-Sexual Harassment Law, to the judiciary. x x x x It would not be remiss to point out that no less than the Constitution itself has expressly recognized the invaluable contributions of the women sector to national development, thus the need to provide women with a working environment conducive to productivity and befitting their dignity.”

71. “In the community of nations, there was a time when discrimination was institutionalized through the legalization of now prohibited practices. Indeed, even within this century, person were discriminated against merely because of gender, creed or the color of their skin, to the extent that the validity of human beings being treated as mere chattel was judicially upheld in other jurisdictions. But in humanity’s march towards a more refined sense of civilization, the law has stepped in and seen it fit to condemn this type of conduct x x x x Ultimately, this is what humanity, as a whole, seeks to attain as we strive for a better quality of life or higher standard of living x x x x In disciplining erring judges and personnel of the judiciary then, this Court can do no less.”

72. People vs. Edwin Julian, et al. (G.R. Nos. 113692-93, April 4, 1997) the Supreme Court said: Rape is chilling, naked sadism. It is marked by the savagery and brutality of the assault on the helpless victim’s person and privacy. Thus, a severe penalty is meted out by the State, as *parens patriae*, for this abhorrent crime, revealing the clear legislative intent to “protect women against the unbridled bestiality of persons who cannot control their libidinous proclivities.

73. People vs. Echagaray (G.R. No. 113692-93, April 4, 1997). In defining the right to life, the Supreme Court said: The evil of a crime may take various forms. There are crimes that are, by their very nature, despicable, either because of life was callously taken or the victim is treated like an animal and utterly dehumanized as to

completely disrupt the normal course of his or her growth as a human being. The right of a person is not only to live but to live a quality life, and this means that the rest of society is obligated to respect his or her own physical body, and the value he or she puts in his or her own spiritual, psychological, material and social preferences and needs.

74. *Marites Bernardo, et al. vs. National Labor Relations Commission and Far East Bank and Trust Company* (12 July 1999, 310 SCRA 186). The Supreme Court held that the Magna Carta for Disabled Persons mandates that qualified disabled persons be granted the same terms and conditions of employment as qualified able-bodied employees. Once they have attained the status of regular workers, they should be accorded all the benefits granted by law notwithstanding written or verbal contracts to the contrary. This treatment is rooted not merely on charity or accommodation, but on justice for all.

75. *International School Alliance of Educators vs. Hon. Leonardo Quisimbing, et al.* (1 June 2000, 333 SCRA 13). The Supreme Court reversed the decision of the Secretary of Labor and ruled that Filipino teachers in the International School were being discriminated against, in violation of their human right of equal protection. The Supreme Court held that there is no reasonable distinction between the services rendered by foreign-hires and local-hires. As such, the school's practice of affording higher salaries to foreign-hires contravenes public policy, which holds that employees should be given equal pay for work of equal value. That is the principle long honored in this jurisdiction.

76. For non-resident foreign migrants, Philippine laws are applicable to them. It is stated that all persons sojourning the country are under all Philippine laws except those laws which are political in nature and are explicitly applicable to the citizens of the country alone, including the right to vote and the right to own real properties.

B. Article 83: Right to an effective remedy

77. The provisions of the Covenant can be invoked before and directly enforced by Philippine courts, other tribunals or administrative authorities. Under Sec. 2, Art. II of the 1987 Constitution, "The Philippines adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations." Since the Convention was ratified by the Philippine Government and is, therefore, binding upon it, its provisions can be invoked before, and directly enforced by, Philippine courts, tribunals and authorities under the aforementioned provision of the Constitution.

78.. Complaints for violation of the provisions of this Convention may be filed before the proper civil judicial authorities, prosecutor's office, regional trial courts, municipal circuit trial courts, and the municipal trial courts. However, where the persons complained of before the civil judicial authorities are government workers, the complaint may be filed with the Office of the Ombudsman.

79. Also, where the persons complained of are members of the Armed Forces of the Philippines (AFP) or the Philippine National Police (PNP), the complaint may be filed directly with the AFP and the PNP.

80. Apart from filing his complaint with the civil government offices, an individual who claims that any of his rights have been violated can file a civil case before the proper civil court for moral and other damages. He can file a special civil action before the proper civil court for habeas corpus, prohibition, mandatory injunction, or restraining order. Other ancillary remedies available to him are: (a) move before the proper civil court for the fixing of his bail, if detained without bail, or for the reduction of the amount of bail; and (b) move before the proper investigating prosecutor/civil court/military authority or court for the suppression of evidence claimed by him to have been illegally obtained. Of course, he can always file before the Supreme Court a petition for the review by certiorari of any order of any civil or military court. He can also appeal to a higher civil court any final decision of a lower civil court against him.

81. For OFWs, the DFA is mandated under RA 8042 to make an assessment of rights and avenues of redress that are available to Filipino migrant workers who are victims of abuse and violation and, as far as practicable, pursue the same on behalf of the victim if it is legally impossible to file individual complaints.

82. A position of Undersecretary for Migrant Workers Affairs (OUMWA) was created under RA 8042 to 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.

83. Section 24, Article 5 of RA 8042 provides the functions and responsibilities of the Undersecretary for Migrant Workers Affairs, viz:

- a. To issue the guidelines, procedures and criteria for the provisions of legal assistance services to Filipino migrant workers;
- b. To establish close linkages with the DOLE, the POEA, the OWWA and other government agencies concerned, as well as with non-governmental organizations assisting migrant workers, to ensure effective coordination and cooperation in the provision of legal assistance to migrant workers;
- c. To tap the assistance of reputable law firms and the Integrated Bar of the Philippines and other bar associations to complement the government's efforts to provide legal assistance to migrant workers;
- d. To administer the legal assistance fund for migrant workers established under Section 25 hereof and to authorize disbursements there from in accordance with the purposes for which the fund was set up.

84. The OUMWA has the authority to hire private lawyers, domestic or foreign, in order to be assisted in the effective discharge of the above functions.

85. Section 25 of the law also established a legal assistance fund for migrant workers, otherwise known as the Legal Assistance Fund (LAF).

86. The expenditures chargeable against LAF includes the fees for foreign lawyers hired 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.

C. Article 84: Duty to implement the Convention

87. The Philippines was the first among the countries of origin in Asia to craft a law that aims “to establish a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress.”

88. RA 8042 was enacted into law on June 1995 to concretize the Government’s commitment to protect the rights and promote the welfare of migrant workers, their families and other OFWs in distress. This law primarily instituted a higher standard of protection and promotion of the welfare of migrant workers. It lays down the minimum conditions under which deployment of overseas workers is to be allowed; assures that the Foreign Service shall give protective services to both legal and undocumented workers and institutionalized the adoption by Philippine embassies and consulates of a “Country-Team Approach.”

89. The programs and services provided for in RA 8042 are anchored on the following policy guidelines:

- The dignity of Filipino migrant workers, whether in the country or overseas and Filipino migrant workers, in particular, shall at all times be upheld.
- Filipino migrant workers shall be provided with adequate and timely social, economic and legal services.
- Overseas employment shall not be promoted as a means to sustain economic growth and to achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised or violated.
- An effective mechanism shall be instituted to ensure that the rights and interests of distressed overseas Filipino migrant workers in particular, documented or undocumented are adequately protected and safeguarded.

90. The law provides that the country-team approach shall be the mode under

which Philippine embassies or their personnel will operate in the protection and the promotion of the welfare of Filipino migrant workers. It further provides that the protection and promotion of the welfare of Filipino migrant workers as well as the promotion of the dignity and fundamental rights and freedoms of the Filipino citizen abroad shall be the highest priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service.

91. Under the country-team approach, all officers, representatives and personnel of the Philippine government posted abroad regardless of their mother agencies, shall on a per country basis, act as one country team with a mission under the leadership of the ambassador. In this regard, the ambassador may recommend to the Secretary of Foreign Affairs the recall of officers, representatives and personnel of the Philippine government posted abroad for acts inimical to the national interest such as, but not limited to, failure to provide necessary services to protect the rights of overseas Filipinos.

92. Also, DFA is mandated under the law to take the necessary initiative such as promotions, acceptance or adherence of countries receiving Filipino workers to multi-lateral conventions, declaration or resolution pertaining to protection of migrant worker's right.

93. RA 8042 ushered in a new era in Philippine foreign policy. Up until the early 1990s, consular assistance and assistance-to-nationals (ATN) have merely been regarded as one of the regular components of the duties of the Philippine Foreign Service. With the enactment of RA 8042, such roles were accorded greater significance and prominence and became subject to a more coordinated, cohesive and better-funded approach with the creation of the OUMWA, under the DFA, that serves as the focal point of ATN concerns. Thus, ATN has progressively evolved as one of the four (4) pillars of Philippine foreign policy, which includes (a) protection of nation's security; (b) advancement of Philippine development objectives; and (c) promotion of Philippine culture and enhancement of the country's image.

PART III: HUMAN RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

A. Article 8: Right to leave any country including own and to return

94. The freedom to choose and change one's place of abode as well as the freedom to travel both within the country and outside are guaranteed by the Philippine Constitution, which in Art. III (Bill of Rights), Sec. 6, provides: "The liberty of abode and changing the same within the limits prescribed by the law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by the law."

95. Article 127 of the RPC provides: "The penalty of prision correccional shall be

imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippine Islands or shall compel such person to change his residence.” Like all liberties, the liberty of abode may be impaired only upon lawful order of the court and “within the limits prescribed by law.” Article 87 of the RPC provides for the penalty of destierro whereby any person so sentenced shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall not be more than 250 and not less than 25 kilometers from the place designated.

96. In one case (*Caunca vs. Salazar*, 82 PHIL 851), the Supreme Court sustained the petition for habeas corpus filed by a maid who had been detained by the employment agency for not paying the amount it advanced for her transportation from the province. The court upheld her liberty of abode and declared her detention unconstitutional.

97. In another case *Villavicencio vs. Lucban* (39 PHIL 778), the court overruled the “deportation” by the Mayor of Manila of some 177 women of ill-repute to Davao City.

98. During the regime of former President Marcos, the freedom to travel was also curtailed through denial of exit permits. Moreover, right to travel cases generally became moot because the practice was to grant an exit permit before the Court could act on a mandamus petition. The Court none the less warned the then Travel Processing Centre to “exercise the utmost care to avoid the misimpression that certain citizens desirous of exercising their constitutional right to travel could be subject to inconvenience or annoyance.” (*Salonga vs. Hermoso*, 97 SCRA 121).

99. As to the limitations of the right to travel by reasons of national security, public safety and public health, the Court held, for example, that health offices might restrict access to contaminated areas and might also quarantine those already exposed to the disease sought to be contained (*Lorenzo vs. Director of Health*, 50 PHIL 195). The Court also held in one case (*Manotoc vs. Court of Appeals*, 142 SCRA 149) that a person admitted to bail might be prevented from leaving the country. In the case of the liberty of abode, the Court upheld in the case of *Rubi vs. Provincial Board of Mindoro* (39 PHIL 660), the action of the respondents requiring the members of certain tribes to reside in a reservation for their better education, advancement and protection. The measure was held to be a legitimate exercise of the police power of the State.

100. RA 8239, or the Philippine Passport Act of 1996, upholds the people’s constitutional and inviolable right to travel by obliging the government to issue passports or travel documents to any of its citizens who comply with the minimum requirements. This right may be impaired only when national security, public safety and public health require. However, the SC has ruled that the right to return to one’s country is not among the rights specifically guaranteed in the Bill of Rights, which treats only of the liberty of abode and the right to travel. A case in point is *Marcos, et al. vs. Manglapus, et al.* (15 Sept 1989, 177 SCRA 668).

101. In this case, the Marcos family petitioned the SC for mandamus and prohibition to order concerned agencies to issue them travel documents and to enjoin the implementation of the President's "ban Marcos" policy. The persons who sought to return to the country were the deposed dictator and his family at whose door the travails of the country were laid and from whom billions of dollars believed to be ill-gotten wealth were sought to be recovered. The SC ruled that the individual right involved is not the right to travel within the Philippines, or from the Philippines to other countries, but essentially the right to return to one's country, a totally distinct right under international law, which is independent from, although related to, the right to travel. The "right to liberty of movement and freedom to choose [his] residence" and the right to "be free to leave any country, including [his] own" may be restricted by such laws as "are necessary to protect national security, public order, public health or morals or the separate rights and freedoms of others."

102. On the question of whether or not then President Aquino had the power under the Constitution to bar the Marcos family from returning to the Philippines, the SC declared that the power involved was the President's residual power implicit in the paramount duty to safeguard and protect the general welfare. The President was not only clothed with extraordinary powers in times of emergency but was also tasked with attending to the daily problems of maintaining order and ensuring domestic tranquility in times of peace. One of the problems was balancing the general welfare and the common good against the exercise of rights of certain individuals.

103. As to whether or not there existed factual bases for the President to conclude that it was in the national interest to bar the Marcoses' homecoming, the SC took judicial notice of the fact that the country was besieged from within by a well-organized communist insurgency, a separatist movement in Mindanao, rightist conspiracies to grab power, urban terrorism, and the murder with impunity of military men, police officers and civilian officials. The return of the Marcoses at that time would only exacerbate and intensify the violence directed against the State and instigate more chaos. Thus, the President cannot be said to have acted arbitrarily and capriciously in determining that the return of the Marcos family poses a serious threat to national interest.

104. SC Circular No. 62-96 (9 Sept 1996) directed all inferior courts to furnish the DFA the prepared list of all active and or unrevoked hold departure orders and decisions within 48 hours after receiving them.

105. In HR Advisory CHR-A3-2000 (20 Jan 2000), the CHR expressed its concern about possible infringement on the right of liberty of movement. The mayor of the City of Marikina reportedly issued an order to "forcibly evict" the residents of particular streets "who will not change their ways" in accordance with Ordinance No. 245, series of 1997, which declared, among other things, "drug risk areas." The PCHR opined that the ordinance was a "tolerable exercise of police power and if properly enforced, may not adversely affect the rights of individuals to travel," as guaranteed by the ICCPR, Philippine Constitution and the landmark case of Villavicencio vs.

Lucban (39 Phil. 776, 1919).

106. Section 22 of the Commonwealth Act No. 613, also known as the Philippine Immigration Act of 1940, states that any lawful resident alien about to depart temporarily from the Philippines who desires a reentry permit may apply to the Commissioner of Immigration for such. If the Commissioner finds that the applicant has been lawfully admitted in the Philippines for permanent residence, he shall issue the permit which shall be valid for a period not exceeding one (1) year except that upon application for extension and good cause therefor being shown by the applicant, it may be extended by the Commissioner for additional periods not exceeding one (1) year each. Applications for the issuance of extension of permits shall be made under oath and in such form and manner as the Commissioner shall by regulations prescribe.

107. A clearance certificate must also be obtained from the Commissioner of Immigration before departure according to Sec. 22.

B. Article 10: Right to life; prohibition of torture; prohibition of
inhuman or degrading treatment

i) Right to Life

108. Section 5, Art. II of the Constitution states that the protection of life, liberty, property, the maintenance and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

109. Section 8 thereof provides that the Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.

110. Section 12 thereof specifically enjoins the State to protect equally the life of the mother and the life of the unborn child from conception.

111. Section 1 of Art. III provides that no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the law.

112. The Constitution in Sec. 19 (1), Art. III abolished the death penalty except for heinous crimes as may be provided by Congress. Any death penalty already imposed is reduced to reclusion perpetua.

113. Pursuant to the aforecited Constitutional provision, the Philippine Congress restored the death penalty with the passage of RA 7659, otherwise known as the Death Penalty Law. RA 7659 cites a compelling reason of the restoration of the death penalty the “alarming upsurge of such crimes which has resulted not only in the loss of human lives and wanton destruction of property but has also affected the nation’s efforts towards sustainable economic development and prosperity while at the same

time has undermined the people's faith in the Government and the latter's ability to maintain peace and order in the country."

114. On 7 June 2006, Congress repealed RA 7659 by enacting RA 9346, otherwise known as "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."

115. Following the enactment of RA 9346, the Philippines signed the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty.

116. The Philippines is also a signatory to the 1949 Geneva Conventions and the 1977 Additional Protocol II to the four Geneva Conventions relating to non-international armed conflicts. As such, the government has put in place measures to ensure the protection of civilians in times of armed conflict and of individuals in conflict with the law.

117. Joint DILG-DND Circular No. 2-91 (2 Dec 1991) is the implementing guidelines for Presidential MO 393 (9 Sept 1991) which directs both AFP and PNP to reaffirm their adherence to the principle of International Humanitarian Law and Human Rights in the context of military and police operations. The Circular contains the rules of behavior to be observed during security or police operations to prevent any abuses against innocent civilians and hostile or lawless elements considered out of combat, such as the wounded, captured or who surrendered, and to reduce the destruction that may be inflicted upon lives and properties. The rules require PNP members:

To maintain a high level of discipline and to strictly adhere to the AFP/PNP code of honor, ethics, loyalty, honor, valor and solidarity or otherwise face dismissal from the military or police service.

To exercise utmost restraint and caution in the use of armed force; in the event its use is inevitable, to exercise strict controls in a way that only reasonable force necessary to accomplish the mission shall be taken and directed only against hostile elements, not against civilians or non-combatants.

To treat out-of-combat suspects and enemies, e.g., wounded, surrendered or captured, humanely and with respect and, at the earliest time feasible, to turn them over to higher echelons of command or office for proper disposition.

To avoid unnecessary military or police actions that could cause destruction to private and public property; as a matter of AFP/PNP Civic Action, to undertake whenever practicable measures utilizing available unit manpower and equipment to repair the damage caused on private properties in the course of the operation.

To respect all persons and objects bearing the emblem of the Red Cross/Crescent, White Flag or Truce or emblems designating cultural property.

118. The Circular also provides that the conduct of military and police operations where the use of crew-served weapons or indirect fire support may become imperative, the use of artillery or mortar fires for interdiction and harassment is strictly prohibited especially when the fire missions are unobserved, when populated areas are near and civilian casualties or material damages are expected.

119. Finally, the Circular stresses the principle of command responsibility, where AFP/PNP commanders are:

Held responsible for the conduct and behavior of personnel under their control and supervision; and, accountable under pertinent provisions of the Articles of War in the case of military personnel and the PNP Rules and Regulations and the Revised Penal Code in case of PNP personnel, or as accessory after the fact, subject of a valid complaint or warrant of arrest, in cases where they refuse to act or otherwise aid or abet the wrongdoing of their subordinates.

To brief and debrief all participants in every security and police operation to ensure their proper behavior and an understanding of their mission in order to assess the overall impact of the operation to AFP/PNP goals and objectives; and, to immediately undertake corrective legal measures or any misconduct committed.

Subject to the requirements of public safety and security, to closely coordinate with local government officials and/or concerned government agencies prior to the conduct of security/police operations to provide for urgent and convenient delivery of services, relief and rehabilitation where civilians are temporarily evacuated for safety.

To ensure that the provisions of this joint circular and other relevant AFP/PNP policies, the pertinent provisions of the Constitution, the Geneva Conventions and the UN declarations on HR and IHL are understood by all their members; and, thus to integrate these provisions into the regular program of instructions for AFP and PNP troop or police information and education sessions in all levels of command and office.

120. AFP CS memo Circular dated 17 Nov 1995 contains the AFP Rules of Engagement (ROE) in internal security operations by ground forces. It directs all military combat units to prevent civilian casualties, damage, harm and all forms of violence not required in overpowering the enemy. Section D (Crisis Situation) and Subsection (d) (Respect for Human Rights) of the Rules provide that “in all these actions in any situation, all AFP personnel shall respect the human rights of the

victims and the perpetrators.” Command responsibility impels unit commanders to ensure that their subordinates abide by these rules.

121. Memorandum Circular (MC) dated 27 Aug. 1997, in amending MC dated 17 Nov. 1995, included the naval and the airforce components. Rules covering them discussed in the AFP ROE on International Security Operations Campaign Plan, or AFP CS MC (17 Nov 1998). The ROE provides that in the conduct of military operations, attack, defense, movements, small unit operations and indirect fire support, any action or decision that results in the unnecessary destruction of life and property of civilians is strictly prohibited. The ROE reiterates its directive for all AFP personnel to respect the human rights of both victims and perpetrators and for the unit commanders to assume command responsibility.

122. The ROE is a major item of discussion in all military training and regular briefings. Reminders to adhere to specific aspects of the ROE are given before the conduct of operations. Post-operation debriefings include a thorough analysis assessment on the compliance with the ROE.

123. With the issuance of the PNP Police Operations Procedure (POP) on 26 January 1997 revising the PNP ROE dated 14 January 1993, the appellation Rules of Engagement was dropped for easier distinction from the AFP ROE. It thereby emphasizes the civilian character of the police force. More importantly, the PNP POP aims to cure the negative public impression on the quality and effectiveness of police performance as it pertains to its most important duty of protecting lives.

124. The PNP POP stresses that in all police matters, respect for human rights is of paramount importance. All PNP personnel are regularly reminded to strictly observe prescribed procedures in the performance of their daily tasks and in the conduct of police operations so as to avoid unnecessary or excessive use of force.

125. The PNP POP ensures the protection of the people’s right to life at all times. The underlying principle of maximum tolerance provides that the use of force, especially firearms, shall be applied only as a last resort, that is, when all other peaceful and non-violent means have been exhausted. The force employed must be necessary, reasonable and sufficient to subdue and overcome a clear and imminent danger or resistance being put up by a malefactor or group, and/or to neutralize the vehicles of the suspects.

126. The police siren and megaphone shall be used to influence or warn the offenders or suspects to stop and peacefully give up. In case of an actual shoot-out with the suspect, panic firing shall be avoided. Panic firing occurs when one member of the apprehending team opens fire and others follow suit. The police officer shall ensure that no innocent bystanders are hit. Hence, extreme caution shall be observed when firing a weapon in congested areas. After a shoot-out, the police officer shall check whether or not the suspect still poses danger or has been wounded and disabled. The suspect shall then be immediately brought to the nearest hospital for medical

treatment. The team leader of the police operation exercises control over his men.

127. The PNP POP ensures that the rules shall be thoroughly disseminated in all police stations that these rules are thoroughly internalized by all members. For this purpose, reputable government prosecutors, CHR lawyers, and other qualified resource persons are invited as resource persons to discuss the POP.

128. As a standard operating procedure, all police officers are given pre-operation briefings on the general rules as well as the special rules applicable to the type of operations to be conducted or functions to be performed before any unit or element is dispatched. A post operation debriefing is also conducted to enable participants assess lessons learned and check compliance with the rules. Superior officers are imposed with command responsibility.

129. Some military and police authorities have been accused of committing violations on the right to life. These violations allegedly occurred in the course of armed conflict. The government also received criticisms for allegedly using paramilitary forces in the anti-insurgency campaign and for allegedly encouraging self-help community groups and vigilantes for their protection against the incursion of DTs.

130. Military and police actions are governed by standard procedures that uphold, and are consistent with the basic principles of human rights and international humanitarian law. Allegations of human rights violations are therefore investigated by appropriate mechanisms established within and outside the military and police establishments. Appropriate punishment and/or corrective measures are instituted following investigations and due process.

ii) Prohibition of torture and other inhuman or degrading treatment or punishment

131. The Constitution of the Philippines contains provisions that, on the whole, provide the legal climate that would permit the enactment of legislative, administrative, and judicial measures that would prevent the act of torture.

132. It is an avowed State policy that “The State values the dignity of every human person and guarantees full respect for human rights,” (Sec. 11, Art. II).

133. Article III of the Constitution contains the Bill of Rights with provisions that will ensure the prevention of acts of torture. These are:

“Sec. 1. No person shall be deprived of life, liberty or property without due process of law.

‘Sec.12.

(1) Any person under investigation of the commission for an offense shall have the right to be informed of his right to remain silent and have

competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will, shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violation of this section as well as compensation to and rehabilitation of victims or torture or similar practices, and their families.

‘Sec. 18. No person shall be detained solely by reason of his political beliefs and aspirations.

‘Sec. 19.

(1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to seclusion perpetua.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions, shall be dealt with by law.

‘Sec. 22. No ex post facto law or bill attainder shall be enacted.’

134. The Constitution also created the PCHR tasked with the implementation and monitoring of all legal measures for the protection of human rights of all persons within the Philippines. Its specific powers and duties are laid out in Secs. 17 to 19 of Art. XIII, viz.,

“Sec. 17.

(1) There is hereby created an independent office called the Commission on Human Rights.

(2) The Commission shall be composed of a Chairman and our Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the abr. The term

of the office and other qualifications and disabilities of the members of the Commission shall be provided by law.

‘Sec. 18. The Commission on Human Rights shall have the following powers and functions:

- (1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- (2) Adopt its operational guidelines and rules of procedure and cite for contempt for violations thereof in accordance with the Rule of Court;
- (3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;
- (4) Exercise visitatorial powers over jails, prisons, or detention facilities;
- (5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
- (6) Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
- (7) Monitor the Philippine Government’s compliance with international treaty obligations on human rights;
- (8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it under its authority;
- (9) Request the assistance of any department bureau, office or agency in the performance of its functions;
- (10) Appoints its officers and employees in accordance with law; and
- (11) Perform such other duties and functions as may be provided by law.

‘Sec. 19. The Congress may provide for other cases of violations of human rights that should fall within the authority of the commission, taking into accounts its recommendations.’”

135. Article 235 of the RPC defines acts of torture as criminal. Thus attempted, frustrated and consummated acts of torture are punishable by law and principals, accomplices and accessories to the torture are criminally liable.

136. The RPC which has been in force since 1932 list many acts of torture as criminal offenses. They are:

- Article 235 – Maltreatment of prisoners
- Article 248 – Murder
- Article 254 – Discharge of firearms
- Article 262 – Mutilation
- Article 263 – Serious physical injuries
- Article 264 – Administering injurious substances or beverages
- Article 265 – Less serious physical injuries and maltreatment
- Article 266 – Slight physical injuries and maltreatment
- Article 282 – Grave threats
- Article 285 – Other light threats
- Article 286 – Grave coercion
- Article 287 – Light coercion
- Article 124 – Arbitrary detention
- Article 125 – Delay in the delivery of detained persons
- Article 126 – Delaying releases

137. In 1992, Congress enacted RA 7438, otherwise known as An Act Defining Certain Rights of Persons Arrested, Detained, or under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Provides Penalties Thereof.” Section 1 of the Act declares it the policy of the State to value the dignity of every human being and to guarantee full respect for human rights.

138. As used in the Act, custodial investigation (that is, an investigation conducted while a suspect in detention following his arrest without warrant) includes the practice of issuing an “invitation” to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the “inviting” officer for any violation of law. As many acts of torture were reportedly committed during custodial investigation, RA 7438 reiterates the constitutional rights of a person under investigation of an offense, or the so-called custodial rights, namely, the rights to remain silent and to have a competent and independent counsel preferably of his own choice, and to be informed of these rights (Art. III, Sec 12(1), 1987 Constitution).

139. Section 2 prescribes procedural safeguards to ensure protection of the constitutional rights of persons arrested, detained or under custodial investigation,

thus:

He shall at all times be assisted by counsel;

The concerned public officer or employee, or anyone acting under his order or in his place, shall inform such person, in a language known and understood by him, of his custodial rights;

The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumb-marked if such person does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever;

Any extra-judicial confession made by such person shall be in writing and signed by him in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extra-judicial confession shall be inadmissible as evidence in any proceedings;

Any waiver by such person shall be in writing and signed by him in the presence of his counsel; otherwise, such waiver shall be null and void and of no effect;

Such person shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or any member of his immediate family or by his counsel, or by any international NGO accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, guardian or ward;

The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.

140. Section 3 provides that an assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or with the prosecution of crimes. In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be legally detained by the investigating officer for the allowable period provided for in Article 125 of the RPC,

or the so-called “12-18-36 hours.”

141. Art 125 provides that a public officer or employee who shall detain any person for some legal ground should deliver such person to the proper judicial authorities (i.e., Supreme Court and such inferior courts as may be established by law) within the period of: 12 hours for crimes or offenses punishable by light penalties or their equivalent, like *arresto menor*, public censure; 18 hours for crimes or offenses punishable by correctional penalties or their equivalent, like *prision correctional*, *arresto mayor*, *destierro*; and, 36 hours for crimes or offenses punishable by afflictive or capital penalties or their equivalent, like death penalty, *reclusion perpetua*, *reclusion temporal*, *prision mayor*.

142. Section 4 provides that any person who obstructs, prevents or prohibits the person arrested, detained or under custodial investigation of his visitatorial rights mentioned in Section 2 at any hour of the day or, in urgent cases, of the night, shall suffer the penalty of imprisonment of not less than four years nor more than six years, and a fine of PhP4,000.00.

143. Further, it provides that any arresting or investigating officer or employee who fails to inform such person shall be fined PhP6,000.00 or face a penalty of imprisonment of not less than eight years but not more than ten years or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

144. Significantly, the visitatorial rights given to a person detained, arrested or under custodial investigation makes easier the detection of signs of torture like fresh marks on the body, or, the visitatorial rights of the detained person may prevent the possibility of the commission of torture. The strict requirements for the execution of extra-judicial confessions help avoid the influence of threat or torture.

145. But RA 7438 also provides safeguards for law enforcement authorities against false accusation of torture. An arrested person who signed extra-judicial confession in the presence of his lawyer may not successfully later recant his confession by alleging that he was tortured into admitting his guilt.

146. In the case of *People vs. Barlis* (231 SCRA) the SC ruled that the right to counsel during custodial investigation is guaranteed merely to preclude the slightest coercion as would lead the accused admit something false, not prevent him from voluntarily telling the truth. In *People vs. Ramon Bolanos* (3 July 1992, 211 SCRA 262), the SC held that extra-judicial confession given by the accused during custodial investigation and without assistance of counsel is inadmissible in evidence. Being already under custodial investigation while on board the police patrol jeep on the way to the police station where formal investigation may have been conducted, the appellant should have been informed of his constitutional right to remain silent.

147. In *People vs. Jovito Tujon, et. al.*, (19 Nov 1992, 215 SCRA 559), the

petitioners allegedly confessed to the commission of the crime during a custodial investigation. In the said extra-judicial confessions that were conducted separately, both accused were reportedly apprised of their constitutional rights. The prosecutor in charge of the case testified that, when the two accused were brought to his office for investigation, he asked the accused if the statements given to the police were freely given and they answered in the affirmative. He then let them affix anew the respective signatures on the said statement in his presence.

148. The Court noted that the interrogation was made in the absence of counsel *de parte* or *de officio* and the waiver of counsel, if made at all, was not made with the assistance of counsel as required. While the right to counsel may be waived, such waiver must be done voluntarily, knowingly, intelligently, and made (in writing) in the presence of the lawyer of the accused. If the record does not show that the accused was assisted by counsel in making his waiver, this defect nullifies and renders his confession inadmissible in evidence. Extra-judicial confessions taken without the assistance of counsel is inadmissible in evidence.

149. To ensure the urgent reporting of any incidence of torture, a MOA (10 Dec 1990) was forged by the DFA, DILG, DOH, DND, AFP, PNP, PHRA and MAG to facilitate access by medical personnel to detained persons. Requirements for the visit are as follows: physicians and other health personnel must submit two photocopies of their Ids on or before the visit for counter-checking; the written consent or confirmation of the detainee that he/she desires treatment by a private physician since all expenses incurred as consequence thereof shall be borne by the requesting detainee. The MOA also allows the conduct of exhumations and autopsies by independent forensic experts from government and NGOs. The representatives of signatory agencies may participate therein as observers.

150. Furthermore, under the Joint DND-DILG Circular No. 2-91 (2 Dec 1991) family members, relatives, friends, legal counsels, private physicians or detainees or accused persons are granted free access to the detention center or jail where the detainees are held, but subject to existing laws and corresponding AFP-PNP policy.

151. The AFP ROE for Internal Security Operations Campaign Plan (10 Aug 1998) provides that: military personnel shall respect the HR of both victims and perpetrators at all times and under any circumstance; arrest during the conduct of operations must be effected pursuant existing laws; and, no violence or unnecessary force shall be used in making an arrest, and the person arrested not subjected to any greater restraint that is necessary for his detention.

152. AFP CS MC dated 17 Nov 1998 specifies the rules for the conduct of operations, attack, defense, movements, small unit operations, and indirect fire support guidelines. It strictly prohibits any action or decision that would result in unnecessary destruction of life and property of civilians in areas where military operations are underway. Subsection (d) "Respect for Human Rights," under Section D (Crisis Situation), of the Rules also provides "in all these actions in any situation, all AFP

personnel shall respect the HR of the victims and the perpetrators.” Command responsibility is stressed and there is no exception in, or justification for, committing torture even if there is an order by a superior officer.

153. The PNP POP (26 June 1997) enjoins strict observance of HR at all times by all PNP members, especially in the conduct of police operations, so as to preclude unnecessary or excessive use of force, which on occasion had resulted in fatalities. It provides that: 1) under any circumstance, the use of force, including firearms, is justifiable only in self-defense and defense of stranger and only as a last resort when all other peaceful non-violent means have been exhausted; 2) whenever resorted to, only necessary and reasonable force sufficient to employ self-defense and defense of stranger or overcome the clear and imminent danger posed or resistance being put up by a malefactor or group shall be applied; 3) reasonable force to neutralize the vehicle and resistance of the suspects is sufficient; and, 4) non violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention.

154. Section 12 (4), Art. III of the Constitution provides that the law shall provide for penal and civil sanctions for violations of human rights, as well as compensation to and rehabilitation of victims of torture or similar practices and their families. The enactment in 1991 of RA 7309, or An Act Creating the Board of Claims under the DOJ for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes (see also Articles 9 and 14), assures the grant of financial assistance to victims of unjust imprisonment or detention and victims of violent crimes. The Act states that violent crimes include rape and likewise refer to offenses made or committed with malice resulting in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity.

155. For victims of violent crimes, the maximum amount of claim the Board may approve shall not exceed Ten Thousand Pesos (PhP10,000) or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to the injury, whichever is lower. This is without prejudice to the right of the claimant to seek other remedies under existing laws. Victims of torture may also claim financial assistance from the CHR, through its financial assistance program.

156. RA 8049, or An Act Regulating Hazing and other Forms of Initiation Rites in Fraternities, Sororities and Organizations of 1995, regulates and penalizes this method of torture often employed by leaders of college or university organizations to gauge the physical, mental and emotional determination of neophytes to join such organizations.

157. Hazing is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do

menial, silly, foolish and similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury. The term organization shall include any club of the AFP, PNP, Philippine Military Academy (PMA), or officer and cadet corps of the Citizen's Military Training (CMT) or Citizen's Army Training (CAT).

158. The person or persons who participated in hazing shall suffer the penalty of (a) reclusion perpetua if death, rape, sodomy or mutilation results therefrom; (b) reclusion temporal in the maximum period if, as a consequence of the hazing, the victim shall become insane, imbecile, impotent or blind; (c) reclusion temporal in its medium period if in consequence of the hazing, the victim lost the use of speech or the power to hear or smell, or lost an eye, hand, foot, arm or leg or became incapacitated for the activity or work in which he was habitually engaged; (d) reclusion temporal in its minimum period if in consequence of the hazing, the victim becomes deformed, disabled or incapacitated for the activity or work in which he was habitually engaged for more than 90 days; (e) prision mayor in its maximum period if the victim becomes ill or incapacitated for more than 30 days; (f) prision mayor in its medium period if the victim becomes ill or incapacitated for 10 days or more or if the injury sustained shall require medical attendance for the period; (g) prision mayor in its minimum period if the victim becomes ill or incapacitated for 1-9 days or if his injury requires medical attendance for the same period; and (h) prision correccional in its maximum period for less serious physical injuries.

C. Article 11: Prohibition of slavery and forced labor

159. Section 18, Article III of the Philippine Constitution provides the following for the prohibition of slavery and forced labor:

“(1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) Involuntary servitude in any form shall exist except as punishment for a crime whereof the party shall have been duly convicted.”

160 Articles 267 to 274 of the RPC define and punish crimes against liberty, including slavery and service rendered under compulsion in payment of debts.

161. Moreover, the Philippines is a State party to the following relevant conventions:

(a) Slavery Convention

(b) Protocol amending the Slavery Convention

(c) ILO Convention (No. 105) concerning the Abolition of Forced Labor.

162. RA 8042 defines the crime of illegal recruitment and provides for stiff penalties therefor. The crime of illegal recruitment constitutes a crime of economic sabotage when committed by a syndicate (if carried out by a group of three or more persons conspiring or confederating with one another) or in a large scale (if committed against three or more persons individually or as a group) and as such, carries with it the penalty of life imprisonment.

163. The Inter-Agency Council Against Trafficking (IACAT), tasked to coordinate, monitor and oversee the implementation of laws regarding forced labor and slavery, was created in Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003. The Council shall have the following powers and functions according to Section 9:

- (a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of the Act;
- (c) Monitor and oversee the strict implementation of the Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the Local Government Units (LGUs), concerned agencies, and Non-Government Organizations (NGOs);
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- (g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate provisions of the Act;
- (h) Formulate a program for the reintegration of the trafficked persons in cooperation with the Department of Labor and Employment (DOLE), Department of Social Welfare and Development (DSWD), Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;
- (i) Secure from any department, bureau, office, agency or instrumentality of the government or from NGOs and other socio-civic organizations such assistance as may be needed to implement the Act;

- (j) Complement the shared government information system for migration established under RA. No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995” with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction
- (k) Develop the mechanism to ensure the timely coordinated and effective response to cases trafficking in persons;
- (l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;
- (m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the Internet;
- (n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;
- (o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and
- (p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of the Act.

164. Section 26 thereof, introduces the Country Team Approach in the recovery and repatriation of the trafficked overseas Filipinos. The Country Team Approach under EO 74, s. of 1993 and further enunciated in RA 8042 shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons regardless of their immigration status. Provisions for trafficked foreign nationals are stated in Section 44 of RA 9208. Trafficked persons in the Philippines who are nationals of a foreign country shall be entitled to appropriate protection, assistance and services available to the trafficked persons and shall be allowed to continued presence in the Philippines for a period of fifty-nine (59) days to enable them to effect the prosecution of offenders. Such period may be renewed upon showing of proof by the trial prosecutor that their further testimony is essential to the prosecution of the case. The trial prosecutor shall course his request for extension to the Council which shall accordingly act upon the same. If such request is granted, the registration and immigration fees of such foreign nationals shall be waived.

D. Articles 12, 13 & 26: Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union

i) Freedom of opinion and expression

165. Article III of the Constitution provides:

Section 4. No law shall be passed abridging the freedom of speech, of expression or of the press, or the right of the people to peaceably assemble and petition the Government for redress of grievances;

Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official acts, transactions, or decisions, as well as to government research data used as a basis for policy development, shall be afforded to citizen, subject to such limitations as may be provided by law;

Section 18 (1). No person shall be detained solely by reason of his political beliefs and aspirations.

166. The Constitution prohibits two types of restrictions on the freedom of speech and press, namely: (a) prior restraint consisting of official government restrictions on the press and other forms of expression in advance of actual publications or dissemination; and (b) subsequent punishments.

167. The SC has ruled that the freedom of expression ranks in the hierarchy of constitutional rights higher than poverty and, hence, the norms for the regulations of expression place more stringent limits on State action (*Salonga vs. Pano*, 134 SCRA 438, 18 February 1985). Jurisprudence has evolved three tests: (a) the dangerous tendency test; (b) the clear and present danger test; and (c) the balancing of interests test.

168. Philippine laws do not protect libelous, slanderous and obscene speech, hence, the RPC contains the following:

Article 353 of the Revised Penal Code defines libel as “a public and malicious imputation of a crime, or of a vice or a defect, real or imaginary, or any act or omission, condition, status or circumstance tending to cause the dishonour or contempt of a natural or judicial person, or to blacken the memory of one who is dead.” Article 355 provides the penalty for libel;

Article 354 provides that every defamatory imputation is presumed to be malicious, even if it is true, if no good intention and justifiable motive for making it shown, except in the following cases:

(1) A private communication made by any person to another in the performance of any legal, moral or social duty;

(2) Fair and true report made in good faith, without any comment or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, as of any statement, report or speech

delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Article 356 punishes the crime of “threatening to publish and offer to prevent such publications for compensation;”

Article 357 punishes the prohibited publication of acts referred to in the course of official proceedings;

Article 358 and 359 punish the crimes of slander and slander by deed, respectively;

Article 362 punishes libelous remarks;

Article 363 and 364 punish the crimes of incriminating innocent person and intriguing against honour, respectively;

169. Articles 200 and 201 punish the crimes of grave scandal, immoral doctrines, obscene publication and exhibitions of indecent shows.

ii) Freedom of conscience and religion

170. Section 5, article II (Bill of Rights), of the Constitution of the Republic of the Philippines provides the following:

“No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.”

171. The foregoing provision consists of two parts: (a) the non-establishment clause, which prohibits the establishment of any religion; and (b) the free exercise clause, which guarantees the free exercise of religion.

172. Three other constitutional provisions express the non-establishment principles namely:

Section 6, article II, which states that “The separation of the church and the State are inviolable.”

Section 2 (5), article IX, section C, which prohibits religious denominations and sects from being registered as political parties or organizations;

Section 29 (2), article VI, which states:

“No public money or property shall be appropriated, applied, paid or employed, directly or indirectly, for the use, benefit or support of any sect, church or denomination, sectarian institution or system of religion, or of any priest, preacher, minister or other religious teacher or dignitary assigned to the Armed Forces, or to any penal institution or government orphanage or leprosarium.”

173. There are constitutionally created exceptions to the non-establishment clause, namely:

Section 28 (3), article VI:

“Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries and all lands, buildings and improvements, actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation.”

Section 29 (2), article VI:

“No public money or property shall be appropriated, applied, paid or employed, directly or indirectly, for the use, benefit or support of any sect, church or denomination, sectarian institution or system of religion, or of any priest, preacher, minister or other religious teacher or dignitary assigned to the Armed Forces, or to any penal institution or government orphanage or leprosarium.”

Section 3 (3), article XIV:

“At the option expressed in writing by parent or guardian, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religion to which the children or wards belong, without additional cost to the Government.”

174. The RPC defines the following crimes against religious worship:

“Article 132. Interruption of religious worship. The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestation of any religion. If the crime shall have been committed with violence or threats, the penalty shall be prision correccional in its medium and maximum periods.”

Article 133. Offending the religious feelings. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.”

175. PD 442 provides in Art. 91 that the employer shall determine and schedule the

weekly rest day of his employees subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labor may provide. However, the employer shall respect the preference of employees as to their weekly rest day when such preference is based on religious grounds.

176. With regard to act incidental to the exercise of freedom of religion, the Corporation Code of the Philippines regulates the establishment of religious corporations and societies; likewise, the Family Code of the Philippines provide that:

“Marriage may be solemnized by any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar-general acting within the limits of those written authority granted by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officials church or religious sect.”

177. The Philippine jurisprudence relating to the non-establishment clause and the free exercise clause includes:

- (a) The constitutional guaranty of free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of such right can be justified like other restraints of freedom of expression on the ground that there is clear and present danger of any substantive evil which the State has the right to prevent. (*American Bible vs. City of Manila*, 101 PHIL 398 (1957)).
- (b) The Supreme Court sustained a provision in the Old Industrial Peace Act allowing laborers to dissociate from or not join a labor union despite its closed-shop agreement with management if they were “members of any religious sect which prohibits affiliation of their members in any such labor organization.” It was held here that the right to association included the right not to associate and that this particular exemption was intended for the benefit of laborers who were inhibited from joining labor unions because of their religious beliefs. The Court further pointed out that the free exercise of religious profession or belief is superior to contract rights. In case of conflict, the latter must, thereto, yield to the former. (*Victoriano vs. Elizalde Rope Workers Union*, 59 SCRA 54, 72 [1974]).

178. In *Ebralinag vs. The Division Superintendent of Schools of Cebu* (1 March 1993, 219 SCRA 256), the Supreme Court said that the expulsion of students for refusing to salute the Philippine national flag and take part in the flag ceremony on the ground that it is contrary to their belief and religion as members of the Jehovah’s Witnesses, is violative of the students’ constitutional right to religious freedom. The sole justification for a prior restraint or limitation on the exercise of religious freedom is the existence of a clear and present danger of a character both grave and imminent,

of a serious evil to public safety, morals, health or any other legitimate public interest, that the State has a right to prevent.

iii) Right to join a trade union

179. Article 269 of PD 442 generally prohibits foreign nationals from engaging in trade union activities. However, foreign workers with valid working permits may exercise the right of self-organization, subject to reciprocity. The aforecited provision states,

“All aliens, natural or juridical as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, that aliens working in the country with valid permits issued by the Department of Labor and Employment, may exercise the right to self-organization and join or assist labor organizations of their choosing for purposes of collective bargaining; Provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers.”

180. Article 270 regulates the grant of foreign assistance to Philippine labor organization or group of workers in support of trade union activities by requiring that permission of the Secretary of Labor and Employment be secured prior to acceptance of the grant.

181. Article 272 provides that foreign nationals who violate the aforecited provisions shall be subject to immediate and summary deportation and shall be permanently barred from re-entering the country without the special permission of the President of the Philippines.

E. Articles 14 & 15: Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property

182. The constitution of the Philippines provides the following:

Under section 2, article III (Bill of Rights):

“The right of the people to be secured in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall be issued except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and persons or things to be seized.”

Under section 3, article III:

“The privacy of communication and correspondence shall be inviolable except upon lawful order or when public safety or order requires otherwise as prescribed by law.”

Section 3, paragraph 2 of article III further provides that any evidence obtained in violation of sections 2 and 3 shall be inadmissible for any purpose in any proceeding.

183. The New Civil Code (Republic Act No. 386) provides in article 26 that “Every person shall respect the dignity, personality, privacy and peace of mind of his neighbours and other persons.” The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention or other relief:

- (a) Prying into the privacy of another residence;
- (b) Meddling with or disturbing the private life or family relations of another;
- (c) Intriguing to cause another to be alienated from his friends;
- (d) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect or other personal condition.

184. The RPC (Act No. 3815) defines in articles 267-289 the crimes against liberty (illegal detention and kidnapping) and crimes against security (trespass to dwelling, threats and coercion).

185. Further, the RPC defines and punishes in article 128 the crime of violation of domicile:

“The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects therein without the previous consent of the owner or having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.”

“If the offense be committed in the night time, or any papers or effects not constituting evidence of a crime are not returned immediately after the search made by the offender, the penalty shall be prision correccional.”

186. Article 32 of RA 386 also provides that any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs, among others the right of liberty of abode and of changing the same and the right to privacy of communication and correspondence, of another person shall be liable to the latter for damages.

187. The RPC also defines “crime against honour” such as libel (article 353), libel by means of writing or similar means (article 355), threatening to publish or offer to prevent such publication for a compensation (article 356), slander (article 358), slander by deed (article 359), incriminatory machinations or incriminating innocent persons (article 363) and intriguing against honor (article 364).

188. Section 21 (privileged communication) of rule 130 of the Rules of Court provides that the following persons can testify as to matters learned in confidence in the following cases:

- (a) The husband or the wife during the marriage or afterwards, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage;
- (b) Any attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of the professional employment; nor can an attorney’s secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;
- (c) A person authorized to practice medicine, surgery or obstetrics cannot, in a civil case, without the consent of the patient, be examined as to any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the character of the patient;
- (d) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs;
- (e) A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure.

189. The Philippines also has an Anti-Wire Tapping Act (RA 4200) which prohibits and penalizes wire tapping and other related violations of the privacy of communication.

F. Articles. 16 (1-4), 17 & 24: Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law

i) Right to liberty and security of persons

190. Article III of the Constitution provides, in part,

“Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

“Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order to the court, or when public safety or order requires otherwise as prescribed by law.”

“(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.”

191. Section 2, Art. III of the Constitution underscores the exclusive and personal responsibility of the judge issuing the warrant of arrest to make a determination on the existence of probable cause to order the arrest of the person. The Court has always stressed that the occasion for the determination of probable cause is not for the full and exhaustive display of the parties’ evidence; it is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

192. There are, however, instances where an arrest may lawfully be made without a warrant and/or by a private person, in which case it is known as a “citizen’s arrest.”

193. These instances are as follows:

- (a) when in the presence of the arresting person, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
- (c) when the person to be arrested is a prisoner who has escaped.

194. The arresting officer is required, at the time of arrest, to inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest, if such was the fact, except when he flees or forcibly resists before the arresting officer has opportunity so to inform him, or when the giving of such information will imperil the arrest.

195. The issuance of a search warrant requires the issuing judge to personally examine the complainant and his witnesses.

196. A search may validly be conducted without a search warrant with the consent of the person searched, when the search is incidental to a lawful arrest, if the search is demanded by the urgency and exigency of the moment, if the object to be seized is in the plain view of the officer who has the right to be in the position to have that view and the object is per se subject to seizure.

197. The Tariff and Customs Code does not require a search warrant for purposes of enforcing customs and tariff laws. As such, except in the search of a dwelling house, persons exercising police authority under the customs laws may effect search and seizure without search warrant in the enforcement of customs laws.

198. A public officer or employee who procures a search warrant without just cause will be criminally liable under Art. 129 of the RPC.

199. Titles 9 and 10 of the RPC define crimes against personal liberty and property, respectively, and prescribe penalties therefore. Further, Articles 124 and 126 penalize arbitrary detention and delaying of release of a prisoner or detention prisoner.

200. Also relevant are Secs. 13 and 14 of Art. III, viz.,

“Sec. 13. All persons except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.”

“Sec. 14 (1). No person shall be held to answer for a criminal offense without due process of law.”

ii) Right to recognition as a person before the law

201. Section 11, Art. II of the Philippine Constitution provides, “The State values the dignity of every human person and guarantees full respect for human rights.”

202. Section 1, Art. III of the Bill of Rights further provides, “No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.”

203. The Civil Code provides:

“Art. 40. Birth determines personality, but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born

later with the conditions prescribed in article 41.

“Art. 41. For civil purposes, the foetus is considered born if it is alive at the time it is completely delivered from the mother’s womb. However, if the foetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four after its complete delivery from the maternal womb.”

204. Section 37 of the Commonwealth Act No. 613, also known as The Philippine Immigration Act of 1940, provides procedural guarantees for non-resident migrants. It states that no alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration.

G. Articles 16 (5 to 9), 18 & 19: Right to procedural guarantees

i) Rights of persons arrested, detained or under custodial investigation

205. The relevant provisions on arrest are found in Rule 113 of the Revised Rules on Criminal Procedure, viz.,

“Sec. 7. Method of arrest by officer by virtue of warrant. – When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest x x x x”

“Sec. 8. Method of arrest by officer without warrant. – When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the person to be arrested is then engaged in the commission of an offense or is pursued immediately after its commission or after the escape, or flees or forcibly resists x x x x”

“Sec. 9. Method of arrest by private person. – A private person when making an arrest shall inform the person to be arrested of the intention to arrest him and the cause of the arrest x x x x”

206. RA 7348 prescribes procedural safeguards to ensure protection of the constitutional rights of persons arrested, detained or under custodial investigation.

207. These rights are as follows:

- He shall at all times be assisted by counsel;

- The concerned public officer or employee, or anyone acting under his order or in his place, shall inform such person, in a language known and understood by him, of his custodial rights;
- The custodial investigation report shall be reduced in writing by the investigating officer, provided that before such report is signed, or thumbmarked if such person does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever;
- Any extra-judicial confession made by such person shall be in writing and signed by him in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extra-judicial confession shall be inadmissible as evidence in any proceeding;
- Any waiver by such person shall be in writing and signed by him in the presence of his counsel; otherwise, such waiver shall be null and void and of no effect;
- Such person shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-government organization duly accredited by the PCHR or by any international non-government organization accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, guardian or ward.

208. By way of summary of the above-cited rules: At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, or relative, or anyone he chooses to be the most expedient means. No custodial investigation shall be conducted unless it is in the presence of counsel engaged by the person arrested or by any person on his behalf. The right to counsel may be waived but the waiver shall be valid only when expressly made in writing in the presence of counsel. Any statement made in violation of the foregoing procedure shall be inadmissible in evidence.

209. Article 125 of the RPC provides that a public officer or employee who shall detain any person for some legal ground should deliver such person to the proper

judicial authorities (i.e., Supreme Court and such inferior courts as may be established by law) within the period of: 12 hours for crimes or offenses punishable by light penalties or their equivalent; 18 hours for crimes or offenses punishable by correctional penalties or their equivalent; and 36 hours for crimes or offenses punishable by afflictive or capital penalties or their equivalent.

210. When a migrant worker or member of his family is arrested or committed to prison or custody, the consular or diplomatic authorities of his State of origin are informed of the fact of arrest or detention.

ii) Rights of the accused

211. Section 14 of Art. III of the Constitution states,

“Sec. 14 (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.”

212. The right to be informed of the nature and cause of the accusation is safeguarded by the provisions in The Rules of Court on preliminary investigation, arraignment, requirements for sufficient allegations in the information, bill of particulars and the rules against duplicity.

213. Philippine jurisprudence abounds in cases upholding the right of the accused to be informed of the nature and cause of the accusation against him. In *People v. Crisologo* (G.R. No. 74145) the Supreme Court declared that, “the absence of a qualified interpreter in sign language and in any other means, whether in writing or otherwise, to inform the accused, a deaf-mute, of charges against him denied him this fundamental right to due process of law.”

214. The right to speedy trial means that the trial is conducted according to the laws of criminal procedure and the rules and regulations without capricious, vexatious or oppressive delays.

215. SC Administrative Circular No. 4, dated 22 September 1988, was issued to establish a mandatory continuous trial system, which was envisioned as a mode of adjudication conducted with speed and dispatch so that trials are held on the scheduled

dates without needless postponements. The factual issues are well-defined at pre-trial and the whole proceedings terminated and ready for judgment within 90 days from the date of initial hearing, unless for meritorious reasons, an extension is permitted. The system requires that the judge (a) adhere faithfully to the session hours prescribed by law; (b) maintain full control of the proceedings; and (c) efficiently allocate and use time and court resources to avoid court delays.

216. In 1998, RA 8493, or An Act to Ensure a Speedy Trial of All Criminal Cases before the Sandiganbayan, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, was enacted into law. Section 6 of the law provides that, “in no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court x x x x”

217. To complement the continuous trial system, DOJ Circular No. 38, s. 1994, directed the National Prosecution Service, thus, “no postponement of the trial or other proceedings of a criminal case shall be initiated or caused by the trial prosecutor except in instances where the subject postponement is occasioned by the absence of material witnesses or other causes beyond his control or not attributable to him.”

218. A convicted person has the right to appeal his sentence to a higher tribunal. The right to appeal, however, is for the benefit of the accused and he may waive it expressly or by implication. (People v. Ang Gioc, 73 Phil. 336)

219. A convicted person shall not also be tried or convicted again for the same offense. The issue of double jeopardy arises when: (a) the accused is charged with the same offense in two (2) separate pending cases; (b) the accused is prosecuted anew for the same offense after he had been convicted or acquitted thereof, or (c) the prosecution appeals from a judgment in the same case.

220. Section 1, Rule 137 of The Rules of Court states,

“No judge or judicial officer shall sit in any case in which he or his wife or child is pecuniarily interested as heir, legatee, creditor or otherwise or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed in accordance to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.”

iii) Right to be provisionally released from custody

221. A person under legal custody may be provisionally released upon the giving of security for his release. Section 13, Art. III of the Constitution states,

“All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law x x x x”

222. The rules for deportation proceedings (BID Office Memorandum No. AAA-01-004) provide,

“Rule XVII. Release on Bail or Recognizance. Petitions for bail shall be filed at the Office of the Commissioner. No alien shall be released on bail or recognizance, except upon meritorious grounds to be determined by the Commissioner on Immigration.”

iv) Prohibition against ex post facto law

223. The Constitution provides in Sec. 22, Art. III that, “no ex post facto law or bill of attainder shall be enacted.”

224. The relevant provisions of the RPC are as follows,

“Art. 21. No felony shall be punishable by any penalty not prescribed by law prior to its commission.”

“Art. 5 Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive through the Department of Justice, the reasons which induce the court to believe that said act be made the subject of legislation.”

225. An ex post facto law has been defined in Philippine jurisprudence as one: (a) which makes an action done before the passing of the law and which was innocent when done, criminal, and punishes such action; (b) which aggravates a crime or makes it greater than when it was committed; (c) which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; (d) which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant; (e) which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful; or (f) which deprives a person accused of a crime of some lawful protection to which he has become entitled, such as protection of a former conviction or acquittal or a proclamation of amnesty.

226. The ex post facto clause prohibits only retrospective penal laws and not laws which concern civil matters or proceedings generally, or which affect or regulates civil or private rights. However, Art. 22 of the RPC provides that penal laws shall have a retroactive effect so far as they favor the persons guilty of a felony who is not a

habitual delinquent, although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same.

v) Compensation for wrongful imprisonment

227. The payment of compensation for unjust imprisonment is governed by RA 7309, otherwise known as An Act Creating the Board of Claims under the DOJ for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes.

228. Under Sec. 3 of RA 7309, the following may file claims of compensation before the Board of Claims:

- “(a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal;
- (b) any person who was unjustly detained and released without being charged;
- (c) any victim of arbitrary or illegal detention by the authorities as defined in the [Revised Penal Code](#) under a final judgment of the court x x x x”

vi) Juvenile justice law

229. Republic Act 9344, otherwise known as Juvenile Justice and Welfare Act of 2006, exempts a child under 15 years of age from criminal responsibility. Under the law, a child over 15 years of age but under 18 is exempt from criminal responsibility, provided he acted without discernment. Discernment means the mental capacity of the child to fully appreciate the consequences of his unlawful act.

230. The law also provides for the immediate turn over of children in conflict with the law to social workers upon apprehension instead of jailing them. It also provides for the referral of children's cases to community-based rehabilitation programs (diversion programs) instead of going to trial, and for juvenile delinquency prevention programs as well as rehabilitation and reintegration.

231. Under the law, the diversion program shall include adequate socio-cultural and psychological responses and services for the child. At the different stage where diversion may be resorted to, viz., at the level of the village chief, at the law enforcement officer and the prosecutor or at the level of the court, several programs are made available for the child in conflict with the law.

H. Article 20: Prohibition of imprisonment, deprivation of authorization of residence or work permit and expulsion merely on the ground of failure to fulfill a contractual obligation

232. Section 20, Art. III of the Constitution states, “No person shall be imprisoned for debt or non-payment of a poll tax.”

233. Pursuant to DOLE Department Order No. 75-06, series of 2006, or the Revised Rules for Issuance of Employment Permits to Foreign Nationals, the Regional Director may cancel or revoke the Alien Employment Permit (AEP) based on the following grounds only:

- a) non-compliance with any of the requirements or conditions for which the AEP was issued;
- b) misinterpretation of facts in the application;
- c) submission of falsified or tampered documents;
- d) meritorious objection or information against the employment of foreign national as determined by the Regional Director;
- e) foreign national has a derogatory record; or
- f) employer terminated the employment of the foreign national.

I. Articles 21, 22 & 23: Protection from confiscation and/or destruction of ID and other documents; protection against arbitrary expulsion; right to recourse to consular or diplomatic protection

i) Protection from confiscation and/or destruction of documents

234. Article 327 of the RPC punishes the act of willfully damaging another’s property for the sake of causing damage due to hate, revenge or other evil motive.

ii) Protection against arbitrary expulsion

235. Under the Constitution, an alien is entitled to the protection of the Bill of Rights. Article 127 of the RPC imposes the penalty of prison correccional upon any public officer or employee who, not being authorized by law, shall expel any person from the Philippines or shall compel such person to change his residence.

236. The Philippines, in the exercise of its sovereign right to admit, exclude and deport aliens, has laws on immigration contained in Commonwealth Act (CA) 613, entitled An Act to Control and Regulate the Immigration of Aliens into the Philippines, otherwise known as the Philippine Immigration Act of 1940. This law governs the entry of aliens into the Philippines and their expulsion, deportation and repatriation therefrom. It applies to and is to be enforced in all the territory and waters subject to the jurisdiction of the Republic of the Philippines.

237. Section 27 of the CA Philippine Immigration Act provides that boards of special inquiry shall have the authority to decide whether an alien seeking to enter or land in the Philippines shall be excluded.

238. Proceedings for the deportation of aliens are not criminal proceedings; hence, all proceedings prescribed in criminal cases for the protection of the accused are not present or followed. Likewise, the constitutional guarantee to bail is not applicable to aliens subject to deportation. The expulsion is deemed a protective measure to rid the Philippines of aliens deemed undesirable and the deportee is merely being sent back to his country of origin and allegiance.

239. An alien within the Philippines, unlike one who is applying for entry or is at the threshold of initial entry, is entitled to the full benefits of procedural due process under the Constitution. Consequently, deportation can be ordered only in accordance with laws and after a fair hearing.

240. There are two procedures for deportation of aliens, viz.,

Executive power to deport

241. The power to deport is lodged in the President of the Philippines. There is no provision in the Constitution nor act of legislature defining the power. However, the act of deporting is subject to regulations prescribed in Section 69 of the Administrative Code, viz.,

“A subject of a foreign power residing in the Philippines shall not be deported, expelled or excluded from said Islands or repatriated to his own country by the President of the Philippines except upon prior investigation conducted by said executive or his authorized agents on the ground upon which such action is contemplated. In such a case, the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf and to cross-examine the opposing witnesses.

“The prior investigation is conducted by the President or his authorized agent, which is the Deportation Board.”

242. Section 69 of the Administrative Code was specifically exempted from the general provisions of the Philippine Immigration Act of 1940.

Deportation power of the Commissioner of Immigration

243. The Philippine Immigration Act of 1940 empowers the Commissioner of Immigration to effect the arrest and expulsion of an alien after a previous determination by the Board of Commissioners of the existence of ground or grounds

specified in Sec. 37 of the law, viz,

“Sec.37. The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

‘(1) Any alien who enters the Philippines after the effective date of this act, by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry;

‘(2) Any alien who enters the Philippines after the effective date of this act, who was not lawfully admissible at the time of entry;

‘(3) Any alien, who, after the effective date of this act is convicted in the Philippines and sentenced to a term of one year or more for a crime involving moral turpitude committed within five years after his entry into the Philippines, or who, at any time after such entry, is so convicted and sentenced more than once;

‘(4) Any alien who is convicted and sentenced for a violation of the law governing prohibited drugs;

‘(5) Any alien who practices prostitution or is an inmate of a house of prostitution or is connected with the management of a house of prostitution or is a procurer;

‘(6) Any alien who becomes a public charge within five years after entry from cause not affirmatively shown to have arisen subsequently to entry;

‘(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant;

‘(8) Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority, or who disbelieves in or is opposed to organized government, or who advises, advocates, or teaches the assault or assassination of public officials because of their office, or who advises, advocates or teaches the unlawful destruction of property, or who is a members of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines;

‘(9) Any alien who commits any of the acts described in Sections 46 and 47 of this Act, independent of the criminal action which may be brought

against him, provided that, in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported; provided, however, that the imprisonment may be waived by the Commissioner of Immigration with the consent of the department head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the department head;

“(10) Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of the Philippine Commonwealth Act No. 653, otherwise known as the Philippine Registration Act of 1941, or who at any time after entry shall have been convicted more than once of violating the provisions of the same act;

“(11) Any alien who engages in profiteering, hoarding or blackmailing, independent of any action which may be brought against him;

“(12) Any alien who is convicted of any offense penalized under Commonwealth Act No. 473, otherwise known as the Revised Naturalization Law of the Philippines or any law relating to acquisition of Philippine citizenship;

“(13) Any alien who defrauds his creditor by absconding or alienating properties to prevent them from being attached or executed.

x x x x

(c) No alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration.”

244. Deportation proceedings are administrative in character and summary in nature. The proceedings commence with the filing of a verified complaint with the Special Prosecutor, who shall determine if probable cause exists to allow deportation of the alien.

245. If the Special Prosecutor finds probable cause, he prepares the written charge which will be served upon the alien, his counsel and his embassy.

246. The charges are referred to the Board of Commissioner, which thereafter deliberates on the charge and informs the alien, his counsel and the embassy of its decision.

247. However, if a foreign embassy cancels the passport of an alien, or does not re-issue a valid passport or travel document, the alien loses the privilege to remain in the Philippines.

248. No warrant of arrest can be issued by the Immigration Commissioner before a final order of deportation is issued and such warrant is confined only to what is necessary to carry out said deportation order. (Neria v. Vivo, G.R. No. 26611-12, 30 September 1969; Contemprate v. Acting Commissioner of Immigration, G.R. No. 28604, 30 October 1970; Collector of Customs v. Villaluz, G.R. No. 34038, 18 June 1976).

249. The courts have jurisdiction to enjoin the Commissioner of Immigration from deporting an alien on other grounds, just as they have jurisdiction to review his decisions for abuse of discretion. On the other hand, Sec. 69 does not define the cases in which the Chief Executive may execute his power to deport; neither does it limit or curtail said power. Section 29 prescribes the procedure.

J. Articles 25, 27 & 28: Principle of equality of treatment in respect of remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical attention

i) Equality of treatment in respect of remuneration and other conditions of work and terms of employment

250. Article 3 of The Labor Code states,

“The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.” (emphasis supplied)

251. Article 6, on applicability of the Labor Code, states, “All rights and benefits granted to workers under this Code shall x x x apply alike to all workers, whether agricultural or non-agricultural.”

ii) Right to social security

252. Section 2 of the Social Security Law (RA 1161), as amended by RA 8282, states:

“It is the policy of the State to establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death and other contingencies resulting in loss of income or financial burden. Towards this end, the State shall endeavor to extend social security protection to workers and their beneficiaries.” (emphasis supplied)

253. The Social Security System (SSS) affords protection to all residents of the Philippines, citizens and non-citizens alike, regardless of age, creed, gender, age, geographic location and socio-economic status.

254. It is observed that companies provide private insurance package to foreign nationals under their employment.

Social security schemes for OFWs

255. The SSS offers voluntary social security coverage for OFWs under two programs: the Regular Program and the Flexi-Fund Program or the National Provident Fund for OFWs.

256. As of end-2005, OFW registration stands at around 600,000, representing 25% of the total number of workers in countries where the SSS has established its representative offices. To cater to the needs of OFWs prior to their deployment, SSS established an office inside the One-Stop Center of the POEA. The SSS has also established 15 offices worldwide mostly housed at Philippine embassies or consulates. OFW collections have also grown immensely from PhP95 million in 1999 to PhP893 million in 2005. Members' net equity in the Flexi-fund has already reached PhP80 million.

257. The Regular Program provides for retirement, death, disability, sickness, maternity and funeral benefits as well as salary, housing and business loans.

258. The Flexi-Fund Program, on the other hand, is a tax-exempt savings and pension plan designed to encourage overseas Filipinos to augment their savings from their hard-earned income, so they would have generated enough funds when they eventually decide to go home. Any amount contributed on top of the maximum contribution to the Regular Program goes to a worker's individual account. The cumulated balance can be used to supplement member's retirement or disability benefits under the Regular Program – in lump sum, pension or a combination of both. A member also has the option to withdraw any amount to finance needs such as housing, education, or seed capital for business.

OWWA Program for OFWs

259. The OWWA has a program providing Filipino working migrants insurance and health-care program benefits.

260. A member is covered with life insurance for the duration of his employment contract. The coverage includes PhP100,000.00 for natural death and PhP200,000.00 for accidental death.

261. A member is also entitled to disability or dismemberment benefits ranging from PhP2,000.000 to PhP50,000.00. In case of total permanent disability, a member

shall be entitled to Php100,000.00. A burial benefit of Php20,000.00 shall be provided in case of the member's death.

262. This program also provides out-patient services and hospitalization benefits to OFWs and their dependents. Established under EO 195, series of 1994, it was implemented by OWWA in coordination with the POEA, the DFA, and the Philippine Health Insurance Corporation (PHIC). The administration of the said program is now handled by the PHIC since March 2005.

Bilateral social security agreements

263. The Philippines has bilateral agreements on social security with the following countries:

- Austria (April 1982)
- United Kingdom/Northern Ireland (September 1989)
- Spain (October 1989)
- France (November 1989)
- Quebec (November 1989)
- Canada (March 1997)
- Switzerland (March 2004)
- Belgium (August 2005)

264. The salient features of these agreements are as follows:

- (a) Equality of treatment – a covered national of either country, including his dependents and survivors, are eligible for social security benefits under the same conditions as the national of the other country.
- (b) Export of benefits – a person shall continue to receive his benefits wherever he decides to reside.
- (c) Totalization – Contribution/creditable periods in both countries shall be added to determine qualification for benefits.
- (d) Payment of benefits – Each country shall pay a fraction of the benefit due from their respective systems, in proportion to the actual contributions/creditable periods.
- (e) Mutual administrative assistance – Covered members or beneficiaries may file their claims with the designated liaison agencies of either country, which shall accordingly extend assistance to facilitate processing of claims.

K. Articles 29, 30 & 31: Right of a child of a migrant worker to a name; registration of birth and nationality; access to education on the basis of equality of treatment; respect for cultural identity of migrant workers and members of their family

i) Right to name

265. A child's right to a name and nationality is well-recognized in the Philippines. This right is protected by the Law on Registry of Civil Status and the Civil Code. These laws require that all births shall be entered in the Civil Register Books, wherein all acts, events, and judicial decrees concerning the civil status of persons are to be recorded.

266. The law on civil registry requires that the registration of birth shall be based on the declaration of the physician or midwife in attendance at birth or, in default thereof, on the declaration of either parent of the newborn child. It shall state the date and hour of birth, sex and nationality of the child; names, citizenship and religion of parents, or if the father is not known, of the mother; the civil status of the parents; and the place where the child was born. In case of an illegitimate child, an acknowledgment of paternity will have to be made if the child will bear the surname of the father.

267. In case of failure to register birth, the parents or the responsible member of the family, and the attendant at birth or the hospital or clinic administrator, shall be jointly liable. If there was no attendant at birth, or if the child was not born in a hospital or maternity clinic, the parents or the responsible member of the family shall be liable.

268. In case of a foundling, the person who found the foundling shall report to the Local Civil Registrar the place where found, the date when found, and other attending circumstances.

269. Article 15 of the Civil Code of the Philippines provides that laws relating to "family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." As such, under Philippine jurisdiction, the personal laws of a person would govern him wherever he may be.

270. The legal name of a Filipino child consists of a given name and a surname. The former is a matter of choice by the parents; the latter is governed by the Civil Code. A legitimate or legitimated child uses the surname of the father; an adopted child, the surname of the adopting parent; and illegitimate child, the surname of either the father or the mother.

ii) Right to nationality

271. The 1987 Constitution defines the following as citizens of the Philippines:

- (a) those who were citizens at the time the Constitution was adopted;
- (b) those whose father or mothers are citizens of the Philippines;
- (c) those born before 17 January 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
- (d) those who are naturalized in accordance with law.

272. The Revised Naturalization Law provides that citizenship may be conferred upon an alien through the process of naturalization. An individual desiring to acquire Philippine citizenship should have resided in the Philippines for a continuous period of not less than 10 years. Naturalization of a parent affects the citizenship of his or her minor children. A minor child, who is foreign-born, dwelling in the Philippines at the time of the parent's naturalization, shall be deemed a Filipino citizen only during his or her minority unless he begins to reside permanently in the Philippines while still a minor, in which case, he will continue to be a Filipino citizen even after attaining majority. A child who is foreign-born after naturalization of his parent shall be considered a Filipino citizen, unless one year after reaching the age of majority he or she fails to register as a Filipino citizen at the Philippine consulate where he resides and to take the necessary oath of allegiance.

273. The Philippines subscribes to the doctrine of *jus sanguinis*, as such the child, wherever born, follows the citizenship of his parents.

iii) Access to education

Overseas Filipinos

274. The Filipino Education and Heritage Program of the CFO assists in efforts to provide necessary schooling for children of overseas Filipinos.

275. Philippine Schools Overseas (PSOs) are duly-registered educational institutions operating outside the Philippines and implementing the educational curriculum approved by the DepEd, to address educational needs of children of Filipinos overseas, and ultimately facilitate their reintegration in the Philippine educational system upon their return to the country. The schools also serve as a venue for the teaching and propagation of the Filipino culture and heritage among Filipino youth overseas and a locus of community activity.

276. PSOs are either accredited, or have pending applications for accreditation by DepEd. They must also possess a valid permit to operate issued by their host country. By their very nature, PSOs need to comply with requirements and regulations of the

Philippine Government and pertinent regulations of the countries where they are located.

277. As of January 2006, 39 Philippine schools overseas have been established and made operational in nine countries – Bahrain, China, Greece, Kuwait, Libya, Oman, Qatar, Kingdom of Saudi Arabia, and United Arab Emirates. Of these schools, 29 have been accredited by the DepEd, while the rest are in various stages of application for accreditation. More than 20,000 students are currently enrolled in Philippine schools overseas at various levels, from pre-elementary, elementary, and high school.

Foreign Students

278. Foreign nationals who are seeking transfer to a school in the Philippines during the school year must take the Philippine Validating Tests (PVT) according to Department of Education Culture and Sports (DECS) Order No. 22.

279. The PVT validates learnings acquired in various situations under certain circumstances. These tests cover five (5) basic subjects in the school curriculum in the elementary and secondary levels, namely: English, Mathematics, Science, Araling Panlipunan and Filipino. The tests are based on the learning competencies prescribed in the elementary and the secondary curricula.

280. The National Educational Testing and Research Center (NETRC) administers the PVT to students upon submission of an appropriate request of the concerned party to the Division Office, duly endorsed by the Regional Office in the area where the school is located.

281. Placement of transferees from foreign countries seeking admission to Philippine Elementary and Secondary School is further elaborated in DECS Order No. 26. It is DECS policy that as much as possible, individual schools, especially private schools, shall be responsible for pupil applicants transferring from foreign countries for grade placement purposes by the DepEd. Each accepting school shall have the discretion to determine the appropriate grade level in which to place the transferee. In general, except as otherwise indicated, the appropriate grade level should be the next curriculum year following that completed abroad by the applicant. The following guidelines from DECS Order No. 67, s. 1993 are given below for the sake of completeness:

- (a) Those who have completed the Sixth or Seventh Grade abroad are eligible for admission to the First Year of High School; however, graduates of a five-year elementary curriculum are eligible only for admission to Grade VI.
- (b) Those who have completed the Eighth Grade abroad are eligible for admission to the Second Year of High School, but shall take Filipino I and Social Studies I (Philippine History and Government).

- (c) Those who have completed the Ninth Grade abroad are eligible for the Third Year of High School, but shall take Filipino I and Social Studies I and then take Filipino II in the Fourth Year of High School.
- (d) Those who have completed the Tenth Grade abroad are eligible for the Fourth Year of High School, but shall take Filipino I and Social Studies I. They need not take Filipino II, III or IV in order to graduate.
- (e) Those who have completed the Eleventh or Twelfth Grade abroad may be eligible for admission to tertiary level, depending on the course they will pursue.

282. The foreign educational system concerned should have a first or elementary level of at least six years, a secondary or high school level system of at least four years, and a total basic education (elementary plus secondary) of at least ten (10) years.

283. The accepting school shall have the discretion to accelerate their pupil to a higher Grade/Year, depending upon the subsequent performance of the pupil in the accepting school. The accepting school shall also be responsible for the appropriate supplementary programs as may be necessary in order that facility in Filipino may be hastened, should it appear inadequate.

Other programs

284. The Non-Formal Education Accreditation and Equivalency (NFE A&E), under DepEd Order No. 47, developed by the Bureau of Non-Formal Education under the ADB-assisted Philippines Non-Formal Education Project (PNFEP), provides an alternative means of certification of learning to Filipinos and foreigners aged fifteen (15) years and above, who are basically literate, who are unable to avail of the formal school system, or who have dropped out of formal elementary or secondary school.

285. The program aims:

- a. to provide a system for assessing levels of literacy and non-formal learning achievement based on a National NFE A&E Curriculum covering basic and functional education skills and competencies comparable to the formal school system;
- b. to offer an alternative pathway by which out-of-school youth and adults earn an educational qualification comparable to the formal elementary and secondary school system; and
- c. to enable out-of-school youth and adults to gain reading, writing and numeracy skills to meet their learning goals as they define them, and to gain the skills they need to improve their economic status and function more effectively in society.

286. The NFE A&E System is a pioneering effort to offer a uniquely non-formal alternative learning system to formal schooling. It is built around a truly non-formal education curriculum and utilizes a range of innovative non-formal learning strategies designed to break down traditional learning barriers of time, accessibility and resource. It allows flexible entry and exit points and aims to maximize learners' control of the learning process.

iv) Respect for cultural identity

287. The Philippines is a signatory to the Convention on the Elimination of Racial Discrimination, having signed and ratified the instrument on 7 March 1966 and 15 September 1967, respectively.

288. The Filipino Education and Heritage Program of the CFO does not only provide schools but promotes projects and activities which will bring younger generations of overseas Filipinos to the Philippines, to encourage them to know the country and its institutions better, and to inculcate in them the ideal that their identity and interests will best be served in the context of preserving their cultural moorings with that of all-Filipino community. This program also includes efforts to promote and advance in an appropriate manner the teaching and study of the Filipino language at various levels of learning within and outside the schools system overseas, particularly in countries or territories which have a high density of permanent overseas Filipino residents.

289. Two programs for overseas Filipinos to maintain their cultural links are Lakbay-Aral and Lakbayan sa Pilipinas.

290. Lakbay-Aral, literally translated as "travel-study", is a program started by the CFO in 1983 to provide young Filipinos overseas with an opportunity to learn more about their roots and heritage by experiencing life in the Philippines.

291. The program seeks to provide young Filipino overseas the opportunity to trace their roots and discover their identities as Filipinos. Through experiencing life in the Philippines, the participants are expected to gain better understanding of the country and its people, and greater awareness and appreciation of their rich Filipino heritage. The experience will hopefully instill and preserve a sense of national pride among the participants, bridge the gap between their native and acquired culture, and serve as catalyst in the participants' search and realization of their Filipino identity.

292. Lakbayan sa Pilipinas is a special 12-day journey for overseas Filipinos, their families and friends who would like to visit and recall their pleasant memories about the Philippines, and together experience a special kind of hospitality. Participants are given the opportunity to gain new insights and perspectives about the country as they journey to various historical landmarks and places of interest, and interact with the people of the land.

293. An important mandate of the CFO is to preserve and enhance the social, economic and cultural ties of Filipinos overseas with the Philippines. Toward this end, CFO is actively involved in developing and implementing programs and activities to encourage Filipinos overseas, specially the younger generations, to learn about their country of origin and appreciate their Filipino heritage and culture.

294. The CFO also aims to help children of Filipino descent overseas to learn to speak the Filipino language. The CFO published and made available the Guide to Learning Filipino in 2002, a teaching material with accompanying musical tape. It was developed for organizations and groups overseas interested to teach the Filipino language to children of overseas Filipinos and other individuals who would like to learn the basic Filipino. The lessons are culture-based and aims to pave the way toward better understanding of the Philippines and its people.

295. The book seeks to teach the Filipino language by situating the lessons within recognizable Philippine conditions and by using vignettes of Philippine life. Philippine songs, legends, stories or folklore, games, cuisine have also been interspersed with the lessons as exercises, examples, and practical learning to reinforce the learning of the Filipino language. Throughout the book, questions, exercises, and activities are provided to motivate learners to think for themselves and to practice or widen their vocabulary.

L. Article 32: Right to transfer to the State of origin their earnings,
savings and personal belongings

296. Remittances can be sent by migrant workers through many channels with varying levels of regulation and opacity: banks, money-transfer organizations, hand delivery/courier or transfers that occur as part of other commercial or charitable activities. Some of these latter channels have been labeled as “informal.”

297. The formal banking channels account for a larger share of Filipino remittances largely due to the long-standing involvement of the Philippine National Bank and more recent market entry by other commercial banks. There is also the convergence of services offered by Philippine banks, licensed non-bank money transfer agencies, courier and cargo companies, and others which offer a wide range and growing range of services available at financial institutions to transfer money overseas, such as electronic transfers, money orders, drafts, “door-to-door service,” dual debit cards and others.

298. For a period of five (5) years, Western Union has captured a market share estimated as high as 20 percent of wire transfers using nearly 7,000 outlets as of year 2002, as indicated in a 2004 report rendered by the Asian Development Bank.

PART IV: RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION

A. Article 37: Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activities

299. All OFWs are required to undergo a Pre-Departure Orientation Seminar (PDOS), a mandatory one-day briefing given to workers by entities duly accredited by the OWWA. The PDOS provides workers briefing on travel procedures, the documents they must carry, how to remit their earnings, what to do upon arrival, what to do and where to go in times of need, the risks and rewards of working abroad, reminders of their basic family obligations, their health and safety and other last minute reminders in overseas employment.

300. Accredited institutions and trainers administer the PDOS. At present, a number of recruitment agencies have an in-house PDOS facility while NGOs run PDOS for domestic workers. A few associations of recruitment agencies are also accredited to conduct PDOS.

301. To complement PDOS, the POEA introduced the Pre-Employment Orientation Seminar (PEOS), which is conducted in the regions and provinces, to enable prospective worker-applicants make informed decisions before they desire to pursue an application for overseas employment. The PEOS, usually conducted by local government units, guides applicants in making intelligent decisions before they desire to pursue overseas employment.

302. Apart from PEOS, the POEA undertakes a Pre-Employment Orientation Program (PEOP) for those who wish to work abroad. The program assesses the prospective applicants' preparedness and qualifications embarking on overseas job hunting. It also informs the applicants on illegal recruitment, the realities of working abroad and the correct application and recruitment procedures. The Anti-Illegal Recruitment Program, consisting of preventive and remedial components, is also being conducted nationwide. The program is conducted in partnership with multi-media organizations, church groups, NGOs, LGUs, schools and private entities.

303. The Community Education Program (CEP) is an annual information campaign conducted by the CFO. In coordination with various government agencies, NGOs, LGUs and academic institutions, this program of the CFO seeks to assist prospective migrants in making informed decisions regarding working or migrating abroad, as well as generate community involvement on migration concerns. It also aims to raise public awareness on various issues concerning migration, intermarriages and existing government policies and programs directed against illegal recruitment, documentation fraud and trafficking in persons, among others.

304. The CFO has also launched a program entitled: Migrant Social and Economic Integration. The overall objective of this program is to ensure that all Filipinos

migrating to other countries are adequately prepared to meet the practical and psychological problems attendant to international migration.

305. The Migrant Social and Economic Integration Program undertakes activities designed to provide Filipino emigrants with adequate structured information and advice about all aspects of migration to their countries of destination, as well as assistance in achieving early social and economic adjustment within their new environment.

306. This program also provides for a continuing linkage with registered Filipino migrants, and a means by which migrants can be assisted by cooperating organizations in the process of adjustment and settlement in their host countries.

307. Filipino emigrants or those leaving the country to settle permanently abroad are required to register with the CFO. Part of its registration requirements is attendance in the PDOS to prepare them for settlement overseas.

308. Country-specific PDOS are conducted for departing Filipino emigrants to address their adjustment concerns in their destination countries. In these seminars, various topics are discussed such as travel regulations, immigration procedures, cultural differences, settlement concerns, employment and social security concerns and rights and obligations of Filipino migrants.

309. Guidance and Counseling services are offered to Filipinos proceeding abroad as fiancé(e) and spouses of foreign nationals. This is a pre-requisite to the issuance of passports under RA 8239 or the Passport Act and DFA Order 28-94.

310. Peer Counseling services are conducted for departing children of Filipino emigrants aged thirteen to nineteen (13-19) years old. This service responds to the needs of young Filipino emigrants by helping them cope with change in their social environment. The sessions provide them with information that will help facilitate their adjustment.

311. To complement the pre-departure services provided in the Philippines, the CFO encourages overseas-based Filipino associations, welfare groups and other private organizations to provide post arrival services to newly arrived Filipino immigrants. The program aims to provide Filipino migrants with relevant information that will enable them to adjust and cope with the demands of settlement in a new country.

312. Post arrival services include language courses, orientation programs, and networking or referral services to employment agencies, migrant resource groups, and other Filipino associations within the area of settlement.

B. Articles 38 & 39: Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose the residence in the territory of the State of employment

i) Right to be temporarily absent without effect upon authorization to stay or work

313. The holder of a valid alien employment permit is authorized to stay in the country for a period of two (2) years extendible for another two (2) years at any given time. During the period, the holder has the right to travel outside of the country and return thereto for as many times as he would wish.

ii) Right to liberty of movement and of abode

314. The freedom to choose and change one's place of abode is guaranteed in Sec. 6, Art. III of the Constitution, which provides, in part, "The liberty of abode and changing the same within the limits prescribed by the law shall not be impaired except upon lawful order of the court x x x x"

315. Article 12 of the RPC provides, "The penalty of prison correccional shall be imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippine Islands or shall compel such person to change his residence."

316. Like all liberties, the liberty of abode may be impaired only upon lawful order of the court and within the limits prescribed by law. Article 87 of the RPC provides for the penalty of destierro whereby any person so sentenced shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall not be more than 250 and not less than 25 kilometers from the place designated.

317. In one case, *Caunca v. Salazar* (82 Phil 851), the Supreme Court sustained the petition for habeas corpus filed by a househelp who had been detained by the employment agency for not paying the amount it advanced for her transportation from the province. The Court upheld her liberty of abode and declared her detention unconstitutional.

318. In another case, *Villavicencio v. Lucban* (39 Phil 778), the Supreme Court overruled the "deportation" by the Mayor of Manila of some 177 women of ill-repute to Davao City.

319. As to the limitations of the right to travel by reasons of national security, public safety and public health, the Supreme Court held, for example, that health offices might restrict access to contaminated areas and also to quarantine those already exposed to the disease sought to be contained (*Lorenzo v. Director of Health*, 50 Phil 195). The Court upheld in the case of *Rubi v. Provincial Board of Mindoro* (39 Phil 660), the action of respondents requiring the members of certain tribes to reside in a reservation for their better education, advancement and protection. The measure was held to be a legitimate exercise of the police power of the State.

C. Article 40: Right to form associations and trade unions; right to participate in public affairs of their State of origin, to vote and be elected at elections of that State; procedure and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment

i) Right to form associations and trade unions

320. Section 8, Art. III, of the Constitution provides that “The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall be abridged.”

321. This provision specifies that the right to form associations belongs to the people. The right may not be impaired without due process of law. It is thus deemed an aspect of the general right of liberty. The degree of protection an association enjoys depends on the position which the association’s objective or activity occupies in the constitutional hierarchy of values. The standards of allowable restrictions are similar to those applied to the freedom of speech and expression.

322. The 1987 Constitution recognizes the role and rights of people’s organization. Thus, article XIII provides:

Section 15. The State shall respect the role of independent people’s organizations to enable the people to protect and pursue, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means, People’s organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure;

Section 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

323. Furthermore, workers’ right to self organization are guaranteed in Section 3 of article XIII, which provides:

“The State shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of 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 condition of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.”

324. The Philippines is a State party to ILO Conventions No. 87 (Freedom of Association and the Right to Organize) and No. 98 (Right to Organize and Collective Bargaining). The Constitution, in article IX, encourages the growth of a multi-party system.

ii) Right to participate in public affairs of their State of origin, to vote and be elected at elections of that State

325. Article V of the Constitution guarantees the right of suffrage of Filipino citizens, viz.:

“Section 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property or other substantive requirement shall be imposed on the exercise of suffrage.”

326. The framers of the 1987 Philippine Constitution made a specific provision granting OFWs the right to vote. Section 2, Article V of the 1987 Constitution states, “The Congress shall provide a system of securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.”

327. On 13 February 2003, RA 9189, otherwise known as the Overseas Absentee Voting (OAV) Act of 2003, was signed into law.

328. RA 9189 provides a mechanism that will provide a system for absentee voting by qualified Filipinos abroad.

329. Section 4 thereof states that any Filipino abroad who has not renounced his Filipino citizenship and not otherwise disqualified by law, shall have the right to register and vote in any national, regional or local elections.

330. Registration is open to Filipinos who are at least eighteen (18) years of age regardless of their location, work category and residency status abroad according to Section 7.

331. Disqualification of an overseas Filipino is detailed in Section 6:

- (a) Any Filipino who has been sentenced by final judgment of a Philippine court or tribunal to suffer imprisonment of not less than one (1) year, including those found guilty of disloyalty as defined under Article 137 of the Revised Penal Code, such disability not having been removed by plenary pardon or amnesty: Provided, however, that any person

disqualified to vote under this subsection shall automatically reacquire the right to vote upon expiration of five (5) years after service of sentence;

- (b) Any Filipino previously declared insane or incompetent by competent authority unless subsequently declared by proper authority that such person is no longer insane or incompetent;
- (c) Any person who has lost his Filipino citizenship;
- (d) Any person who has renounced his Filipino citizenship and has pledged allegiance to a foreign country;
- (e) Any person whose registration has been cancelled or annulled.

D. Article 43, 54 & 55: Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity

332. The information provided in pars. 64 and 65 is hereby reiterated.

E. Articles 44 & 50: Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage

333. The wife and unmarried children below 21 years of age of the holder of a valid employment permit are likewise authorized to stay within the country for a period of two (2) years extendible for another two (2) years.

F. Articles 45 & 53: Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects; measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family

i) Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects

334. The information provided in par. 278-291 is hereby reiterated.

ii) Measures taken to guarantee integration of children of migrant workers in the local school system

335. The information provided in pars. 279-284 is hereby reiterated.

iii) Right to freely choose a remunerated activity for members of a migrant worker's family

336. Dependents of non-resident foreign nationals may engage in gainful employment and shall apply for an AEP. Legitimate spouses of the officers and staff of international organizations are exempted from securing an AEP.

G. Articles 46, 47 & 48: Exemption from import and export duties and taxes in respect of particular belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation principle

i) Right to transfer earnings and savings from the State of employment to the State of origin or any other State

337. The information provided in pars. 297 to 299 is hereby reiterated.

ii) Imposition of taxes and avoidance of double taxation principle

338. The Philippines has entered into treaties with various countries for the avoidance of double taxation and prevention of fiscal evasion. Tax treaties with the following countries have been ratified and are currently in force: Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Indonesia, India, Israel, Italy, Japan, Korea, Malaysia, the Netherlands, New Zealand, Norway, Pakistan, Romania, Russia, Singapore, Spain, Sweden, Switzerland, Thailand, United Kingdom, United States of America, and Vietnam.

339. Section 105 (h) of the Tariff and Customs Code entitles an alien, who is coming to settle in the Philippines for the first time, to import all his used household goods and personal effects tax and duty-free.

340. Section 35 of RA 8042 exempts Filipino migrant workers from the payment of travel tax and airport fee upon proper showing of proof of entitlement by the POEA.

H. Articles 51 & 52: Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity

341. The foreign national is not restricted from seeking other employment after termination of his previous employment. However, the DOLE must be notified of the said transfer or termination of employment and the AEP card under the previous employer must be surrendered for cancellation. A new AEP must be secured prior to commencement of employment.

342. It must be mentioned that the AEP shall be valid for one (1) year or co-terminus with the duration of employment, consultancy services or other modes of employment or term of office. Said AEP is valid for the position/s and company for which it was issued. In case of assignment in the company's subsidiaries, branch

offices and joint ventures and those assigned in the headquarters with oversight function in any of the branch offices, operation or projects in the country, one (1) AEP shall be required and valid for all the said assignments irrespective of their place/s.

343. The AEP may be revoked or cancelled only on any of the following grounds:

- Misrepresentation of facts or falsification of documents submitted;
- The foreign national has been declared undesirable alien by competent authorities;
- Non-compliance with the condition for which the AEP was issued;
- Failure to renew AEP within one (1) year after its expiration.

344. A refugee in the Philippines, who satisfies the requirements set by DOLE and DOJ, may also apply and be granted with an AEP.

345. Multiple or simultaneous employment of foreign nationals is prohibited by the law.

I. Articles 49 & 56: Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion

346. The information provided in pars. 343 to 345 is hereby reiterated.

PART V: PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

347. Under local laws, owners and representatives of foreign principals whose companies are accredited by the POEA, can come to the Philippines for a limited period solely for the purpose of interviewing Filipino applicants for employment abroad.

348. Also, holders of the Special Investors Visa have the privilege to work for the company where they made the investment for as long as the investment subsists.

PART VI: PROMOTION OF SOUND, EQUITABLE, HUMANE AND LAWFUL CONDITIONS IN CONNECTION WITH INTERNATIONAL MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES

A. Article 65: Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families

349. Section 19 of RA 8042 provides for the establishment of a Migrant Workers and Other Overseas Filipinos Resource Center within the premises and under the

administrative jurisdiction of the Philippine Embassy in countries where there are large concentrations of Filipino migrant workers. The Center provides the following services:

- (a) Counseling and legal services;
- (b) Welfare assistance including the procurement of medical and hospitalization services;
- (c) Information, advisory and programs to promote social integration such as post-arrival orientation, settlement and community networking services for social integration;
- (d) Institute a scheme of registration of undocumented workers to bring them within the purview of the law;
- (e) Human resource development, such as training and skills upgrading;
- (f) Gender sensitive programs and activities to assist particular needs of women migrant workers;
- (g) Orientation program for returning workers and other migrants; and
- (h) Monitoring of daily situations, circumstances and activities affecting migrant workers and other overseas Filipinos.

350. The establishment and operations of the Center is a joint undertaking of various government agencies. The Center is open for twenty-four (24) hours daily, including Saturdays, Sundays and holidays, and is staffed by Foreign Service personnel, service attaches or officers who represent other organizations from the host countries. In countries categorized as highly problematic by the DFA and the DOLE and where there is a concentration of Filipino migrant workers, the Government provides for a lawyer and a social worker for the Center. The Labor Attaché coordinates the operation of the Center and shall keep the Chief of Mission informed and updated on all matters affecting it.

351. On-Site Services which are offered by OWWA include the following:

- a. Providing post-arrival orientation among OFWs (for some host countries like South Korea & Taiwan)
- b. Locating OFWs on-site as per request of families left-behind
- c. Community Reach-out Program
- d. Socio-cultural activities like sports festivals, medical missions

- e. Legal assistance, mediation and conciliation
- f. Psycho-social counselling
- g. Skills/Techno and Entrepreneurship Trainings as preparatory phase for eventual reintegration of OFWs i.e., Business Plan preparation, Computer Literacy, Crafts, Cooking, Health Care, Survival Training, etc.
- h. Airport assistance

B. Article 67: Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration

352. The Labor Attaché and/or the POEA, in verifying the employment contract, sees to it that OFWs are provided for their return to the country. As such, employers are obliged to provide OFWs with free airfare from and to the Philippines.

353. RA 8042 provides for the system of repatriation of workers and the mandatory repatriation of underage migrant workers.

354. Section 15 of RA 8042 states that the repatriation of the worker and the transport of his personal belongings is the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation is borne by or charged to the agency concerned and/or its principal. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.

355. The OWWA, in coordination with appropriate international agencies, undertakes the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency. However, in cases where the principal or recruitment agency cannot be identified, all costs attendant to repatriation is borne by the OWWA.

356. Section 16 discusses the mandatory repatriation of underage migrant workers. Upon discovery or being informed of the presence of migrant workers whose actual ages fall below the minimum age requirement for overseas deployment, the responsible officers in the foreign service shall without delay repatriate the said workers and advise the DFA, through the fastest means of communication available, of such discovery and other relevant information.

357. Section 17 provides for the establishment of replacement and monitoring center. A replacement and monitoring center was created in the DOLE for returning Filipino migrant workers which shall provide a mechanism for their reintegration into

the Philippine society, serve as a promotion house for their local employment, and tap their skills and potentials for national development.

358. The DOLE, the OWWA, and the POEA formulated a program that motivates migrant workers to plan for productive options such as entry into highly technical jobs or undertakings, livelihood and entrepreneurial development, better wage employment, and investment of savings.

359. TESDA, the Technology Livelihood Resource Center (TLRC), and other government agencies involved in training and livelihood development give priority to those who had been employed as domestic helpers and entertainers.

360. DOLE, OWWA, and POEA undertake the following activities:

- (a) Develop livelihood programs and projects for returning Filipino migrant workers in coordination with the private sector;
- (b) Coordinate with appropriate private and government agencies the promotion, development, re-placement and the full utilization of their potentials;
- (c) Institute in cooperation with other government agencies concerned, a computer-based information system on skilled Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private;
- (d) Provide a periodic study and assessment of job opportunities for returning Filipino migrant workers.

361. In June 2006, a total of 561,256 Filipinos took the Skills Training Programs offered by TESDA. A total of 155,906 enrolled in the Institution-Based Programs administered in schools, while 23,577 enrolled in the Enterprise-Based Programs being implemented within companies and firms. 167,633 enrolled in the Community-Based Programs designed to catalyze the creation of livelihood enterprises that shall be implemented by the trainees, immediately after training. The remaining 214,140 enrolled in other programs conducted by TESDA.

362. The OWWA formulated a Reintegration Program which facilitates reintegration of OFW returnees into the mainstream of society by addressing the psycho-social and economic needs of both the OFW returnees and their families through organizing of families of OFWs; providing business counseling, skills-techno and entrepreneurship development training for OFW while on-site and among interested families left-behind and OFW returnees including other training like basic social counseling; and provision of economic packages for interested OFW groups who would like to venture in any business or economic activities as follows:

- OFW Groceria Project - a non-collateral, interest-free loan window of fifty thousands (P50,000.00) pesos worth of merchandise goods for every qualified OFW organization; and
- NLSF-OWWA LDPO (Livelihood Development Program for OFWs) - a collateralized loan window with 9% nominal interest rate per annum offering a loan ceiling amount of two hundred thousand (P200,000.00) pesos maximum for individual OFW borrower and maximum of one million pesos for a group of five members.

C. Article 68: Measures aimed at the prevention and elimination of illegal clandestine movements and employment of migrant workers in an irregular situation

363. The information provided in pars. 162 to 164 is hereby reiterated.

364. Section 14 of RA8042 gives priority to the establishment of programs and services to prevent illegal recruitment, fraud, and exploitation or abuse of Filipino migrant workers. All embassies and consular offices, through the POEA, issue travel advisories or disseminate information on labor and employment conditions, migration realities and other facts; and adherence of particular countries to international standards on human and workers' rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment.

365. The POEA has a 24-hour Information Center which replies to public inquiries regarding overseas employment, more particularly on issues relating to availability of jobs overseas and the legitimacy of persons offering jobs overseas.

366. RA 8042 further prevents unscrupulous illegal recruiters from taking advantage of workers seeking employment abroad by instituting financing schemes that will expand the grant of pre-departure loan and family assistance loan. The law provided for the creation of a Migrant Workers Loan Guarantee Fund administered by OWWA.

367. The Public Information and Education Program of the CFO conducts an annual information campaign entitled: The Community Education Program (CEP). CEP, which is conducted by the CFO in coordination with various government agencies, NGOs, LGUs and academic institutions, seeks to assist prospective migrants in making informed decisions regarding working or migrating abroad. The program also aims to raise public awareness on various issues concerning migration, intermarriages and existing government policies and programs directed against illegal recruitment, documentation fraud and trafficking in persons, among others.

D. Article 69: Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party, and circumstances to take into account in case of regularization procedure

368. The information provided in pars. 162 to 164 is hereby reiterated.

369. For OFWs, Sec. 28 of RA 9208 provides for the rescue of illegal Filipinos migrants at the country of destination. Under this provision, the embassy or consulate which has jurisdiction over the place where the victim is residing has the duty of verifying the veracity of the report of incidence of trafficking and inquire about the status of the victim.

370. Consistent with the country team approach, the Post concerned shall send a team composed of a consular officer and personnel from the POLO or the Overseas Filipinos Resource Center (OFRC), as the case may be, to conduct a visit to the jail, establishment, work site or residence of the victim.

371. Rescue operations are then immediately conducted in cooperation and close coordination with the police authorities and other relevant law enforcement agencies in the host country, especially if the victim is under detention or being kept against his/her will.

372. Thereafter, the victim is encouraged to execute a sworn statement, recounting among others, the people/establishment involved in the recruitment/transfer and deployment, the modus operandi employed to recruit, transport and deploy the victim, and other pertinent information which could provide a lead in the investigation and eventual prosecution of the perpetrators.

E. Article 70: Measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with standards of fitness, safety, health and principles of human dignity

373. There is no existing mechanism to monitor the living conditions of non-resident foreign nationals in the Philippines and Filipino migrant workers. Such are usually stipulated in the contract of employment and non-compliance with its provisions can lead to filing of a complaint for breach of contract.

F. Article 71: Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to death

374. Under Sec. 15 of RA 8042, the shipment of remains and transport of the personal belongings of a deceased Filipino migrant worker and all costs attendant thereto shall be borne by the principal and/or local agency.

375. The OWWA and DFA both offer repatriation programs to facilitate the immediate repatriation of distressed OFWs and medically-ill OFWs. These agencies offer airport assistance, domestic transport and temporary shelter.

Initial Submission to the UN Committee on Migrant Workers³⁹ Annotated List of Issues in Consideration of the Philippine Government's Initial Report to the Committee



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- III. The Context: An Overview of Filipino Labor Migration
- IV. Comments on the Initial Report of the Philippine Government and
Additional Issues for the Consideration of the Committee

I. List of Acronyms.

ASEAN	–	Association of Southeast Asian Nation
CEDAW	–	Convention on the Elimination of All Forms of Discrimination Against Women
CMA	–	Center for Migrant Advocacy
CRC	–	Convention on the Rights of the Child
CSO	–	Civil Society Organization
CESCR	–	Convention on Economic, Social, Cultural Rights
DAWN	–	Development Action for Women Network
DFA	–	Department of Foreign Affairs
FDC	–	Freedom for Debt Coalition
FWRC	–	Migrant Workers and Other Overseas Filipinos Resource Center
GFMD	–	Global Forum on Migration and Development
GR 26	–	General Recommendation 26 on Women Migrants adopted by the CEDAW Committee
HSW	–	Household Service Workers
MFA	–	Migrant Forum in Asia
NSCB	–	National Statistics and Census Board
NSO	–	National Statistics Office
OAV	–	Overseas Absentee Voting
OF	–	Overseas Filipinos
OFW	–	Overseas Filipino Workers
OPAs	–	Overseas Performing Artists
OUMWA	–	Office of the Undersecretary for Migrant Workers Affairs
OWWA	–	Overseas Workers Welfare Administration
PAHRA	–	Philippine Alliance of Human Rights Advocates
PhilHEALTH	–	Philippine Health Insurance
PMRW	–	Philippine Migrants Rights Watch
POEA	–	Philippine Overseas Employment Administration
POLO	–	Philippine Overseas Labor Office
RA 8042	–	Republic Act 8042 otherwise known as Migrant Workers and Overseas Filipinos Act of 1995
SGISM	–	Shared Government Information System for Migration

II. Introduction.

This initial report is prepared by Center for Migrant Advocacy, a Philippine based migrants' rights advocacy NGO. It embodies CMA's experience in doing actual lobby-advocacy work before representatives of the various migration-focused agencies of the Philippine government, which include the legislative branch and direct service units overseas such as Philippine embassies, consulates, and Labor offices. This report is also informed by the database of CMA's assistance program, which receives and refers cases of distressed migrants to concerned government agencies in the Philippines and overseas for prompt assistance. More importantly, this report incorporates inputs from CMA's partner organizations in the Philippines and abroad, particularly Filipino migrant organizations and communities that are based overseas.

Together with its networks of partners in the Philippines and overseas, the CMA will submit a more comprehensive alternative report before the April 2009 session.

About the Center for Migrant Advocacy.

The Center for Migrant Advocacy is a Philippine-based migrants' rights advocacy group. Our focus of work is on public and policy advocacy for the rights and well being of overseas Filipino workers and their families. We do lobby-advocacy work at the national as well as in the international, regional and local levels. Our main advocacy issues with our government is protection of our migrant workers as contained in RA 8042, advocacy to restructure OWWA to make it a real welfare agency of government for migrants and their families and for the political empowerment of overseas Filipinos through the Overseas Absentee Voting Law. We also advocate for the migrants' genuine and meaningful representation and participation in agencies of government such as the POEA Governing Board, OWWA Board of Directors. CMA is an active and consistent participant in Congressional hearings on migration-related issues.

Complementing CMA's lobby advocacy work is its research, information, education work. It conducts regular quarterly forums on pressing migration policy issues where it brings together in a dialogue the migrants, NGOs and government agencies. Another program of CMA is assistance to distressed migrants. We receive complaints of migrants and we facilitate prompt assistance to them. We document their cases, monitor and follow up the concerned agencies and involved the migrants directly in the resolution of their cases, onsite and upon return to the Philippines. In 2006, we launched a mobile telephone-based helpline system, the SOS SMS Helpline for distressed migrants, to enable the OFWs to immediately report their cases to us. The SOS SMS system runs 24 hours, 7 days a week, anytime, anywhere around the globe. It is an online system that utilizes the SMS facility of a mobile telephone. This works very well with Filipinos who are quite familiar with SMS technology. It is also least expensive. The SMS sent is received by CMA and the DFA OUMWA as well as our selected partners overseas.

In the ASEAN region, CMA serves as the focal group of the Task Force on ASEAN Migrant Workers. CMA convened a national consultation in September 2007 for recommendations on a rights-based framework instrument for ASEAN. This year, CMA took charge of the island consultations for Philippine-based Civil Society organizations in relation to the 2nd Global Forum on Migration and Development. The consultations in Luzon, Visayas, Mindanao solicited inputs on the roundtable themes of the GFMD, crafted a national migrants' agenda and selected the 15 official CSO representatives, 5 each from the islands, to the CSO Days of the GFMD.

CMA participated in and/or provided inputs to the CSO alternative reports to CRC (2008); ESCR (2008), CEDAW (2006). CMA attended the 36th Session of the Committee as part of the CSO delegation from Hong Kong to highlight the issues of discrimination against women domestic workers in Hong Kong, which was included in the country report of China that was scheduled for a hearing in 2006. In 2005, CMA also took part in the discussions of the CEDAW working group that drafted a general recommendation for a comprehensive protection mechanism for women migrants. Recently this year, the CEDAW Committee (2008) adopted the proposed general recommendation as General Recommendation 26. .

CMA is a member of several rights-based networks: the Philippine Alliance of Human Rights Advocates (PAHRA); Network Opposed to Violence Against Women Migrants (NOVA), Freedom from Debt Coalition (FDC) and Philippine Migrants Rights Watch (PMRW), a Philippine-based advocacy network for migrants' rights. In the region, it is a member of Migrant Forum in Asia (MFA) and currently chairs MFA's executive committee. CMA has partners and networks in 52 countries and destinations of overseas Filipinos.

III. The Context: An Overview of Filipino Labor Migration

Government-managed labor migration from the Philippines is almost four decades old now. What was originally envisioned as a temporary solution to an acute crisis of unemployment and a balance of payments deficits in the early 1970s has become a permanent fixture of the Philippine government's strategy to provide employment for its people.

The Philippine government has continuously failed to fulfil its citizens' right to work, falling short of its own annual target of providing 1.6 million jobs by generating only less than half of the promised number (700,000) in 2005, and even much less in 2007 (599,000). The increasing figures on overseas deployment reflect the worsening unemployment, underemployment, contractualization and poverty conditions in the Philippines. By 2007, daily overseas deployment averaged 2,952, or an increase of 17% from five years before and 30% more than ten years before. The number of deployed Overseas Filipino Workers (OFWs) in 2007, (1.07million) was 21% more than those deployed 5 years before and 44% more than 10 years earlier. The trend continues, with Philippine Overseas Employment Administration (POEA) reporting that for the first six months of 2008, it has already met 64% of the year's 1 M target. More than half a million OFWs (640,401) have already left the country, representing a 33.5% increase in deployed documented OFWs over the same period in 2007.⁴⁰

Since 2004, one out of three OFWs was laborers and unskilled workers. One out of five OFWs worked in KSA. By 2006, one in ten worked in United Arab Emirates (UAE).

The POEA sets an annual deployment target of 1 M OFWs (new hires and rehires) which it has consistently met since 2006. In fact, as early as 2005, POEA processed more than a million contracts although only 988,615 were deployed. The target dates back to when President Arroyo first assumed the presidency in 2001.⁴¹ In fact, overseas deployment is the only area where the 2004-2010 Medium-Term Philippine Development Plan (MTPDP) is on track.⁴² The POEA and the President have always bragged about its deployment figures year in and year out as one of their significant achievements. POEA has, since 2006, also become more explicit about labor export being a government policy.

The huge growth in deployment is due to the significant increase in the number of deployed rehires, consistently two thirds of land-based workers' deployed for the last five years (2001-2005), and the steady growth in the number of deployed seafarers averaging 3% from 2000-2003, 6% in 2004 and 8.3% in 2005. OFWs renew their contracts for as long as it is possible –until the time they can afford to retire - because

40 Doris C. Dumlaog. Remittances surged to \$1.5 B in June. Philippine Daily Inquirer August 18,2008

41 DOLE Secretary Patricia Sto. Tomas. February 17 2005 press statement

42 The same research paper presented during the July 13 forum at SOLAIR, UP Diliman, Quezon City

of the problematic labor situation in the country. In the case of the undocumented, they will continue to stay overseas until such time they are forced to return when they are caught and deported.

Undocumented or irregular OFWs. The Commission on Filipinos Overseas (CFO) estimated that there were 1,607,170 irregular Overseas Filipinos (OFs) in 2002 but reported that this dropped by 44% in 2007. Despite the general downtrend, the volume of irregular OFs slightly went up again by 2% in 2007. Undocumented or irregular workers are a major concern because their status in the host countries makes them vulnerable to human and workers' rights' violations.. The estimated increase of undocumented workers in selected countries such as Qatar⁴³, Oman⁴⁴, by 15,000 in the United Arab Emirates (UAE) and by 18,000 in Singapore in 2007 and their sheer number in countries like Kuwait (10,000), Saudi Arabia (KSA) (20,000), UAE (35,000), Singapore (56,000) and Malaysia (128,000) are worrisome, given the high incidence of recorded abuses in these countries, including the continuing deportation of Filipinos from Malaysia. Moreover, most undocumented OFWs are women and are found in unskilled professions such as domestic work and are thus, more vulnerable to abuses.

Feminization of Filipino migration. Overseas work was initially dominated by men, but the recruitment for household domestic workers into the global care economy has increased demand for Filipino women, changing the face of the typical Filipino OFW from male into female. POEA statistics show the growing trend of feminization of OFWs. In 1990s, the gender ratio of OFWs reached 50:50 and by 2005, female deployments have outnumbered men: 72 by 28.

Female OFWs are highly vulnerable to human rights violations because of their young age and the nature of their jobs.

From 1998-2002, the biggest proportion of Filipino women working abroad were younger (25-29 years old) compared to the bulk of their male counterparts who were mostly aged 45 yrs old and above. They continued to be generally younger up till 2007, when the biggest proportion of Filipinas working abroad were still within the 25-29 age range, followed by those in the 30-34 range.

Almost one third of the Filipinos deployed in 2006 were domestic workers (91,412) and majority (98%) of this number were women. Caregivers, just a thin line removed from domestic workers, averaged 17,000 from 2003 to 2006, 20,394 in 2004. The nature of their job where the women usually stay in their employers' households (caregivers sleeping in the room of the person they are caring after) and domestic

43 Per estimates of the Commission on Filipinos Overseas (CFO), the number of irregular Filipinos in Qatar increased by 7,500 between 2006 and 2007 (www.cfo.gov.ph)

44 Per estimates of the Commission on Filipinos Overseas (CFO), the number of irregular Filipinos in Qatar increased by 7,500 between 2006 and 2007 (www.cfo.gov.ph)

work not being recognized as work in many host countries put them in a position vulnerable to human, worker and women's rights' violations, including sexual harassment and rape.

In 2008, the CMA received 130 complaints involving women OFWs as victims. This included a case on sexual advances, attempted, and actual rape. Other cases of sexual abuse experienced by women OFWs have been reported. In February of 2008 the US military announced that they would investigate the case of a woman OFW who was allegedly raped by a member of the US Army in Okinawa.⁴⁵ At about the same time, the Philippine media documented the homecoming of rescued Filipina girls who were trafficked and made to work as sex slaves in Malaysia. In late 2006, the Philippine embassy in Kuwait reported that six women OFWs were victims of rape and seven complained of sexual harassment.

Despite the increasing number of female OFWs and their growing contribution as an economic force in the Philippines and in their countries of destination, the social and political status of women OFWs remains to be low because they are located in triple D jobs (dirty, demeaning and dangerous). As blue collar workers and as women, they suffer from the double edge sword of discrimination and dangers of experiencing gender-based violence.

Prior to 2005 the bulk of women OFWs were not only found in domestic work but also in the entertainment industry in Japan. Under the POEA category of skills, entertainers or overseas performing artists (OPAs) are classified under the professional and technical category. Domestic workers on the other hand, belong to the service category.

Japan was the most popular destination of Filipino OPAs who were comprised mostly (up to 95%) of young women, many of whom were aged between 15-24. From 2001 to 2004, Japan hired and rehired 288,982 OFWs, averaging 72,245 yearly. Working as an OPA in Japan was the top job in 2002 (25% of all deployments) and in 2004.⁴⁶

However, Japan in 2005 imposed an immigration policy which limited the number of visas issued to OPAs. This intervention immediately manifested its impact: from a high of 73,685 OFW deployments to Japan in 2001 went down to 7,431 by 2006 – roughly close to a 90% cut. As an effect, the total number of deployed female OFWs dropped from a high of 209,372 in 2004 to 145,549 in 2007. Other policy interventions, such as the POEA's implementation of Policy Reform on Household Service Workers HSW, a new term coined by the POEA for domestic workers and caregivers in a household setting) that started in 2007, cut down to 40,000 or by more than half (56.6%) the number of deployed newly-hired domestic workers (DWs).

45 US military probing alleged rape of Filipina in Japan. AFP. <http://abs-cbnnews.com/storypage.aspx?StoryId=109856>

46 <http://www.ofwjournalism.net/>www.ofwjournalism.net>. dated March 28, 2005

Government policies, even when well meaning, have resulted in increasing the vulnerabilities of overseas workers, especially women. Since the Philippine government's HSW policy reform does not serve to benefit everyone, domestic workers with expired contracts in some cases choose to overstay in the host country. In many instances, recruitment agencies, with complicity of the OFWs, avoid stringent requirements for hiring of domestic workers by declaring recruits as beauticians, salesgirls or waitresses, thereby resorting to contract substitution.

A 2005 study by DAWN (Development Action for Women Network, an NGO focused on Filipino women migrants in Japan) found gaps in the Philippine government's implementation of new documentary requirements for applicants. Originally taunted as mechanisms to protect OFWs, DAWN uncovered the failure of the Philippine government to safeguard against the occurrence of anomalies such as the issuance of Artist Record Book or Artist Accreditation Certificates to applicants who did not complete the required training, and the falsification of travel documents which enabled Filipinas below the minimum age requirement, to work as entertainers.⁴⁷ In 2007, the Tokyo Embassy reported that OPAs continued to overstay on expired visas and have become more vulnerable to lower/unpaid salaries, prolonged working hours, abrupt employment termination and restricted freedom. Many OFWs have also been reported paying large sums of money to marry their Japanese customers just to stay on. CFO's statistics on registered Filipino emigrants to Japan and on Filipino spouses and other partners of Japanese nationals tend to lend evidence to this.⁴⁸

Other overseas jobs classified under the professional category, such as nursing and teaching, are also dominated by female OFWs.

Deployment of Filipino Nurses averaged 8,000 yearly but reached a high of 13,000 in 2001.

Some 2,000 of the nurses who leave each year are reportedly former nursing faculty and doctors who shifted to the nursing profession so that they can easily apply for a job abroad. The incentive for working abroad is primarily financial. A nurse's average monthly salary in the Philippines is about \$110-120, while that of a government doctor is \$300-\$800. These are much lower than the \$3,000-\$4,000 monthly that nurse earns in the United States (US). Philippine Medical Association president Dr. Bu Castro said that 80% of doctors in community hospitals in rural areas are studying to become nurses. Yet there is no shortage of Philippine nurses. Only half of 40,000 nursing graduates pass the licensing exam every year but fewer are hired abroad. Still, according to the Philippine Nurses Association (PNA), these nurses would rather not seek employment in local hospitals and clinics because the pay is too low. Thus, despite the glut in nurses, there is a shortage of skilled nurses and doctors willing to work in local hospitals, especially in rural areas. On the other hand, medical schools

47 OFW Journalism Consortium, Inc. <<http://www.ofwjournalism.net/>>www.ofwjournalism.net
3 14 2006

48 CFO statistics <http://www.cfo.gov.ph/statistics.htm>

produce only about a thousand doctors a year, and their enrolment is declining fast - by as much as 20% in 2004 – forcing some medical schools to close down. The ratio of doctors to the population is 1:26,000 (ideal: 1: 6,000 citizens).⁴⁹

Overseas work is also draining the Philippines of its best and most experienced teachers in highly specialized areas such as Math, Science, English and Special Education. In 2006, 890 teachers left the Philippines for a teaching job abroad.

Overseas labor migration continues to be promoted and managed by the Philippine government as an employment policy, while it neglects to fulfill its obligation to create a sound economic base that will enable its citizens to realize their right to work and live in one's home country.

There is even no serious reintegration program that can make the OFW stay in the Philippines for good and break the vicious cycle of migration. Despite a high-profile launch of the government's reintegration center in 2007, the center is not allocated a sufficient budget for its operation. When the Japan government implemented its stringent rule against OPAs and the POEA implemented its HSW reform policy, there was no real effort for job provision and safety nets for the OPA and domestic workers who were expected to be displaced. On the other hand, efforts to re-absorb returning OFWs such as those deported from Malaysia, have been piecemeal and outward looking by way of relaxing policies on domestic worker application for a job in a third country, rather than offering longer lasting solutions within the Philippines.⁵⁰ Similarly, there is no serious planning to anticipate the reintegration of Filipino nurses from the United Kingdom who are in danger of being displaced due to reduced or closed quotas for immigrant workers in the UK.⁵¹

Unfortunately, the steady focus and emphasis of the Philippine government has remained in marketing our labor force. Labor attaches identify and assess labor market opportunities abroad and together with the POEA, go on intensive marketing campaigns and conduct labor marketing missions. Their success is measured by the number of jobs generated from overseas, not locally. "With the intensive marketing campaigns conducted by the DOLE and POEA, job orders identified increased by 211.83% from CY 2004's 21,744 to 80,735 in CY 2005...227,179 OFWs benefited or will stand to benefit..."⁵² "With the Secretary of Labor at the helm, we dispatched marketing missions to expand employment opportunities for Filipinos in these countries..." In addition, the POEA "facilitated and supervised 364 job fairs...that

49 Carlos Conde. Filipina nurses' exodus. Oct. 19 2004 International Herald Tribune. New York <http://www.ihl.com/articles/2004/10/18/news/phil.php>

50 Powerpoint on Proposed mandatory psychiatric testing for HSWs distributed during the August 6, 2008 consultation called by Poe Gratela of the POEA Governing Board.

51 Parliament adopts directive on return of illegal immigrants. June 18, 2008. http://www.europarl.europa.eu/news/expert/infopress_page/018-31787-168-06-25-902
20080616IPR31785-16-06-2008-2008-true/default_en.htm

52 The 2005 POLO Annual Report

registered 38,208 jobseekers...1,678 were hired for overseas jobs.”⁵³

As the Philippine government attempts to redirect the composition of OFWs lately by concentrating on deployment of highly skilled, superior status and better paying professions such as nurses, Information Technology (IT) workers, teachers, production technicians and mechanical and electrical engineers.⁵⁴ The issue on brain drain looms. Already, the POEA proudly reported that professionals and skilled workers now make up 75% of newhires. Concurrently, the concern on providing jobs for displaced unskilled workers begs the question/

IV. Comments on the Initial Report of the Philippine Government.

General Comment: It is imperative to present sex-disaggregated data in offering statistics and narratives on the situation of male and female OFWs. Collection of sex-disaggregated data has already been instituted in the monitoring systems of government, why are we not making use of this database? Why is there also a repeated reference to the OFW as male? Inasmuch as more women than men leave the country as migrant workers, this reality should be reflected in the policies as well as in the terminologies referring to Filipino migrant workers.

Specific Comments:

1. Page 18, Part II (A) Articles 1 and 7: Principles of Non-Discrimination, Paragraphs 64 to 76

The report is limited to non-discrimination among Filipinos in the Philippines. Except for the general statement in Paragraph 76 that Philippine laws are equally applicable to non-resident foreign migrants in the Philippines, the report failed to provide specifics. It is important to note that during the 2nd GFMD held in the Philippines in October 2008, foreign migrant delegates were warned by the Philippine Bureau of Immigration not to engage in any protest activity, otherwise they shall be deported and blacklisted. This is an example of discrimination against foreign migrants in the Philippines.

2. Page 22, Part II (B) Article 83: Right to An Effective Remedy, Paragraphs 77 to 86

While it is admitted that the Philippines is a source rather than a destination country for migrant workers, still, the report should not have focused solely on what are the available remedies for Filipino migrant workers under Philippine laws. There is not even a mention about the legal remedies and procedures for money claims of Filipino migrant workers. In addition, there is no mention in the report on the effective remedies available for foreign migrants in the Philippines. The report failed to discuss how does the Philippines ensure that foreign migrants in the Philippines have an adequate and effective remedies under Philippine laws.

53 The 2005 POLO Annual Report

54 The 2007 POEA Annual Report

3. Page 23, Part II (C) Article 84: Duty to Implement the Convention, Paragraphs 87 to 93

The text of the discussion of this portion does not relate to its avowed topic “Duty to Implement the Convention”. The report merely implies that the enactment of R. A. 8042 is a mode of compliance of the Philippine government to implement the Convention. But these are two entirely different laws. In fact, RA 8042 was enacted by the Philippine Congress almost a month earlier, on June 7, 1995, than its ratification of the Convention on July 5, 1995.

4. Page 25, Part III (A) Article 8: Right to leave any country including own and to return, Paragraphs 94 to 107

Departing OFWs are required to present proof of payment of the US\$25.00 membership fee per contract to the OWWA before they are allowed to board the plane to their international destination. This is a violation of the migrant workers’ right to work and to travel because the membership fee is mandated by law⁵⁵ to be paid by the overseas employer.

How can there be freedom of choice in employment and conditions of employment when there is high unemployment, underemployment, contractualization and growing poverty? Overseas migration actually provides a lot of relief/covering up for these so that the social volcano does not erupt into more unrest e.g. the US Congressional Research Service’s latest report on Food Security in Developing Countries (2007-2017) cited that “Food security in the Philippines is projected to remain stable...”, owing to OFWs’ high remittances will keep providing food security despite threats of rising global food and fuel prices and will continue to cushion the high cost of Philippine imports.⁵⁶

5. Page 27, Part III (B) Article 10: Right to life; prohibition of torture; prohibition of inhuman or degrading treatment, Paragraphs 108 to 158

The discussion in this section appears to be a rehash of the Philippine government’s report on its compliance with its obligations under international humanitarian laws. Unfortunately, as presented, the report failed to relate to the Convention itself and to the migrant workers and their families as well.

6. Page 38, Part III(C) Article 11: Prohibition of slavery and forced labor, Paragraphs 159 to 164

Same comment as above.

55 Letter of Instruction (LOI) 537 Implementing Rules and regulations Section 5b, May 1, 1977.

56 Cynthia D. Balana. OFWs keep RP food-secure, says US report. PDI Aug 23, 2008

7. Page 40, Part III(D), Articles 12, 13 and 26: Freedom of Opinion and Expression; freedom of thought, conscience and religion; right to join a trade union, Paragraphs 165 to 181

Article 269, 270, 271 and 272 of the Philippine Labor Code violates the rights of migrant workers to self-organization and is incompatible with the provisions of the Convention.

Article 269 of the Philippine Labor Code states:

“ARTICLE 269. Prohibition against aliens; exceptions. - All aliens, natural or juridical, as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, That aliens working in the country with valid permits issued by the Department of Labor and Employment, may exercise the right to self-organization and join or assist labor organizations of their own choosing for purposes of collective bargaining: Provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers. (As amended by Section 29, Republic Act No. 6715, March 21, 1989).”

Article 270 of the Philippine Labor Code states:

“ARTICLE 270. Regulation of foreign assistance. - (a) No foreign individual, organization or entity may give any donations, grants or other forms of assistance, in cash or in kind, directly or indirectly, to any labor organization, group of workers or any auxiliary thereof, such as cooperatives, credit unions and institutions engaged in research, education or communication, in relation to trade union activities, without prior permission by the Secretary of Labor.

“Trade union activities” shall mean:

- (1) organization, formation and administration of labor organization;
- (2) negotiation and administration of collective bargaining agreements;
- (3) all forms of concerted union action;
- (4) organizing, managing, or assisting union conventions, meetings, rallies, referenda, teach-ins, seminars, conferences and institutes;
- (5) any form of participation or involvement in representation proceedings, representation elections, consent elections, union elections; and

(6) other activities or actions analogous to the foregoing.

(a) This prohibition shall equally apply to foreign donations, grants or other forms of assistance, in cash or in kind, given directly or indirectly to any employer or employer's organization to support any activity or activities affecting trade unions.

(a) The Secretary of Labor shall promulgate rules and regulations to regulate and control the giving and receiving of such donations, grants, or other forms of assistance, including the mandatory reporting of the amounts of the donations or grants, the specific recipients thereof, the projects or activities proposed to be supported, and their duration."

Article 271 of the Philippine Labor Code states:

"ARTICLE 271. Applicability to farm tenants and rural workers. - The provisions of this Title pertaining to foreign organizations and activities shall be deemed applicable likewise to all organizations of farm tenants, rural workers, and the like: Provided, That in appropriate cases, the Secretary of Agrarian Reform shall exercise the powers and responsibilities vested by this Title in the Secretary of Labor."

Article 272 of the Philippine Labor Code states:

"ARTICLE 272. Penalties. - (a) Any person violating any of the provisions of Article 264 of this Code shall be punished by a fine of not less than one thousand pesos (P1,000.00) nor more than ten thousand pesos (P10,000.00) and/or imprisonment for not less than three months nor more than three (3) years, or both such fine and imprisonment, at the discretion of the court. Prosecution under this provision shall preclude prosecution for the same act under the Revised Penal Code, and vice versa.

(b) Upon the recommendation of the Minister of Labor and Employment and the Minister of National Defense, foreigners who violate the provisions of this Title shall be subject to immediate and summary deportation by the Commission on Immigration and Deportation and shall be permanently barred from re-entering the country without the special permission of the President of the Philippines. (As amended by Section 16, Batas Pambansa Bilang 130 and Section 7, Batas Pambansa Bilang 227)."

8. Page 44, Part III(E), Articles 14 and 15: Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property, Paragraphs 182 to 189

Again, the discussion in this section appears to be a rehash of the Philippine government's report on its compliance with its obligations under international

humanitarian laws. As presented, the report failed to relate to the Convention itself and to the migrant workers and their families.

9. Page 46, Part III(F), Articles 16(1-4) 17 & 24: Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law, Paragraphs 190 to 204

Again, the discussion in this section appears to be a rehash of the Philippine government's report on its compliance with its obligations under international humanitarian laws.

Except for Paragraph 204 which mentioned Section 37 of Commonwealth Act No. 613 on "procedural guarantees" for non-resident migrants, as presented, the report failed to relate to the Convention itself and to the migrant workers and their families.

10. Page 48, Part III(G), Articles 16 (5 to 9), 18 & 19: Right to procedural guarantees, Paragraphs 205 to 231

Except for Paragraphs 210 and 222, the report failed to relate itself to the Convention and to the rights of migrant workers and their families.

The report also failed to show the specific implementation of Article 16 (5 to 9) of the Convention under Philippine laws specific to migrant workers in the Philippines. Worse, the report failed to mention or report anything on Article 17 of the Convention

11. Page 53, Part III(H), Article 20: Prohibition of imprisonment, deprivation of authorization of residence or work permit and expulsion merely on the ground of failure to fulfill a contractual obligation, Paragraphs 232-233

As cited in Paragraph 233 of the report, DOLE Department Order No. 75-06, series of 2006 violates Article 20 of the Convention.

12. Page 53, Part III(I), Articles 21, 22 & 23: Protection from confiscation and/or destruction of ID and other documents; protection against arbitrary expulsion; right to recourse to consular or diplomatic protection, Paragraphs 234 to 249

Note: where is the comment on this item?

13. Page 56, Part III(J), Articles 25, 27 & 28: Principle of equality of treatment in respect of remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical attention, Paragraphs 250 to 264

This section of the report presents a fair description of existing Philippines laws, policies and programs on the application of equality of treatment with respect to Articles 25, 27 and 28 of the Convention.

This section of the report presents a fair description of the deportation process for foreigners in the Philippines.

14. Page 59, Part III(K), Articles 29, 30 & 31: Right of a child of a migrant worker to a name; registration of birth and nationality; access to education on the basis of equality of treatment; respect for cultural identity of migrant workers and members of their family, Paragraphs 265 to 295

This section of the report presents a fair description of existing Philippines laws, policies and programs that are compliant with Articles 29, 30 and 31 of the Convention.

15. Page 63, Part III (L), Article 32: Right to transfer to the State of origin their earnings, savings and personal belongings, Paragraphs 296 to 298

The report failed to mention that notwithstanding the fact that the punitive aspects of the law have been repealed, under Article 22 of the Philippine Labor Code in relation to Executive Order No. 857, it is still mandatory for Filipino migrant workers to remit 50-70% of their foreign exchange earnings to their families, dependents and/or beneficiaries in the Philippines.

16. Page 64, Part IV(A), Article 37: Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activities, Paragraphs 299 to 312

The report presents a brief description of the laws, policies and programs of the Philippine government relating to Article 37 of the Convention but the report failed to present a qualitative assessment of such policies and programs.

While all regular or documented OFWs are required to undergo a Pre Deployment Orientation Seminar (PDOS) prior to deployment, (whole day for first-timers and a half-day or less for rehires), CMA's evaluation study found that while PDOS providers are generally guided by the POEA/OWWA Memorandum Circulars, the conduct and content of the PDOS vary greatly in terms of coverage, duration, cost, and actual take-home instructional materials, depending on which accredited organization is conducting the seminar. It was observed that PDOS providers do not have a clear and standardized learning objectives, topics, assessment features and qualifications of trainers". This casts an even stronger doubt on the quality of the Pre Employment Orientation Seminar or PEOS, which is not expected to be as structured as the PDOS. Respondents of the CMA study recommended country- and job-specific approach to increase the effectiveness of the orientations seminars. Materials should also be supplemented by appropriate and adequate explanations. Finally, topics addressing specific needs of rehires and those approaching reintegration need to be included in the orientation curriculum.

Evaluation studies on the PDOS by the Scalabrini Migration Center in 1992 and 1997 indicated its low impact because at the time it is conducted the “OFWs’ frame of mind is set on their imminent departure...appeared as competing with their pre-departure concerns and forfeited the purpose of being a pre-orientation”. Kanlungan Centre Foundation’s studies in 2001 and 2003 likewise identified PDOS as “particularly not being helpful in teaching OFWs the basic information on how to cope with their work abroad”, e.g. rights of OFWs, dos and don’ts, where to file cases, etc.

On the other hand, the PEOS, which is “envisaged to orient prospective migrants about the legal application process, how to avoid illegal recruiters and the like” was seen to be more timely and relevant. Unlike the PDOS however, it is not institutionalized.⁵⁷ POEA conducted 367 PEOS nationwide in 2006 and 543, 66% outside Metro Manila, the latter attended by 50,467 participants in 2007. It also signed Memoranda of Understanding with 22 local government units to regularly conduct PEOS with Anti-illegal recruitment components.⁵⁸ But considering that a million was deployed abroad in 2006 and in 2007, PEOS participants are too few.

In addition, OWWA also conducts free language and culture courses for OFWs headed for non-English speaking countries, among them Israel, China, and Korea. However, recruitment agencies still require applicants, mostly domestic workers and caregivers, to undergo expensive private training elsewhere prior to attending the OWWA courses, for assessment purposes.

Executive agencies have only just started consulting in relation to the legislated Shared Government Information System for Migration (SGISM)⁵⁹ on OFWs but are bogged down by problems related to both hardware and software. While the diplomatic posts have been submitting semestral reports on the situation of overseas Filipinos to the Department of Foreign Affairs, which is accountable to report to Congress, the data still needs to be systematized and summarized for easy retrieval and reference by policy makers.

17. Page 66, Part IV(B), Articles 38 & 39: Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose the residence in the territory of the State of employment, Paragraphs 313 to 319

The report presents a fair description of Philippine laws and policies relating to Articles 38 and 39 of the Convention.

18. Page 67, Part IV(C), Article 40: Right to form associations and trade unions; right to participate in public affairs of their State of origin, to vote and be elected at elections of that State; procedure and institutions taking care of the needs of migrant

57 Dr. Erlyn Sana and Dr. Melflor Atienza. Evaluation of the Pre-Employment and Pre-Departure Orientation Seminars. CMA. December 2007

58 The 2007 POEA Annual Report

59 The establishment of an SGISM is mandated by RA 8042 under Section 20. It is not yet set up 13 years after the law was enacted in 1995.

workers and possible enjoyment of political rights in the State of employment, Paragraphs 320 to 331

As previously mentioned on Item 7 above, Articles 269 to 272 of the Philippine Labor Code violates the right of migrant workers to self-organization. Said laws violate the letter, spirit and intent of Article 40 of the Convention.

While it is true that Filipino migrant workers can now exercise their right to vote for President, Vice President, Senators and Party-List representatives, their right of suffrage does not include the right to vote for members of the House of Representatives (lower house of Congress) and for local elective positions.

Filipino migrant workers who have acquired a permanent resident or immigrant status in another country are not allowed to register and vote unless he/she executes a sworn affidavit stating that he/she shall resume actual physical and permanent residence in the Philippines not later than three (3) years from the approval of his/her registration as a voter. Violation of this law is penalized with imprisonment for not less than one year, disqualification from voting and stamping of his/her Philippine passport with the phrase “not allowed to vote”.

Migrant workers are also required to comply with the residency requirement within the Philippines as required by all elective positions. Thus, they are effectively disqualified from being elected. Filipino migrants who have acquired a permanent residence or immigrant status in a foreign country are specifically disqualified from running for a local elective post in the Philippines.

Additional Issues for the Consideration of the Committee

1. Issue: De Facto Policy of Promoting Labour Migration

RA 8042 says “...the State does not promote overseas employment as a means to sustain economic growth and achieve national development...”⁶⁰ However, every year, POEA targets to deploy one million migrant workers. Since 2006, POEA has surpassed the 1 million target. End of 2007, it deployed 1,077,623, upped by 1.42%⁶¹ from 2006 deployment figure. The number of migrants every year, for the last 4 decades, keeps on increasing,⁶² with rehires constituting more than 50% of the deployment. This manifests government's failure to provide decent job opportunities in the Philippines.

2. Part III: Human Rights of All Migrant Workers and Members of Their Families, Article 16, (7) & (9) and Article 23

60 POEA Stats2007

61 POEA Stats2007

62 Deployed Land based migrant workers: 1998: 831,643; 1999: 837,020; 2000: 841,628; 2001: 867,599; 2002: 891,908; 2003: 867,969; 2004: 933,588; 2005: 988,615; 2006: 1,062,657; 2007: 1,077,623 (POEA stats2007)

On-Site Protection, Access to Philippine Consular and Overseas Labor Offices, Programs and Services

Regular or documented overseas Filipino migrant workers currently number about 4.1 M while there are about 0.9 million undocumented workers residing in 193⁶³ countries and destinations around the globe. In terms of the presence of Philippine representative offices, the Philippines has only 84 embassies and consulates, 37 Philippine Overseas Labor Offices (POLOs)⁶⁴ and 20 Filipino Workers Resource Centers (FWRCs).⁶⁵ There are destinations of Filipinos around the globe that do not have a Philippine representative office and are simply included in the jurisdiction of neighboring posts. For example, Cyprus, where there is a big number of Filipino domestic workers, is under the jurisdiction of the embassy in Athens.⁶⁶ In the case of Iraq, where Filipinos are estimated to number between 6,000 and 8,000, the nearest Philippine embassy is now located in Amman, Jordan following the pull out of Philippine troops from Iraq in 2004.

The table below shows the presence of Philippine Embassies and consulates in selected destination countries of OFWs, the number of labor attaches present, and whether they maintain a Filipino Worker's Center.

63 POEA Stats2007

64 11 in Asia (37%); 14 in Middle East (49%), 12 in Europe (10%) and Americas (4%) combined

65 Mandated by RA 8042 in places where there are more than 20,000 Filipino migrants.

66 A few years ago, it was under the jurisdiction of the Philippine embassy in Tel Aviv.

Table 1. The Arithmetic of Migration Protection⁶⁷

Destination	Estimate of Overseas Filipinos ⁶⁸	PE/PCG ⁶⁹	Number of Labor Attaches	Filipino Workers' Resource Center
Saudi Arabia	994377	Riyadh (covers Yemen too) /Jeddah	3 in Riyadh 2 in Jeddah	yes in Riyadh Jeddah
UAE	205964	Abu Dhabi/Dubai	1 in AD 2 in Dubai	Yes
Hong Kong SA	197345	PCG	2	Yes
Japan	353252	Tokyo/Osaka	1	Yes
Malaysia	352650	Kuala Lumpur	1	Yes
Singapore	136489	Singapore	1	Yes
Taiwan	160672	MECO ⁷⁰ in Taipei	1 in Taipei 1 in Kaohsiung 1 in Taichung	
United Kingdom	116322	London (also covers Iceland, Ireland, Greenland)	1	Yes
Italy	138461	Rome (covers also Albania and San Marino)/Milan	1 in Rome 1 in Milan	Yes
United States	2.7M	Washington DC/ PCG: San Francisco; New York, Los Angeles, Chicago	1 in Washington	Yes
Greece	25146	Athens (also covers Macedonia & Cyprus)	1	Yes

67 To cite the situation of OFWs in selected destinations vis a vis protection mechanism.

68 Stock Estimate of Overseas Filipinos, end of December 2004. www.poea.gov.ph

69 PE-Philippine Embassy; PCG-Philippine Consulate General

70 MECO is Manila Cultural Economic Office. It is not a diplomatic representation office.

Among the OFW cases documented by CMA, 89 included complaints about the neglect and the lack of familiarity by embassy staff on the laws and processes of the host country. Embassy staff reportedly gave poor advice, or did not assist them at all (23 complaints). OFW Filipina migrant, a sewer who was gang raped by five Saudi nationals in August 2005, accused the Philippine consulate personnel in Jeddah of depriving her of proper legal advice and blocking the hearings that almost caused her to lose claim over for her private rights. In her letter-complaint submitted to the Department of Foreign Affairs, she said it was only through the help of fellow OFWs from the SOS SMS Team⁷¹ in Riyadh that she was able to file her claim against her perpetrators in 2007, two years after the crime was committed.⁷²

Julian Camat, Hermilo Ramos and Napoleon Fabregas, cargo handlers who were sentenced by a Saudi court to one and a half years of imprisonment for stealing computers in January, 2003 ended up serving a longer prison term because of the neglect of the Philippine Consulate in Jeddah. They were released after four years and four months in detention, or three years longer than the 1.5 year sentence.⁷³ Theirs is not an isolated case.

More than 150 OFWs are still languishing in jails in Al Malaz and Al Hair in KSA despite having served their sentence because they are not being sufficiently assisted by the post.⁷⁴

Esnaïra Angin, on the other hand, accused the assistant labor attaché of denying her help and shelter at the Philippine Overseas Labor Office in Dubai, allegedly for lack of money to pay for necessary fees. She was one of four OFWs in Dubai whose house was broken into by three Emirati and an Omani national in November 2005 and was stabbed on her chest and back while trying to resist their attackers.⁷⁵

D, a nurse charged for not calling police about a dead baby found in the hospital toilet, sought the embassy's help to appeal for the unfair verdict because she was not on duty at the time. The embassy advised her: "Desisyon mo yan... Tanggapin mo na lang yan total napakasimpleng parusa lang yan. Bawat hearing, nandon naman ang embassy a. If you file, tataas ang sentensya." (It's your decision. Just accept the verdict, anyway it's only a small punishment and the embassy will be there [for support] in every hearing. If you file an appeal, the sentence will go up.)

When the 10 Thadiq hospital nurses consulted POLO/OWWA about not being allowed to go home despite their expired and unrenewed contracts, they were told "Kelangan makatakas sila. Dito punta sa embassy para don daw sila kayang tulungan...Kung hindi sila punta don, kahit 10 years sila dito, hindi sila makakaalis dito." (They should run away and go to the embassy so they can get assistance. If they don't run away,

71 CMA OFW partner group on SOS SMS Helpline system in Riyadh, Saudi Arabia

72 CMA case file 2008

73 CMA Case file 2007

74 E-mail report from V Team, Riyadh, KSA

75 CMA case File 2007

they will not be able to go home even in ten years.)

C, a heavy equipment mechanic, met an accident at work in Riyadh and suffered spinal injury that forced him to stop working. His company did not attend to his disability pay worth 120,000 SR nor did the embassy assist or visit him since October 2006. Through follow-up by the SOS SMS Team, the processing of his claim was facilitated and released in January 2008.

A doctor in Riyadh who reported this said “POLO/OWWA Riyadh is rather slow in moving (the case did not move for three months)...Why do they need an NGO to help them when that is why they are receiving their salary for? Who will answer for the incompetenc(ies) of these government people assigned to help OFWs?”⁷⁶

At the government’s worst, there are cases where Filipino diplomatic personnel themselves abuse Filipina domestic workers e.g. a staff of the Philippine permanent mission to the UN in Geneva was charged guilty of abusing her domestic worker who also happened to be her cousin. The Geneva court ordered her to pay damages as far back as January 2000 but to date, she has not paid any money to the OFW and despite a warrant of arrest, and the DFA continues to employ her in the home office.⁷⁷

A major concern too is that OFWs do not want to file cases against their abusers because of their lack of trust in the justice system. In Qatar, a group of OFW cleaners who paid excessive fees to their agency said they would file a case if they were guaranteed a safe exit from Qatar. They have also complained about long working hours, delayed meals and low salaries. They said they number around 300. The same applies to OFW caregivers in Israel who pay excessive fees to recruitment agencies in the Philippines or intermediaries in Israel. Other OFWs complain that some of those who win their cases in the National Labor Relations Commission (NLRC) in fact win only paper victories because the errant agency has already closed shop or disappeared.

On the other hand, based on 2006 Middle East post reports to the Department of Foreign Affairs and Congress, most distressed/runaway OFWs were in Kuwait,

KSA and UAE; top in repatriating OFWs were KSA, Kuwait and UAE; and the most detainees and cases were in KSA, Qatar and Bahrain.

Top countries in terms of welfare/labor cases handled in 2005 were Hong Kong (21%), Singapore (14%), Taiwan, Kuwait, UAE and Qatar. Top countries in terms of runaways were Kuwait (34%), KSA (18%), Lebanon, UAE, Brunei and Japan. Top countries in terms of repatriates were KSA (30%), Kuwait (20%), Singapore, Japan and Jordan.

In total, POLOs handled 187,269 welfare/labor cases in 2004 and 167,466 in 2005.

76 CMA case file 2008

77 *ibid.*

The type of assistance rendered ranged from conciliation/mediation, legal assistance, repatriation services, and visits to hospitals and jails, etc. OFWs sought mostly counseling, including psychosocial stress debriefing for crisis situations and trauma, conciliation/mediation services of OFW claims for unpaid/back wages, temporary shelter or custody of OFWs in the Filipinos Workers' Resource Centers . (13,625 in 2004 and 12,907 in 2005), and repatriation assistance (8,173 in 2004 and 9,237 in 2005).

3. ISSUE: Discrimination, Protection

- a. In March 2007, the POEA started to implement a new set of policy reforms which was meant to improve and uplift the working and living conditions of domestic workers and caregivers, also referred to as Household Service Workers (HSW).

In October 2006, the POEA Governing Board Adopted Resolutions nos. 4-12 to improve the standards of protection for HSWs. POEA Governing Board Resolution No. 4, adopted on October 24, 2006, sets the minimum age for HSW to 25 years old. The minimum age for all other migrant workers is 18 years old. The rationale for the higher age requirement for HSWs is “to improve preparedness and maturity of the HSW and in light of reports of unabated abuses and maltreatments against HSWs.” CMA, in its statement submitted to POEA on January 31, 2007 questioned the stated rationale arguing that the primary cause of the abuses is not so much the physical age but the non-recognition of domestic work as work. The resolution also falls short of identifying concrete programs apart from ageing that will help “improve the preparedness and maturity of the HSW” since the required pre-qualification trainings are only available to those who are already qualified in age. The provision is also discriminatory against those between the age of 18 and 25 years old.

Per report of the POEA at the end of 2007, there were less women migrants deployed (48% against 52 %.) One attribution for the decrease in women migrant deployment was the new policy reforms. However, POEA has not made an assessment yet of its first year implementation of the HSW policies. One of the things we also questioned was how POEA intended to implement the policies since these were promulgated without the benefit of consultations among migrants and migrant rights advocates⁷⁸ as well as with receiving governments.

- b. The OWWA Issue.

The OWWA is a national government agency created by virtue of Letter of Instruction No. 537, Presidential Decree No. 1694, as amended by Presidential Decree No. 1809, Executive Order No. 195 and Republic Act No 8042. Its primary

⁷⁸ NGOs, duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect. --RA 8042 Section 2h on Declaration of Policies.

task is to provide welfare services to the OFWs and their families. On September 2003, the OWWA Board of Trustees promulgated resolution 038 on the OWWA Omnibus Policies (OP). The OP was practically an amendment of existing laws on OWWA. It transformed the welfare agency into a membership based organization where its programs and services can only be availed of by its members. To become a member, one must pay the US\$25 contribution, contrary to LOI 537. Moreover, the OP was promulgated without consultations from the OFWs, NGOs and other stakeholders. In fact, the land-based OFW representative in the OWWA board did not sign the promulgation. CMA's network the PMRW challenged it in the court and moved for the deletion of provisions in the OP that are contrary to the mission and mandate of OWWA. The case questioned the authority of the Board to enact the OP, as this was a legislative task.

- c. ISSUE: Political claims on Sabah imposes ambiguity on the status of Filipinos in Sabah, thus widening the protection gap.

Estimates on the number of Filipinos in Sabah, Malaysia are between 300,000 to 500,000. From the Malaysian perspective, many of these Filipinos are undocumented migrants, hence the regular crackdown and deportations by the Malaysian authorities. In the past concerned stakeholders strongly recommended to the Philippine government to set up an office in Sabah to monitor the status of Filipinos there and extend protection to them. However, the Philippines, to this date, has not heeded the call because of the so-called Sabah claim which considers Sabah a part of the Philippine territory. If this were the case, then the status and welfare of Filipinos in Sabah will not be covered by the Convention since the Convention only makes reference to the well being of migrant workers who work in countries not of their own. In the meantime, thousands of children born to Filipinos in Sabah are stateless because their parents could not register them since this would mean travelling the long distance to a Philippine embassy in Kuala Lumpur.

At the same time that the Philippines is not yielding on its claims to Sabah, it is also in joint meetings with Malaysia on the status of Filipinos in Sabah! At the end of the day, what matters most is for those Filipinos in Sabah, particularly the undocumented Filipinos to be able to access and avail of programs and services including mechanisms for redress.

Rights of detainees and deportees. Arrest, detention and deportation of undocumented Filipino workers continue in Malaysia. In 2006, the Philippine embassy in Malaysia reported to OUMWA that at any given time, there are 1,600 Filipinos being held at the three detention centers and regular prisons in Kota Kinabalu, Tawau and Sandakan due mostly to immigration-related problems. In the same year, 9,277 Filipinos or an average of 762 Filipinos were deported monthly, with over 98% of them coming from Sabah.⁷⁹ This continues into 2008 – where 11,729 were reported deported in 2007 and 8,205 have been deported in 2008 up to

79 Semi-annual report of foreign service posts on assistance to nationals July-Dec 2006

August.⁸⁰ Mujeres, a women's organization in Zamboanga City, further observed that there could be as much as twenty times more Filipino deportees landing in its pier. From 2007 until April 15, 2008, the RELA⁸¹ was reported to have conducted 7,213 raid operations and arrested 42,946 undocumented migrant workers (Home Affairs Minister answer to YB Khalid Abdul Samad on May 5, 2008).⁸² In addition, human trafficking was monitored mostly in Labuan, Sabah and Sarawak where victimized Filipinos could not seek shelter and protection from the Philippine Embassy in faraway Kuala Lumpur. The embassy reported 46 cases of human trafficking, 78% of them were in Sabah.

4. ISSUE: Right to Family Reunification and Family Life

UNICEF deputy country representative Colin Davis draws attention to 2006 data which shows that around 56% of migrants are married. If there are 1 million each of female and male OFWs abroad who are married. Assuming an average of three children per household, six million children are left behind and are at risk from the social costs of migration.⁸³

A major concern are the children of undocumented OFWs in Sabah whose right to nationality is violated due to the inaccessibility of the Philippine embassy in faraway Kuala Lumpur, Malaysia that in turn prevents parents from filing their children's birth registration. Children of undocumented OFWs also risk the dangers from continuing raids, arrests, detention in subhuman conditions and deportation.⁸⁴

As of January 2007, the Immigration Department Enforcement Unit in Putrajaya showed that of 1,943 Filipinos in detention, 231 were children, for whom there are no special provisions in the detention cells. One expects that their detention conditions would be the same as those of the 14 and 16 year old among the 36 fishermen jailed Filipino fishermen to earn money to go back to school. Their detention center is described below.⁸⁵

Another matter of concern is that the adopted legislative text of the European Return Directive that allows undocumented migrants to be held in custody between six months and 18 months includes children.⁸⁶

⁸⁰ DSWD service delivery report sent to CMA in August 2008

⁸¹ Rela is a civil volunteer corps formed by the Malaysian government whose main duty is to check the travel documents and immigration permits of foreigners in Malaysia to reduce the illegal immigrants. It is authorized to deal with situations like policemen e.g. raiding suspected places e.g. streets, factories, restaurants and even hotels, interrogating and even detaining people who forgot to bring their passports and/or working permits. Wikipedia http://en.wikipedia.org/wiki/RELA_Corps

⁸² Press release. July 25, 2008. Migrant Care. Indonesia

⁸³ United Nations Children's Fund (Unicef)-Philippine Institute for Development Studies (PIDS) Seminar Series on Public Policies and the Rights of Children.

⁸⁴ CMA and Mujeres. A report on irregular migration and human trafficking. 2007

⁸⁵ CMA case file 2008

⁸⁶ Veronica Uy. New EU rules may affect 94,000 irregular OFWs in Europe. Inquirer.net 6/20/08 <http://globalnation.inquirer.net/news/breakingnews/view/20080620-143800/New-EU-rules-may->

A recent research also found that migration risks Filipino adolescents to become "worse off" in life, as presented at the United Nations Children's Fund (Unicef)-Philippine Institute for Development Studies (PIDS) Seminar Series on Public Policies and the Rights of Children. It showed OFWs give less time and??more?? money to their children aged 13 to 16, making them "susceptible to being engaged in unwarranted acts, such as premarital sex that results in teenage pregnancies and subjects them to abuse, whether sexual or physical; or they go into drugs."⁸⁷

5. ISSUE: Placement Fees.

The Philippines has not ratified ILO Convention 181 on no fee charging by private recruitment agencies, not only because there is strong opposition from the majority of the recruitment agencies⁸⁸ but also because it is POEA that actually institutionalised the collection of placement fees by recruiters under Rule V on Fees, Costs and Contributions, Section 3 on Fees/ Costs Chargeable to the Workers. At the same time, under the same Rule, Section 1, POEA also allowed the agencies to charge a service fee from the principals or employers "to cover services rendered in the recruitment, documentation and placement of workers." At the end of the day, the recruiter collects twice as much for the same service – the recruitment of worker. At the same time, receiving States have allowed the setting up and engagement in labor migration of their own placement agencies or brokers or manpower agencies and also allows legal collection of placement fees. In sum, the migrant worker pays two entities –again, for the same service.

6. ISSUE: Non-Portability of Social Security (also page 58, item 263-264)

Unlike local workers, migrants do not automatically enjoy the benefits of social security while being employed overseas. Foreign employers are not willing to co-fund with OFWs social security insurance for the latter. The Social Security System program of the Philippines is made available to OFWs on voluntary basis under the self-employed category. And for those with social security, the problem is its portability when the migrant decides to go home to the Philippines for good after retirement. It usually needs a bilateral social security agreement to enable migrants to enjoy their social security upon retirement in the Philippines. To date, the Philippines has bilateral social security agreements with only 8 countries. Our bilateral Social Security agreement with Spain was signed in 1988 and expired in November 2002. The agreement was renewed in 2002 but not yet ratified to date.⁸⁹ The agreement with Quebec entered into force in November 1998, not 1989.⁹⁰

affect-94000-irregular-OFWs-in-Europe

87 Rosemarie Edillon. "The Effects of Parent's Migration on the Rights of Children Left Behind"

88 We said "majority" because there is a small group of recruitment agencies who do not charge placement fees from the workers.

89 Philippine Bilateral Labor Agreements, International Labor Affairs Service, Department of Labor and Employment. December 2006

90 Ibid.

Statement of the International Catholic Migration Commission to the UN Committee on Migrant Workers



Delivered during the Ninth Session, 25 November 2008

For discussion of issues and questions regarding
The first report to the Committee
by the Philippines

The International Catholic Migration Commission (ICMC) welcomes the first report submitted to the Committee on Migrant Workers by the Philippines in accordance with its obligations as a State party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (hereafter referred to as “the Convention” or “the Migrant Workers’ Convention”).

We note the exemplary scope and depth of the report with regards to the situation for Filipino migrant workers and their families — a model for other State parties to the Convention — and observe further that the attention devoted to the preparation of this report by the government of the Philippines and others involved in its preparation reflects the growing and responsible leadership role that the Philippines has exercised in regional and global consideration of labour migration issues in recent years, including hosting the second Global Forum on Migration and Development in Manila last month, in which efforts were made to ensure a rights-centered approach to migration and development issues and policies.

We appreciate this opportunity to share with the Committee questions and concerns generated from our analysis of the report, including perspectives and experiences of ICMC members and partners working directly with migrants and their families on the ground in the Philippines, throughout Asia, the Middle East and other countries. The Catholic Church, and ICMC members in particular, are heavily engaged in migration-related programming, coordinating and supporting: migrants’ desks; parish-based Overseas Filipino Workers (OFW) groups; school-based Sons and Daughters of OFW groups; provision of direct paralegal and family counselling services; provision of entrepreneurship and economic activities and migrants rights advocacy work, to name but a few.

In the same way that the Migrant Workers’ Convention relates both to non-Filipino nationals and members of their families working in the Philippines, and Filipino citizens who have migrated to other countries, so too do the following perspectives and concerns.

I. With regards to Filipino migrant workers and members of their families living abroad: their rights and the Philippines’ obligations to them under the Migrant Workers’ Convention:

As is widely acknowledged, the Philippines is the first migrant “sending” country in Asia to draft and ratify a formal legal framework for protecting its overseas citizens and, as such, should be recognized for its efforts in this regard. Nonetheless — and despite the Philippines frequently being considered as a model for other Asian labour-sending countries — we remain deeply concerned by the development of migration-centred national economic policies (and, conversely, economic-centred migration policies) that do not adequately safeguard the basic human rights of migrant workers and their families.

With an express target of one million deployments of Overseas Filipino Workers

(OFWs) per year, the Philippines has worked to develop some of the world's most comprehensive administrative structures and legal mechanisms to facilitate the outward migration of citizen workers on the one hand, while providing a number of safeguards for their protection on the other. There are indications, however, that this policy emphasis may be creating, or accelerating, enormous, if unintended consequences.

At least ten percent of the Filipino population is already reported to be living and working overseas and, in 2005, a nationwide survey revealed that an increasing number of Filipinos (33% in October 2005) agreed with the statement "if it were possible, I would migrate to another country to live there". Among children between the ages of ten and twelve years, one out of every two had plans to work abroad someday, with the figure rising to nearly two out of three in the case of those who are children of migrants.

As observed by ICMC members working both in the Philippines and with the Diaspora abroad, Filipino society is paying a steep and worrying price for the massive exodus of its citizens spurred on by this growing "culture of migration", particularly as a consequence of the extended de-unification of families. Moreover, the serious problem of "brain drain," especially the exodus of skilled doctors and nurses, only increases the severity. Increasingly, there are growing reports of shortages of health care professionals in parts of the country, leading to the forced closure of hospitals as essential medical staff leave or otherwise choose work abroad. Along with the government, many families are investing in professional formation for their children according to foreign demand, including courses that are explicitly designed to enhance their likelihood of being accepted for overseas employment, such as nursing or information and communications technology.

Request 1: Pursuant to Articles 8 and 64 of the Convention, please describe what measures are being taken to ensure that the right of migrant workers and their families to remain in the Philippines (as well as to leave if s/he so chooses) is adequately protected and promoted, with due regard to labour needs and resources at home, as well as the social, economic and cultural needs and consequences to both potential migrants and their communities.

ICMC and its members are concerned by an increasing dependency on remittances from Filipino migrant workers. The World Bank projects that through the end of 2008, OFWs will have sent some 18.7 USD billion in remittances back to the Philippines, through formal channels alone, and it is believed that for every Filipino worker leaving the country, at least five people are dependent upon his or her remittances. Various indicators suggest that international migration has been embraced by the Philippine government as one of its major strategies for national development. Some further suggest that this strategic reliance on overseas employment and the remittances it generates have prevented the government from elaborating and enacting national plans towards self-sustainable development. The consequential "need" to sustain the massive deployment of migrant workers has led to concessions on labour conditions

imposed by countries and/or foreign employers receiving OFWs, with widespread discrimination and violation of migrants' rights.

Request 2: In reference to Articles 47 and 48 of the Convention please elaborate upon the total amount of remittances actually received may have been, including informal transfers. Please describe how such remittances are factored into national economic development planning, including especially any evaluations, planned or completed, to assess their effectiveness in supporting national development any efforts to explore alternative options that may be less dependent upon migrant remittances.

Bi-lateral coordination with OFW receiving countries, including Saudi Arabia, the United Arab Emirates and the United States of America, has demonstrated a commitment by the government of the Philippines both to the well-being of Filipino migrants and their families abroad, and to the principles enshrined in the Migrant Workers Convention. As seen in our work on the ground and with migrant workers and their families, however, the contract labour system that has emerged in bilateral agreements between the Philippines and migrant "receiving" countries goes to great lengths to regulate entry, residence and economic activity of migrants, yet falls short on the effective protection of migrants' basic rights.

We are especially concerned by temporary labour contracts that prevent the integration and long-term settlement of migrant workers and their families by encompassing short, limited contracts; prohibiting transfers to alternative employers or labour sectors; prohibiting or rendering extremely difficult family reunification even for workers who consistently renew their contracts or otherwise stay long-term; implementing policies which automatically repatriate migrant workers found pregnant during their contract term and prohibiting the marriage of migrant workers with nationals of the receiving country.

Request 3: In light of Articles 45, 51, 52, 54 and 70, please expand on concrete efforts being made to ensure that Filipino migrant workers, including those on temporary or short term contracts, enjoy equal quality of treatment as nationals, freely choose their remunerated activity, are not regarded as "irregular" due to job termination and are ensured working and living conditions aligned with standards of fitness, safety, health and principles of human dignity.

Request 4: Please present qualitative analysis as well as quantitative data about the provision of legal assistance services to OFWs and members of their families overseas, in particular by the Office of the Legal Assistant for Migrant Worker Affairs, and especially for overseas Filipinos in distress.

Request 5: Please describe the numbers, gender segregated, and any recurrent factors or elements, in the repatriation of Filipino workers who have died during or because of their period of employment overseas, including causes of

death, autopsies and other investigations, civil or criminal charges, and the results of any follow-up between the government of the Philippines and the country in which the Philippine national died.

Request 6: Please describe any concerns expressed by the government or in recent legislative proposals about the current scope and structure of the Overseas Workers Welfare Administration (OWWA), including the involvement and number of migrant workers as full, formal and voting members of its Board.

Despite continued efforts to curb illegal recruitment practices and irregularities, exploitation and abuses still mark the experience of many overseas Filipino workers prior to their departure, over the course of their time abroad and upon their return to the Philippines. Exacerbated by social and economic pressures to seek work abroad and the dynamics of a migration industry in which a vast pool of aspiring migrants is met by a mass of recruitment middlemen, migrant workers and their families are increasingly rendered vulnerable to abuse and exploitation, including human trafficking, forced labour and debt bondage situations.

The 2008 edition of the US State Department's Trafficking in Persons Report positions the Philippines as a "Tier 2" country for human trafficking, citing that "a significant number of Filipino men and women who migrate abroad for work are subjected to conditions of involuntary servitude in Bahrain, Canada, Cyprus, Hong Kong, Cote d'Ivoire, Japan, Kuwait, Malaysia, Palau, Qatar, Saudi Arabia, Singapore, South Africa, Turkey and the United Arab Emirates".

Request 7: In this light, and with reference to Articles 11, 66 and 68 of the Convention, please describe, with gender and age-segregated data, specific efforts to prevent the trafficking and forced labour of Filipino nationals, particularly children, as well as efforts to ensure their proper care, treatment and return when intercepted by border authorities. Additionally, please expand on current efforts to regulate recruitment channels and prosecute those middlemen who may be intentionally deceiving and violating the safety, health, dignity and rights of migrant workers and members of their families.

It is reported that private agencies handled the deployment of over ninety percent of OFWs in 2007. The experience of our members and partners, media reports, and studies by the Commission on Audit (e.g., its 2007 report) raise concerns about materially inadequate monitoring of the agencies, both within the Philippines and abroad, as well as of foreign employers of OFWs. In this context, it is further understood that nearly one out of four staff positions in the Philippine Overseas Employment Administration (POEA) are currently vacant (116 out of 510) — having been so for several years — and that a substantial number of POEA employees are approaching retirement age.

Request 8: Please elaborate on the role and prevalence of false passports and other documents, the sale of skills certificates, excessive placement fees and other such practices in the recruitment and placement processes involving private agencies, and reasonable measures that the Philippine government takes to address these abuses. Among other things, please enumerate the resources devoted to enforcement by POEA, including the number of full time inspectors, the ratio of inspectors to agencies, the system, regularity and results of inspection of all agencies, the system, regularity and results of random inspections, and the system for recording and sharing the results of all inspections with potential migrant workers and the broader public.

Beyond the agencies, please provide a similar description, including an actual record, of regular and random inspections of foreign employers by either the Philippine Overseas Labor Offices (POLOs) or other entities of the Philippine government, with conclusions and recommendations of any audit of the inspection process or its effectiveness, and any measures being taken to improve inspections.

Request 9: Please describe any existing mechanism or efforts to mitigate the conflict between the government's goal of supporting and substantially increasing the overseas employment of Philippine nationals and its goal of protecting the rights of those workers and their families during that employment, including efforts, if any, to avoid or mitigate institutional conflicts of interest in the present assignment of both goals as the principal responsibility of just one government agency, POEA.

Request 10: In view of the assignment to POEA of primary responsibility for protection of OFWs, please elaborate upon its relationship with the Philippine Overseas Labor Offices (POLOs), including the rationale, record and effectiveness in keeping those POLO offices outside of the POEA organisation, control, supervision and accountability.

Request 11: Please describe the current state of staffing within the POEA, POLOs and OWWA, including current and projected vacancy rates, the results of any recent manpower audits, the relevance of any national hiring policies (e.g., hiring freezes, budgets, compensation, etc., and specific measures to remedy shortages in essential personnel).

And finally, while it is impossible to calculate with any certainty the number of irregular migrants of any nationality, it is estimated that a significant number of Filipinos working and living abroad may be in irregular immigration status, in neighboring countries, as well as other industrialized countries. Therefore:

Request 12: With reference to Article 69 of the Convention, and given the Philippine government's strategic reliance upon and support for its nationals living and working abroad, please describe any efforts by the government to

encourage countries in which important numbers of Filipino nationals work and live without the full benefit of proper legal status to regularize the status of those workers and members of their families, particularly in the case of those who have worked in the host country for many years, obeyed the laws, worked and contributed to the economy and built personal, social and community ties. Inter alia, please address the situation and measures taken with respect to workers of Filipino origin and members of their families who, for lack of birth certificates or other documentation, are considered stateless in Malaysia.

II. Turning to Convention rights and obligations towards non-Filipino migrant workers and members of their families in the Philippines:

Request 13: Recognizing that accurate statistics can be challenging to obtain and also their importance in assessing the current situation of migrant workers and their families, please describe the current number and nature of undocumented migrants in the Philippines, including sectors of employment and any plans to regularize their status, particularly those who have resided in the Philippines for many years, obeyed the laws, worked and contributed to the economy and built personal, social and community ties.

Request 14: Pursuant to Articles 43 and 45 of the Convention, please describe in detail the extent to which non- Filipino nationals and members of their families living and working in the Philippines have access to educational and training institutions, social and health services and participation in cultural life, both Filipino and of their own origin.

Request 15: With reference to Articles 33 and 37, please expand upon initiatives taken, currently underway or anticipated, to ensure that migrant workers and members of their families residing in the Philippines, as well as those Filipino enterprises employing migrant workers, have been duly informed of their rights and responsibilities under the Migrant Workers Convention, including with respect to conditions of employment.

Request 16: Please describe policies and practices that ensure that migrants are not criminalized in the context of their claims or status, asserted or proven, as victims of human trafficking, asylum seekers, or persons who are undocumented or in an otherwise irregular situation, including explicit training programs for border patrol/policing and other relevant authorities to identify and provide appropriate support services or referrals to the individuals concerned.

Request 17: Please describe measures taken with respect to the expulsion of migrants, including (but not limited to) unaccompanied minor children, those seeking asylum and those whose applications for asylum have been rejected, and how such expulsions comply with Articles 16-19, 22, 23, 56 and 67 of the Convention.

Thank you.

COMMITTEE ON THE PROTECTION OF THE RIGHTS OF
ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Ninth session
Geneva, 24- 28 November 2008
ADVANCE UNEDITED VERSION

CONSIDERATION OF REPORTS SUBMITTED BY
STATES PARTIES
UNDER ARTICLE 73 OF THE CONVENTION

List of issues to be taken up in connection with
the consideration of the initial report of THE
PHILIPPINES



List of issues to be taken up in connection with the consideration of the initial report of THE PHILIPPINES

A. Information of a general nature

1. Please describe the role, if any, of non-governmental organisations in the implementation of the Convention and in the preparation of the State party's report (see the Committee's provisional guidelines regarding the form and content of initial reports, paragraph 3 (d)).
2. Please explain whether domestic legislation provides for the application of the Convention to refugees and stateless persons (article 3 (d) of the Convention).
3. Please provide further information on measures taken for the dissemination and promotion of the Convention. Please also indicate whether specific training programmes on the Convention are implemented for relevant public officials, such as border police officers, embassy and consulate officials and social workers, but also judges, prosecutors and relevant government officials.
4. Please provide information on how the various government agencies dealing with overseas employment and the protection of Filipino migrant workers coordinate their activities.
5. Please provide information on the activities undertaken by the National Commission on the Role of Filipino Women to improve the situation of migrant women (para.68 of the report). How does the National Commission address the situation of feminization of overseas employment?

B. Information in relation to each of the articles of the Convention

(a) General principles

6. Please clarify which laws are not applicable to migrant workers and explain why migrant workers do not have the right to own real property in the Philippines (para.76 of the report).
7. Please provide examples of judicial decisions where the Convention has been directly applied by the courts.
8. Please provide more information on the activities of the Legal Assistant for Migrant Workers Affairs under section 24 of the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042). In particular, how many Filipino migrant workers have benefitted from legal assistance (para.83 of the report)? Please provide more information on when the Legal Assistance Fund was established and how it has been used in practice (paras.85 and 86 of the report). How many

Filipino migrant workers have received disbursements from the Fund and for what legal services in which countries?

9. In relation to the State party's claim that it will only deploy Filipino migrant workers to countries where their rights are protected (para.89 of the report), please explain how this commitment is implemented in practice.
10. Please indicate what types of initiatives the Department of Foreign Affairs has undertaken to promote the accession to the Convention of countries receiving Filipino workers (para.92 of the report).

(b) Part III of the Convention

Article 11

11. Please provide further information on:

(a) Measures adopted to combat the practice of mail-order brides and their impact (para.69 of the report);

(b) Measures adopted to ensure that women recruited abroad, in particular in Japan, as “entertainers” or “overseas performing artists” do not become involved in forced prostitution (para.53 of the report).

Article 16

12. With regard to the information contained in paragraph 208 of the report that “at the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason of the arrest, if any” (emphasis added), please clarify whether migrant workers and members of their families can be arrested without any reason (para.208 of the report). Please provide data on foreigners in detention in the Philippines. Please clarify whether and how their right to the free assistance of an interpreter is guaranteed in practice.

Article 17(7)

13. Please explain why, under the rules for deportation proceedings, foreigners who are detained cannot be released on bail (paras.222 and 238 of the report). Please also indicate what measures are in place to ensure that foreigners who are detained in the Philippines pending deportation are given adequate access to courts and lawyers and that their cases are reviewed by competent authorities without undue delay (para.239 of the report).

Article 21

14. Please explain the measures the State party has taken to prevent the retention of identity documents by the employers/employment agencies of migrant workers.

Article 22

15. Please explain whether and how a migrant worker subject to an expulsion order can submit reasons why he or she should not be expelled and whether appeals from decisions of expulsion have suspensive effect.

Article 26

16. Please clarify whether and how migrant workers, including irregular migrant workers, can exercise their right to engage in trade union activities, and explain why such exercise is subject to reciprocity (para.179 of the report). How is this requirement applied in practice? Furthermore, please explain the rationale behind article 272 of Presidential Decree 442 providing that foreign nationals violating article 269 of the same Decree on trade union activities are immediately deported and permanently barred from re-entering the country, and comment on its compatibility with article 26 of the Convention (para.181 of the report).

Article 29

17. Please provide information on measures adopted to encourage and facilitate the registration of children born abroad to Filipino migrant workers, in particular women migrant workers returning from abroad with their children, irrespective of whether they are documented or not (paras.265-268 of the report).

Article 30

18. Please explain whether the children of migrant workers in an undocumented situation have the right to access to education and how this right is implemented in practice.

Article 33

19. Please specify what information on the rights protected by the Convention is provided to migrant workers during the Pre-Departure Orientation Seminar (PDOS). In particular, what information are migrant workers given on the administrative and judicial remedies that are available to them in the event of a violation of their rights, e.g. a list of contact numbers, especially that of embassies or consular offices and non-governmental organizations (para.299 of the report). Please provide information on the number of migrant workers benefitting from the PDOS and their country of destination.

(c) Part IV of the Convention

Article 41

20. Please provide information on the level of participation of Filipino migrant workers living abroad in elections held in the Philippines and on any measures taken by the State party to facilitate such participation in practice (paras.325-330 of the report). Please clarify whether Filipino migrant workers can exercise their right to vote only if they commit themselves to return to and live in the Philippines within the three years following their registration as a voter.

Article 46

21. Please indicate whether Filipino migrant workers enjoy exemption from import duties and taxes in respect of their personal and household effects upon their final return.

Article 47

22. Please provide information on any measures adopted to facilitate transfers of migrant workers' earnings and savings to the Philippines, including any agreement to reduce the cost of such transactions for migrant workers (paras.296-298 of the report). Please clarify whether article 22 of the Labour Code in relation to Executive Order No.857 requires that Filipino migrant workers remit 50-70% of their earnings in foreign currency to their families in the Philippines. Are any taxes levied on incoming remittances?

(c) Part VI of the Convention

Article 64

23. Please indicate whether further bilateral agreements and memoranda of understanding are under negotiation with countries and regions hosting substantial numbers of Filipino migrant workers and provide information on the content of such agreements, particularly regarding the protection of migrant rights (paras.263 and 338 of the report).
24. Please provide information on the regional efforts to promote sound, equitable and humane migration conditions initiated, pursued and supported by the State party.

Article 65

25. Please provide information on the impact of the Migrant Advisory and Information Network (MAIN). What services does it currently provide? In which countries are Migrant Advisory and Information centres currently located? (para.69 of the report)

26. Please indicate what measures have been taken to enable consular services to respond more quickly and effectively to the protection needs of Filipino migrant workers and members of their families, and, in particular, to provide assistance to those suffering from the hands of abusive employers and victims of trafficking. What assistance do migrant workers receive to file complaints? Please also specify what assistance is offered to Filipino migrant workers who are the victims of a system of “sponsorship” designed to give the sponsor control over them for the duration of their stay in the State of employment, and sometimes even to prevent them from returning to the Philippines. Please specify how migrant workers and members of their families have benefitted from the services provided by the Migrant Workers and Other Overseas Filipinos Resource Centers and report on their impact (para.350 of the report). How many of these Resource Centres have been open and in which countries? What are the main challenges/obstacles to their effective functioning?

Article 66

27. In the light of article 66, please indicate what efforts have been undertaken to better regulate recruitment activities within the State party. In particular, please provide information on:
- (a) Measures adopted to address violations such as contract substitution or exaction of “exorbitant” placement fees charged on prospective migrants;
 - (b) The handling by the Philippine Overseas Employment Agency (POEA) of cases filed by victims of illegal recruitment;
 - (c) The number of successful prosecutions for illegal recruitment;
 - (d) The plans for the Supreme Court to designate special courts to hear and decide illegal recruitment cases.

Article 67

28. Please provide information on the number of returning Filipino migrant workers and the measures adopted to facilitate the return of these migrant workers, when they decide to return, to facilitate their durable social and cultural reintegration. What types of reintegration programmes are available to returning migrants? Please clarify whether these services are provided to returning Filipino migrant workers.

Article 68

29. In the context of the State party’s obligations under article 68, please provide further information on the activities of the Inter-Agency Council Against

Trafficking (IACAT) and their impact (para.163 of the report). Please also provide further information on:

- (a) The scale of the phenomenon of trafficking of persons in, through and from the State party's territory;
- (b) The establishment of the Migrant Workers Loan Guarantee Fund as envisaged by section 21 of Anti-Trafficking in Persons Act of 2003 (RA 9208) and its practical application (para.366 of the report);
- (c) The number of victims of trafficking who have benefitted from the protection afforded by section 44 of the Anti-Trafficking in Persons Act of 2003 (RA 9208) and for how long (para.164 of the report);
- (d) The status of the cases which the IACAT has assisted in filing since it was created in 2003, including data on prosecutions, convictions and sanctions;
- (e) The measures which have been adopted to improve the low rates of prosecution and conviction of traffickers under the Anti-Trafficking in Persons Act of 2003 (RA 9208);
- (f) The status of the cases reported to embassies and consulates abroad;
- (g) The level of assistance provided to victims of trafficking whose cases are reported to embassies and consulates abroad.

Please clarify whether these services are also available to victims of trafficking who do not wish to testify against their traffickers.

Article 69

30. Please provide more details on the rescue operations which have been conducted to protect irregular Filipino migrants who are victims of trafficking in their country of destination. Please clarify whether any programmes exist to facilitate the return of irregular Filipino migrants who are not victims of trafficking (paras.369 to 371 of the report).

Annex

International Human Rights Obligations of the Philippine Government

A. United Nations Conventions and Declarations

Source: <http://www2.ohchr.org/english/bodies/ratification/index.htm>

Treaty/ Convention	Date Adopted/ Entered into Force
Universal Declaration of Human Rights	1948
Convention on the Prevention and Punishment of the Crime of Genocide	December 9, 1948
Convention on the Non-applicability of statutory limitations to war crimes and crimes against humanity	November 26, 1968
International Convention on the Suppression and Punishment of the Crime of Apartheid	November 30, 1973
International Convention Against Apartheid in Sports	December 10, 1985
International Covenant on Civil and Political Rights (ICCPR)	December 16, 1966/ March 23, 1976.
Optional Protocol to the ICCPR Second Optional Protocol to the ICCPR aiming at abolition of Death Penalty	December 16, 1966 December 15, 1989
International Covenant on Economic, Social and Cultural Rights (ICESCR)	December 16, 1966/ January 3, 1976.
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	March 7, 1966/ January 4, 1969
Amendments to Article 8 of the ICERD	January 15, 1992
Convention on the Rights of the Child (CRC) Amendment to Article 43 (2) of the CRC Optional Protocol to CRC on Involvement of Children in Armed Conflict Optional Protocol to the CRC on the sale of children, child prostitution and child pornography	November 20, 1989/ Sept 2, 1990 December 12, 1995 May 25, 2000 May 25, 2000
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	December 2, 1949/ July 25, 1951
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Amendments to Articles 17 (7) and 18 (5) of the Convention Against Torture	December 10, 1984/ June 26, 1987 September 8, 1992

Optional Protocol to the Convention Against Torture	December 18, 2002
Convention Against Discrimination in Education Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO)	December 14, 1960
Declaration on the Human Rights of Individuals Who Are not Nationals of the Country in Which They Live Adopted by UN GA (United Nations General Assembly) Resolution 40/144	December 13, 1985
Declaration on the Elimination of Discrimination Against Women Proclaimed by the GA Resolution 2263 (XXII)	November 7, 1967
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women Amendment to Article 20, par 1 of the CEDAW	December 18, 1979/ September 3, 1981/ October 6, 1999 December 22, 1995
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	December 18, 1990/ July 1, 2003
Convention on the Rights of Persons with Disabilities Optional Protocol to the CRPD	December 13, 2006 December 13, 2006
International Convention for the Protection of All Persons from Enforced Disappearance	December 20, 2006

B. International Labor Organization Conventions

Source: <http://www.ilo.org/ilolex/cgi-lex/pqconv.pl?host=status01&textbase=iloeng&querytype=bool&hitdirection=1&hitstart=0&hitsrange=2000&sortmacro=sortconv&query=Philippines@ref&chsp ec=19&>

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force
C17 --Workmen's Compensation (Accidents) Convention	1925
C19 -- Equality of Treatment (Accident Compensation) Convention	1925
C23 – Repatriation of Seamen Convention	1926
C29 –Forced Labour Convention	1930
C53 – Officers' Competency Certificates Convention	1936
C59 – Minimum Age (Industry) Convention (Revised)	1937/ RP denounced on

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force
	June 4, 1998
C77 – Medical Examination of Young Persons (Industry) Convention	1946
C87 – Freedom of Association and Protection of the Right to Organize Convention	1948
C88 –Employment Service Convention	1948
C89 – Night Work (Women) Convention (Revised)	1948
C90 – Night Work of Young Persons (Industry) Convention (Revised)	1948
C93 – Wages, Hours of Work and Manning (Sea) Convention (Revised)	1949
C94 – Labour Clauses (Public Contracts) Convention	1949
C95 –Protection of Wages Convention	1949
C98 –Right to organize and Collective Bargaining Convention	1949
C99 – Minimum Wage Fixing Machinery (Agriculture) Convention	1951
C100-- Equal Remuneration Convention	1951
C105 –Abolition of Forced Labour Convention	1957
C110 – Plantations Convention	1958
C111 ---Discrimination (Employment and Occupation) Convention	1958
C118 – Equality of Treatment (Social Security) Convention	1962
C122 – Employment Policy Convention	1964
C138 – Minimum Age Convention	1973
C141 – Rural Workers' Organizations Conventions	1975
C142 – Human Resources Development Convention	1975
C143 –Migrant Workers (Supplementary Provisions) Convention	1975
C144 – Tripartite Consultation (International Labour Standards) Convention	1976
C149 – Nursing Personnel Convention	1977
C157 –Maintenance of Social Security Rights Convention	1982
C182 – Worst Forms of Child Labour Convention	1999

- **Bilateral Agreements and Memoranda of Understanding/ Undertaking⁹¹**

91 Philippine Bilateral Labor Agreements, International Labor Affairs Service, Department of Labor and Employment. December 2006

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
RP-Indonesia MOU Memorandum of Understanding between the Department of Labor and Employment (DOLE) of the Republic of the Philippines and the Department of Manpower and Transmigration of the Republic of Indonesia Concerning Migrant Workers	January 18, 2003/ June 12, 2003 in Bali, Indonesia; Valid for 5 years and automatically renewed for similar periods unless terminated by either Party.	
RP-Laos MOU Memorandum of Understanding on Technical Cooperation on Labor and Employment between the Government of the Republic of the Philippines and the Government of the Lao People's Democratic Republic	July 27, 2005 in Vientiane, Laos	For ratification
RP-Papua New Guinea MOU Memorandum of Understanding between the Philippines and Papua New Guinea	March 14, 1979 in Manila	Expired
RP-Korea MOU Memorandum of Understanding between the Ministry of Labor of the Republic of Korea and the Department of Labor and Employment of the Republic of the Philippines on the Sending of Workers to the Republic of Korea	April 23, 2004 in Seoul / Renewed on October 20, 2006/ Valid for two years; may be amended or extended as mutually decided upon in writing by both parties	Renewed
RP-Korea EPS Memorandum of Understanding between the Department of Labor and Employment of the Philippines and the Ministry of Labor of the Republic of Korea on the Sending and Receiving of Workers to the Republic of Korea under the Employment Permit System (EPS)	October 20, 2006 in Gwacheon City/ Two years (until October 20, 2008)	Until Oct 20/08
RP-Taiwan MOU Memorandum of Understanding on Special Hiring Program for Taiwan between the Manila Economic and	January 12, 2001 in Taipei/ Renewed on March 20, 2003/ Renewed on March 20, 2006 / Valid for 2 years subject to	Renewed/ Active

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
Cultural Office in Taipei and the Taipei Economic and Cultural Office in the Philippines	extension by mutual agreement by Parties	
RP-Bahrain MOU Memorandum of Understanding between the Government of the Philippines and the Government of the Kingdom of Bahrain on Technical Education	December 14, 2003 in Manama, Bahrain	For ratification
RP-Iraq MOA Memorandum of Agreement relating to Mobilization of Manpower Between the Republic of Iraq and the Republic of the Philippines	November 25, 1982 in Manila	Expired
RP-Jordan MOU Memorandum of Understanding between the Minister of Labor and Employment of the Republic of the Philippines and the Minister of Labor of the Hashemite Kingdom of Jordan	November 5, 1981 in Manila	Expired
RP-Jordan BLA Agreement on Manpower between the Government of the Republic of the Philippines and the Government of the Hashemite Kingdom of Jordan	November 3, 1988 in Amman	Expired
RP-Kuwait MOU Memorandum of Understanding on Labor and Manpower Development between the Government of the Republic of the Philippines and the Government of the State of Kuwait	September 14, 1997 in Kuwait/ ratified on October 27, 1997/ entered into on May 21, 1998/ valid for 4 years and automatically renewed for the same period unless one of the parties expresses in writing the desire to terminate the Agreement	
RP-Liberia MOU RP-Liberia Memorandum of Understanding on Employment of Seafarers	August 10, 1985 in Manila	Expired
RP-Libya MOU Memorandum of Understanding between the Government of the Republic of the	July 17, 2006 in Tripoli/ Ratified December 11, 2006/ Valid for 5 years and shall be automatically	

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
Philippines and the Great Socialist People's Libyan Arab Jamahiriya	renewed for the same period unless either of the two parties requests termination thereof in writing through diplomatic channels	
RP-Qatar BLA Agreement Between the Republic of the Philippines and the Government of the State of Qatar Concerning Filipino Manpower in the State of Qatar	March 10, 1997 in Doha/ Ratified by the Senate on March 4, 1999/ Valid for 3 years and thereafter renewed automatically for further periods, unless either party notifies the other party in writing the desire to terminate the agreement at least 6 months prior to intended termination date.	
RP-Saudi Arabia MOU Memorandum of Understanding for Cooperation in the Field of Technical Vocational Education and Training Between the Government of the Kingdom of Saudi Arabia and the Government of the Republic of the Philippines	October 1, 2005	For ratification
RP-Norway Agreement Between Philippines Overseas Employment Administration and Aetat (the Directorate of Labour, Norway) on Transnational Cooperation for Recruiting Professionals from the Health Sector to Positions in Norway	June 26, 2001 in Oslo/ Valid until December 31, 2003; Renewal agreement required at least 3 months before termination date	Expired
RP-Spain Memorandum of Understanding on Cooperation for the Management of the Migratory Flows Between the Ministry of Labor and Social Affairs of the Kingdom of Spain and the Ministry of Labor and Employment of the Republic of the Philippines	June 29, 2006 in Madrid	Active
RP-Switzerland Agreement Between the Government of the Republic of the Philippines and the Swiss Federal Council on the Exchange of Professional and Technical Trainees	July 9, 2002 in Manila/Ratified by the Philippine Government on January 28, 2003 and entered into force on June 10, 2003.	

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
RP-UK Recruitment Agreement between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland	January 6, 2002 in London/ Valid for 3 years and automatically renewed unless one party decides to terminate the agreement	Active
RP-UK MOU Memorandum of Understanding Between the Republic of the Philippines and the United Kingdom of Great Britain and Northern Ireland on Health Care Cooperation	July 30, 2003 in London/ Ratified on March 9, 2004	
RP-CNMI MOU Memorandum of Understanding Between the Department of Labor and Employment of the Republic of the Philippines and the Commonwealth of Northern Mariana Islands	September 14, 1994 in Manila	Amended
RP-CNMI Amended MOU Amended Memorandum of Understanding Between the Department of Labor and Employment of the Republic of the Philippines and Department of Labor and Immigration of the Commonwealth of Northern Mariana Islands	December 18, 2000 in Manila/ Valid for 1 year and automatically renewed year after year unless one of the parties expresses in writing the desire to terminate the Agreement	Under review
RP-US BLA Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Relating to the Recruitment and Employment of Philippine Citizens by the United States Military Forces and Contractors of the Military and Civilian Agencies of the United States Government in Certain Areas of the Pacific and Southeast Asia	December 28, 1968 in Manila	Expired
RP-US MOA Agreement Between the Republic of the	March 10, 1982 in Manila	Expired

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
Philippines and the United States of America on Employees' Compensation and Medical Care Programs		
RP-Saskatchewan MOU Memorandum of Understanding Between the Department of Labor and Employment and Her Majesty the Queen in the Right of the Province of Saskatchewan as represented by the Minister Responsible for Immigration and the Minister of Advanced Education and Employment (AEE) Concerning the Cooperation in the Fields of Labor, Employment and Human Resource Development	December 18, 2006/ Valid for 2 years, automatically renewed for similar periods unless one Participant expresses in writing its intention to terminate or renegotiate the MOU before the expiration of the first 2 years	

D. Agreements Concerning Recognition of Seafarers' Training Certificates⁹²

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention) prescribes minimum standards in training, certification and watchkeeping for seafarers, which countries that are party to the Convention are required to meet or accede to. An amendment to the Convention in 1995 added regulations for the recognition of seafarers certificates. This regulation states that a written undertaking between the flag state (the country whose nationals own the ships) and the certificate-issuing party/state (the country whose seamen's certificates are being recognized) need to be agreed upon to allow seafarers from the certificate-issuing party to work on board the flag-state ships.

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
RP-Australia Undertaking between the Government of the Republic of the Philippines and the Government of Australia Concerning the Recognition of Certificates under Regulation 1/10 of the 1978 STCW Convention as amended	June 21, 2002 in Manila	For ratification
Brunei MOU Undertaking between the Government of the Republic of the Philippines and the Government	August 23, 2001 in Bandar Seri Begawan/ Entered into force on	

92 Ibid.

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam Concerning the Recognition of Certificates under Regulation 1/10 of the 1978 STCW Convention as amended, of Seafarers for Service on Vessels Registered in Brunei	March 12, 2002	
RP-Cambodia MOU Memorandum of Undertaking between the Ministry of Public Works and Transport of the Kingdom of Cambodia and the Maritime Training Council of the Republic of the Philippines on Recognition of Training and Certification for Seafarers	October 14, 2002 in Manila/ October 22, 2003	
RP-Hong Kong MOU An Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Hong Kong-Registered Ships between the Department of Labor and Employment on behalf of the Government of the Republic of the Philippines and the Marine Department on Behalf of the Government of the Hong Kong Special Administrative Region of the People's Republic of China	October 29, 2001 in Hong Kong/ February 26, 2002	
RP-Indonesia MOU An Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Board Indonesia Flagged Vessels between the Directorate General of Sea Communication on Behalf of the Republic of Indonesia and the Maritime Training Council on Behalf of the Government of the Philippines	September 16, 2002/ Ratified on June 2, 2003	
RP-Japan MOU Undertaking on the recognition of Certificates under Regulation 1/10 of the IMO STCW – through a Note Verbale issued by CDA (Charge D'Affaires) Hideaki Asahi, Embassy of Japan in Manila	January 21, 2000/ August 17, 2004	
RP-Korea MOU Korea: An Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Korean-Flagged Vessels	October 3, 2005	For ratification

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
between Shipping and Logistics Bureau, Ministry of Maritime Affairs and Fisheries, on behalf of the Republic of Korea and Maritime Training Council on Behalf of the Republic of the Philippines		
RP-Malaysia MOU An Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Malaysia Flagged Vessels between the Maritime Department of Malaysia and Maritime Training Council of the Republic of the Philippines	July 31, 2002	For ratification
RP-Mongolia MOA Memorandum of Agreement on the Recognition of Training and Certification of Seafarers between the Government of Mongolia and the Republic of the Philippines	June 12, 2003/ October 9, 2003	
RP-Singapore MOU Undertaking Between the Government of the Republic of the Philippines and the Government of the Republic of Singapore Concerning the Recognition of Certificates under Regulation 1/10 of STCW 1978 as amended	August 25, 2001 in Singapore/ April 15, 2002	
RP-Eritrea MOU An Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Eritrean Flagged Vessels between the department of Maritime Transport of the Ministry of Transport and Communication of the State of Eritrea and Maritime Training Council (MTC), Republic of the Philippines	April 17, 2006	For ratification
RP-Kuwait MOU Memorandum of Understanding on the Recognition of Certificates of Competency and Training of Seafarers for Service Onboard Vessels registered in State of Kuwait between the Government of the State of Kuwait and the Government of Philippines	November 10, 2002/ April 2, 2004	
RP-Liberia MOU Undertaking Between the Government of the	June 5, 2002	For ratification

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
Republic of the Philippines and the Government of the Republic of Liberia Concerning the recognition of Certificates Under regulations 1/10 of the 1978 STCW Convention as amended		
RP-Qatar MOU Memorandum of Understanding Between the Government of the State of Qatar and the Government of Philippines Concerning Mutual Recognition of Certificates in accordance with the international convention on standard of training certification and watch keeping for seafarers	August 9, 2006	For ratification
RP-South Africa MOU An Undertaking Concerning the Recognition of Training and Certification of Seafarers between the Maritime Training Council (MTC) and the South African Maritime Safety Authority (SAMSA) (Recognition of South African Seafarer Qualifications)	June 1, 2006	For ratification
RP-Belgium MOU Undertaking for the Recognition by the Government of the Kingdom of Belgium of Certificates of Competency Issued by the Government of the Republic of the Philippines under regulation 1/1- of the 1978 STCW Convention, As amended	June 12, 2003/ December 30, 2003	
RP-Cyprus MOU Undertaking for the recognition by the Government of the Republic of Cyprus of Certificates of Competency issued by the Competent authorities of the Republic of the Philippines in accordance with the Regulation 1/10 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended	September 13, 2001 in Manila/ August 28, 2003	
RP-Georgia MOU An Undertaking concerning the recognition of training and certification for seafarers between Maritime Transport Administration of Georgia on behalf of the Government of Georgia and Maritime Training Council on behalf of the	May 6, 2003	For ratification

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
Government of the Philippines		
RP-Greece Bilateral Undertaking between the Government of the Hellenic Republic and the Government of the Republic of the Philippines Concerning the Recognition of Certificates Pursuant to Regulation 1/10 of the 1978 STCW Convention, As amended	March 12, 2003/ July 22, 2003	
RP-Ireland MOA Memorandum of Agreement on the Recognition of Training and Certification of Seafarers between the Republic of the Philippines as represented by the Maritime Training Council and the Government of Ireland as represented by the Department of Communications, Marine and Natural Resources	April 25, 2003	For ratification
RP-Isle of Man MOU An Undertaking in accordance with Regulation 1/10 paragraph 1.2 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 concerning the Recognition of certification issued to seafarers by the Government of the Republic of the Philippines for service in ships registered in the Isle of Man, and made between the Isle of Man Marine Administration, a Division of the Department of Trade and Industry of the Isle of Man and the Maritime Training Council for the Government of the Philippines	January 11, 2002	For ratification
RP-Italy MOU Memorandum of Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Italy Flagged Vessels Between the Philippine Administration and the Italy Administration	April 24, 2002	For ratification
RP- Luxembourg MOA Memorandum of Agreement on the Certificates of Competency and Training of Seafarers for Service on board vessels registered in Luxembourg	June 28, 2002	For ratification

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
between the Maritime Training Council of the Philippines and the Commissariat aux Affaires Maritimes of Luxembourg		
RP-Malta MOU Undertaking between the Government of the Republic of the Philippines and the Government of Malta Concerning the Recognition of Certificates under Regulation 1/10 of the 1978 STCW Convention, as amended	January 11, 2002	For ratification
RP-Netherlands MOU Undertaking between the Kingdom of Netherlands and the Republic of the Philippines on the Recognition of Certificates under Regulation 1/10 of the 1978 STCW Convention	May 31, 2001 in Manila/ February 11, 2002	
RP-Norway MOU Undertaking between the Government of the Republic of the Philippines and the Government of Norway Concerning the Recognition of Certificates Under Regulation 1/10 of the 1978 STCW Convention, as Amended	November 19, 2001/ January 22, 2002	
RP-Poland MOU Undertaking between the Polish Maritime Administration and the Maritime Training Council Concerning the Recognition of Certificates Under Regulation 1/10 of the 1978 STCW Convention, as Amended	September 2, 2004/ March 8, 2005	
RP-Sweden MOA Undertaking between the Swedish Maritime Administration and the Maritime Council of the Republic of the Philippines Concerning the Recognition of Certificates under Regulation 1/10 of the STCW Convention	January 29, 2002	For ratification
RP-Switzerland MOA Memorandum of Agreement on the Recognition of Certificates of Competency and Training of Seafarers for Service on Board Vessels Registered in Switzerland between the Swiss Maritime Navigation Office on behalf of the Government of Switzerland and the Maritime Training Council on behalf of the Republic of the Philippines	March 28, 2005	For ratification

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
RP-Ukraine MOU Memorandum of Understanding between the Maritime Training Council of the Republic of the Philippines and the Ministry of Transport of Ukraine on the Recognition of Certificates pursuant to Regulation 1/10 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995	September 2, 2004/ April 2005	
RP- Antigua and Barbuda MOU Undertaking between the Government of the Republic of the Philippines and the Government of Antigua and Barbuda Concerning the Recognition of Certificates under Regulation 1/10 of the 1978 STCW Convention, as Amended	December 12, 2001/ August 8, 2003	
RP- Bahamas MOU Undertaking between the Government of the Republic of the Philippines and the Government of Bahamas Concerning the Recognition of Certificates under Regulation 1/10 of the 1978 STCW Convention, as Amended	September 10, 2001/ February 18, 2002	
RP- Barbados MOU An Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Board Vessels Registered in Barbados between the Principal Registrar Barbados Ships' Registry on behalf of the Government of Barbados and the Maritime Administration of the Philippines	April 22, 2002 / August 4, 2003	
RP- Belize MOU An Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Board Vessels Registered in Belize between the International Merchant Marine Registry of Belize on behalf of the Government of Belize and Maritime Training Council on Behalf of the Government of the Philippines	June 17, 2002	For ratification
RP- Dominica MOA Memorandum of Agreement on the Recognition of Training and Certification of Seafarers between the Commonwealth of Dominica as represented	April 25, 2003/ September 15, 2003	

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
by the Office of Maritime Affairs and Marine Personnel and the Republic of the Philippines as represented by the Maritime Training Council		
RP- Jamaica Recognition of Certificates under the Terms of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as Amended in 1995 (Recognition of Philippine Certificates)	April 21, 2005	For ratification
RP- Marshall Islands MOU An Undertaking between the Government of the Republic of the Philippines and the Government of the Republic of Marshall Islands Concerning the Recognition of Certificates under Regulation 1/10 of the 1978 STCW Convention, as Amended	October 8, 2001 / August 4, 2003	
RP- Panama MOA An Agreement Concerning the Recognition of Training and Certification of Seafarers for Service on Board Vessels Registered in the Republic of Panama between the Administrator of the Panama Maritime Authority (AMP) on behalf of the Republic of Panama and the Maritime Training Council on behalf of the Philippines	July 26, 2002	For ratification
RP- St. Vincent and the Grenadines MOU An Undertaking Concerning the Recognition of Training and Certification of Seafarers for Service on Board Vessels Registered in St. Vincent and the Grenadines Maritime Administration on behalf of the Government of St. Vincent and the Grenadines and Maritime Training Council on Behalf of the Government of the Philippines	July 28, 2005	
RP- Vanuatu MOU Undertaking between the Government of the Republic of the Philippines and the Government of the Republic of Vanuatu Concerning the Recognition of certificates under regulation 1/10 of the 1978 STCW Convention as amended	September 26, 2001	For ratification

E. Agreements on Social Security⁹³

Treaty/ Convention	Date Adopted/ Signed/ Entered into Force	Status
RP- Korea Agreement on Social Security between the Government of the Republic of the Philippines and the Government of the Republic of Korea	December 15, 2005	For ratification
RP- Austria Convention between the Republic of the Philippines and the Republic of Austria in the Field of Social Security	December 1, 1980/ April 1, 1982	
RP- Belgium Convention on Social Security between the Republic of the Philippines and the Kingdom of Belgium	December 7, 2001/ August 1, 2005	
RP- France Convention on Social Security between the Government of the Republic of the Philippines and the Government of the French Republic	February 7, 1990/ November 1, 1994	
RP- Netherlands Agreement between the Republic of the Philippines and the Kingdom of the Netherlands on the Export of Social Insurance Benefits	April 10, 2001/ November 26, 2001	
RP- Spain Convention on Social Security between Spain and the Philippines	May 21, 1988/ Expired on November 12, 2002	Expired
RP- Switzerland Agreement on Social Security between the Republic of the Philippines and the Swiss Confederation	September 17, 2001/ March 1, 2004	
RP – Canada Agreement on Social Security between the Republic of the Philippines and Canada	September 9, 1994/ March 1, 1997	
RP-Quebec Understanding on Social Security between the Republic of the Philippines and Quebec	October 22, 1996/ November 1, 1998	

93 Ibid.

Philippine Laws and Regulations Affecting Overseas Filipinos

Source: [www.pinoy-abroad.net/Handbook for Filipinos Overseas, CFO](http://www.pinoy-abroad.net/Handbook%20for%20Filipinos%20Overseas,%20CFO).

- 1987 Philippine Constitution
- Labor Code of the Philippines

- RA 8042 (1995, Migrant Workers and Overseas Filipinos Act of 1995)
- RA 9208 (2003, Anti-trafficking in Persons Act of 2003)
- RA 9189 (2003, Overseas Absentee Voting Act of 2003)
- RA 9225 (2003, Citizenship Retention and Re-acquisition Act of 2003)
- RA 7042 (Foreign Investments Act of 1991)
- RA 8762 (Retail Trade Liberalization Act of 2000)
- RA 8043 (Inter-Country Adoption Act of 1995)
- RA 8552 (Domestic Adoption Act of 1998)
- RA 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act)
- RA 8424 (Tax Reform Act of 1997)
- PD 1183 (Travel Tax (and Exemption))
- RA 6768 (Balikbayan Law)
- Batas Pambansa 185 (Laws on Land Ownership by Overseas Filipinos)
- RA 8179 (Amended Foreign Service Act of 1991)
- RA 8171 (Re-acquisition of Philippine Citizenship by Filipino women who lost their citizenship by marriage to aliens)
- RA 8239 (Philippine Passport Act of 1996) (being amended)
- LOI 537 (Creation of OWWA, 1977)
- RA 6955 (1990, Anti-Mail Order Bride Law--An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail-Order Basis and Other Similar Practices)
- Executive Order No. 203, Establishing an Inter-Agency Committee on the Shared Government Information System for Migration (SGISM) (2000)
- Executive Order No. 220, Creating an Executive Council to Suppress Trafficking in Persons, Particularly Women and Children (2000)
- Executive Order No. 252, Establishing the Inter-Agency Committee on Philippine Schools Overseas, Defining its Composition, Structure and Functions (2000)
- Executive Order 325, Presidential Anti-Illegal Recruitment Task Force, 2004
- Executive Order 392, Transfer of OFW Medicare to Philhealth, 2004
- Philippine Seafarers One-Stop Center at POEA
- Republic Act No. 7157 (Foreign Service Act of 1991)