

**Handbook on the
UNITED NATIONS
CONVENTION on the**

**PROTECTION OF
RIGHTS OF ALL
MIGRANT
WORKERS
AND MEMBERS
OF THEIR
FAMILIES**

**CHRP TREATY SERIES
Publication # 3**



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This publication is dedicated to all migrant workers and their families in commemoration of the 25th Anniversary of the Adoption of the UN Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families.

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UNITED NATIONS DEVELOPMENT PROGRAMME

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*Empowered lives.
Resilient nations.*

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MESSAGE



Loretta Ann P. Rosales
Chairperson

**COMMISSION ON
HUMAN RIGHTS
OF THE PHILIPPINES**

It gives me great pleasure to present this publication of the Handbook on the United Nations' Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UNCMW).

Together with the Commission on Human Rights of the Philippines' (CHRP) partners, the Center for Migrant Advocacy and the United Nations Development Program, we offer this publication to raise awareness on the United Nations Convention on the Rights of All Migrant Workers and Members of their Families and share the experience of engaging in a tripartite mechanism composed of the government, civil society and the CHRP as a national human rights institution, in an effort to empower all stakeholders in the course of implementing of the UNCMW.

This handbook is a product of CHRP's fulfillment of its constitutional mandate to monitor government compliance with international human rights treaties. It hopes to assist and inspire government, civil society and other stakeholders to work together and jointly monitor compliance with the Convention. Monitoring compliance is not only a reporting requirement of the Convention, it is imperative to ensure that the dignity of every migrant, here and abroad, is fully respected and protected

While Philippines is praised internationally for its institutional framework that protects migrant workers, it remains its mandate to continue to improve its protection mechanisms, in the increasing complex conditions Filipino migrants find themselves on globally. The real challenge is to ensure that the policies and legislation are implemented to bring about a substantive improvement in the lives of millions of migrants.

As one of the first countries to ratify the Convention, the Philippines committed to uphold the highest standards of protection for migrant workers and their families. With over 10 million Filipinos living abroad, the Philippines is among the largest migrant sending countries in the world. The overseas Filipino workers (OFWs), our modern day heroes, have made immense sacrifices to contribute to the development of the Philippines. They deserve comprehensive protection across borders. Unfortunately, migrant workers commonly experience various forms of abuse and exploitation.

The UNCMW must be translated domestically through Philippine statutes, policies and programs to ensure its full and faithful implementation. But this must be done in close bilateral cooperation with host countries and through other protection mechanisms provided by the UN System where the Philippines is a State Party. It is in this regard where the entire system of Philippine Foreign Relations and Policy must be compliant with its obligations under the human rights standards provided by the UNCMW and the other human rights instruments it has ratified.

As concretely manifested in the completion of this book, the CHRP aims to continue to maintain and strengthen its partnership work with civil society organizations such as the Center for Migrant Advocacy with in close cooperation with the Government and the international human rights community through the United Nations.

MESSAGE



*Empowered lives.
Resilient nations.*

Maurice Dewulf
Country Director

**UNITED NATIONS
DEVELOPMENT
PROGRAMME
(UNDP)**

With millions of migrants living abroad, the Philippines is one of the largest migrant countries of origin in the world. The Overseas Filipino Workers (OFWs) phenomenon has grown into an economic force, with remittances amounting to USD 25.1 billion in 2013, equivalent to 8.4% of the Gross Domestic Product. But behind these impressive figures are also some tales of hardship, as many OFWs leave the warmth of their families to work in difficult foreign environments, often for low wages.

Under these circumstances, the rights of migrants are vulnerable to violation. Many OFWs have fallen victim to sex trafficking and forced labour, while some Filipinos arrive in jobs with terms of reference and salaries very different to what they had originally signed up for. There have also been documented cases of domestic helpers being physically and mentally abused by their employers, while their status as employee is not recognised in certain countries, leaving them feeling isolated and alone.

It is in this respect that the **Handbook on the United Nations' Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** is a valuable and much needed resource. Not only does the handbook provide the reader with a list of their entitlements, but it also contains reports on the situation of migrant workers' rights. These reports provide a benchmark for all stakeholders, including the Philippine government, civil society, and the United Nations, to monitor the progress of compliance to this human rights convention.

This publication is part of the UNDP project with the Commission on Human Rights (CHR): Nurturing a Culture of Human Rights in the Philippines, and in partnership with the Center for Migrant Advocacy.

As part of the project, UNDP supported CHR in the establishment of a tripartite monitoring mechanism for the Universal Periodic Review, from which government, civil society, and the private sector come together to track the progress the Philippines is making towards the fulfilment of the human rights conventions. We hope that this publication supports this partnership to promote, fulfil, and protect the rights of Filipinos, both at home and abroad.

MESSAGE



Ellene Sana
Executive Director

**CENTER FOR
MIGRANT
ADVOCACY**

On July 5, 1995 the Republic of the Philippines ratified the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their families, otherwise known as the Migrant Workers Convention. The Philippines is the fifth State party to voluntarily commit itself to work for the realization of the provisions of the Convention as applied to Overseas Filipino workers (OFWs) and their families as well as to all other migrant workers and their families in the Philippines.

The Convention represents the comprehensive set of human rights of all migrant workers –both documented and those in irregular status-- and members of their families. It sets the minimum universally-accepted human rights standards on the protection of migrants and their families.

The Philippines is regarded by the international community as a model for protection policies for migrant workers. Not only has it ratified the Convention and all other related Conventions of both the UN and ILO. It has also nominated labour organizations and put in place programs and services to comply with this commitment.

It is observed however that despite serious efforts by the State and civil society organizations and like minded groups, countless OFWs continue to experience various forms of abuse and exploitation at every stage in the migration cycle –from pre-departure, onsite in the destination country and upon return and reintegration back to the Philippines. There is a need for concerted efforts, cooperation and collaboration between and amongst stakeholders –the Philippines and other countries of origin and destination, CSOs and the private sector to comprehensively and effectively address the multifaceted issues that beset the migrant workers and their families.

Thus the Center for Migrant Advocacy, as an advocacy NGO for migrants rights, welcomes the Handbook of Rights for Migrant Workers and Members of Their Families. This handbook will be a useful resource guide for policy makers and migrants rights advocates, Filipinos and non-Filipinos alike, as we continue the advocacy journey to respect, promote and fulfil the human rights of all migrant workers and their families.

This latest addition to the Rights Series of the Commission on Human Rights (CHR) is a fitting tribute to mark the 25th year of the Migrant Workers Convention in 2015. It informs the reader of the level of compliance of the Philippines as a State Party to the Convention. It also identifies relevant recommendations on how to further improve compliance and close the gaps between law and practice. Moreover, it invites and inspires the reader to take part in the global campaign for ratification of the Convention.

INTRODUCTION ON THE USE OF THE HANDBOOK

The Commission on Human Rights of the Philippines is pleased to share this Handbook on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the Migrant Workers Convention (MWC) Handbook.

This Handbook is the third in the Treaty handbook Series of the CHRP whose main motivation is to popularize the various international human rights standards that the Philippines is a State party to. This is CHRP's modest contribution in upholding and mainstreaming human rights both as a principle and a way of life for Filipinos.

Specifically, the MWC Handbook puts together the following documents: 1) the text of the Migrant Workers Convention, all 93 Articles of it; 2) the Guidelines for preparing reports to the Migrant Workers Convention Treaty Monitoring Body (also known as the Committee for Migrant Workers or CMW); 3) the two CMW General Comments thus far; 4) reports and documents related to the 2 periodic reporting cycles of the Philippine government including the CMW Concluding Observations and recommendations. It also informs the readers of the activities and processes undertaken by the State and Civil Society, in parallel and together, to prepare and engage with CMW. An action matrix, mapping out the CMW recommendations and the corresponding responsible agencies and where available, CSOs, is also included in the Handbook.

This publication is envisaged to guide duty holders, government, civil society as well as national human rights institutions in gauging the level of respecting, protecting and fulfilling the human rights of Filipino migrant workers, the migrant workers in the Philippines, and members of their families. It is hoped that the handbook will also prove useful to other States parties since the Philippines has been regarded as a global model for the protection of migrant workers and members of their families.

The handbook is a repository of pertinent reports to the CMW. It also provides a glimpse of the processes in engaging the Treaty Body. Hence the handbook is a good reference guide in preparing for the next reporting cycles and engagements.

As mandated, the CHRP will continue to work with and assist both the State party and the CSOs throughout the reporting procedures. The Commission will continue to partner with the State and the CSOs in the dissemination of the concluding observations and the reporting procedures at the national and community level to raise awareness about the rights under the Convention.

Structure of the Handbook

The Handbook starts off by informing the readers of what the Convention is all about; the guidelines for engaging and reporting both in terms of content, forms and procedures; the additional documents referred to as general comments the Committee has adopted as a way to elaborate application of the Convention on certain categories of migrant worker; It proceeds to document the actual procedures and submissions made to the reports for engagements with the Treaty Body including the concluding observations issued by the latter. The last part is information on steps forward to realize the recommendations of the Committee.

Text of the Convention and the Reporting Guidelines

The Handbook begins with the text of the United Nations International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families and the 'Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties' in accordance with article 73 and 74 of the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families. These guidelines preceded and are replicated in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN2/Rev.5)

as well as the evolving practice of the Committee in relation the application of the Convention, as reflected in various issuances including concluding observations, general comments and statements. The Convention text alongside the guidelines for reporting sets the stage for both government and non-government duty holders in ensuring substantive submissions to the treaty body.

General Comments (GC)

The CMW, on per need basis, issues General Comments to provide greater understanding of the ‘normative content’ of the rights contained in the Convention. Simply stated, the normative content of rights is the norm (or prescribed action, behaviour) by which government is expected to demonstrate its obligations to human rights. General Comments also elaborate on the scope of specific and related rights. It also elaborates the meaning of the language used and the spirit of the Convention provisions. Since its entry into force in July 2003, the CMW has issued two General Comments thus far –the first one, GC Number 1 on migrant domestic workers and GC number 2 on migrant workers in irregular status. These GCs are meant to clarify and elaborate the application of the Convention provisions as they apply to migrant domestic workers and those in irregular status.

List of Issues Prior to Reporting (LOIPR)

The list of issues prior to reporting was adopted by the Committee at its sixteenth session, in accordance with the new optional procedure adopted by the Committee at its fourteenth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies to the LOIPR will be considered as the State party’s periodic report under article 73 of the Convention.

Philippine Government’s Replies to the LOIPR (2nd Periodic Report of the Philippines)

Per the new optional procedure, the replies of the State party to the LOIPR is considered the State Party’s second periodic report to the CMW. The new procedure shortens and simplifies the procedure. It is also focused in terms of issues to be addressed vis a vis the Convention provisions. Prior to the adoption of an LOIPR, CMW issues a call to interested stakeholders to submit possible list of issues (LOI) for the CMW consideration. The Committee receives and studies all submissions; and proceeds to draft and put together the LOIPR.

Information from Civil Society Organizations and CHRP

Apart from engagement with States Parties, it has been an established procedure for UN treaty bodies like the CMW to invite involvement and engagement of CSOs and NHRIs.

The Committee encourages submission of additional information from CSOs and NHRIs to enable the Committee members to have a broader and holistic perspective on the issues at hand. This space for engagement is an opportunity for CHR to assist and collaborate with CSOs in the consultation processes as well as in the preparation of the shadow or parallel reports.

These submissions were prepared by the Commission’s Government Linkages Office, a recently created office which undertakes cooperation as a mode of engagement with the Executive, Legislative and Judiciary in respect of the Commission’s mandate to monitor government compliance with human rights treaty obligations, particularly of its treaty process obligations; the harmonization of domestic laws in accordance with the standards and principles set by Core International Human Rights Instruments; monitoring of Philippine jurisprudence that affirms the provisions of core human rights treaties in domestic application; and advising the executive on the implementation of state obligations to respect, protect and fulfil human rights.

For the two periodic reporting cycles for the Philippines, written reports from CSOs and the NHRI were received by the Committee. On the two occasions also, direct CSO engagement with the members of the Committee, both formally and informally, were undertaken in Geneva.

Preparing for the CMW Engagement

All three categories of duty bearers made parallel and collective preparations for the CMW engagement starting off from the CMW issuance of the first concluding observations in 2009 for the first periodic report of the Philippines.

Simulation Exercise/ Practice Session for the Revalida

This was the final activity conducted by the Philippine government delegation before departing for Geneva.

Constructive Dialogue between the State Party and the CMW: Consideration of the Philippine Report

In this section a brief documentation of the dialogue between the treaty body and the State party is presented. This is to provide the reader with a sense of how an actual consideration takes place.

Concluding Observations, Mapping of Responsible Agencies

The final phase of the Committee's examination of the report consists of the drafting and adoption of its concluding observations. For this purpose, the Committee usually sets aside a brief period in closed session immediately after the conclusion of the dialogue to enable its members to express their preliminary views. The country rapporteur then prepares, with the assistance of the secretariat, a draft set of concluding observations for consideration by the Committee. The agreed structure of the concluding observations is as follows: introduction of positive aspects, factors and difficulties impeding the implementation of the Convention, principal subjects of concern and suggestions and recommendations. At a later stage, the Committee then discusses the draft again in private session, with a view to adopting it by consensus.

This section also presents the concluding observations vis a vis a mapping of state responsibility, which is the outcome document that guides the Commission on Human Rights in monitoring the progress of the recommendations arising from the treaty reporting process.

The Mapping Document is a product of the 'Human Rights Based Approach' tools that the Commission has applied in its monitoring work. This will be used as a template for the Government's report card on how it has fared in considering and acting on the Committee of Migrant Workers' recommendations.

It also signals 'Human Rights Cooperation' as a mode of engagement among the duty bearers and necessitates the inclusion of claim holders or rights bearers in the process implementation monitoring. Cooperation involves two objectives:

First is to build awareness and capacities in government institutions in order that they are able to adopt rights based approaches in performing their functions and to enable them to fulfil their responsibility to promote and protect human rights;

Second, to develop mechanisms to formalize collaborative efforts to capacitate government in promoting and protecting human rights.

The mapping features four (4) categories of duty bearers, the three branches of government, independent, constitutionalizing bodies (including the CHRP) alongside civil society. The three branches of government has been renamed to reflect the State's primary obligation to human rights and as such, the Commission has chosen to call it the 'Branches of State Responsibility': the Executive, the Legislative, and the Judiciary with Constitutional Independent Bodies'. Finally, this is regarded as a living document in the course of the Monitoring the progress of the implementation of the treaty body recommendations within the reporting cycle.

Way Forward, Follow Up

Follow up on the concluding observations and recommendations of the Committee, will mainly consist of the periodic convening of the GO-NGO Forum and other activities which will be used as a platform for constructive dialogues and action at the national and regional levels to thresh out issues and remind government of its role to implement the Committee's recommendations.

In the course of performing the Commissions' role to disseminate the Convention, its implementation by government of the recommendations of the Committee, the Mapping Document will be the Commission's companion in ensuring that national and local processes are grounded on specific issues raised in the treaty reporting process.

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Adopted by General Assembly resolution 45/158 of 18 December 1990

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,

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 (ordre 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, , 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 therefor;

(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 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
IN 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-à-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 systems. 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 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 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 in 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.



COMPILATION OF GUIDELINES ON THE FORM AND CONTENT OF REPORTS

To be submitted by States Parties to the International Human Rights Treaties

HRI/GEN/2/Rev.2/Add.1

6 May 2005

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

GE.05-41517

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.

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 fulfillment 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.

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 fulfill 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 questions 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).

GUIDELINES FOR THE PERIODIC REPORTS

To be submitted by States Parties under Article 73 of the Convention

HRI/GEN/2/Rev.5 page 140

INTRODUCTION

1. Article 73 (1) (a) 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. Thereafter, the States parties shall submit periodic reports every five years and whenever the Committee so requests, according to article 73 (1) (b). The Committee has agreed to the following guidelines in addition to its guidelines for initial reports, in order to give indications to States parties on the form and contents of their periodic reports.

2. State reports under the reporting system will consist of two parts: the common core document and the treaty-specific document. The common core document should include general information about the reporting State, the general framework for the protection and promotion of human rights as well as general information on non-discrimination and equality and effective remedies in accordance with the harmonized guidelines (HRI/GEN/2/Rev.4).

A. The CMW-specific document

3. Under the CMW-specific document, States parties should provide information relating to:

(a) The implementation of the Convention taking into account the issues raised by the Committee in its concluding observations on the State party's previous report;

(b) Recent developments in law and practice affecting the enjoyment of the rights of migrant workers. The CMW-specific document should not merely list or describe the legislation of the State party but elaborate on its practical implementation;

(c) 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 and in the preparation of the State party's CMW-specific document.

4. The CMW-specific document should be divided in two sections, a general information part and a specific provisions part, according to the following indications.

B. General information

5. In this part of the periodic report, the State party should provide updated information related to the current reporting period in accordance with the following categories; if there is nothing new to report under a category, it should be so stated:

(a) Disaggregated data on the characteristics and nature of migratory flows (immigration, transit and emigration) affecting the State party. If no exact data are available, please provide estimated figures on the dynamics of migration flows in the State party;

(b) Data and statistics on the number of unaccompanied or separated migrant children within the territory of the State party;

(c) Steps that have been taken to harmonize the national migration laws with the Convention, including whether the State party has plans to withdraw its reservations to the Convention, if any;

(d) Any signature, accession or ratification of human rights treaties or international instruments relevant for the implementation of the present Convention; in particular, any steps taken towards ratification of ILO Conventions Nos. 97 (1949) on Migration for Employment and No. 143 (1975) on Migrant Workers.

(e) Any court decisions related to the enjoyment by migrants and members of their families of the rights contained in the Convention;

(f) Any change in the legislation affecting the implementation of the Convention;

(g) Specific procedures that have been put in place in order to deal with mixed migratory flows, in particular to establish the special protection needs of asylum-seekers and victims of trafficking; in this context, please indicate whether national legislation provides for the application of the Convention to refugees and/or stateless persons, according to article 3 (d) of the Convention;

(h) Steps taken to ensure that migrant children who are detained including for violations of provisions relating to migration, are held separately from other adults and whether specific procedures are in place to determine the age of juvenile migrants; data on the number of migrant children detained;

(i) Special programmes to address the special interests of migrant children, including unaccompanied and separated children;

(j) Legislation and practice providing for mechanisms to monitor the situation of migrant women, including those employed as domestic workers, and safeguards and guarantees to protect them from exploitation and violence;

(k) Procedures assisting victims of trafficking, especially women and children;

(l) Measures taken to provide assistance given by the State party to its migrants abroad;

(m) Measures taken to facilitate migrants' reintegration in case of return to the State party;

(n) Multilateral or bilateral agreements relating to migration the State party has entered into, including regional agreements;

(o) Efforts made, also in cooperation with other States, in order to prevent migrants' loss of life at the land and maritime border areas;

(p) Measures to prevent clandestine movements and employment of migrants in an irregular situation.

C. Specific Provisions

6. The information provided in this part should be per cluster of articles as indicated in the initial report guidelines (HRI/GEN/2/Rev.2/Add.1) and should clearly make reference to any progress made towards the enjoyment of the Convention rights by migrant workers and members of their families during the reporting period. If there is nothing new to report under any article, it should be so stated.

7. On each cluster of articles, the State party should also include information on concrete measures taken with regard to the concluding observations adopted by the Committee in relation to the previous report.

**D. References
to other
treaty-specific
documents and
ILO Convention
reports**

8. If a State party refers in its CMW-specific document to information contained either in the common core document, or in any other treaty-specific documents, it should indicate precisely the relevant paragraphs in which such information is contained.

9. Similarly, if a State party is party to any of the ILO Conventions listed in appendix 2 of the harmonized guidelines and has already submitted reports to the supervisory committee concerned that are relevant to any of the rights recognized in the Convention, it may wish to refer and to attach the respective parts of those reports rather than repeat the information.

**E. Format of the
CMW-specific
document**

10. As required in paragraph 19 of the harmonized guidelines, subsequent periodic documents should be limited to 40 pages. Pages should be formatted for A4-size paper, with 1.5 line spacing, and text set in 12 point Times New Roman type. Reports should be submitted in electronic form (on diskette, CD-ROM or by electronic mail), accompanied by a printed paper copy.

11. 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. Reports should also contain a full explanation of all abbreviations used in the text, especially when referring to national institutions, organizations, laws, etc., that are not likely to be readily understood outside of the State party.



GENERAL COMMENT NO. 1 ON MIGRANT DOMESTIC WORKERS

Committee on the Protection of the Rights of all Migrant Workers & Members of Their Families

CMW/C/GC/1

23 February 2011

INTRODUCTION

1. Domestic work is an important occupation for millions of individuals, accounting for up to 10 per cent of total employment in some countries.¹ The trend over the past decades has been a growing prevalence of migrants amongst domestic workers. Women make up the overwhelming majority of these workers.

2. Noting the omission of express references to either domestic work or domestic workers in a broad range of national and international frameworks of law, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as the Committee), at its eleventh session in October 2009, resolved to issue a general comment in order to provide States with guidance on how to implement their obligations under the International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families (hereinafter referred to as the Convention) with respect to migrant domestic workers. The Committee organized a Day of General Discussion on this subject on 14 October 2009, which generated strong participation by States, international organizations, non-governmental organizations (NGOs) and trade organizations, civil society and migrants, including a number of written perspectives and studies. This general comment draws upon those contributions as well as the Committee's experience in reviewing with States parties their reports on the implementation of the Convention.

3. As defined by the Convention, the term "migrant worker" refers to any 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. Accordingly, the Convention expressly provides protection to migrant workers and their family members not only when the migrants are actually working, but "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"³.

4. Depending on their administrative status under national immigration laws, some migrants are considered as documented or in a regular situation, while others are considered as non-documented or in an irregular situation. Just as the Convention delineates rights that apply to all migrant workers regardless of their status⁴, and then distinguishes further

¹ There is no accurate data on the number of domestic workers throughout the world, partly due to the high incidence of undeclared domestic work and the fact that national statistics often do not count domestic workers as a distinct category. However, such data as are available show that domestic work accounts for between 4 and 10 per cent of total employment in developing countries and between 1 and 2.5 per cent in industrialized countries. See International Labour Organization (ILO) (2009), "Decent Work for Domestic Workers", Report IV(1), International Conference, 99th session, 2010.

² Convention, art. 2. Article 3 of the Convention excludes from its scope of application a number of categories of workers, including certain employees of international organizations and of States, investors residing outside of their State of origin, whose status are regulated by general international law or specific agreements; students and trainees; and seafarers and workers on offshore installations who have not been admitted to take up residence and engage in a remunerated activity in the States of employment. Moreover, refugees and stateless persons are only included under the Convention if such application is provided in national legislation (art. 3(d)).

³ Convention, art. 1.

⁴ Convention, Part III.

rights of migrants who are documented or in a regular situation⁵, this general comment shall refer to all migrant domestic workers, unless expressly indicated.

5. The terms “domestic work” or “domestic worker” have not yet been defined in any international instruments. However, drawing on common elements found in definitions set out in national legislation⁶, the Committee notes that the term “domestic worker” generally refers to a person who performs work within an employment relationship in or for other people’s private homes, whether or not residing in the household.

6. The Committee considers that migrant domestic workers are included in the term “migrant worker” as defined in article 2, paragraph 2, of the Convention and that any distinction made to exclude migrant domestic workers from protection would constitute a prima facie violation of the Convention.

7. Whereas many of the human rights issues and concerns identified in this general comment are relevant to all domestic workers, several issues and concerns are specific to the situation of domestic workers who are migrants. Generally, migrant domestic workers are at heightened risk of certain forms of exploitation and abuse. At the heart of their vulnerability is isolation and dependence, which can include the following elements: the isolation of life in a foreign land and often in a foreign language, far away from family; lack of basic support systems and unfamiliarity with the culture and national labour and migration laws; and dependence on the job and employer because of migration-related debt, legal status, practices of employers restricting their freedom to leave the workplace, the simple fact that the migrants’ workplace may also be their only shelter and the reliance of family members back home on remittances sent back from the domestic work. Women migrant domestic workers face additional risks related to their gender, including gender-based violence. These risks and vulnerabilities are further aggravated for migrant domestic workers who are non-documented or in an irregular situation, not least because they often risk deportation if they contact State authorities to seek protection from an abusive employer.

A. Problems faced by migrant domestic workers and members of their families

Recruitment, pre-departure and in countries of transit

8. The vulnerability of migrant domestic workers does not begin and end in the workplace. Migrant domestic workers face risk throughout the migration cycle with a number of factors exposing them to violations of their human rights including those protected under the Convention.

9. In many countries, recruitment agencies, labour brokers, and other intermediaries charge exorbitant fees to migrant domestic workers and do not provide accurate information, meaningful preparation for migrants before travel, or written contracts. In particular, migrants are often not provided with information on their rights and on avenues for reporting abuse. Some prospective migrant domestic workers are deceived by illegal recruitment agents and lured into paying for fraudulent visas or other documentation and non-existent jobs.

10. While transiting through foreign countries, women and girls are particularly at risk of being subjected to physical and sexual abuse by agents and intermediaries.

At arrival and during employment

11. Upon arrival the migrants are often left stranded with high levels of debt from their migration and without legal papers and employment, rendering them vulnerable to abuse and exploitation. Even where contracts had been signed pre-departure, many migrant domestic workers are compelled to sign new contracts upon arrival, nearly always for less pay and often for different work conditions of employment and abode than had been agreed

⁵ Convention, Part IV.

⁶ See ILO (2009), “Decent Work for Domestic Workers”, report IV(1), International Conference, 99th session 2010; José Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective*, ILO (2003).

upon or promised and often in a language they do not understand, without legal counselling, and under duress.

12. The withholding of passports by the employer is widespread, reinforcing isolation and dependence and restricting the movement of the migrant worker out of the house as well as out of the country.

13. In the workplace, many are subjected to abusive working conditions, including:

- (a) Partial and in many cases, total, restriction on movement outside the house and on communication with individuals outside the house, including with family members left behind;
- (b) Excessive and often undefined working hours. Especially for migrant live-in domestic workers, there is often an express or implied expectation of total availability, where the worker can be called on to work at any time;
- (c) Insufficient rest and leisure time. Many migrant domestic workers have no agreed leave day at all; others only have one day off per month and frequently any agreed “day off” is cancelled or changed arbitrarily by the employer; when the employer is on holiday, or the worker is ill, a practice of “no work – no pay” is applied. Others experience reprimands or threats of losing their jobs even where there are legitimate reasons for absence such as illness or personal/family emergencies;
- (d) Restrictions on their ability to travel even for essential family matters, such as serious illness or bereavement in the family;
- (e) Low salaries and late payment or non-payment of salaries. As a result of the absence or inapplicability in most countries of minimum wage laws for domestic workers, many migrant domestic workers are paid only a fraction of what other workers in comparable sectors receive, often without any traceable payments into bank accounts, or with salaries paid in kind;
- (f) Lack of social security protection, including sickness and family benefits and building pension rights;
- (g) Psychological, physical and sexual abuse and harassment from their employers as well as from recruitment agents or intermediaries; and
- (h) Inadequate, unsanitary and degrading living accommodations.

14. The risk of abuse is heightened for child domestic workers, who make up a significant proportion of domestic workers. Their young age, isolation and separation from their families and peers, and near-total dependence on their employers exacerbate their vulnerability to violations of their rights under the Convention, including the basic right of access to education.

Families left behind

15. The prolonged absence of migrant domestic workers negatively affects the family unity, and the social and psychological wellbeing of members of their families and also often results in violations of the rights of their children who have remained in the country of origin.

Upon return

16. Migrant domestic workers may encounter difficulties in reintegrating into the labour market and society in their countries of origin upon their return. They may also encounter difficulties related to the portability of pension and social security benefits.

17. Many migrants are unable to seek remedies for violations of their rights by employers because they are not entitled to stay in the country of employment once the employment relation has been terminated. As a result migrant domestic workers may for example return to the country of origin with less pay than they are due and with no possibility of seeking

compensation and remedies. Those who return to their countries of origin in order to escape an abusive work relationship often have no access to support mechanisms and no possibility of seeking legal remedies.

B. Gaps in protection

Protection gaps: “legal”

18. A wide body of international treaties articulate human rights, including labour rights, basic to all human beings, including all workers.⁷ In line with other human rights treaties, the protection against abusive and exploitative labour conditions afforded under the Convention extends to all migrant workers, irrespective of their migration status. In this regard, the Committee notes with concern that, at national level, major categories of law often ignore, or explicitly exclude domestic work and workers in ways that contribute to exploitative labour practices and limit avenues for legal redress in cases of violations.

19. *Labour law.* In many countries, domestic workers are not legally recognized as “workers” entitled to labour protection. A number of premises and special definitions are used to exclude domestic workers from the protection of labour laws, including the consideration that they work for private persons, who are not considered to be “employers”. Equally, traditional perceptions of domestic work as tasks associated with unpaid work in the home performed by women and girls as well as traditional perceptions of domestic workers as either being “family helpers” often militate against the extension of national labour law to effectively cover domestic work. Because of their de facto and/or de jure, “unrecognized” status as “workers”, domestic workers are unable to exercise the rights and freedoms granted by labour law to other workers.

20. Some national labour laws include protections for domestic work and workers, but exclude migrant domestic workers from some or all of these protections. For example, migrant domestic workers are often restricted in their ability to organize for their labour rights. In other cases where labour or other standards and protections apply both to domestic work and to migrant domestic workers, laws can bar monitoring and labour inspections in home settings.

21. *Immigration law.* Laws regulating the conditions of entry and stay in countries of employment are often a source of specific vulnerabilities for migrant domestic workers. Overly restrictive immigration laws may lead to higher numbers of migrant domestic workers who are non-documented or in an irregular situation, and thus particularly vulnerable to human rights violations. Even for workers with a documented or regular migration status, similar vulnerabilities arise where immigration laws tie their status to the continued sponsorship of specific employers. Consequently, migrant domestic workers may risk deportation if they try to escape an abusive employment relationship or seek legal remedies against their employers.

22. Under some countries’ laws regarding work permit and security bond conditions, women migrants, including domestic workers, who get pregnant or who are found to be HIV positive lose their permit. It is not uncommon for women migrant workers to be subjected to mandatory health testing related to sexual and reproductive health without consent or counselling.

23. *Contract law.* National laws and regulations pertaining to contracts are often inapplicable to domestic work and/or domestic workers, either categorically or as a practical matter because domestic work is performed in the informal labour market.

⁷ The core international human rights treaties all contain standards and safeguards which are of relevance to the protection of migrant domestic workers. Several of the other human rights treaty- monitoring bodies have paid specific attention to the situation of migrants and migrant workers, including migrant domestic workers. See, in particular, Committee on the Elimination of Discrimination against Women, general recommendation No. 26 (2008) on women migrant workers; Committee on Economic and Social Rights, general comment No. 18 (2005) on the right to work; Committee on the Rights of the Child, general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin; Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non citizens; Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant.

24. *Social security laws.* Domestic workers, especially those who are migrants, are often excluded from rights under national law related to social security. The lack of social security benefits and of gender-sensitive health care coverage further increases the vulnerability of migrant domestic workers and their dependence on their employers.

***Protection gap:
practical***

25. Even if certain protections for migrant domestic workers are provided under national laws, there is often a gap between protections enjoyed by such workers in law and in practice. Some of the practical obstacles faced relate to the “hidden” nature of domestic work and factors preventing or deterring migrant domestic workers from claiming their rights.

26. A range of factors constitutive of domestic work itself, and even more so, of domestic work performed by migrants, hides abuses from view, and makes detection of protection needs difficult.

- (a) Workplaces are unseen, behind closed doors and out of the public eye;
- (b) Domestic work is commonly part of the informal labour market, where work and workers are unregistered;
- (c) The physical and social isolation of workers blocks individual and collective action;
- (d) The large number of workplaces, their geographical spread and national privacy laws complicates effective inspections and monitoring by labour departments.

27. A number of factors make it difficult for migrant domestic workers to claim their rights and seek redress in case of violations, including the fact that:

- (a) Specific mechanisms available to receive and address complaints from domestic workers are often not available;
- (b) Migrant domestic workers often do not know to whom to address their labour problems or may be reluctant to contact the police or labour authorities out of fear of deportation. Language barriers and the costs of administrative and legal processes may be additional deterrents.
- (c) Migrant domestic workers who depend on their employers for their immigration status may not report abuse for fear of arrest, detention or deportation. In some countries, if the victim brings a formal complaint against the employer, he or she can neither seek alternative employment while the case is in court, nor leave the country for the duration of the case. These restrictions, and the long periods it may take for cases to be resolved, often lead to domestic workers choosing not to report complaints or withdrawing their cases in order to return home more quickly.

**C. Recommendations
to States parties**

***Pre-departure
awareness-raising
and training***

28. For nationals considering whether to migrate for domestic work, States parties should take appropriate measures to disseminate information on their rights under the Convention as well as the conditions of their admission and employment and their rights and obligations under the law and practice of other States (article 33). Such awareness-raising could include:

- (a) Information on different types and arrangements of domestic work;
- (b) Basic knowledge of applicable national and transnational legal frameworks;
- (c) Essential information and perspectives on:
 - (i) Migration-related fees and debt;

- (ii) Family aspects and effects on family life, such as separation, right to family visits or return, pregnancy during employment, etc.; and
- (iii) Other risks of domestic work outside the country of origin.

29. For workers who have made the decision to migrate for domestic work, States parties are encouraged to develop more specific pre-departure training and awareness-raising programmes. Such training may be developed in consultation with relevant non-governmental organizations, migrant domestic workers and their families, and recognized and reliable recruitment agencies, and could cover:

- (a) A comprehensive “know your rights” curriculum, covering both international and national frameworks, using the Convention as a reference;
- (b) “Know your obligations” orientation to essential aspects of the law and culture of the country of employment;
- (c) “Awareness-raising” training, including issues of migration, working conditions, social security, debt, finance and work-related fees and basic knowledge on methods of conflict resolution, and avenues for redress;
- (d) Financial literacy, including information on remittances and saving schemes;
- (e) Contact information for emergency assistance, including embassies and consulates and relevant civil society organizations in countries of employment; and
- (f) Other information needed on logistics, safety, health, human rights issues and points of assistance during the entire migratory process.

30. Where appropriate, States parties could also support pre-departure training offering:

- (a) Basic language preparation;
- (b) Training for specific types of work, including key job skills where appropriate; and
- (c) Cross-cultural destination-specific orientation.

Cooperation among States

31. States of origin, States of transit and States of employment share the responsibility for regulating and monitoring recruitment and placement processes.

32. In line with articles 64 and 65, States of origin and employment are encouraged to cooperate on:

- (a) Protection-sensitive and transparent frameworks and agreements, including bilateral, multilateral and regional agreements between States;
- (b) The use of standard, unified and binding employment contracts, with fair, full and clear conditions and labour standards that are enforceable – and enforced – by systems of law in countries both of origin and employment. Such standard contracts, as well as services where migrant domestic workers can receive counselling and guidance or submit complaints, could also usefully be included in bilateral and multilateral agreements between countries of origin and employment;
- (c) Regular and public reporting of migrant domestic worker flows, employment, rights issues, training and other programmes, and issues of justice administration.

Recruitment agencies

33. In accordance with article 66, States parties have an obligation to effectively regulate and monitor labour brokers, recruitment agencies and other intermediaries to ensure that they respect the rights of domestic workers.

34. Agencies engaged in the movement of migrant domestic workers, whether in countries of origin, transit or employment, must be subject to authorization, approval and supervision by public authorities. This may take the form of formal, regular, transparent and State-regulated:

- (a) Licensing, possibly involving processes of accreditation and periodic renewal;
- (b) Monitoring, inspection and evaluation;
- (c) Sanctions and penalties;
- (d) Systems of recording and reporting, including web-based formats that are widely and easily accessible to the public, with particular attention to instances of complaints and conflicts involving workers.

35. States parties should establish specific criteria relating to migrant domestic workers' rights and ensure that only those agencies observing these criteria and codes can continue to operate. Such criteria could usefully be established in consultations with migrant workers' organizations themselves, non-governmental organizations working with migrant workers and with workers' and employers' organizations.

36. Additionally, States parties are encouraged to adopt codes of conduct on the recruitment of migrant domestic workers, including specific rules governing fees and salary deductions, and to provide for appropriate penalties and sanctions to enforce them. States parties should ban recruitment fees charged to domestic workers, including through salary deductions.

Conditions of work

37. The rights of migrant domestic workers should be dealt with within the larger framework of decent work for domestic workers. In this regard, the Committee considers that domestic work should be properly regulated by national legislation to ensure that domestic workers enjoy the same level of protection as other workers.⁸

38. Accordingly, labour protections in national law should be extended to domestic workers to ensure equal protection under the law, including provisions related to minimum wages, hours of work, days of rest, freedom of association, social security protection, including with respect to maternity, pension rights and health insurance, as well as additional provisions specific to the circumstances of domestic work. In this regard, migrant domestic workers should enjoy treatment not less favourable than that which applies to nationals of the State of employment (article 25).

39. States should protect the right of migrant domestic workers to freedom of movement and residence, including by ensuring that migrant domestic workers are not required to live with their employers or stay in the house during their time off (article 39). States should also ensure that migrant domestic workers retain possession of travel and identity documents (article 21). In addition, States should take all necessary measures to promote a shift in public perceptions so that domestic work becomes widely recognized as work and domestic workers as workers with fundamental rights, including labour rights.

40. States parties are encouraged to ensure that migrant domestic workers have explicit, written terms of employment, in a language they can understand, outlining their specific duties, hours, remuneration, days of rest, and other conditions of work, in contracts that are free, fair and fully consented to. In particular, States parties may wish to consider developing model or standard provisions for these purposes.

41. States parties should include provisions for monitoring mechanisms of the working conditions of migrant domestic workers in national legislation and strengthen labour

⁸ This recommendation is in line with Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 10.

inspection services to carry out such monitoring and to receive, investigate and address complaints of alleged violations.

Social security and health services

42. States parties should ensure that migrant domestic workers are granted access to social security benefits on the basis of equal treatment with nationals (article 27).

43. States should ensure effective access of all migrant domestic workers to any medical care urgently required to avoid irreparable harm to their health (article 28). Particular attention should be given to women migrant domestic workers with irregular status, who are especially vulnerable during pregnancy, as they are often afraid to contact public health services out of fear of deportation. States should not require public health institutions providing care to report data on the regular or irregular status of a patient to immigration authorities.

44. States should ensure that migrant domestic workers in a documented or regular situation enjoy equal treatment with nationals in relation to social and health services (article 43(1)(e)). Moreover, the Committee recalls the obligations assumed by States under other core international human rights treaties, notably the International Covenant on Economic, Social and Cultural Rights, to take appropriate measures towards ensuring to all persons within their jurisdiction, irrespective of their immigration status, the highest attainable standard of physical and mental health and medical care, services and attention in the event of sickness.⁹

Right to organize for collective bargaining and protection

45. The right to organize and to engage in collective bargaining is essential for migrant domestic workers to express their needs and defend their rights, in particular through trade unions (articles 26 and 40) and labour organizations.

46. The laws of States parties, particularly countries of employment of migrant domestic workers, should recognize the right of the latter to form and join organizations, regardless of migration status (article 26) and self-organization should be encouraged.

47. States parties are encouraged to provide migrant domestic workers with information about relevant associations that can provide assistance in the country/city of origin and employment.

Freedom of religion or belief and freedom of expression

48. States parties should take effective measures to ensure that migrant domestic workers are free to practise the religion or belief of their choice, as well as their freedom of expression, individually or in community with others, in public and in private, in accordance with articles 12 and 13 of the Convention and other international human rights standards (articles 12 and 13).

Access to justice and remedies

49. States of employment should ensure that all migrant domestic workers have access to mechanisms for bringing complaints about violations of their rights (articles 18, paragraph 1, and 83). States parties should ensure that such complaints are investigated in an appropriate manner and within a reasonable period of time and that cases of violations are appropriately sanctioned. To facilitate access to redress mechanisms, States parties could for example designate a domestic workers' Ombudsperson. States parties should also ensure that migrant domestic workers can obtain legal redress and remedies for violations of their rights by employers who enjoy diplomatic immunity under the Vienna Convention on Diplomatic Relations.

50. In order to ensure effective access to justice and remedies for all migrant domestic workers, the Committee considers that migrant domestic workers should be able to access

⁹ See International Covenant on Economic, Social and Cultural Rights, art. 12. As the Committee on Economic, Social and Cultural Rights underlines in its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, "The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation" (para. 30). See also Committee on the Elimination of All Forms of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non citizens.

courts and other justice mechanisms without fear of being deported as a consequence, and that migrant domestic workers should have access to temporary shelter when needed due to the abusive circumstances of their employment. States parties are encouraged to consider time-bound or expedited legal proceedings to address complaints by migrant domestic workers. Moreover, States parties are encouraged to enter into bilateral agreements in order to ensure that migrants who return to their country of origin may have access to justice in the country of employment, including to complain about abuse and to claim unpaid wages and benefits.

Access to regular migration status

51. With a view to preventing irregular migration as well as smuggling and human trafficking, States parties should ensure that migrant domestic workers have access to regular channels for migration based on actual demand (article 68).

52. States parties should take appropriate measures to address the extreme vulnerability of undocumented migrant domestic workers, especially women and children. In particular, States parties should consider policies, including regularization programmes, to avoid or resolve situations in which migrant domestic workers are undocumented or are at risk of falling into irregular status (article 69).

53. States parties should avoid making the immigration status of migrant domestic workers conditional on the sponsorship or guardianship of a specific employer, since any such arrangement may unduly restrict the liberty of movement of migrant domestic workers (article 39) and increases their vulnerability to exploitation and abuse, including in conditions of forced labour or servitude (article 11).

Respect for family unity

54. States parties shall take appropriate measures to protect the unity of the families of migrant domestic workers in a regular situation (article 44, paragraph 1). In particular, migrant domestic workers should have reasonable opportunities for family contact and family-related mobility, including opportunities to communicate with family left behind, travel to participate in essential family matters such as funerals, and, especially in the case of long-term migrants, to visit spouses and children in other countries. States parties should ensure that children separated from one or both parents are allowed to maintain direct contact with both parents on a regular basis.

55. Moreover, States parties should take appropriate measures with regard to migrant domestic workers in a regular situation to facilitate their reunification with their spouses and children (article 44, paragraph 2). In the event of the death of or divorce from a migrant worker with a regular status, States parties should favourably consider granting independent residence status to family members of that migrant worker (article 50).

Special protections for children

56. In line with the Convention on the Rights of the Child and relevant International Labour Organization (ILO) instruments, States should ensure that migrant children do not perform any type of domestic work which is likely to be hazardous or harmful to their health or physical, mental, spiritual, moral or social development. States shall refrain from adopting policies aimed at recruiting domestic migrant children.

57. States parties shall ensure that all migrant children, independently of their migration status, have access to free and compulsory primary education as well as to secondary education on the basis of equality of treatment with nationals of the State concerned (article 30), and that the domestic work carried out by children does not interfere with their education. Schools should not be required to report data on the regular or irregular status of pupils to immigration authorities.

58. Children of migrant domestic workers shall be registered soon after birth, independently of the migration status of their parents, and be provided with birth certificates and other identity documents. States should take all appropriate measures to ensure that children are not deprived of a nationality. (article 29)

59. States parties should eliminate discriminatory policies and practices that deny or restrict the rights of children of migrant domestic workers, notably their right to health and education (articles 28 and 30).

Gender perspective

60. As noted by the Committee on the Elimination of All Forms of Discrimination against Women, the position of female migrants is different from that of male migrants with regard to, *inter alia*, the migration channels used, the sectors of the labour market where they are employed, the forms of abuse they suffer and the consequences and impact thereof.¹⁰ Recognizing that most domestic workers are women and girls and taking into consideration traditional roles, the gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration, States should incorporate a gender perspective in efforts to understand their specific problems and develop remedies to the gender-based discrimination that they face throughout the migration process.

61. States parties should repeal sex-specific bans and discriminatory restrictions on women's migration on the basis of age, marital status, pregnancy or maternity status (articles 1 and 7), including restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel (article 8) or bans on women migrant domestic workers marrying nationals or permanent residents (article 14), or securing independent housing. States parties should also repeal discriminatory laws, regulations and practices related to HIV, including those which result in the loss of work visas based on HIV status, and ensure that medical testing of migrant domestic workers, including tests for pregnancy or HIV, is only done voluntarily and subject to informed consent.

Embassies and consulates

62. While the States of employment have the primary responsibility to protect the rights of migrant domestic workers, embassies and consulates of States of origin should play an active role in protecting the rights of their nationals employed as migrant domestic workers. In particular, embassies and consulates of countries of origin that are present in countries where migrant domestic workers are employed are encouraged, in coordination with the authorities in the countries of employment, to:

- (a) Ensure adequately trained staff and mechanisms (including telephone hotlines) to receive and address complaints made by migrant domestic workers, including through the provision of legal aid;
- (b) Provide counselling and facilitate appropriate shelter for migrant domestic workers, especially women and children, fleeing from abusive employment circumstances;
- (c) Expedite the processing of temporary travel documents and return tickets to avoid migrant domestic workers in distress being trapped in shelters for lengthy periods of time;
- (d) Receive, record and report information that can be useful to migrant domestic workers in the country of employment as well as to prospective migrant workers back home regarding:
 - (i) Actual country and employment conditions;
 - (ii) The experience of migrant domestic workers, including travel and arrival, migration-related fees and debt, the effects on family, workplace conflicts, issues of rights and access to justice.

63. Embassies and consulates of countries of origin are encouraged to cooperate with each other to identify abusive recruitment agencies and to promote appropriate protection policies for migrant domestic workers.

¹⁰ Committee on the Elimination of Discrimination against Women, general recommendation No. 26 (2008) on women migrant workers, para. 5.

***Participation of
migrant domestic
workers
and civil society***

***Monitoring and
reporting***

64. In the case of detention of a migrant domestic worker or a member of his or her family, the person shall be contacted by the embassies or consulates concerned with a view to arranging visits by the relevant consular officials in consultation with the State of employment. (articles 16, paragraph 7, and 23).

65. The Committee emphasizes the importance of genuine consultations with migrant domestic workers and civil society organizations in the development and implementation of legislative and other measures related to migrant domestic workers and the protection of their rights.

66. States parties should include in their reports information about efforts to monitor the situation of migrant domestic workers, including through the provision of statistical data, and to protect their rights under the Convention, keeping in mind the recommendations contained in the present general comment.



GENERAL COMMENT NO. 2 ON THE RIGHTS OF MIGRANT WORKERS IN AN IRREGULAR SITUATION AND MEMBERS OF THEIR FAMILIES

Committee on the Protection of the Rights of All Migrant Workers & Members of Their Families

CMW/C/GC/2

28 August 2013

I. INTRODUCTION

1. International sources estimate that between 10 and 15 per cent of the world's international migrants are in an irregular situation,¹¹ although the very nature of irregular migration makes it difficult to find reliable data on the scale of this phenomenon. While the economies of developing countries cannot absorb the large numbers of young men and, increasingly, women, seeking employment, population decline and ageing have reduced the labour force in developed countries, thereby generating a demand for low and middle-skilled migrant workers in many sectors of the economy. However, that demand has not been matched by a corresponding increase in regular migration channels. As a result, employers often resort to migrant workers in an irregular situation to fill the gaps.

2. As a deterrent for migrant workers and members of their families in an irregular situation to enter or stay on their territory, States increasingly resort to repressive measures, such as criminalization of irregular migration, administrative detention and expulsion. Criminalization of irregular migration fosters and promotes public perceptions that migrant workers and members of their families in an irregular situation are “illegal”, second-class individuals, or unfair competitors for jobs and social benefits, thereby fuelling anti-immigration public discourses, discrimination and xenophobia. Moreover, migrant workers and members of their families in an irregular situation generally live in fear of being reported to the immigration authorities by public service providers or other officials, or by private individuals, which limits their access to fundamental human rights, as well as their access to justice, and makes them more vulnerable to labour and other types of exploitation and abuse.

3. The term “migrant workers in an irregular situation” is defined in article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Convention), which specifies that migrant workers or members of their families are considered as non-documented or in an irregular situation if they are not authorized to enter, to stay or to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which it is a party.

4. The Committee is of the view that the term “in an irregular situation” or “non-documented” is the proper terminology when referring to their status. The use of the term “illegal” to describe migrant workers in an irregular situation is inappropriate and should be avoided as it tends to stigmatize them by associating them with criminality.¹²

5. The situation of migrant workers may be irregular either because they have entered the State of employment in an unauthorized way and are thus not authorized to stay, reside or work in that State, or because they overstay the period or otherwise violate the conditions of their authorized stay. Regular migrants may also lose their status through no fault of their own due to illness or other unforeseen circumstances affecting them or family members. The Committee emphasizes that whatever the modalities of their stay, migrant workers can

¹¹ International Labour Office, *International Labour Migration: A rights-based approach* (2010), p. 32.

¹² See General Assembly resolution 3449, para. 2.

never be deprived of their fundamental rights, as protected under Part III of the Convention, by virtue of their irregular situation.

II. THE NORMATIVE FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF MIGRANT WORKERS IN AN IRREGULAR SITUATION AND MEMBERS OF THEIR FAMILIES

A. Part III of the Convention

6. Part III of the Convention protects the rights of all migrant workers and members of their families, including those in an irregular situation. Most of the rights protected in Part III are common to a host of international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Among the civil and political rights protected in Part III, the right of migrant workers to liberty and security of person (art. 16) and the right of migrant workers deprived of their liberty to be treated with humanity (art. 17) have been contextualized, taking into account the situation of this group of rights-holders. Specific rights of migrant workers that are either not explicitly protected in other human rights treaties include their protection against unauthorized confiscation or destruction of personal documents (art. 21), procedural safeguards in individual expulsion proceedings (art. 22) and the right to have recourse to consular or diplomatic protection and assistance (art. 23). Among the economic, social and cultural rights of all migrant workers, the right to respect for their cultural identity (art. 31) and the right to transfer their earnings and savings upon termination of their stay in the State of employment (art. 32) are Convention-specific. In addition, Part III provides for information rights (art. 33) and affirms the obligation of all migrant workers and members of their families to comply with the laws of the State of employment or transit (art. 34).

B. Other international legal instruments

7. The Committee notes that the Convention provides only for a minimum standard of protection. Article 81, paragraph 1, states that nothing shall prevent States parties from granting more favourable rights or freedoms than those set out in the Convention to migrant workers and members of their families, including those in an irregular situation, by virtue of the law and practice of, or any bilateral or multilateral treaty in force for, the State party concerned. The Committee is of the view that a State's obligation under the Convention must be read with respect to the core human rights treaties and other relevant international instruments to which it is a party. Although separate and freestanding, these treaties are complementary and mutually reinforcing.

8. The rights guaranteed to migrants in an irregular situation in other international human rights treaties often have a wider scope than their counterparts in Part III of the Convention. These treaties also contain additional rights. The rights guaranteed in those treaties generally apply to everyone, including migrants and other non-nationals, without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including immigration status.

9. For example, the International Covenant on Civil and Political Rights provides for a wider scope of protection regarding the right of peaceful assembly, the right to freely enter marriage and to equality of rights and responsibilities of spouses, the right of every child to special protection, the right to equality before the law and equal protection of the law, and minority rights. In addition, other rights enshrined in the Covenant apply to all migrant workers, whether in a regular or an irregular situation, such as the right to form associations and trade unions and the right to protection of the family, whereas the Convention makes a distinction between migrant workers in a regular situation and those in an irregular situation. Both the Covenant and the Convention protect the right to freedom of movement and to free choice of residence of migrants insofar as they are lawfully within the territory of a State party.

10. Similarly, the International Covenant on Economic, Social and Cultural Rights also provides for a broader range of rights, including the right to strike, the right to freely enter marriage, the right to maternity protection, the right to special protection of children and

adolescents, the right to an adequate standard of living including adequate food and clothing, and certain cultural rights. The Convention does not provide for such rights only in relation to migrant workers in a regular situation. In addition, the Covenant recognizes the rights to work, to vocational guidance and training, to form trade unions, to protection of the family, to housing, and to participate in cultural life. The Convention recognizes these rights in relation to migrant workers in a regular situation and members of their families. In addition, most of the economic, social and cultural rights in Part III of the Convention have a narrower scope than their counterparts in the Covenant.

Regional human rights treaties

11. Regional human rights treaties protect all migrants against refoulement¹³ and collective expulsion.¹⁴ However, the procedural safeguards in individual expulsion proceedings in regional human rights treaties apply only to migrants who are lawfully within the territory of a State party.¹⁵ The rights protected in the European Social Charter apply to “foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned”, or to migrant workers and their families “lawfully within their territories”.¹⁶ The opinions of the European Committee of Social Rights, however, have held that the European Social Charter also applies to vulnerable categories of undocumented migrant children. Moreover, the right to education is guaranteed to all migrant children, regardless of their migration status, in all regional human rights systems.¹⁷

International Labour Organization

12. International labour standards adopted by the International Labour Conference of the International Labour Organization (ILO) apply to migrant workers, including those in an irregular situation, unless otherwise stated. The fundamental principles and rights at work set out in the eight fundamental ILO Conventions¹⁸ apply to all migrant workers, irrespective of their nationality and migration status. The 1998 ILO Declaration on fundamental principles and rights at work and its follow-up requires all ILO member States to promote and realize the principles concerning the fundamental rights enshrined in these Conventions. A number of other ILO standards of general application and those containing specific provisions on migrant workers in the areas of employment, labour inspection, social security, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction, hotels and restaurants, and domestic work, are of particular importance to migrant workers in an irregular situation.¹⁹ Lastly, in formulating national laws and policies concerning labour migration and the protection of migrant workers in an irregular situation, States are also guided by ILO Convention No. 97 (1949) concerning Migration for Employment (Revised),²⁰ Convention No. 143 (1975) concerning Migrations

¹³ See European Convention on Human Rights (ECHR), art. 3; American Convention on Human Rights (ACHR), art. 22, para. 8; and African Charter on Human and Peoples’ Rights (ACHPR), art. 5.

¹⁴ See Protocol No. 4 to ECHR, art. 4; ACHR, art. 22(9); ACHPR, art. 12(5); and Arab Charter on Human Rights (Arab Charter), art. 26(1).

¹⁵ See Protocol No. 7 to ECHR, art. 1; ACHR, art. 22(6); ACHPR, art. 12(4); and the Arab Charter, art. 26(2).

¹⁶ European Social Charter, arts. 19(4-9), and the appendix.

¹⁷ See Protocol No. 1 to ECHR, art. 2 (read in conjunction with art. 14 of ECHR); ACHPR, art. 17(1); and African Charter on the Rights and Welfare of the Child, art. 11. See also the case law of the European Committee of Social Rights on art. 17(2) of the revised European Social Charter and the jurisprudence of the Inter-American Court of Human Rights on art. 19 of ACHR.

¹⁸ Conventions No. 29 (1930) concerning Forced Labour; No. 105 (1957) concerning the Abolition of Forced Labour; No. 138 (1973), concerning Minimum Age for Admission to Employment; No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; No. 87 (1948) concerning the Freedom of Association and Protection of the Right to Organize; No. 98 (1949) concerning the Right to Organize and Collective Bargaining; No. 100 (1951) concerning Equal Remuneration; and No. 111 (1958) concerning Discrimination (Employment and Occupation).

¹⁹ For example, ILO Conventions Nos. 19, 81, 95, 110, 121, 129, 131, 155, 167, 172, 181, 184, 189, 200 and 201.

²⁰ While Convention No. 97 in principle only applies to migrant workers lawfully within the territory of a State, it contains certain provisions requiring States parties to take measures that have the effect of preventing migrant workers from falling into an irregular situation.

III. PROTECTION OF THE CONVENTION IN RELATION TO THE RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES IN AN IRREGULAR SITUATION

A. BASIC PRINCIPLES

1. Power to regulate entry and stay

13. The Convention strikes a balance between the sovereign power of States parties to control their borders and to regulate the entry and stay of migrants workers and members of their families, on the one hand, and the protection of the rights, under Part III of the Convention, of all migrant workers and members of their families, including those in an irregular situation, on the other. This balance is reflected in article 79 of the Convention.

2. Duty to comply with the laws and regulations

14. Article 34 of the Convention states that nothing in Part III of the Convention shall have the effect of relieving migrant workers and 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 those States. The obligation to comply with the laws and regulations of the State of employment or any State of transit comprises a duty to refrain from any hostile act directed against national security, public order (*ordre public*) or the rights and freedom of others.

3. Regularization

15. Article 35 of the Convention clarifies that the fact that Part III protects the rights of all migrant workers and members of their families, irrespective of their migration status, cannot be interpreted as implying the regularization of the situation of migrant workers or members of their families in an irregular situation or any right to such regularization. While States parties have no obligation to regularize the situation of migrant workers or members of their families, they shall take appropriate measures, whenever migrant workers or members of their families within their territory are in an irregular situation, to ensure that such a situation does not persist (art. 69, para. 1). States parties shall therefore consider the possibility of regularizing the situation of such persons in each individual case, in accordance with applicable national legislation and bilateral or multilateral agreements, taking into account the circumstances of their entry, the duration of their stay and other relevant considerations, in particular those relating to their family situation (art. 69, para. 2). When States parties provide for the regularization of migrant workers in their national legislation, they must ensure that all migrant workers and members of their families in an irregular situation have non-discriminatory and effective access to such regularization procedures and that those procedures are not applied in an arbitrary manner (arts. 7 and 69).

16. The Committee recalls that regularization is the most effective measure to address the extreme vulnerability of migrant workers and members of their families in an irregular situation.²¹ States parties should therefore consider policies, including regularization programmes, for avoiding or resolving situations whereby migrant workers and members of their families are in, or are at risk of falling into, an irregular situation (art. 69, para. 1).

4. International Cooperation (Part VI)

17. States parties shall cooperate in promoting sound, equitable, humane and lawful conditions for international migration (art. 64, para. 1). Coordinated policies, which ensure that migrant workers and members of their families have access to regular channels for migration, based on actual or projected labour market needs – at all skills levels – and resources (art. 64, para. 2), are an important element of such cooperation. By making regular channels of migration available, States parties also contribute to the aim of preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation (art. 68).

²¹ Committee's general comment No. 1 (2011) on migrant domestic workers, para. 52.

B. NON-DISCRIMINATION (PART II)

18. The principle of non-discrimination is central to all international human rights instruments and to the Charter of the United Nations. Article 7 of the Convention explicitly includes nationality among the prohibited grounds of discrimination. Treaty bodies have also interpreted the prohibition of discrimination to include non-nationals, such as migrant workers, regardless of legal status and documentation.²² The rights in Part III of the Convention also apply to all migrant workers and members of their families, including those in an irregular situation. Therefore, any differential treatment based on nationality or migration status amounts to discrimination unless the reasons for such differentiation are prescribed by law, pursue a legitimate aim under the Convention, are necessary in the specific circumstances, and proportionate to the legitimate aim pursued.²³

19. Article 7 requires States parties “to respect and to ensure” to all migrant workers and members of their families without discrimination the rights provided for in the Convention. Article 7 does not provide an autonomous right. Its application is limited to those rights of migrant workers and members of their families in an irregular situation that are protected in the Convention, and in particular Part III. Article 7 covers both *de jure* and *de facto* discrimination. In this context, *de jure* refers to discrimination that exists in the law, and *de facto* refers to discrimination that exists in fact or has an effect even though not formally or legally recognized. States parties shall respect the prohibition of discrimination by ensuring that their laws, regulations and administrative practices do not discriminate against migrant workers and members of their families. The Committee is of the view that merely addressing *de jure* discrimination will not ensure *de facto* equality. Therefore, States parties shall protect the rights under the Convention for all migrant workers by adopting positive measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate *de facto* discrimination against them.

20. Article 7 prohibits both direct and indirect discrimination against migrant workers. In line with the jurisprudence of other international human rights mechanisms, indirect discrimination against migrant workers occurs when a law, policy or practice appears neutral at face value, but has a disproportionate impact on their rights. For example, requiring birth certificates for school enrolment may disproportionately affect migrant workers in an irregular situation, who often do not possess, or have been denied, such certificates.

C. PROTECTION OF CIVIL AND POLITICAL RIGHTS (PART III)

1. Protection against violence

21. Migrant workers in an irregular situation, particularly women, are at increased risk of ill-treatment and other forms of violence at the hands of both private actors, including employers, and State officials which includes sexual violence, beatings, threats, psychological abuse, and denial of access to medical care, for example. Under article 16, paragraph 2, States parties have an obligation to protect all migrant workers and members of their families against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions. This obligation requires States parties to:

- (a) Adopt and implement legislation prohibiting such acts;
- (b) Effectively investigate cases of abuse and violence;
- (c) Prosecute and punish those responsible with appropriate punishments;

²² Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 30.

²³ See Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 13; and Committee on Economic, Social and Cultural Rights, general comment No. 20 on the right to education, para. 13.

- (d) Provide adequate reparation to victims and members of their families;
- (e) Provide human rights training for public officials; and
- (f) Effectively monitor the conduct of State agents, and regulate that of private persons and entities, with a view to preventing such acts.

22. States parties are also required to take effective measures to fight all manifestations of racism, xenophobia or related intolerance against migrant workers and members of their families, especially those in an irregular situation, such as hate crimes, incitement to hatred and hate speech, including by politicians and in the media, and to raise public awareness about the criminal nature of such acts as well as to promote respect for migrant workers' human rights.

2. Protection against arbitrary arrest and detention

23. Article 16 protects the right of migrant workers and members of their families to liberty and security of person (para. 1), and provides that identity controls of migrant workers must comply with the procedure established by law (para. 3). Article 16, paragraph 4, complements article 9, paragraph 1, of the International Covenant on Civil and Political Rights, adding that migrant workers and members of their families shall not be subjected "individually or collectively" to arbitrary arrest or detention. In order not to be arbitrary, arrest and detention of migrant workers and members of their families, including those in an irregular situation, must be prescribed by law, pursue a legitimate aim under the Convention, be necessary in the specific circumstances and proportionate to the legitimate aim pursued.

24. The Committee considers that crossing the border of a country in an unauthorized manner or without proper documentation, or overstaying a permit of stay does not constitute a crime. Criminalizing irregular entry into a country exceeds the legitimate interest of States parties to control and regulate irregular migration, and leads to unnecessary detention. While irregular entry and stay may constitute administrative offences, they are not crimes per se against persons, property or national security.²⁴

25. Although article 16, paragraph 4, does not define the permissible grounds for detention, it states that migrant workers and members of their families shall not be deprived of their liberty, except on such grounds and in accordance with such procedures as are established by law. Furthermore detention must be prescribed by law, pursue a legitimate aim under the Convention, be necessary in the specific circumstances, and proportionate to the legitimate aim pursued.

26. In the Committee's view, any custodial or non-custodial measure restricting the right to liberty must be exceptional and always based on a detailed and individualized assessment. Such assessment should consider the necessity and appropriateness of any restriction of liberty, including whether it is proportional to the objective to be achieved. The principle of proportionality requires States parties to detain migrant workers only as a last resort, and to give preference to less coercive measures, especially non-custodial measures, whenever such measures suffice to achieve the objective pursued. In all such cases, the least intrusive and restrictive measure possible in each individual case should be applied.

27. Administrative detention of migrants that is initially lawful and non-arbitrary may become arbitrary if it continues beyond the period for which a State party can provide proper justification. To prevent such a situation from occurring, a maximum period of administrative detention shall be established by law, upon expiry of which a detainee must be automatically released in the absence of such justification. Administrative detention must never be unlimited or of excessive length. The justification for keeping a migrant worker detained shall be reviewed periodically to prevent prolonged and unjustified detention, which would be considered arbitrary. Preventive detention of migrant workers often leads to prolonged detention based on vague criteria. Therefore, such detention should

²⁴ See report of the Special Rapporteur on the human rights of migrants to the Human Rights Council (A/HRC/20/24), para. 13.

be imposed only following an individual assessment in each case and for the shortest time possible, in compliance with all procedural safeguards provided for in article 16 of the Convention. In cases where an expulsion order cannot be executed for reasons beyond the detained migrant worker's control, he or she shall be released in order to avoid potentially indefinite detention.

28. Article 16, paragraph 5, requires States parties to inform migrant workers and members of their families who are arrested of the reasons for their arrest at the time of arrest and, as far as possible, in a language they understand. Moreover, they must be promptly informed of the charges against them in a language they understand. In order to comply with this obligation, States parties should consider preparing standard notification forms, containing, *inter alia*, information on available remedies, in the languages that are most frequently used or understood by migrant workers in an irregular situation in the State party concerned. Such standard notification forms, however, should be complementary to the issuance of a detention order containing factual information and the legal grounds pertaining to the arrest.

29. Under article 16, paragraph 6, the guarantees of certain rights of migrant workers and members of their families in custody and pre-trial detention are applicable to anyone suspected of committing or having committed a crime.

30. Article 16, paragraph 7, provides for the right of migrant workers who are deprived of their liberty to communicate with the consular or diplomatic authorities of their State of origin or those of a State representing the interests thereof. It also requires State parties to:

- (a) Inform the said authorities without delay of the arrest or detention of the migrant worker concerned, if he or she so requests;
- (b) Facilitate any communication between the person concerned and the said authorities;
- (c) Inform the person concerned without delay of this right as well as of rights under other applicable treaties; and
- (d) Correspond and meet with representatives of the said authorities and make arrangements with them for his or her legal representation.

31. In order to enable detained migrant workers to avail themselves effectively of the rights under (c) above, States parties shall provide the relevant information without delay, that is, upon or shortly after admission to the facility where they are deprived of their liberty and preferably in a language they understand. In relation to (a) above, the Committee emphasizes that the detaining State shall only contact the said authorities if this is explicitly requested by the detained migrant worker. In particular, migrant workers with potential protection needs shall not be brought to the attention of the said authorities without their knowledge and consent.

32. Article 16, paragraph 8, provides for the right of all migrant workers and members of their families who are deprived of their liberty by arrest or detention to take proceedings before a court, in order that the court may decide without delay on the lawfulness of their detention. If the court finds that the detention is unlawful, it must order the release of the detained migrant worker. The Committee considers that mandatory detention of migrant workers and members of their families in an irregular situation is incompatible with article 16, paragraph 8, if the possibility of judicial review is confined to a formal assessment of whether the migrant worker concerned entered the State party without a valid entry permit, without the possibility of release if the detention is incompatible with article 16, paragraph 4.

33. The Committee considers that anyone arrested and detained solely for immigration purposes should be brought promptly before a judge or other officer authorized by law to exercise judicial power to review the lawfulness of the arrest and/or detention and the continued necessity of such arrest or detention; and to order unconditional release and/or

less coercive measures, if warranted. Further reviews of the continued necessity and lawfulness of the detention should be carried out at regular intervals by a judge or other officer authorized by law to exercise judicial power. The burden of proof must rest on the detaining authorities to demonstrate that the presumption in favour of liberty should be displaced. The migrant worker must have access to legal representation and advice, if necessary free of charge, to challenge the lawfulness of detention. Children, and in particular unaccompanied or separated children, should never be detained solely for immigration purposes.

34. Article 16, paragraph 8, of the Convention provides for the right of migrant workers attending such proceedings to an interpreter, if necessary, without cost to them, if they cannot understand or speak the language used. In the Committee's view, States parties should take effective measures to ensure that all migrant workers held in migration detention centres, including those who opt for voluntary repatriation, are properly informed of their rights in a language they understand, especially with regard to their rights to consular assistance, to challenge the lawfulness of their detention and/or to release, to request asylum and to receive information about protection measures available to victims or witnesses of trafficking in persons.

35. Article 16, paragraph 9, provides for an enforceable right to compensation for migrant workers and members of their families who have been victims of unlawful arrest or detention. This right does not depend on a violation of article 16. It is sufficient that the arrest or detention be found unlawful under national or international law. States parties shall ensure that the right to compensation can be effectively enforced before the competent domestic authority. States parties must also ensure that migrant workers and members of their families are not expelled while their claim is being considered.

3. Protection against inhumane treatment

36. In accordance with article 17, paragraph 1, of the Convention, States parties have an obligation to treat migrant workers and members of their families who are deprived of their liberty with humanity, and with respect for their inherent dignity and cultural identity. In order to respect the inherent dignity of migrant workers and members of their families who are deprived of their liberty, States parties are obliged to ensure adequate conditions in line with applicable international standards, including the provision of adequate sanitary, bathing and shower facilities; adequate food (including appropriate food for those observing religious dietary laws) and drinking water; the right to communicate with relatives and friends; access to qualified medical personnel, and adequate opportunities to practise their faith, for example. It also requires States parties to ensure that they are not subjected to any form of inhumane treatment, including sexual violence and abuse, by guards or other detainees or inmates. States parties must therefore:

- (a) Train supervisory and other staff;
- (b) Enable regular and independent monitoring of places where migrant workers are or may be deprived of their liberty;
- (c) Ensure that they have access to effective and independent complaint mechanisms, including access to legal counsel and interpreters;
- (d) Investigate complaints of torture and other forms of ill-treatment in places where migrant workers or members of their families are deprived of their liberty; and
- (e) Bring those responsible to justice.

37. Article 17, paragraph 2, of the Convention provides that accused migrant workers and members of their families shall be separated from convicted persons and shall be subjected to a regime appropriate to their status as persons who have not been convicted of a crime. In addition, accused juveniles shall be separated from adults and brought as speedily as possible for adjudication.

38. Article 17, paragraph 3, underlines the non-punitive nature of administrative detention. It provides for migrant workers or members of their families who are detained for violation of provisions relating to migration to be held, insofar as is practicable, separately from convicted persons or pre-trial detainees. Given that such detention can last for an extended period, migrant detainees should be kept in special facilities that are specifically designed for that purpose. Moreover, migrant workers and members of their families should not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. The Committee is of the view that States parties should look for alternatives to administrative detention and that administrative detention should only be used as a last resort.

39. The Committee considers that administrative detention of migrant workers should, as a rule, take place in public establishments. Privately run migrant detention centres pose particular difficulties in terms of monitoring. States parties cannot absolve themselves of their human rights obligations by contracting out the detention of persons to private commercial enterprises. If States parties delegate such functions to private companies, they must ensure respect for the rights of detained migrant workers, as provided for under article 17 of the Convention. States parties must ensure that detention centre personnel are trained in human rights, cultural sensitivity, and age and gender considerations.

40. Article 17, paragraph 4, underscores the essential aim of the criminal justice system, which is to reform and rehabilitate offenders. Juvenile offenders must be separated from adults and treated appropriately for their age and legal status, and pursuant to international standards, including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

41. Article 17, paragraph 5, guarantees detained and imprisoned migrant workers and members of their families the same rights as nationals with regard to visits by their family members. If the law of a State party grants certain visitation rights, such as direct contact with visiting family members, to nationals who are deprived of their liberty, it must ensure equal rights for detained or imprisoned migrant workers, including those in an irregular situation. States parties shall eliminate de facto discrimination against detained migrant workers by removing practical barriers to their equal enjoyment of visitation rights, such as detention in a remote location, making access difficult for family members.

42. Article 17, paragraph 6, requires States parties to pay attention to the problems that deprivation of liberty may pose for family members, in particular spouses and minor children. In such cases, the Committee is of the view that States parties should seek alternatives to administrative detention, as administrative detention often has dire consequences, both economically and psychologically, for spouses and children.

43. Article 17, paragraph 7, contains a specific non-discrimination clause providing for detained or imprisoned migrant workers and members of their families to enjoy the same rights as nationals of the State of employment or transit who are in the same situation. This provision has the effect of extending additional procedural safeguards, over and above those contained in article 17, to detained migrant workers, such as the right to communicate with the outside, including by telephone, access to health professionals and to education, if also provided to nationals.

44. This provision also raises the issue of family detention. As a general rule, children and families with children should not be detained and States parties should always give priority to alternatives to detention where children and families are concerned. When family detention is unavoidable, detention of children shall be used “only as a measure of last resort and for the shortest appropriate period of time”, in accordance with article 37, paragraph (b), of the Convention on the Rights of the Child. Moreover, the primary consideration in all actions concerning children shall be the best interest of the child standard, as laid down in article 3, paragraph 1, of the Convention on the Rights of the Child. States parties shall ensure that children in detention are treated with humanity and respect for the inherent dignity of the human person and in an age-appropriate manner and are provided with all legal safeguards (Convention on the Rights of the Child, art. 37). States

parties shall therefore provide living quarters that are suitable for children and provide adequate access to education, play and leisure facilities, and, in the case of children detained with their parents, in special family units. Children should not be separated from their parents against their will except when such separation is necessary for the best interests of the child (Convention on the Rights of the Child, art. 9, para. 1). Unaccompanied children should be appointed a legal guardian who should be entrusted with the duty to care for the child outside of detention facilities.

45. States parties must also take into consideration the special situation of women migrant workers in detention. States parties must ensure separate facilities for men and women, ensure the provision of gender-specific health care services, and also provide for the specific needs of pregnant women, breastfeeding mothers and mothers with young children. States should avoid detaining women migrant workers in the final months of pregnancy or if they are nursing. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) provide useful guidelines for States in these situations.

46. Detention can be particularly damaging to vulnerable categories of migrant workers, impacting negatively on their physical and mental health. These migrant workers and members of their families may include victims of torture, unaccompanied older persons, persons with disabilities and persons living with HIV/AIDS. Special measures should be taken to protect vulnerable people deprived of their liberty, including access to adequate health services, medication and counselling. Moreover, migrant workers with disabilities and members of their families with disabilities should be provided with “reasonable accommodation”²⁵ to ensure their right to enjoy their human rights and fundamental freedoms on an equal basis with others.

47. With regard to article 17, paragraph 8, the Committee considers that detention “for the purpose of verifying any infraction of provisions related to migration” covers the entire duration of administrative detention, and that, consequently, migrant workers and members of their families subjected to administrative detention shall not bear any costs arising therefrom.

48. Considering that migrant workers deprived of their liberty are in a particularly vulnerable situation due to their predicament and the uncertainty of the circumstances, the Committee is convinced of the importance of independent monitoring in preventing torture and other forms of ill-treatment and abuse. National human rights institutions, relevant civil society actors, the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross and the Office of the High Commissioner for Human Rights should have broad access to all places of detention where migrants are or may be detained.

4. Protection in expulsion proceedings

Substantive protection against expulsion: non-refoulement

49. Article 22 of the Convention prohibits collective expulsion and provides procedural safeguards in individual expulsion proceedings with respect to both regular and irregular migrant workers and members of their families. While article 22 regulates only the procedure and not the substantive grounds of expulsion, its purpose is to prevent arbitrary expulsions and to provide substantive protection against expulsions in certain situations. Article 22 applies to all procedures aimed at the obligatory departure of migrant workers whether described in national law as expulsion or otherwise.

50. The principle of non-refoulement, as contained in international and regional human rights and refugee law, is the prohibition on forcibly removing anyone, in any manner whatsoever, to a country or territory where they would be at real risk of persecution or serious human rights violations or abuses. In the view of the Committee, this principle covers the risk of torture and cruel, inhuman or degrading treatment or punishment, including inhumane and degrading conditions of detention for migrants or lack of necessary medical treatment in the country of return, as well as the risk to the right to life (arts. 9 and 10 of the Convention). It also applies to situations where individuals would not be protected

²⁵ Convention on the Rights of Persons with Disabilities, art. 2.

from onward refoulement. The Committee is of the view that migrants and members of their families should be protected in cases where expulsions would constitute arbitrary interference with the right to family and private life. Migrants and members of their families in an irregular situation with international protection needs should also be protected against expulsion.

Prohibition of collective expulsion

51. Article 22, paragraph 1, of the Convention explicitly prohibits collective expulsion and requires that each case of expulsion be examined and decided individually. States parties have an obligation to ensure that their expulsion procedures provide sufficient guarantees to ensure that the personal circumstances of each migrant worker are genuinely and individually taken into account. This obligation extends to all spaces over which a State party exercises effective control, which may include vessels on the high seas.²⁶

Procedural safeguards in individual expulsion proceedings

52. Article 22, paragraph 2, seeks to prevent arbitrary expulsions by allowing only those carried out “in pursuance of a decision taken by the competent authority in accordance with law.” Article 22, paragraph 3, provides for the decision on expulsion to be communicated to the migrant worker concerned in a language he or she understands and, upon his or her request where not otherwise mandatory, in writing and with reasons, save in exceptional circumstances on grounds of national security. These rights are important to ensure due process, by enabling migrant workers to prepare their arguments with regard to such a decision. The right of the persons concerned to be informed of these rights before, or, at the latest, at the time the decision is rendered, serves the same purpose.

53. The right of a person to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority (art. 22, para. 4), includes the right to seek a stay of the decision of expulsion pending review of the said decision. While a stay of decision does not regularize the status of the person concerned for the time of the proceedings, it prevents the State party from expelling him or her before a final decision is rendered. In accordance with article 83 of the Convention, States parties are obliged to provide an effective remedy, including the right to review by a competent authority for migrant workers and their family members, whose rights and freedoms as recognized in the Convention have been violated. The Committee notes that migrant workers and members of their families must be given adequate time and facilities to pursue such a remedy against expulsion so as to ensure the effectiveness of their right to review. Such facilities should include the right to legal assistance and the assistance of an interpreter, if necessary, and be free of charge, if the circumstances of the case so require. The competent authority reviewing the decision of expulsion should ideally be a court. The right to appeal expulsion under article 22, paragraph 4, of the Convention may only be restricted for “compelling reasons of national security”.

54. Article 22, paragraph 5, states that if an expulsion decision that has already been executed is subsequently annulled, the person concerned has the right to seek compensation according to law. The expelling State shall ensure that the expelled person has the necessary facilities to pursue his or her compensation claim from abroad, for example, by appointing a legal representative. Furthermore, the expelling State may not invoke the earlier (annulled) decision to deny the person concerned re-entry into its territory.

55. Article 22, paragraph 6, provides for the person concerned by an expulsion decision to 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. This provision echoes article 9, paragraph 1, of ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions). The opportunity to settle claims, wages and other benefits must be effective in practice. Migrant workers often encounter problems pursuing legal claims in the State of employment once they have returned to their State of origin, including high litigation costs or difficulties providing evidence. Therefore, States parties should, whenever possible, grant migrant workers and their family members a reasonable

²⁶ See European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09 (23 February 2012).

period of time prior to their expulsion to claim wages and benefits. States parties should also consider time-bound or expedited legal proceedings to address such claims by migrant workers. In addition, States parties should conclude bilateral agreements so that migrant workers who return to their State of origin may have access to justice in the State of employment to file complaints about abuse and to claim unpaid wages and benefits.

56. Article 22, paragraph 7, provides for migrant workers and members of their families who are subject to an expulsion decision to seek entry into a State other than their State of origin, without prejudice to the execution of the expulsion decision. The exercise of this choice on the part of the migrant worker and family members is subject to the consent of the third State.

57. Article 22, paragraph 8, provides that migrant workers and members of their families shall be exempt from bearing the costs of their expulsion. The expelling State may require that they pay their own travel costs, but migrant workers must not be required to pay the costs of the legal proceedings leading to their expulsion or the costs of their administrative detention (see also art. 17, para. 8). However, the Committee notes that migrant workers who are in an irregular situation not of their own making, for example, redundancy before expiry of a contract or where an employer failed to complete the necessary formalities, should not be responsible for the costs of expulsion, including travel costs.

58. Article 22, paragraph 9, complements article 22, paragraph 6, and article 25, paragraph 3, stating that migrant workers and family members should not be deprived of their acquired rights, such as the right to receive wages and “other entitlements,” including social security benefits or reimbursement of contributions made with respect to such benefits. States parties should therefore ensure that migrant workers and members of their families have access to information on the amount of their accrued social security benefits prior to their expulsion.

Consular protection

59. Article 23 of the Convention provides for migrant workers and members of their families subject to an expulsion decision to be informed without delay of their right, and to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin. It also requires the authorities of the expelling State to facilitate the exercise of this right. Accordingly, the expelling State shall inform the person concerned without delay of this right, that is, at the time of or shortly after notifying the person of the expulsion decision and preferably in a language he or she understands. It shall facilitate any communication between the person concerned and the consular or diplomatic authorities of the State of origin.

D. PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (PART III)

1. Protection against labour exploitation

Protection against forced and compulsory labour and child labour

60. Article 11 of the Convention requires States parties to take effective measures against all forms of forced or compulsory labour by migrant workers.²⁷ This includes debt bondage, passport retention, and illegal confinement, for example. Article 21 obliges States parties to ensure that employers and recruiters do not confiscate or destroy travel or identity documents belonging to migrant workers.²⁸ States parties should provide training to law enforcement officers, and ensure that occupations dominated by migrant workers, especially women migrant workers, such as domestic work²⁹ and some forms of entertainment, are protected by labour laws and subject to inspections.³⁰

61. Article 25, paragraph 1 (b), of the Convention provides that laws and regulations on the minimum age of employment shall equally apply to migrant children. The minimum age shall not be less than 15 years, in accordance with article 2 of ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment. Furthermore, in accordance with article 11 of the Convention, States parties are obliged to ensure that child migrant workers shall be protected from any form of slavery, prostitution or work that would jeopardize their education, safety, morals and health, such as long hours of work.³¹ States parties must protect child migrant workers from violence and ensure their rights to education, leisure and occupational health.

Equal treatment

62. Article 25, paragraph 1, provides for migrant workers, irrespective of their status, to enjoy equal treatment to that of nationals in respect of remuneration, other conditions of work and terms of employment.³² While States parties may refuse migrant workers who do not have work permits access to their labour markets, once an employment relationship has been initiated and until it is terminated, all migrant workers, including those in an irregular situation, are entitled to equal conditions of work and terms of employment. The conditions of work and terms of employment listed in article 25, paragraph 1(a) and (b), are non-exhaustive examples. The equal treatment principle also covers any other matter that, according to national law and practice, is considered a working condition or term of employment, such as maternity protection.

63. States parties should require employers to explicitly state in contracts that are free, fair and fully consented to, the terms of employment for migrant workers, including those in an irregular situation, in a language they understand, outlining their specific duties, hours of work, remuneration, days of rest and other conditions of work.³³ They should take effective measures against non-payment of wages, delay in payment until departure, transfer of wages into accounts that are inaccessible to migrant workers, or payment of lower wages to migrant workers, especially those in an irregular situation, than to nationals. States parties should also step up inspections of places where migrant workers are routinely employed and instruct labour inspectorates not to share data concerning the migration status of migrant workers with immigration authorities,³⁴ as their primary duty is to secure the

²⁷ ILO Convention No. 29 (see Note 8 above).

²⁸ See Committee's general comment No. 1 (2011) on migrant domestic workers, para. 39.

²⁹ ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

³⁰ See Committee's general comment No. 1 (2011) on migrant domestic workers, para. 41.

³¹ ILO Convention No. 182 (see Note 8 above).

³² ILO Convention No. 111 (1958) concerning Discrimination (Employment and Occupation).

³³ See Committee's general comment No. 1 (2011) on migrant domestic workers, paras. 38 and 40.

³⁴ Ibid, paras. 41 and 49-50.

enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, in accordance with article 3, paragraph 1 (a), of ILO Convention No. 81 (1947) concerning Labour Inspection in Industry and Commerce.

Horizontal effect and enforcement of equal labour rights

64. Article 25 provides for equality in treatment regarding remuneration and other conditions of work between nationals and migrants and also guarantees this right in private employment contracts, notwithstanding the status of the migrant worker. Article 25, paragraph 3, states that employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of any irregularity in the stay or employment of migrant workers. States parties shall provide for appropriate sanctions for employers who derogate from the principle of equality of treatment in private employment contracts with migrant workers in an irregular situation, and ensure that those migrant workers have access to labour courts or other judicial remedies when their rights are violated and without fear of being deported (art. 83).³⁵ To give effect to this provision, the Committee is of the view that States parties shall also put in place an effective monitoring system for workplaces, especially in industries known to be employing migrant workers in an irregular situation.

Right to join trade unions

65. The right to organize and to engage in collective bargaining is essential for migrant workers to express their needs and defend their rights, in particular through trade unions.³⁶ Article 26 of the Convention sets out the right of all migrant workers to join trade unions and other associations protecting their interests. Article 26 does not provide for protection of the right to form trade unions. This provision, however, read together with other international human rights instruments, may create broader obligations for States parties to both instruments. For example, article 2 of ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Rights to Organise, and article 22, paragraph 1, of the International Covenant on Civil and Political Rights, both apply to migrant workers in an irregular situation. Article 26 also protects their right to participate in meetings and activities, and to seek the assistance, of trade unions and any other associations established in accordance with law. States parties shall ensure these rights, including the right to collective bargaining, encourage self-organization among migrant workers, irrespective of their migration status, and provide them with information about relevant associations that can provide assistance.³⁷

66. With regard to article 26, paragraph 2, the Committee notes that similar limitations can be found in article 8, paragraph 1(a), of the International Covenant on Economic, Social and Cultural Rights and in article 22, paragraph 2, of the International Covenant on Civil and Political Rights. It refers to the jurisprudence of the relevant treaty bodies for the purposes of interpreting what constitute permissible restrictions under article 26, paragraph 2, of the Convention.

2. Right to social security

67. With respect to social security, article 27, paragraph 1, of the Convention provides that all migrant workers and members of their families shall have the right to the same treatment granted to nationals of the State of employment, insofar as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. When a State party enacts legislation providing for the payment of a social benefit, whether conditional or not on the prior payment of contributions, and if the migrant worker concerned fulfils the requirements provided for in such legislation, it cannot arbitrarily exclude him or her from that benefit or limit his or her access to such benefit, as the prohibition of discrimination applies to the right to social security. Accordingly, any distinction based on nationality or migration status must be prescribed by law, pursue a legitimate aim under the Convention, be necessary in the specific circumstances, and be proportionate to the legitimate aim pursued.³⁸ While States parties enjoy a certain

³⁵ Ibid., paras. 49–50.

³⁶ Ibid, para. 45.

³⁷ Ibid, paras. 46–47.

³⁸ See note 19 above, *Koua Poirrez v. France*, Application No. 40892/98 (30 December 2003), para. 39.

margin of discretion in assessing whether and to what extent differences in otherwise similar situations justify different treatment, they must explain how such different treatment, based exclusively on nationality or migration status, is compatible with articles 7 and 27.³⁹

68. Article 27, paragraph 1, provides that migrant workers' right to social security is subject to the applicable bilateral and multilateral treaties and that 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 the application of this benefit. As recommended in the ILO Multilateral Framework on Labour Migration, States parties should consider entering into bilateral, regional or multilateral agreements to provide social security coverage and benefits, as well as portability of social security entitlements, to migrant workers, including, as appropriate, to those in an irregular situation.⁴⁰ However, article 27, paragraph 1, cannot be interpreted as depriving migrant workers of benefits to which they would otherwise be entitled under the applicable legislation of the State of employment, merely because that State has not signed a reciprocity agreement with their State of origin.⁴¹

69. Article 27, paragraph 2, states that where the applicable legislation does not allow migrant workers and members of their families a benefit, the State party concerned shall examine the possibility of reimbursing them the amount of contributions made by them with respect to that benefit on the basis of equality of treatment with nationals. In this respect, States parties shall provide objective reasons in each case in which the reimbursement of the said contributions is deemed impossible. A decision not to reimburse contributions made by a migrant worker or family member must not discriminate on the basis of his or her nationality or migration status. Furthermore, the Committee considers that a migrant worker's entitlement to social security benefits should not be affected by a change in workplace.

70. The reference to "contributions" in article 27, paragraph 2, does not imply that "social security," under article 27, paragraph 1, refers only to contributory social security schemes. Such a narrow reading would be contrary to article 9 of the International Covenant on Economic, Social and Cultural Rights, which recognizes "social security" as "including social insurance." Recalling that article 9 of the Covenant applies to all migrant workers, regardless of their legal status and documentation, the Committee considers that "social security" in article 27 of the Convention also covers existing non-contributory social benefits, and that migrant workers in an irregular situation shall have access to such benefits on a non-discriminatory basis, to the extent that the applicable legislation of the State party concerned provides for such an entitlement.

71. The Committee considers that in cases of extreme poverty and vulnerability, States parties should provide emergency social assistance to migrant workers in an irregular situation and members of their families, including emergency services for persons with disabilities, for as long as they might require it. It recalls that even if many migrant workers in an irregular situation do not participate in contributory schemes, they contribute to financing social protection schemes and programmes by paying indirect taxes.⁴²

72. Article 28 of the Convention provides for migrant workers and members of their families to 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. Article 28, however, read together with other international human rights instruments, may create broader obligations for States parties to both instruments. Article 12 of the International Covenant on Economic, Social and

³⁹ Ibid., *Gaygusuz v. Austria*, Application No. 17371/90 (16 September 1996), para. 42.

⁴⁰ ILO, "ILO Multilateral Framework on Labour Migration, Non-binding principles and guidelines for a rights-based approach to labour migration", (Geneva, 2006), guideline 9.9.

⁴¹ See note 19 above, *Koua Poirrez v. France*, para. 39.

⁴² See report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (E/2010/89), para. 46.

3. Right to urgent medical care

Cultural Rights provides for the right to the highest attainable standard of health for all persons. States parties are therefore obliged to ensure that all persons, irrespective of their migration status, have effective access to at least a minimum level of health care on a non-discriminatory basis. The Committee on Economic, Social and Cultural Rights considers this to encompass primary health care, as well as preventive, curative and palliative health services. The Committee on the Rights of the Child holds that every migrant child is entitled to the same health care as nationals under article 24 of the Convention on the Rights of the Child. To that effect, States parties shall ensure, inter alia, that all migrant workers and members of their families have access to essential medicines and that migrant children are provided with immunization against the major infectious diseases. They shall ensure that migrant women have access to appropriate prenatal and postnatal health care, safe reproductive health services, and to emergency obstetric care.

73. The Committee considers that access to urgent medical care must be ensured to all migrant workers on the basis of equality of treatment with nationals and thus on a non-discriminatory basis. Although medical care need not necessarily be free of charge, equality of treatment requires that the same rules for payment of fees or exemption from payment apply to migrant workers and members of their families as to nationals. States parties should prohibit the charging of excessive fees from migrant workers in an irregular situation or requiring immediate payment or proof of payment before the service is delivered. Urgent medical care should never be withheld due to the inability to pay. States parties should also ensure that migrant workers and members of their families are provided with information on the medical care provided and information about their health rights. States parties should also ensure that doctors and health professionals are provided with culturally sensitive training regarding health care for migrant workers and members of their families.

74. Article 28 prohibits the refusal of such medical care to migrant workers because of an irregularity with regard to their stay and employment. States parties should not use health care as an instrument of immigration control, which would effectively prevent migrant workers in an irregular situation from contacting public health care providers out of fear of deportation. Toward this end, States parties shall not require public health institutions to report or otherwise share data on the migration status of a patient to immigration authorities, and health care providers should also not be required to do so.⁴³ Moreover, States parties shall not conduct immigration enforcement operations on or near facilities providing medical care, as this would limit migrant workers and members of their families from accessing such care.

4. Right to education

75. Article 30 of the Convention protects the “basic right of access to education” of all children of migrant workers “on the basis of equality of treatment with nationals of the State concerned.” Article 30 also provides that access to public preschool educational institutions or schools shall be without prejudice to the migration status of the child concerned or parents of the child. The Committee, in accordance with article 13 of the International Covenant on Economic, Social and Cultural Rights, is of the view that States parties must provide free and compulsory primary education for all, including children of migrant workers, regardless of their migration status. As such, States parties have an obligation to eliminate all direct costs of schooling, such as school fees, as well as alleviate the adverse impact of indirect costs, such as expenses for school materials and uniforms. Access to secondary education by children of migrant workers must be ensured on the basis of equality of treatment with nationals. Accordingly, whenever children who are nationals have access to free secondary education, States parties must ensure equal access by children of migrant workers, irrespective of their migration status. Similarly, when States parties provide different forms of secondary education, including vocational education, they should also make them accessible to children of migrant workers. The same principle applies to free preschool education or to scholarship schemes. Therefore, whenever children who are nationals have access to free preschool education or scholarships, States parties must ensure equal access by children of migrant workers, irrespective of their migration status.

⁴³ See note 12 above, para. 43.

76. The Committee notes that migrant children may suffer from multiple forms of discrimination due to race, ethnicity, gender, and disability, for example. The principle of equality of treatment requires States parties to eliminate any discrimination against migrant children in their educational systems. States parties must therefore avoid segregated schooling and the application of different standards of treatment to children of migrant workers as well as eliminate any forms of discrimination against children of migrant workers in classrooms. States parties also need to ensure that effective programs, policies and mechanisms are in place to prevent discrimination against these children.

77. To ensure access to education, the Committee is also of the view that States parties shall not require schools to report or share data on the regular or irregular status of pupils or their parents to immigration authorities or conduct immigration enforcement operations on or near school premises, as this would limit access to education by children of migrant workers. States parties should also clearly inform school administrators, teachers and parents that they are not required to do so either and provide them with training on the educational rights of children of migrant workers.

78. While noting that the obligation of the State of employment to endeavor to facilitate the teaching of the mother tongue and culture is explicitly accorded to the children of migrant workers in a regular situation pursuant to article 45, paragraph 3, of the Convention, the Committee emphasizes that the right to respect for one's cultural identity (art. 31) belongs to all migrant workers and members of their families, including children. Considering these two provisions together, along with article 29, paragraph 1 (c), of the Convention on the Rights of the Child, which applies to all children, the Committee is of the view that States parties should also ensure access for children of migrant workers in an irregular situation to mother-tongue instruction if already available to children of migrant workers who are documented as having the same mother tongue.

79. Legal identity is often a prerequisite for access to a number of fundamental rights. Children of migrants in an irregular situation, particularly those born in a host State that does not recognize their existence, are vulnerable throughout their lives. States parties are obliged to ensure that children of migrant workers are registered soon after birth, irrespective of the migration status of their parents, and provided with birth certificates and other identity documents (art. 29). States parties shall not require migrant workers to present a residence permit in order to register a child, as this would effectively deprive migrant children in an irregular situation of their right to birth registration, which can also deny them access to education, health services, employment and other rights. Non-compliance by migrant workers with the obligation to register their children following birth should never justify their exclusion from education.



LIST OF ISSUES PRIOR TO THE SUBMISSION OF THE SECOND PERIODIC REPORT OF THE PHILIPPINES

SPECIFIC INFORMATION ON THE IMPLEMENTATION OF ARTICLES 1 TO 71 OF THE CONVENTION, INCLUDING WITH REGARD TO THE COMMITTEE'S PREVIOUS RECOMMENDATIONS DURING THE 16TH SESSION

Committee on the Protection of the Rights of All Migrant Workers & Members of Their Families
CMW/C/PHL/Q/2
21 May 2012

I. GENERAL INFORMATION

1. In light of the recommendations made by the Committee in paragraphs 14 and 50 of its concluding observations on the initial report of the Philippines (CMW/C/PHL/CO/1), please provide information on the measures taken to improve the capacity of the State party's institutions for effectively implementing the Convention by:
 - (a) Simplifying and streamlining the institutional structure dealing with migration issues;
 - (b) Allocating sufficient human and financial resources for agents within this structure to carry out their work efficiently;
 - (c) Establishing proper follow-up procedures as well as clear, measurable and time-bound targets in order to facilitate tracking the implementation of the various initiatives and programmes in place to respond to challenges faced in the State party's labour migration policy. Please also provide information on the results of any evaluation made in relation to the implementation the Convention and of relevant national legislation.
2. Please provide information on the progress made by the State party in gathering, processing and analysing data relevant under the Convention, including through the Shared Government Information System on Migration (SGISM), and in improving the compilation of statistical data, or studies and estimates, on migrants in an irregular situation, in line with the recommendation contained in paragraph 20 of the Committee's previous concluding observations.
3. Please provide information on the State party's cooperation with civil society organizations working on migrants' rights in relation to the implementation of the Convention and the preparation of its periodic reports (see CMW/C/PHL/CO/1, paragraphs 22 (c), 50 and 52).
4. Please provide information on the measures taken by the State party to evaluate and further intensify training programmes on the application of the Convention for public officials working in the area of migration, including consular officials, border police officers, social workers, judges and prosecutors (CMW/C/PHL/CO/1, para. 22 (a)).
5. Please describe the measures taken by the State party to widely disseminate the Convention and the Committee's previous concluding observations, in particular to government departments, Parliament, the judiciary, the national human rights institution and non-governmental organizations (CMW/C/PHL/CO/1, para. 53).

6. Please provide information on measures taken to strengthen the protection of Filipino migrant workers abroad by reviewing and amending bilateral and multilateral agreements, Memoranda of Understanding or other protective measures with countries of employment of Filipino migrant workers (CMW/C/PHL/CO/1, para. 32 (a)).
7. Please provide information on the mandate and activities of the Commission on Human Rights of the Philippines to promote and protect the rights of migrant workers and members of their families under the Convention, as well as on any plans to extend the mandate of the Commission to include economic, social and cultural rights of migrant workers.
8. Please provide information on the measures taken to prevent public officials from using corrupt practices to (a) obstruct migrants' access to justice and (b) favour child labour, e.g. by stating a higher age of migrant children on birth certificates.
9. Please indicate whether the State party has undertaken and/or supported a comprehensive study on the situation of children of migrant workers. Please also describe the progress made in developing and implementing strategies, policies and programmes, in collaboration with non-governmental organizations (NGOs), to ensure the protection and promotion of the rights of migrant children through, inter alia, community support programmes, education and information campaigns and school programmes (CMW/C/PHL/CO/1, para. 46).
10. Please indicate whether the State party envisages ratifying International Labour Organization (ILO) No. 189 (2011) concerning Decent Work for Domestic Workers.
11. Please indicate whether the State party envisages making the declarations provided for in articles 76 and 77 of the Convention, as recommended in the Committee's previous concluding observations (CMW/C/PHL/CO/1, para. 18).

II. INFORMATION RELATING TO EACH OF THE ARTICLES OF THE CONVENTION

A. GENERAL PRINCIPLES

Articles 7 and 83

12. Please provide information on the implementation of the Convention in the Autonomous Region of Muslim Mindanao (ARMM) given that the ARMM has a separate cabinet and a regional legislative assembly.
13. Please provide information on the steps taken by the State party to ensure that the exercise by migrant workers and members of their families of their rights under the Convention is not subject to the principle of reciprocity, in particular by aligning its domestic legislation with the Convention (CMW/C/PHL/CO/1, para. 24).
14. In light of paragraphs 26, 30 and 32 (b) of the Committee's previous concluding observations, please provide information on the measures taken by the State party to:
 - (a) Strengthen its legal assistance to Filipino migrant workers;
 - (b) Inform Filipino migrant workers of the administrative and judicial remedies available to them;
 - (c) Increase awareness among Filipino migrant workers, especially women domestic workers, on the available mechanisms for bringing complaints against employers so that any abuses can be investigated and punished;
 - (d) Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families;

- (e) Ensure that its diplomatic and consular staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino migrant workers, especially in those countries categorized as “highly problematic” by the Department of Foreign Affairs (DFA) and the Department of Labour and Employment (DOLE);
- (f) Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues.

15. Please provide information on the assistance provided through embassy and consulate staff abroad to migrant workers victims of the “sponsorship” or *kafalah* system in Gulf countries, especially for women domestic workers, and on endeavours to negotiate a reform or review of such a system with the relevant countries of employment (CMW/C/PHL/CO/1, para. 32 (d)).

B. PART III OF THE CONVENTION

Articles 10 & 11

16. Please provide information on the measures taken to fight the exploitation of prostitution of migrant women in the State party, particularly in the context of sex tourism, as well as on the measures taken to protect migrant children in the State party from forced labour and from sexual exploitation and abuse.

Article 29

17. Please provide information on the measures taken to promote the birth registration of Filipino migrant children abroad, including those in an irregular situation, and to ensure the birth registration of foreign migrant children in the State party.

Article 33

18. Please provide information on pre-departure programmes for Filipino nationals considering migration. In this regard, please indicate the measures taken by the State party to implement the recommendations contained in paragraph 22 (b) to (d) of the Committee’s previous concluding observations.

19. Please provide information on the measures taken to ensure that migrant workers arriving in, or preparing to come to, the State party have access to clear information on immigration procedures, including full information on exit and entry visa guidelines and registration. Please clarify what Government institution is responsible for providing such information and if any coordinated policies, programmes or legislation have been developed to ensure transparency and accountability in this process.

C. PART IV OF THE CONVENTION

Article 40

20. Please provide information on the measures taken by the State party, in particular with respect to legislative amendments to sections 269 and 272 (b) of the Labour Code, to guarantee to all migrant workers and members of their families in a regular situation in the State party the right to join, form and to form part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention, as well as with ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise, and irrespective of reciprocity (CMW/C/PHL/CO/1, para. 34).

Article 41

21. Please provide information on the measures taken to implement the recommendations contained in paragraph 36 of the Committee’s previous concluding observations, with a view to ensuring the right of Filipino migrant workers to participate in public affairs and to vote and to be elected at elections of the State party.

D. PART VI OF THE CONVENTION

Article 64

22. Please provide information on the measures taken to prevent irregular migration, including through international agreements, policies and programmes. Please include information on how such measures have been mainstreamed in overall migration policies

and programmes and whether a measurable result on the numbers of irregular migrants has been determined.

Article 65 23. In line with the recommendations contained in paragraph 28 of the Committee's previous concluding observations, please provide information on the measures taken by the State party to improve the situation of Filipino migrant women facing situations of vulnerability by:

- (a) Conducting a thorough assessment of the situation of Filipino migrant women, including their income in the informal sector, and taking concrete measures to address the feminization of migration comprehensively in its labour migration policies, and ensuring minimal social protection for Filipino migrant women;
- (b) Negotiating more secure employment opportunities and terms and conditions for Filipino migrant women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent;
- (c) Carrying out gender training and sensitization for government officials dealing with migration issues, in particular those providing legal and consular assistance to Filipino migrant workers abroad seeking justice against abuse in the workplace;
- (d) Implementing the outcome document of the International Conference on Gender, Migration and Development called the Manila Call to Action as a tool for informed policy decision-making and advocacy;
- (e) Liaising with local and international partner networks to provide services and support to migrants and to advocate for migrants' rights.

Article 66 24. Please provide information on the measures taken to review the role of private recruitment agencies and to strengthen the existing licensing system for recruitment agencies, migration regulation and control mechanisms to prevent private recruitment agencies from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters (CMW/C/PHL/CO/1, para. 42). Please also indicate whether the State party envisages ratifying ILO Convention No. 181 (1997) concerning Private Employment Agencies.

Article 67 25. Please describe the progress made by the State party in strengthening the reintegration of returning migrant workers and members of their families, as recommended in paragraph 44 (a)-(e) of the Committee's previous concluding observations. Please indicate if bilateral agreements facilitate the return and reintegration of migrant workers and how the National Reintegration Centre for Overseas Filipino Workers operates and coordinates its activities with other relevant institutions to promote the return and reintegration of Filipino migrant workers.

Article 68 26. Please provide information on the measures taken to implement the recommendations contained in paragraph 48 (a)-(f) of the Committee's previous concluding observations in order to combat trafficking in persons.

III. ADDITIONAL INFORMATION

27. Please provide any additional information on measures adopted since the Committee's consideration of the State party's initial report in 2009 to implement the Convention and the Committee's previous concluding observations (CMW/C/PHL/CO/1, para. 51), including relevant disaggregated statistical data, as well as information on any other important developments in the State party relating to the provisions of the Convention.



CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 73 OF THE CONVENTION PURSUANT TO THE SIMPLIFIED REPORTING PROCEDURE

SECOND PERIODIC REPORTS OF STATES PARTIES DUE IN 2011

THE PHILIPPINES* (Date received 13 March 2014)

Committee on the Protection of the Rights of All Migrant Workers & Members of Their Families
CMW/C/PHL/2
27 March 2014

LIST OF ACRONYMS

ACMW	ASEAN Committee on Migrant Workers	DFA-OUMWA	Department of Foreign Affairs-Office of the Undersecretary for Migrant Workers Affairs
AEP	Alien Employment Permit		
AIR-TIP	Anti-Illegal Recruitment/Trafficking in Persons Seminars	DILG	Department of the Interior and Local Government
ARG	ARMM Regional Government	DOJ	Department of Justice
ARMM	Autonomous Region of Muslim Mindanao	DOLE	Department of Labor and Employment
ATN	Assistance-to-Nationals	DSWD	Department of Social Welfare and Development
BI	Bureau of Immigration	FLOIS	Foreign Labor Operations Information System
BSP	Bangko Sentral ng Pilipinas (the Central Bank of the Philippines)	FSI	Foreign Service Institute
CAIRTIM	Campaign Against Illegal Recruitment, Trafficking in Persons and Irregular Migration	GAD	Gender and Development
CFO	Commission on Filipinos Overseas	GCC	Gulf Cooperation Council
CHR	Commission on Human Rights	GFMD	Global Forum on Migration and Development
CLKSS	Child Labor Knowledge Sharing System	HSWs	Household Service Workers
CLOAV	Certified List of Overseas Absentee Voters	IACAT	Inter-Agency Council Against Trafficking
CMA	Center for Migrant Advocacy	IBP	Integrated Bar of the Philippines
CNSP	Children in Need of Special Protection	ICACP	Inter-Agency Council Against Child Pornography
COA	Commission on Audit	ILAB	International Labor Affairs Bureau
COMELEC	Commission on Elections	ILO	International Labour Organization
CSC	Civil Service Commission	ILS	International Labor Institute
CSOs	Civil Society Organizations	IOM	International Organization for Migration
CSPC	Committee for the Special Protection of Children	IR-Free LGUs	Illegal Recruitment-Free Local Government Units
DA	Department of Agriculture	ISWSFN	International Social Welfare Services for Filipino National
DBM	Department of Budget Management	LAC	Labor Assistance Counter
DFA-OAVS	Overseas Absentee Voting Secretariat	LAD	POEA Legal Assistance Division
DFA-OCA	Office of Consular Affairs		

* The present document is being issued without formal editing.

LAF	Legal Assistance Fund	PDOS	Pre-Departure Orientation Seminar
LEGS	Labor Education on Graduating Students	PEOS	Pre-Employment Orientation Seminars
LEPD	Law Enforcement and Prosecution Database	PESO	Public Employment Services Offices
LGUs	Local Government Units	PhilHealth	Philippine Health Insurance Corporation
LOIPR	List of Issues Prior To Reporting	PHILJA	Philippine Judicial Academy
MECO	Manila Economic and Cultural Office	PHRC	Presidential Human Rights Committee
MOA	Memorandum of Agreement	PIDS	Philippine Institute for Development Studies
MOU	Memorandum of Understanding	PLOS	Pre-Licensing Orientation Seminar
MWOFRC	Migrant Workers and Other Overseas Filipinos Resource Centers	PNP	Philippine National Police
NAIA	Ninoy Aquino International Airport	POEA	Philippine Overseas Employment Administration
NBI	National Bureau of Investigation	POLO	Philippine Overseas Labor Office
NBI-AHTRAD	National Bureau of Investigation-Anti-Human Trafficking Division	PRA	Philippine Recruitment Agency
NCLC	National Child Labor Committee	PRC	Professional Regulation Commission
NEDA	National Economic and Development Authority	PSO	Pre-Employment Services Office
NGOs	Non-governmental organizations	RPMC	Re-placement and Monitoring Center
NLDC	National Livelihood Development Corporation	RRPTP	Recovery and Reintegration Program for Trafficked Persons
NLRC	National Labor Relations Commission	RWOs	Regional Welfare Officers
NRCO	National Reintegration Center for OFWs	SEA-K	Self-Employment Assistance Kaunlaran
NRRD	National Recovery and Reintegration Database	SEC	Standard Employment Contract
NRS	National Referral System	SENA	Single Entry Approach
NSO	National Statistics Office	SGISM	Shared Government Information System on Migration
OCA	Office of the Court of Administrator	SMB	Sagip Batang Manggagawa or Rescue the Child Laborers
OEC	Overseas Employment Certificate	SMB-QAT	Sagip Batang Manggagawa Quick Action Team
OFIS	Overseas Filipinos Information System	SOMTC	ASEAN Senior Officials Meeting on Transnational Crime
OFWs	Overseas Filipino Workers	SPMS	Strategic Performance Management System
OLTCC	Overseas Land-based Tripartite Consultative Council	SPRS	Statistical and Performance Reporting System
OPCR	Office Performance Commitment and Review	SSS	Social Security System
OPRT	Overseas Preparedness and Response Team	SWAt	Social Welfare Attaché
OSD	Operations and Surveillance Division	TCEU	Travel Control and Enforcement Unit
OWO	Overseas Welfare Office	TESDA	Technical Education and Skills Development Authority
OWWA	Overseas Workers Welfare Administration	TIP	Trafficking in Persons
PATD	Philippine Anti-Trafficking Database	UNDP	United Nations Development Programme
PCTC	Philippine Center on Transnational Crime	VAW	Violence Against Women

INTRODUCTION

1. This second report of the Philippines 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 list of issues prior to reporting (CMW/C/PHL/Q/2) identified by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. The present report provides specific information on the implementation of articles 1 to 71 of the Convention, including with regard to the previous recommendations contained in the Committee's concluding observations and covers the measures and progress in the implementation of new and old policies since the submission of the State party's initial report in 2009.
2. The information used in this report was provided by the respective Philippine government agencies and inter-agency committees⁴⁴.
3. Civil society partners and non-government organizations were consulted and the Commission on Human Rights of the Philippines (CHRP) provided independent views to enhance the report.

I. GENERAL INFORMATION

1. **In light of the recommendations made by the Committee in paragraphs 14 and 50 of its concluding observations on the initial report of the Philippines (CMW/C/PHL/CO/1), please provide information on the measures taken to improve the capacity of the State party's institutions for effectively implementing the Convention by:**

(a) Simplifying and streamlining the institutional structure dealing with migration issues

4. For the last five years, the State party further strengthened its normative framework for the promotion and protection of the rights of migrants. It enacted the Amended Migrant Workers' Act (RA 10022) in 2010 that further strengthened the protection mantle for the OFWs and their families and the Expanded Anti-Trafficking in Persons Act (RA 10364) in 2013 which provided, among others, additional protection to victims of trafficking and service providers. It has also ratified the ILO Convention on Domestic Work (C 189) in 2012 and enacted the Domestic Workers Act (RA 10361) in 2013 that institutionalized policies for the protection and welfare of Filipino domestic workers.

5. Under the current administration of President Benigno S. Aquino III, the State party, guided by the President's Social Contract with the Filipino people, continuously endeavours to create jobs at home so that working abroad will be a choice rather than a necessity and when citizens choose to be overseas Filipino workers (OFW), their welfare and protection will still be the Government's priority. Consistent therewith, the State party initiated policy and procedural reforms to strengthen coordination and effectiveness of service delivery as follows:

1. Created the Overseas Preparedness and Response Team (OPRT), a high-level, ministerial team chaired by the Executive Secretary⁴⁵. It facilitates maximum coordinated responses to remove OFWs from immediate hazards and risks

⁴⁴ These agencies included the Department of Foreign Affairs (DFA), Department of Labor and Employment (DOLE), Department of Justice (DOJ), Department of Social Welfare and Development (DSWD), Philippine Overseas Employment Administration (POEA), Overseas Workers Welfare Administration (OWWA), Bureau of Immigration (BI), National Bureau of Investigation (NBI), Philippine National Police (PNP), Philippine Commission on Women (PCW), Inter-Agency Council Against Trafficking (IACAT), Presidential Human Rights Committee (PHRC), Commission on Filipinos Overseas (CFO) and other relevant national government agencies. The DOLE and POEA State Report Preparation Team led the consolidation and finalization of this report.

⁴⁵ Created by Executive Order 32 on April 2011, the OPRT is composed of the Secretaries of Foreign Affairs, Labor, Defense, Interior, Justice, and Budget, and the Presidential Adviser on OFW.

brought about by natural disasters, civil unrest, armed conflict and similar crises in foreign countries.

2. Strengthened inter-agency partnership and coordination of agencies in addressing specific migration issues such as illegal recruitment and human trafficking for labour⁴⁶.
3. Implemented more accessible, efficient and convenient in-country services for OFWs and their families, such as passport and exit clearance processing and enrolment to social protection programmes through the (a) new consular and OEC transaction counters in shopping malls; (b) mobile passporting and consular outreach services; (c) one-stop-shop centres for services of the Philippine Overseas Employment Administration (POEA) and Overseas Workers Welfare Administration (OWWA); (d) online system for appointments, submission of applications, registration, and inquiries; (e) simplified requirements for often used service, such as the multi-travel exit clearance for frequently vacationing OFWs; and (f) ISO certification for 37 key work processes in POEA to sustain improvement in service quality for OFWs.
4. Strengthened on-site services for OFWs under the one-country-team approach by (a) streamlining procedures for handling anti-illegal recruitment and anti-human trafficking in persons; (b) rationalizing procedures for accessing legal assistance funds; and (c) providing revised guidelines on operations of the Department of Labor and Employment-Philippine Overseas Labor Office (DOLE-POLO) such as the management of the Filipino Migrant Workers Resource Centers, handling of OFW cases involving contract violation and illegal recruitment, repatriation procedures, facilitating conduct of skills training and capacity building for workers on-site, and preparing them for return and reintegration.
5. Adopted the Citizen's Charter that informs the public of the requirements, procedures and forms for accessing public services and the rationalized process time within which such services are obtained or completed. Agency Citizens Charters are posted in the premises of agencies and in their websites.
6. Implemented "We Serve OFWs Convergence Program" for a more concerted, synchronized and coordinated delivery of services to OFWs, both in-country and on-site, among agencies of the DOLE⁴⁷. The programme focuses on four areas, namely: capability-building for internal and external partners, education and training for OFWs, setting up of 625 OFW Help Desks at local government units, and provision of legal assistance.

(b) Allocating sufficient human and financial resources for agents within this structure to carry out their work efficiently

6. The State party network of 83 embassies and consulates, 38 POLOs, and 20 Filipino Workers Resource Centers serve the various needs of Filipinos before, during, and after their employment abroad. Assistance-to-Nationals (ATN) units and the POLOs provide 24/7 on-site services.
7. State party agencies dealing with migrant worker protection, overseas employment, and related migration issues were rationalized with regular staffing and adequate operating funds.

⁴⁶ The Presidential Task Force on Anti-Illegal Recruitment undertakes coordinated preventive and remedial approaches to curb illegal recruitment at national and local levels. On the other hand, the Inter-Agency Council on Anti-Human Trafficking jointly pursues capacity building, information dissemination programs, and enforcement operations to fight human trafficking within the framework of the Anti-Trafficking Act.

⁴⁷ DOLE Administrative Order No. 157 dated, April 2013.

8. In light of several natural and man-made emergencies and implementation of certain immigration policies in host countries from 2010 to date, the State party attended to the immediate evacuation and repatriation of Filipino nationals through its Emergency Repatriation Program and Legal Assistance Fund, in addition to the regular annual allocation for such purposes.

9. Cognizant of the challenges in terms of resources, the State party continues to take a progressive approach in redirecting or increasing funds and personnel by prioritizing Posts where there is high concentration of nationals and OFWs⁴⁸.

(c) Establishing proper follow-up procedures as well as clear, measurable and time-bound targets in order to facilitate tracking the implementation of the various initiatives and programme in place to respond to challenges faced in the State party's labour migration policy

10. The State party tracks the implementation of migration policies and programmes through a multi-level, and multi-stakeholder performance management system. At the national level, the Organizational Performance Indicator Framework establishes a clear accountability for results from organizations to officials, officers and staff who administer the programmes. The Planning Tool, on the other hand, links the cluster indicators and targets with societal outcomes, measured on per programme, project, and activity level. Performance is reported and progress is assessed at the national level through the Department of Budget and Management (DBM). By sector, the Philippine Labor and Employment Plan (2011-16) contains specific targets and measures on the decent work goals for Filipino migrants and their families. Progress is measured and reported annually to the government's tripartite partners. At the organizational level, various statistical reporting procedures are set in place (e.g., the DOLE's monthly Statistical and Performance Reporting System or SPRS).

11. Certain indicators are also monitored through specialized systems. For instance, the 2nd National Strategic Action Plan (2012-16) of the Inter-Agency Council Against Trafficking (IACAT), a results-based monitoring and evaluation framework, tracks and measures the efficiency and effectiveness of efforts in addressing human trafficking issues. The DOLE also implements a case monitoring system for adjudication of recruitment violation and settling complaints using Single-Entry Approach to measure the speed of case disposition.

(d) Provide information on the results of any evaluation made in relation to the implementation the Convention and of relevant national legislation

12. In 2009, the Philippine Institute for Development Studies (PIDS), in its work on "Institutions Serving Philippine International Labor Migrants," discussed the overseas employment governance structures and their mandates and how these institutions work together with NGOs in providing support to migrant workers. It cited that the regulatory framework for deployment of overseas workers that has been honed through time has been hailed by many as a model for other countries.

13. Relevant recommendations of a 2005 ILO study were addressed in subsequent laws and other measures adopted by migration-related agencies as discussed in relevant sections of the report⁴⁹. The ILO study pertains to the assessment and development of policy measures to upgrade the capability of Philippine missions overseas to deliver services to Filipino migrant workers and the deregulation of the overseas employment sector.

⁴⁸ In 2012, ten (10) Embassies and Consulates were closed to re-align personnel and resources to ATN-heavy posts. In 2014, the operating budget for the FWRCs in Riyadh, Kuwait, Qatar and the UAE were doubled. Additional female Labor Attaches and Welfare Officers were also deployed to Posts in the Middle East to ensure that gender-sensitive issues related to migration are handled effectively.

⁴⁹ For example, Republic Act No. 9422 was passed in 2007 and gave POEA enhanced powers to regulate the recruitment industry.

2. Please provide information on the progress made by the State party in gathering, processing and analyzing data relevant under the Convention, including through the Shared Government Information System on Migration (SGISM), and in improving the compilation of statistical data, or studies and estimates, on migrants in an irregular situation, in line with the recommendation contained in paragraph 20 of the Committee's previous concluding observations

14. The State party reiterates the importance of effective collection and utilization of migration data to support policy and programme implementation. Pursuant to existing laws, the DFA and DOLE submit to the legislative branch a semi-annual Report to Congress on Filipino Overseas. A biennial survey is conducted by the National Statistics Office (NSO) to collect data on overseas Filipinos and their socio-economic characteristics.

15. In 2013, the Philippine Country Migration Report was published in cooperation with the International Organization for Migration (IOM) and Scalibrini Migration Center. Said report contains migration data and statistics over the years and an analysis of the country's experience in terms of labour migration governance.

16. The implementation of the SGISM is a work in progress. The Overseas Filipinos Information System (OFIS) of the OPRT, which regularly gathers and updates information on the whereabouts of overseas Filipinos, particularly in crisis-prone regions, is designed to enhance and complement the SGISM.

17. Efforts are ongoing to connect the databases of migration-related agencies with the assistance of the Advanced Science and Technology Institute of the Department of Science and Technology (DOST). The POEA and Bureau of Immigration (BI) started the phased implementation of a data-sharing system as part of the preventive measures on illegal recruitment and human trafficking. Other existing databases that will contribute to the SGISM also include the Foreign Labor Operations Information System (FLOIS) of DOLE and the National Recovery and Reintegration Database (NRRD) for trafficked persons of the DSWD.

3. Please provide information on the State party's cooperation with civil society organizations working on migrants' rights in relation to the implementation of the Convention and the preparation of its periodic reports (see CMW/C/PHL/CO/1, paragraphs 22 (c), 50 and 52)

18. The State party engages civil society organizations (CSO) and non-government organizations (NGO) as part of its comprehensive effort to promote the rights of Filipino migrant workers. The land-based and sea-based OFW sectors and the women sector are represented in government policy-making bodies on migration, such as the POEA Governing Board and the OWWA Board of Trustees. Three (3) NGOs, representing the women, children and migrant workers sectors, also sit in the IACAT.

19. In May 2013, the Overseas Land-based Tripartite Consultative Council (OLTCC) composed of the POEA, CSOs, licensed private recruitment agencies, and key government agencies was established. The OLTCC (a) serves as a forum for labour, management and government to address OFW issues and concerns together; (b) acts as an advisory body to the Secretary of Labor and Employment on policies and programmes affecting labour, employers and their intermediaries in the overseas employment sector; and (c) strives for consensus on matters brought to it for consideration, deliberation and/or resolution.

20. CSOs are also consulted under the ASEAN initiative to protect migrant workers. The consultation meeting highlighted the work of the ASEAN Committee on Migrant Workers (ACMW) and the progress on developing an ASEAN binding instrument on the protection and promotion of the rights of migrant workers.

21. CSOs and faith-based groups are active partners in implementing programmes for the protection of Filipino migrants, such as the following:

1. On the fight against illegal recruitment and trafficking in persons. There are 28 MOUs with CSOs which sustain coordinated efforts in the intensified campaign against illegal recruiters at the local level, particularly among youth, women and migrant workers.
2. On the establishment and operation of local OFW desks. There are partnerships with six NGOs, 39 academic institutions, 13 OFW Family Circles and 536 local government units for this programme.
3. On the conduct of post arrival orientation and other services. State party has partnership with Filipino associations in major countries of destination of emigrants through which newly arrived Filipinos in the host countries are linked with migrant resource centers, support groups, and Filipino associations.
4. On the review of programmes and evaluation of programmes. The State party conducted a series of consultation with CSOs on programmes for migrants, women and children.

22. Following the concluding observations of the Committee, the State party through the Presidential Human Rights Committee (PHRC) convened a consultative/validation meeting with CSOs and NGOs in September 2013 to solicit comments on this second compliance report to the UNCMW⁵⁰.

4. Please provide information on the measures taken by the State party to evaluate and further intensify training programmes on the application of the Convention for public officials working in the area of migration, including consular officials, border police officers, social workers, judges and prosecutors (CMW/C/PHL/CO/1, para. 22 (a))

23. The State party continues to implement capacity-building programmes for public officials and officers with migration and migration-related functions. Gender issues are incorporated in relevant modules. In 2013, the various training courses covered the following:

1. Foreign service personnel were trained on pre-departure programmes. The training modules include courses on Philippine foreign policy, relevant international instruments, rights-based approach on migrant protection, anti-human trafficking, labour migration and consular services, case counselling and crisis management, gender sensitivity, migration issues such as HIV/AIDS, among others. Specialized courses for Career Ministers and Officers were also provided.
2. 150 government officers and personnel from various agencies were trained by the OPRT as crisis managers, technical experts and first responders. The training programme includes special modules on national security, emergency preparedness and response and negotiation skills in crisis situations.
3. Labor attachés, welfare officers and POLO administrative staff were trained on POLO rules, procedures and operations. The training modules include policies and programme on overseas employment and workers protection; counselling, negotiating and conciliation skills; and immersion or hands-on training in handling OFW cases, complaints and emergencies.

⁵⁰ Representatives from the following organizations attended the said consultation/validation meeting: Center for Migrants Advocacy (CMA); Batis Center for Women; Migrant Forum Asia (MFA); Development Action for Women Network (DAWN); Philippine Migrants Rights Watch (PMRW); FMW Group Holdings, Inc (a recruitment agency); LEARN; and Scalabrini Migration Center. The recommendations of the CSOs were considered in preparation of the PHL report.

4. Law enforcement officers, prosecutors, social welfare officers and local government executives handling anti-trafficking, anti-illegal recruitment and anti-child labour programmes were trained based on the Manual of Procedures in Handling Complaints of Trafficking, Illegal Recruitment and Child Labor.
 5. 404 government employees and 273 agents were trained by IACAT on the programme against TIP. The course was attended by law enforcers, prosecutors, judges, government employees (social workers, labour officers, local government personnel) and members of CSOs. Manuals and guidelines were provided to aid law enforcers and prosecutors in dealing with TIP cases.
 6. Implementers were trained on the Comprehensive Delivery of Reintegration Services for Deportees, Repatriates and Returned Irregular OFWs. Service providers undertook a course on Recovery and Reintegration Program for Trafficked Persons (RRPTP) which deals with case management and delivery of direct services to trafficked persons and facilitating and documenting referrals through the sustained use of the National Referral System and National Recovery and Reintegration Database. Periodic monitoring and evaluation are conducted to ensure the proper implementation of the programme vis-à-vis achievement of its goals and targets. Yearly capacity-building activities are conducted year-round for Social Welfare and Development Assistants at the local level, and for the intermediaries, i.e., local government officials and social workers, peoples' organizations, and NGOs.
 7. Partner LGUs, Public Employment Services Offices (PESOs), NGOs, and academic institutions were trained on the Family Support Development and Reintegration Program to assist migrants in need of special services. The training included topics on migration and family, paralegal remedies, basic counselling, case intake, referral mechanism, networking, and communication and customer relations skills.
 8. 1,616 police personnel were trained on anti-trafficking in persons. The Maritime Group and Women and Children Protection Desk of the PNP participated in the Interpol Capacity-Building Program on the Prevention of Migrant Smuggling (Phase 3) Specialized Crime Training and Operation Workshops.
 9. The State party's Judicial Academy (PHILJA) integrated migration as a major subject for the training course on "Application of International Law Principles in the Philippines" attended by newly appointed Judges.
- 5. Please describe the measures taken by the State party to widely disseminate the Convention and the Committee's previous concluding observations, in particular to government departments, Parliament, the judiciary, the national human rights institution and non-governmental organizations (CMW/C/PHL/CO/1, para. 53)**
24. State party adherence to the principles and objectives to promote and protect the rights of migrants predates the adoption of the Convention. Hence, when the Convention was ratified by the State party, mechanisms for the implementation of the principles and normative framework, as contained in the laws of the State party, were already in place. By operation of these mechanisms and laws, the information dissemination of the Convention has been carried out through the various advocacies, capacity-building, print, media and public information campaign conducted by the State party and its partner agencies or organizations.
25. In 2009, the State party convened a post-reporting forum to discuss the concluding observations of the Committee with key government agencies and NGO and CSO partners.
- 6. Please provide information on measures taken to strengthen the protection of Filipino migrant workers abroad by reviewing and amending bilateral and multilateral agreements, Memoranda of Understanding or other protective measures with countries of employment of Filipino migrant workers (CMW/C/PHL/CO/1, para. 32 (a))**

26. The State party, under its amended Migrants Worker law, allows deployment only to countries that (a) have taken positive and concrete measures to protect the rights of migrant workers in addition to having labour and social laws protecting the rights of workers, including migrant workers; or are signatories to and/or ratified multilateral conventions, declarations or resolutions relating to the protection of workers including migrant workers; or have concluded bilateral agreements or arrangements with the State party on the protection of the rights of OFWs.

27. In 2012-2013, the State party forged the following labour agreements: A Protocol on the Employment of Filipino Domestic Workers with Jordan (2012); MOU on Labor Cooperation and Protocol on the Deployment and Employment of Household Service Workers with Lebanon (2012); MOU on Labour Cooperation with Kuwait (2012); Joint Communiqué on Areas of Mutual Benefit with Respect to Labour Mobility with British Columbia (2012); Agreement on Deployment of Nurses with Germany (2013); MOU on Domestic Workers with Kingdom of Saudi Arabia (2013); and MOU on Human Resource Development with Saskatchewan (2013).

28. The State party also concluded a Philippine-EU Partnership Cooperation Agreement (PH-EU PCA) and Philippine-Canada Joint Commission for Bilateral Cooperation (JCBC).

29. The State party is the first country in the ASEAN that ratified the Convention. The State party is a founding member, and continues to take active leadership roles in regional cooperation processes and multilateral forums on labour migration management and migration and development, such as the Global Forum on Migration and Development (GFMD), Colombo Process, and Abu Dhabi Dialogue which it currently chairs for 2012-2014.

30. Under the Socio-Economic Community of the ASEAN, the State party continues to negotiate for the adoption of the implementing guidelines on regional cooperation on the protection of migrant workers. Within the framework of action of ASEAN Senior Officials Meeting on Transnational Crime (SOMTC), the State party likewise shepherds negotiations on an ASEAN Convention and a regional plan of action to combat TIP.

31. In recent years, the State party has undertaken continuing review and development of bilateral agreements based on existing guidelines⁵¹. Review of existing labour agreements forged with Italy, Bahrain, UAE, Qatar, Israel, Iraq, Oman and Kuwait are ongoing. Recent BLAs not only contain general statements but specific terms and standards relating to conditions of employment for target occupations.

7. Please provide information on the mandate and activities of the Commission on Human Rights of the Philippines to promote and protect the rights of migrant workers and members of their families under the Convention, as well as on any plans to extend the mandate of the Commission to include economic, social and cultural rights of migrant workers

32. In accordance with the Paris Principle, the Commission on Human Rights of the Philippines is an independent human rights institution whose work is supported by the State party. Discussions are on-going in the Philippine legislature to further expand its mandate and strengthen its organizational capacity.

8. Please provide information on the measures taken to prevent public officials from using corrupt practices to (a) obstruct migrants' access to justice and (b) favour child labour, e.g. by stating a higher age of migrant children on birth certificates

33. The Anti-Graft and Corrupt Practices Act and the Anti-Trafficking in Persons Act impose stiff penalties to public officials who facilitate or directly participate in trafficking of

⁵¹ DOLE issued Administrative Order Nos. 383 (2010), 481 (2011) creating the Committee on Labor Agreement Matters and No. 28 (2011) providing for Guidelines and procedures on negotiating labor agreements and prescribing model Bilateral Labor Agreement.

persons, especially of women and children who are exploited for sex or labour. Punishable acts under the TIP law include facilitating exit and entry of trafficked persons in possession of fraudulent travel documents, and misrepresentation as regards age of minor or OFWs.

9. Please indicate whether the State party has undertaken and/or supported a comprehensive study on the situation of children of migrant workers. Please also describe the progress made in developing and implementing strategies, policies and programmes, in collaboration with non-governmental organizations (NGOs), to ensure the protection and promotion of the rights of migrant children through, inter alia, community support programmes, education and information campaigns and school programmes (CMW/C/PHL/CO/1, para. 46)

34. The State party continues to look after the welfare of the children of migrants, on site and those left behind in the country through relevant initiatives, such as:

1. Engagement with Atikha, an NGO focused on the economic and social reintegration of returned migrants, to undertake a study on the social costs of migration, as well as a rapid assessment of programmes and services for families left behind by overseas Filipinos.
2. Establishment and supervision of Philippine Schools Overseas (PSOs) which are operated by the private sector. Aimed to meet the education needs of Filipino children overseas, forty two (42) PSOs are currently in 10 countries with heavy OFW concentration.
3. Implementation of Leadership and Social Entrepreneurship (LSE) training programmes for migrant youth. The LSE, a cooperative work with the Associazione Pilipinas, OFPSPES and the Ateneo School of Government, has been piloted in Rome, Milan, Naples, Florence & Turin over 9 to 12 months.
4. Addressing cases of children left behind by migrant workers. Leading in this effort is the Committee on Family and Alternative Care of the Council for the Welfare of Children (CWC). Specifically, the National Plan of Action (2011-2016) includes children left behind by OFWs as a vulnerable sector in need of protection from violence, abuse, neglect and exploitation.
5. Provision of venues for regular livelihood and entrepreneurial activities and trainings and family values formation and reorientation families and children left behind by migrant parent/s. This undertaking is in partnership with Family Circles, composed of religious organizations, NGO, and private institutions

10. Please indicate whether the State party envisages ratifying International Labour Organization (ILO) No. 189 (2011) concerning Decent Work for Domestic Workers

35. The State party has ratified ILO Convention 189. It has also enacted the “Kasambahay Law” (Domestic Workers Law)⁵²

11. Please indicate whether the State party envisages making the declarations provided for in articles 76 and 77 of the Convention, as recommended in the Committee’s previous concluding observations (CMW/C/PHL/CO/1, para. 18)

36. The State party is undertaking consultations with concerned government agencies on this issue.

⁵² President Aquino signed the Instrument of Ratification of ILO No. 189 on 18 May 2012, with the Philippines Senate concurring on 6 August 2012. The ratification was registered with the ILO on 5 September 2012. The Philippines is the second country to ratify ILO Convention 189. The Philippine ratification paved the way for the entry into force of the ILO Convention. After the ratification of ILO No. 189, President Aquino signed into law Republic Act No. 10361, otherwise known as the “Act Instituting Policies for the Protection and Welfare of Domestic Workers”. It became enforceable on June 4, 2013.

II. INFORMATION RELATING TO EACH OF THE ARTICLES OF THE CONVENTION

A. General Principles

Articles 7 and 83

12. Please provide information on the implementation of the Convention in the Autonomous Region of Muslim Mindanao (ARMM) given that the ARMM has a separate cabinet and a regional legislative assembly

37. State party laws apply to territories of the ARMM, a juridical entity of the Philippines. Philippine national agencies, including those which pertain to human rights, labour and migration, either have offices or operate in the ARMM⁵³. The ARMM created its own Regional Human Rights Committee in May 2012 as provided under the ARMM Charter.

38. The ARMM organic law recognizes labour as a primary social economic force for development and affords full protection to labour, promotes full employment, and ensures equal work opportunities regardless of sex, race or creed. It upholds and protects the fundamental right of women and children, including the rights of women to engage in lawful occupation.

13. Please provide information on the steps taken by the State party to ensure that the exercise by migrant workers and members of their families of their rights under the Convention is not subject to the principle of reciprocity, in particular by aligning its domestic legislation with the Convention (CMW/C/PHL/CO/1, para. 24)

39. The Constitution of the State party has an incorporation clause where treaties entered into by the State party are read into domestic laws.

40. There are proposals in Philippine Congress to remove the reciprocity provisions in the exercise of the right to form or join unions by the migrant workers in the State party.

14. In light of paragraphs 26, 30 and 32 (b) of the Committee's previous concluding observations, please provide information on the measures taken by the State party to:

(a) Strengthen its legal assistance to Filipino migrant workers

41. Legal assistance and mechanisms are available to OFWs at every stage of the migration process – from pre-departure/pre-employment⁵⁴, on-site⁵⁵, to return and reintegration⁵⁶.

⁵³ POEA and the ARMM Regional Government (ARG), through a MOA signed in December 2003, cooperated on a campaign against illegal recruitment in ARMM, trainings for ARMM officials and personnel, technical assistance in illegal recruitment cases investigation, and provision of legal services to victims. In September 2012, an MOU was entered into between and among DOLE, POEA, OWWA, CFO, the ARG and the Province of Maguindanao on an information campaign against illegal recruitment, TIP and irregular migration. In the implementation of the MOU, five (5) Pre-Employment Orientation Seminar (PEOS) sessions were conducted in different municipalities of Maguindanao, with a total of 749 participants. 135 law enforcers and prosecutors were trained on illegal recruitment and TIP. On the same month and year, the IACAT, in partnership with UNICEF, assisted ARMM to come up with its own Strategic Plan of Action Against Trafficking In Persons. IACAT also trained various officials of ARMM, including prosecutors, police officers and social workers on the identification of victims of trafficking; referral system; investigation and prosecution of cases; and on the new law against TIP. The ARMM Council Against Trafficking was set up.

⁵⁴ For the year 2012, the POEA Legal Assistance Division (LAD) endorsed 148 cases of illegal recruitment involving two hundred sixty three (263) complainants to the Prosecution Division (PD) for evaluation and endorsement to the proper prosecution offices. From January to November 2013 alone, LAD received 166 cases of illegal recruitment and related cases, involving 321 victims.

⁵⁵ Filipino nationals overseas involved in criminal cases and legal disputes assisted through the ATN Unit of Philippine embassies and consulates. For employment related cases, the Philippine Overseas Labor Offices (POLO) provide counselling services and exhaust all available remedies to amicably settle all disputes and invites parties to conciliation meetings/proceedings. When conciliation is not possible, filing of complaints through a labour arbitration process in the host country is explored, where the worker is assisted at all stages of the proceedings. The processes for case handling and management are clearly defined in the POLO Manual.

⁵⁶ The POEA assists in filing administrative or criminal charges against recruitment agencies on return of OFWs to the Philippines. Unpaid salaries and other money claims may also be pursued at the National Labor Relations Commission (NLRC). Assistance of the police and prosecution offices on criminal cases are also provided. Many

There are separate and distinct funds for legal assistance for migrants, such as the Legal Assistance Fund administered by the DFA⁵⁷ and the legal fund administered by the OWWA for its members.

(b) Inform Filipino migrant workers of the administrative and judicial remedies available to them

42. Administrative and judicial remedies are incorporated in the Pre-Departure Orientation Seminar (PDOS), Pre-Employment Orientation Seminar (PEOS), the Anti-Illegal Recruitment and Trafficking in Persons (AIR-TIP) Campaign and capacity-enhancement trainings that are organized at the local level. Legal counselling to OFWs, including advice on available administrative and judicial remedies/options, legal and judicial procedures and the repercussions and implications of options are also provided. Informing OFWs of their legal options at countries of destination is part of the functions of POLOs and ATN Units, especially during initial contact with workers or during provision of legal assistance.

(c) Increase awareness among Filipino migrant workers, especially women domestic workers, on the available mechanisms for bringing complaints against employers so that any abuses can be investigated and punished

43. In keeping with the third pillar of the Philippine Foreign Policy, which is assistance to nationals abroad, the State party network of Philippine Foreign Service Posts (FSPs) and POLOs reach out to OFWs to increase their awareness of available mechanisms for bringing complaints against erring employers for redress and remedy. In fulfilling this mandate, FSPs and POLOs utilize the Filipino community organizations, NGO's, CSOs, host government service institutions, and international organizations to supplement and enhance their capacity to respond to the need for assistance and protection of OFWs.

(d) Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families

44. The State party, through its foreign posts, provides protection to migrant workers in addition to consular services. ATN is central to the mandate of Philippine Foreign Service and other government personnel assigned overseas, and as such, ATN training is mandatory for them before and during deployment to post.

45. The embassy and consulates have designated hotline numbers to receive calls for assistance or report complaints. A dedicated 24/7 Operations Center in the Philippines serves as, among others, a centre for receiving and acting on calls for assistance from migrants through sms, email, or phone call⁵⁸.

(e) Ensure that its diplomatic and consular staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino migrant workers, especially in those countries categorized as "highly problematic" by the Department of Foreign Affairs (DFA) and the Department of Labour and Employment (DOLE)

46. All diplomatic, consular, and labour and welfare personnel are required to attend seminars regularly done at Posts especially on labour laws of host country and laws on TIP. Officials or employees on first-time deployment undergo pre-deployment training and

local government units in the Philippines maintain OFW Desks. Other than providing information and guidance about migration or overseas work, these desks provide legal advice or referrals for legal assistance.

⁵⁷ The LAF is used to provide lawyers and other legal services to overseas Filipinos in distress, including, among others: (1) appeal for Filipinos sentenced to death abroad; (2) criminal cases where Filipinos are accused or victims; (3) labour cases involving Filipino migrant workers; (4) cases involving Filipino victims of TIP for the prosecution of traffickers or for the application for social benefits for victims as allowed by the host countries; (5) tort/civil cases to enforce the rights of Filipinos that have been violated abroad. From January 2013 to December 2013, a total of Php 39,441,582.14 of LAF was utilized for the benefit of overseas Filipinos.

⁵⁸ Other than the OWWA Operation Center, the DFA maintains a 24/7 duty officer unit to receive calls and acts on calls assistance while the CFO manages the IACAT 1343 Action Line Against Human Trafficking for TIP victims in need of assistance.

development programmes which include host country culture, immigration and employment laws and regulations.

(f) Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues

47. The Commission on Audit (COA), a constitutional body with the power to audit all accounts pertaining to all government revenues and expenditures/uses of government resources, regularly deploys⁵⁹ audit teams to all FSPs of the country. Financial audits of government personnel are also conducted annually through submission of required reports to the DBM and the Civil Service Commission (CSC).

15. Please provide information on the assistance provided through embassy and consulate staff abroad to migrant workers victims of the “sponsorship” or kafalah system in Gulf countries, especially for women domestic workers, and on endeavours to negotiate a reform or review of such a system with the relevant countries of employment (CMW/C/PHL/CO/1, para. 32 (d))

48. Assistance and other forms of support are available to Filipino migrant workers who become victims of the kafalah system, which includes among others, negotiations with employer as regards respecting the terms of contract, renewal/issuance of iqama, provision of return ticket and in cases where the OFW has been arrested or detained, negotiating for the withdrawal of case/amicable settlement, jail visits, provision of lawyer and interpreter during court hearings⁶⁰.

49. The State party pursued bilateral arrangements with countries of destination (COD) specific to the enforcement of the Standard Employment Contract (SEC). Bilateral arrangements are in place with the Kingdom of Saudi Arabia and Jordan, while negotiations are on-going with Lebanon and the United Arab Emirates.

B. Part III of the Convention Articles 10 and 11

16. Please provide information on the measures taken to fight the exploitation of prostitution of migrant women in the State party, particularly in the context of sex tourism, as well as on the measures taken to protect migrant children in the State party from forced labour and from sexual exploitation and abuse

50. The State party has no record of migrant women sexually exploited in its territory, especially in the context of alleged existence of sex tourism. However, should there be exploited migrant women that are sexually exploited, they will be treated as victims and subject to assistance as victims under Philippine laws⁶¹.

51. The State party implements programmes to address child labour, such as the Kabuhayan para Sa Magulang ng Batang Manggagawa (Livelihood for Parents of Child Laborers), Project Angel Tree and the Campaign for Child Labor Free Barangays⁶² Combating child labour is also included in the Philippines Development Plan 2011-2016.

⁵⁹ Regular audit is done every two years in FSPs.

⁶⁰ In cases where OFWs are trapped in countries in crisis such as those that happened in MENA during the Arab Spring, the Philippines deploys Rapid Response Teams, mobilizes even its senior officials, and in numerous cases, these teams are led by the Secretary of Foreign Affairs to mount rescue and repatriation operations. Recently, assistance to OFWs in distress and stranded in a country in crisis included buying off her/his contract from her/his employer.

⁶¹ These laws include, among others, the Expanded Anti-Trafficking Law (R.A. No. 10364, amending R.A. No. 9208), Anti-Child Pornography Law (R.A. No. 9775), Worst Forms of Child Labor Law (R.A. No. 9231, amending R.A. No. 7610) and Anti-Child Abuse, Exploitation and Discrimination Act (R.A. No. 7610, as amended). There are various interagency bodies that coordinate and monitor implementation of the above laws such as the IACAT, ICACP, CSPP and the NCLC.

⁶² The conditional cash transfer program of the State Party provides monthly allowance for poor families and requires that the school age children of beneficiary families to be in school and not at work for continued availment of the benefit.

Article 29

17. Please provide information on the measures taken to promote the birth registration of Filipino migrant children abroad, including those in an irregular situation, and to ensure the birth registration of foreign migrant children in the State party

52. All Philippine Consuls serve as civil registrars in their respective jurisdictions. They are responsible for reporting all foreign vital events (births, marriages, deaths) that occur among Filipinos abroad, even if they are irregular migrants. They also conduct consular missions to places which are far from the embassies and consulates in order to, among other tasks, register Filipino children. In addition, representations are also being made with the host countries to allow registration of Filipino children born in the territories regardless of immigration status of Filipino parents.

53. Philippine laws⁶³ allow registration of children born to migrants at the local civil registration office in the places where the birth occurred.

Article 33

18. Please provide information on pre-departure programmes for Filipino nationals considering migration. In this regard, please indicate the measures taken by the State party to implement the recommendations contained in paragraph 22 (b) to (d) of the Committee's previous concluding observations

54. The PDOS is a mandatory training conducted by accredited providers for all departing migrant workers in preparation for new life overseas. It enables OFWs to successfully adjust to their new environments. Language training and culture familiarization courses are provided for free and are mandatory for all household workers. The PDOS also includes stress management and basic life support skills.

55. The PDOS is also conducted for Filipino emigrants; Filipino spouses of foreign nationals, and exchange visitor and Au Pairs programmes participants to ensure preparedness for the psychosocial challenges that come with leaving the home country.

56. The PEOS is also conducted to provide information to prospective migrants at an earlier stage⁶⁴. Designed to help individuals considering to work abroad make informed decisions, the PEOS provides information on the realities of migration or overseas employment. It teaches the processes in applying for overseas work and avoiding illegal recruitment. It is a comprehensive and massive public information and education programme of government that uses multi-media organizations, church-groups, NGOs, local government units, schools and other relevant private entities. It specifically targets areas with high deployment of OFWs and high incidence of illegal recruitment, as well as communities rendered vulnerable by calamities and conflicts.

19. Please provide information on the measures taken to ensure that migrant workers arriving in, or preparing to come to, the State party have access to clear information on immigration procedures, including full information on exit and entry visa guidelines and registration. Please clarify what Government institution is responsible for providing such information and if any coordinated policies, programmes or legislation have been developed to ensure transparency and accountability in this process

57. The BI is the primary government agency responsible for implementing immigration laws, rules and regulation of the State party. It is the main information source on immigration procedures which available and accessible through public posting and in the BI website (www.immigration.gov.ph) and social media (Facebook: [facebook.com/OfficialBureauofImmigration](https://www.facebook.com/OfficialBureauofImmigration); Twitter: twitter.com/immigrationPH).

⁶³ Such as the Law on Registry of Civil Status (Commonwealth Act No. 3753)

⁶⁴ For 2012, there were 170,378 PEOS participants all over the Philippines.

C. Part IV of the
Convention
Article 40

20. Please provide information on the measures taken by the State party, in particular with respect to legislative amendments to sections 269 and 272 (b) of the Labour Code, to guarantee to all migrant workers and members of their families in a regular situation in the State party the right to join, form and to form part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention, as well as with ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize, and irrespective of reciprocity (CMW/C/PHL/CO/1, para. 34)

58. The State party accords foreign nationals who are residing in its territory the right to self-organization, allowing them to freely form associations, social clubs and related groupings as long as their purposes are not contrary to law. Foreign nationals in business enterprises are allowed to form, join, and assist labour unions of their own choosing provided they have valid working permits issued by the appropriate government agencies and maintains an official employer-employee relationship with their respective managements.

59. Moreover, trade union rights are available to foreign nationals who are lawfully residing and working in the Philippines if they are nationals of a country which grants the same or similar rights to Filipino workers, or a signatory to ILO Convention Nos. 87 or 98.

60. Proposed amendments to Articles 269 and 270 of the Labor Code are being discussed in the State party's legislature.⁶⁵

Article 41

21. Please provide information on the measures taken to implement the recommendations contained in paragraph 36 of the Committee's previous concluding observations, with a view to ensuring the right of Filipino migrant workers to participate in public affairs and to vote and to be elected at elections of the State party

61. The Filipino migrant workers' right to participate in public affairs and the right to vote and be elected at elections of the State party have been institutionalized through the enactment of the Overseas Absentee Voting Act of 2003 (R.A. No. 9189). Several measures were undertaken to realize the objective of the law, such as intensive information campaign, field registration of voters activities, setting up of dedicated secretariat, introduction of "Voting by Mail" to 57 Foreign Service Posts, and conduct of field voting and drop box/pick up point voting in places with large numbers of OFW voters. The State party also conducted a non-binding test of internet voting in one country.

D. Part VI of the
Convention
Article 64

22. Please provide information on the measures taken to prevent irregular migration, including through international agreements, policies and programmes. Please include information on how such measures have been mainstreamed in overall migration policies and programmes and whether a measurable result on the numbers of irregular migrants has been determined

62. The State party does not encourage irregular migration. The conduct of PEOS, PDOS, and strict enforcement of SEC are some of the preventive measures to discourage irregular migration. In addition, the State party pursues bilateral agreements with countries hosting Filipinos to strengthen the mechanisms of discussion and the settlement of concerns and are focused on the following areas of cooperation: regulation of deployment of labour; preservation, promotion, and development of workers' welfare in accordance with existing laws; exchange of information and continuing studies in the area of labour, and other technical and human resource development cooperation.

⁶⁵ A bill is pending before the House of Representatives (House Bill No. 894), entitled An Act Allowing Aliens to Exercise Their Right to Self-Organization and Withdrawing Regulation of Foreign Assistance to Trade Unions, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines. The aim is to extend the right to self-organization to aliens in the Philippines and withdraw the prohibition on foreign trade union organizations to engage in trade union activities and the regulation of foreign assistance to Philippine trade unions.

63. The State party is fine-tuning its document verification processes at exit points to avert potential trafficking situations and protect possible victims from exploitation, while upholding the right to travel of other citizens. Task forces, composed of inter-agency representatives, are stationed in key exit points in the country.

64. The State requires departing Filipino workers to secure an Overseas Employment Certificate (OEC) to ensure proper documentation and fulfilment of all government regulations for overseas employment.

65. The State party is formulating a legislation that will prevent and combat smuggling of migrants and protect the rights of smuggled migrants, complementing existing TIP measures and address irregular migration.

Article 65

23. In line with the recommendations contained in paragraph 28 of the Committee's previous concluding observations, please provide information on the measures taken by the State party to improve the situation of Filipino migrant women facing situations of vulnerability by:

(a) Conducting a thorough assessment of the situation of Filipino migrant women, including their income in the informal sector, and taking concrete measures to address the feminization of migration comprehensively in its labour migration policies, and ensuring minimal social protection for Filipino migrant women

66. The State party formulated its Women's Empowerment, Development and Gender Equality Plan 2013-2016, or the Women's EDGE Plan, to address, among others, sectoral concerns of women, including issues faced by women migrant workers⁶⁶.

67. The State party enacted the Magna Carta of Women (MCW) or Republic Act No. 9710 which mandates concerned government agencies to exert efforts to create local employment and other economic opportunities to address out-migration and for the provision of skills and entrepreneurship development of returning women migrant workers, reduction/elimination of transfer costs of remittances, and provision of access to investment opportunities for remittances in line with national development efforts. The same law requires the appointment of Gender Focal Point Officer (GFPO) in FSPs to handle gender concerns of women migrant workers.⁶⁷

(b) Negotiating more secure employment opportunities and terms and conditions for Filipino migrant women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent

68. The State party continues to negotiate bilateral labour agreements with destination countries. The State party also continues to assess the situation in other countries to check for protective guarantees for migrant workers. As of December 2013, 192 countries have been found by the State party to be compliant with the protection guaranty requirements for destination countries of OFWs.⁶⁸

⁶⁶ The Women's EDGE Plan 2013-2016 includes five (5) main parts as strategic key result areas: Economic Empowerment, Social Development Rights, Security, Justice and Peace, Gender and Environment, Biodiversity and Climate Change and Gender-Responsive Governance. Economic Empowerment includes women in formal, informal and migration sectors.

⁶⁷ As an example, the designated GFP Officer in the Philippine Embassy in Paris launched the establishment of a Violence Against Women (VAW) desk in response to the various situations of violence faced by Filipina migrants in France. The launch was made during the celebration of the National Consciousness Day on VAW. Similar to the VAW desks set up in barangays (villages) in the Philippines, the desk receives victims of VAW, provides psychological or medical help and assists on possible legal action under French law.

⁶⁸ As of December 2012, 191 countries have been found by the State Party to be compliant with the protection guarantees requirement for destination countries of OFWs.

- (c) *Carrying out gender training and sensitization for government officials dealing with migration issues, in particular those providing legal and consular assistance to Filipino migrant workers abroad seeking justice against abuse in the workplace*

69. The State party deploys female labour attaches and welfare officers, social workers and medical personnel in countries where there is large concentration of Filipino women workers. It has added female welfare attachés and staff in Riyadh, Jeddah and Jordan. It is also redesigning the deployment plan to rationalize deployment of welfare officers to destinations with significant number of women migrant workers. And it incorporates the Code of Conduct for Government Employees and Customer Care in its training programmes for its officers and staff.

70. The State party Foreign Service officers, labour and other Philippine officials dealing with migrants undergo training on TIP and gender-sensitive handling of cases involving women migrant workers. They are also required to attend pre-deployment training that includes modules on migration and development, trafficking in person, illegal recruitment, gender issues, and case management, among others.

71. Female immigration officers with sufficient background on gender and development (GAD) programmes are tasked to assist profiled female victims in interviews and other processes conducted by the BI to encourage victims to divulge necessary information on their respective cases.

- (d) *Implementing the outcome document of the International Conference on Gender, Migration and Development called the Manila Call to Action as a tool for informed policy decision-making and advocacy*

72. The State party utilizes the Manila Call to Action as a tool to formulate measures to strengthen the protection of migrant women workers⁶⁹ and their families and to advocate the adoption of international instruments such as the ratification of ILO Convention 189 and the enactment of national laws, such as Republic Act No. 10631.

- (e) *Liaising with local and international partner networks to provide services and support to migrants and to advocate for migrants' rights*

73. The State party FSPs maintain close relations with NGOs, church-based groups, local public and private service providers, and the Filipino communities in their respective host territories to enhance capacity to extend assistance to migrant Filipinos, particularly Filipino migrant women facing situations of vulnerability; and advocate for migrants' rights. In partnership with Filipino associations overseas, mostly from CODs of emigrants, State party conducts post-arrival orientation and other services to facilitate integration of newly-arrived migrants in their host communities.

74. The State party also partners with local government units, academe, faith-based organizations, professional associations, non-government organizations and other civil society partners in the campaign against illegal recruitment and TIP, as well as in conducting PEOS and community education on migrants' rights.

Article 66

24. Please provide information on the measures taken to review the role of private recruitment agencies and to strengthen the existing licensing system for recruitment agencies, migration regulation and control mechanisms to prevent private recruitment agencies from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters (CMW/C/PHL/CO/1, para. 42).

⁶⁹ These measures include a) the conscious integration of gender perspectives in the development and implementation of PDOS to ensure safe migration; b) socio-economic and psychological programs for more sustainable reintegration of returning women migrants; c) continuous capacity building of government officials dealing with migrants on gender-sensitive handling of cases of women migrant workers; d) adoption of a standard bilateral agreement to ensure equal treatment and opportunities in terms and conditions of employment; and e) establishment of the Remittance for Development Council, among others.

Please also indicate whether the State party envisages ratifying ILO Convention No. 181 (1997) concerning Private Employment Agencies

75. Along its commitment to pursue ethical recruitment principles, the State party initiated the crafting of the “Commitment to Ethical Conduct and Best Recruitment Practices for Land-based Agencies” and completed the draft “Code of Ethics for Manning Agencies.” The land-based agencies have committed to, among others, assist and advise workers to enter into overseas employment in the most cost-effective manner; not enter into any arrangement with any entity that shall increase the burden to the workers; endeavour to eliminate placement fees; and comply with recruitment regulations. The sea-based agencies committed to represent seafarers in an ethical and professional manner and negotiate for the best terms and conditions of employment. As of June 2012, 24 industry associations from the land-based and sea-based agency sectors signed the said codes of ethics.

76. The State party strengthened the licensing system of recruitment agencies by requiring the attendance of officials and employees of said agencies to attend either the Pre-Licensing Orientation Seminar (PLOS) or the Continuing Agency Education Program (CAEP) as preconditions for issuance, upgrading and renewal of licenses.⁷⁰

77. Participation of private recruitment agencies in the overseas employment programme is regulated by the State party to ensure that the rights of OFWs are protected. Charging excessive fees is a serious offense and is dealt with administratively and criminally. Philippine private recruitment agencies are also jointly and severally liable with their foreign principals to fulfil contractual obligations and claims of workers. OFW money claims are satisfied from escrow accounts that the private recruitment agency open as part of the licensing requirements.

78. The State party conducts regular inspection visits of licensed recruitment agencies to determine their continued compliance with rules, regulations and applicable laws. Violation of recruitment rules may result in either suspension or cancellation of agency license. 110 licenses of private recruitment agencies were cancelled in 2012-2013.

79. The State party is reviewing and consulting stakeholders on ILO Convention 181, especially its implications on existing policies.

Article 67

25. Please describe the progress made by the State party in strengthening the reintegration of returning migrant workers and members of their families, as recommended in paragraph 44 (a)-(e) of the Committee’s previous concluding observations. Please indicate if bilateral agreements facilitate the return and reintegration of migrant workers and how the National Reintegration Centre for Overseas Filipino Workers operates and coordinates its activities with other relevant institutions to promote the return and reintegration of Filipino migrant workers

80. The State party’s reintegration agenda facilitates the re-integration of returning OFWs by offering tax incentives, access to government financial institutions and other benefits that are usually offered to foreign investors. The agenda also helps OFWs achieve financial stability through training, investment and savings programmes.

81. The State party established the National Reintegration Center for Overseas Filipino Workers (NRCO) to develop and support programmes, projects and services on livelihood, entrepreneurship, savings, investments, financial literacy including assistance to job searching for returning Filipino migrant workers and their families. The NRCO has a PhP 2 billion (US\$450,000) programme fund for OFWs and their families who plan to put up

⁷⁰ A Pre-Licensing Orientation Seminar (PLOS) is required for owners, partners, presidents, CEOs, and branch managers of private recruitment agencies. PLOS participants are introduced to the overseas employment program, the licensing policies, pertinent rules and regulations governing overseas employment, responsibilities or obligations of agencies, and measures to prevent illegal recruitment/TIP. A Continuing Agency Education Program (CAEP) was institutionalized to further professionalize and improve the technical capabilities and moral values of officers and staff of employment agencies.

businesses to maximize the gains of overseas employment, mitigate the social costs of migration, and cushion the impact of forced repatriation. The NRCO is also implementing Balik-Pinay Balik Hanap-buhay Project, a skills-training and grant programme in the form of business starter-kits for home-based income generating occupations.

82. The State party facilitates on-site training and processing of requirements of distressed OFWs for entitlement to reintegration packages (livelihood starter kits) upon their arrival in the Philippines.

83. The State party has a loan scheme for returned OFWs with an annual rate of 7.5 per cent in declining balance with a flexible payment scheme pegged at five years and an incentive grace period of two years. A borrower can obtain a maximum loan of PhP2 million (US\$45,000). Since its launching in 2011, the loan scheme has extended PhP 443.7 million (US\$9.86M) worth of loans, capitalized 648 entrepreneurs, and has generated an estimated 2,995 jobs.

84. The State party reinforced its reintegration agenda with the guidelines for the implementation of the Comprehensive Delivery of Reintegration Services for Deportees, Repatriates and Returned Irregular Overseas Filipino Workers and made it a regular programme of DSWD. The programme has the following major components: Advocacy and Social Preparation, Technical Assistance and Capability Building of Implementers, Networking and Resource Generation, Data Banking and Documentation, Service Delivery, and Monitoring and Evaluation.

Article 68

26. Please provide information on the measures taken to implement the recommendations contained in paragraph 48 (a)-(f) of the Committee's previous concluding observations in order to combat trafficking in persons

(a) Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to combating trafficking, especially of women and children

85. The State party implements the Philippine Anti-Trafficking Database (PATD) as the comprehensive national mechanism for collecting, storing and generating information on TIP. The PATD has two components, the National Recovery and Reintegration Database (NRRD) and the Law Enforcement and Prosecution Database (LEPD). The NRRD, is a web-based facility for service providers and case managers to document and keep track of the delivery of services for trafficked persons. The LEPD, also a web-based facility, is designed for law enforcers and prosecutors. It tracks the progress of the investigation and prosecution of TIP cases. Both systems can generate reports for use in the implementation, review and development of the State party's anti-TIP initiatives.

86. Complementing the PATD is the National Referral System (NRS) for the Recovery and Reintegration of Trafficked Persons. The NRS strengthens the referral network of service providers and ensures assistance and protection to trafficked persons.

87. The State party, with support from ILO-IPEC, developed the Child Labor Knowledge Sharing System (CLKSS) in 2011 as an information technology tool for sharing relevant data, fostering communication, improving programme monitoring, automating child labour case referrals, and facilitating knowledge exchange between agencies with different mandates. Its main feature is the centralized database on reporting of child labour incidence nationwide via its online reporting form which also allows anonymous reporting by the public of child labour incidents.

(b) Vigorously ensure effective enforcement of anti-trafficking legislation and increase efforts to improve the record of prosecutions, convictions, and punishment for traffickers and public officials who profit from and are involved in trafficking and bring perpetrators to justice

88. The State party amended its TIP law to strengthen the provisions on law enforcement and prosecution. The amended TIP law now penalizes attempted trafficking and accessories or accomplices to the offense of TIP; providing for extraterritorial application of the law; and enhanced protection to trafficked persons.

89. The State party established Inter-Agency Committee against Trafficking and Violence against Women and their Children in 17 regions, 40 provinces, 38 cities, and 82 municipalities. These mechanisms provide holistic support to migrants and their children who have survived domestic violence, rape, sexual assault, harassment and other forms of gender-based violence. The inter-agency committee also organized several task forces to immediately respond to trafficking cases, created a special team of prosecutors to prosecute TIP cases⁷¹, and developed policies and guidelines on investigation and prosecution of trafficking cases.⁷²

90. The State party directed all its public prosecutors to prioritize and fast-track the resolution and trial of TIP cases, with further instruction to oppose motions designed to delay the prosecution, and to prohibit the dismissal of TIP cases on grounds of Affidavit of Desistance executed by the victims or his/her guardians. Judges at trial courts were also directed to expedite and prioritize the disposition of TIP cases, and submit the list and status report of cases pending in their respective courts⁷³.

(c) Strengthen anti-illegal recruitment campaign and provide adequate funding for the implementation of the National Strategic Plan of Action against Trafficking

(d) Continue collaboration with all relevant partners to increase advocacy, information, education and overall public awareness activities

91. The State party is committed to strengthen its anti-illegal recruitment campaign and provide adequate funding for the implementation of the national strategic plan of action against trafficking. It is also committed to continue to collaborate with relevant partners in advocacy, information, education, and overall public awareness activities.

92. The State party proactively responded to the need of the overseas worker-applicants for reliable information on overseas employment programme, procedures and documentary requirements, advantages and disadvantages of overseas employment, government services, and modus operandi of illegal recruiters and traffickers PEOS⁷⁴.

93. Part of the prevention strategy is the distribution of information materials to targeted communities. These materials include information on the modus operandi of illegal

⁷¹ There are 20 prosecutors at the DOJ main office specifically designated to handle and prosecute TIP cases. Sixty (60) prosecutors serve in the National Capital Region and in various provincial and city prosecution offices. They are tasked to conduct investigation and prosecute TIP cases. There are also 43 prosecutors designated to assist law enforcement operatives in their case build up. In addition to the foregoing key personnel, there are 154 technical assistants helping the DOJ, NBI, the IACAT task forces and the Secretariat in handling the IACAT's daily operations and implementation of programs and activities.

⁷² These guidelines include: a) Standard Operating Procedures for Task Forces Against Trafficking in Persons in International Airports; b) Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases; c) Model Local Ordinance against Trafficking in Persons; d) Manual on the Recovery and Reintegration of Victim-Survivors of Trafficking; e) Philippine Guidelines in Handling Trafficked Children, and f) Philippine Guidelines in Handling Trafficked Women.

⁷³ As of January 2014, 121 cases of TIP involving 140 traffickers resulted in conviction. Ninety-two (92) or 76% of the total number of convictions were obtained from the period July 2010 to January 2014. Moreover, simultaneous with the filing of criminal cases against the recruiters or traffickers is the filing of administrative cases against government officials or employees involved in the acts of TIP. Twenty-seven (27) administrative cases have been filed against 67 government employees involved in TIP cases.

⁷⁴ There had been 4,505 PEOS sessions conducted by the State Party and by its program-partners in the past 5 years that benefited a total of 562,179 participants. These sessions were held nationwide either in schools/universities, churches, communities, or State Party offices. The other PEOS channels are – PEOS in the Air (guestings in TV and radio public affairs programs) and in shopping malls. For 2011-2013, partnerships with 241 local governments units were formed up for the conduct of PEOS.

recruiters and how to avoid illegal recruitment, as well as remedial venues available to victims of illegal recruiters⁷⁵.

94. The State party also conducted seminars for law enforcers and prosecutors, public employment service officers and local government officials on the anti-illegal recruitment provisions of the amended Migrant Workers law and the amended TIP law⁷⁶ and on the identification of illegal recruiters⁷⁷. Capability enhancement trainings were also held for public employment services officers and other local partners on overseas employment and recruitment malpractices in the form of trainers' training for programme partners from various government and NGO entities to meet the objective of the programme of reaching out to the grassroots⁷⁸.

95. The State party's national strategic plan on trafficking, the IACAT StratPlan, provides strategic direction in the courses of action of the government against TIP until 2016. Since 2012, at least PHP 2 million (US\$45,000) have been allocated annually by the IACAT for the implementation of the StratPlan. IACAT member-agencies have also allotted substantial funds for the implementation of the plan.

96. To engage the public and encourage vigilance in fighting TIP, the State party launched the 1343 Action Line Against Human Trafficking on 15 March 2011 as a 24/7 hotline facility that responds to emergency or crisis calls from victims of TIP and their families. It can be reached from any point in the country. Online reporting is also possible by accessing www.1343actionline.ph. A total of 7,762 calls were received in 2012, involving 130 actual cases with 78 victims.

97. Under the Community Education Program (CEP), the State party assists prospective migrants make informed decisions on working or migrating abroad, as well as generating community involvement on migration concerns. The programme has reached 32 provinces and served 65,000 participants who have been made aware of the various migration issues, including intermarriages, and existing government policies and programmes directed against illegal recruitment, document fraud and TIP, among others.

98. The State party's CSO partners likewise undertake advocacy and prevention campaigns at the national and sub-national levels.

(e) Coordinate and monitor implementation of laws regarding forced labour and slavery, and continue training programmes in identifying and providing the necessary intervention and assistance to trafficked persons

99. As part of efforts to coordinate and implement laws on forced labour and to identify and provide assistance to trafficked victims, the State party developed two significant operational manuals: (a) Manual of Procedures in Handling Complaints on Trafficking in Persons, Illegal Recruitment and Child Labor, and the (b) Labor Dimensions of Trafficking in Persons: A Manual for Investigators, Prosecutors, Labor Inspectors and Service Providers.

100. The State party provides services to victim-survivors in forty-two (42) residential care unit/temporary shelters in different regions of the country:

1. The Haven (Substitute Home Care for Women) provides direct intervention to women victims (18-59 years old) of gender-based violence or those vulnerable to abuse and exploitation. It also provides protective service and programmes for healing and recovery;

⁷⁵ More than 63,000 copies of information and education campaign materials and 335 copies of the trilogy of audio-visual presentation were disseminated to local government officials, students, worker-applicants and NGOs.

⁷⁶ Republic Act 8042, as amended by R.A. 10022 and RA 9208, as amended by RA 10364, respectively.

⁷⁷ For 2011-2013, 123 seminars were held that served 8,435 participants.

⁷⁸ For 2011-2013, 45 trainings were held across the country with 3,146 participants.

2. Home / Center for Girls, a child-caring facility for the protection, care, treatment and rehabilitation services to abused and exploited girls below 18 years old;
3. Marillac Hills (National Training School for Girls), a child-caring facility for care and rehabilitation of female children in conflict with the law, and abused and exploited girls below 18 years old;
4. Reception and Study Center for Children, a child-caring facility extending psychosocial services to children 0-6 years old, with emphasis on child survival, development and protection;
5. Jose Fabella Center – A centre specially established and made operational in 2014 to provide services to male trafficking victims.

101. The State party established an Operations Center (OpCen) as a central coordinating centre for walk-in complainants and rescued victims of trafficking. The OpCen facilitates affidavit-taking, assists in locating witnesses, and accompanies victim-witnesses during investigations and trials. It also refers victims for appropriate psycho-social interventions and reintegration assistance⁷⁹.

102. The State party's national police organization has assisted and referred 1,122 victims of TIP to the social work department and the Visayan Forum Foundation, Inc. (VFFI) for debriefing and temporary shelter prior to sending them back to their respective hometowns.

- (f) *Continue training of prosecutors to make them fully aware of the nuances of anti-trafficking law. Similarly, continue partnerships to increase technical capacity building and training of law enforcers, prosecutors and service providers*
- (g) *Continue partnership with national and international relevant partners, including NGOs to provide services to victims*

103. The State party has been implementing a continuing training programme for prosecutors and law enforcement agencies. In between May to November 2013, six trainings were conducted for various audiences on the investigation and prosecution of TIP between May and November 2013. The participants comprised of 50 prosecutors, 88 police investigators and intelligence officers, 14 judges, two social workers and one lawyer from the Office of the Solicitor General.

104. Capacity-building trainings were also conducted for service providers, including members of the anti-trafficking task force. Law enforcement officers have been trained to enhance their capability in conducting surveillance, rescuing trafficking victims, and collecting and monitoring data on TIP cases. Trainings on the expanded anti-trafficking law were also conducted for Foreign Service Officers and Labour officials assigned in countries with significant number of trafficking incidents.

105. The State party strongly supports regional and international cooperation on combating TIP, especially women and children. In particular, the Philippines is advocating for the conclusion of an ASEAN Convention Against Trafficking in Persons. It is actively engaged in the Bali Process on TIP and Human Smuggling. In the United Nations, the Philippines sponsors periodic resolutions in the General Assembly and in the Human Rights Council on combating TIP and ensuring protection of the human rights of victims. The Philippines is also a member of the Group of Friends Against Trafficking and actively promotes the wider ratification of the United Nations Palermo Protocol, the United Nations Convention on the Rights of Migrant Workers and Their Families and ILO Convention No. 189.

⁷⁹ For the year 2012, it received a total of five hundred thirty seven (537) complaints consisting of one thousand three hundred sixty two (1,362) actual numbers of complainants/victims, of which 799 are women and 563 are men.

106. The State party works closely with NGOs in the provision of assistance to victims of trafficking. It partnered with a number of faith-based CSOs, NGOs and relevant private sector industry organizations on various anti-trafficking projects namely: International Centre for Missing and Exploited Children (ICMEC), ECPAT International, Plan International, MTV EXIT (End Exploitation and Trafficking), Center for Migrant Advocacy (CMA), DNA-Pro Kids, DAKILA, Philippine Inter-faith Movement Against Trafficking, Bankers' Association of the Philippines (BAP), Association of Bank Compliance Officers (ABCOM), Union of Local Authorities of the Philippines, and the League of Cities and Municipalities of the Philippines. The State party held three (3) NGO summits in 2013 alone.

107. The State party, with additional funding from its bilateral partner, will establish a new Victim Processing Center that to serve as a temporary shelter exclusively for victims of TIP. Similar shelters will be established in other identified hotspots nationwide.

III. ADDITIONAL INFORMATION

27. Please provide any additional information on measures adopted since the Committee's consideration of the State party's initial report in 2009 to implement the Convention and the Committee's previous concluding observations (CMW/C/PHL/CO/1, para. 51), including relevant disaggregated statistical data, as well as information on any other important developments in the State party relating to the provisions of the Convention

108. The Philippine Labor and Employment Plan 2011-2016 (Inclusive Growth through Decent and Productive Work), a sectoral plan annexed to the overall Philippine Development Plan, was formulated to provide strategic direction on labour and employment in the short term. The Plan stresses the protection of OFWs, especially those in vulnerable occupations and the expansion of social protection for Filipino migrant workers. It calls for the review of the implementation in law and practice of relevant ILO and United Nations conventions on migrant workers. Many of the strategic activities in the plan are being carried out, some of which relate to the issues raised by the Committee on Migrant Workers.

109. There are about 10.4 million Philippine nationals living and/or residing abroad. They include about 4.2 million temporary migrants (about 40%), with the Kingdom of Saudi Arabia as top destination, the rest are permanent migrants mostly living and residing in North America.

110. The number of Filipinos leaving the country for temporary work has been increasing since 2009. From 1.4 million Filipinos who left the country for work abroad in 2009, the number has increased to 1.8 million in 2012.

111. Of the 1.8 million workers in 2012, 1.4 million were land-based workers, while 366,865 were sea-based workers. For land-based workers, there were 976,591 re-hires, while 458,575 were new hires. The top ten destinations for new hires and rehires are: Kingdom of Saudi Arabia, United Arab Emirates, Singapore, Hong Kong SAR, Qatar, Kuwait, Taiwan, Malaysia, Italy, and Bahrain. Most new hires find employment as service and production workers.

112. Remittances have been increasing, reaching almost US 21.4 billion dollars in 2012. Data indicates that the share of remittances to the gross national product (GNP) over the past ten years (from 2001) had been substantial, ranging from 7.9 per cent to 10 per cent.



PHILIPPINES' 2ND IMPLEMENTATION REPORT ON THE CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

20th Session of the UN Committee on Migrant Workers

Geneva, 31 March to 11 April 2014

THE PHILIPPINES' SECOND REPORT ON THE CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

In 2011, the Commission on Human Rights of the Philippines (CHR), in partnership with the Center for Migrant Advocacy (CMA), an NGO that promotes the rights of overseas Filipinos, convened a GO – NGO⁸⁰ Forum / Workshop on the Committee's Concluding Observations. In the same year, the Commission contributed to the South East Asia National Human Rights Institutions Forum (SEANF) research on Migration through the NGO, *Migrante International* in coordination with *IBON Foundation*. This research provided an overview of the situation of Filipino Migrant Workers with particular focus on the human rights of migrants, their burdens and vulnerabilities.

With the issuance of the List of Issues in 21 May 2012 the Commission began the process of disseminating the contents of the LOIPR to migration stakeholders in preparation for its independent submission to the Committee for the Second State Party report. On 5 December 2012, a public forum entitled, "*The Human Rights of Migrants: A Public Forum on the List of Issues Prior to Reporting (LOIPR)*" was held by the Commission with the CMA. The forum was attended by different migration stakeholders and was aimed at creating collaborative reflection on the LOIPR by bringing together diverse stakeholders including government agencies. Initial inputs on the list of issues were gathered during the public forum, with commitment from State representatives to an inclusive process in the preparation of the State Report.

Following the public forum, a series of consultations were held on the LOIPR. Still in partnership with CMA, the Commission sought to gather the inputs/replies of non-government organizations and other stakeholders on the list of issues, with the end that the same shall parallel and augment the State's report. On 11 June 2013, the Manila consultation was held and was attended by 39 participants from 21 organizations. This was immediately followed by the Mindanao consultation in Davao on the 28th of June 2013 attended by 31 participants from 19 organizations. Results from the consultations were subsequently integrated into the consolidated replies of NGOs to the list of issues and submitted to the Committee by CMA.

The Commission, as CMA's partner in the design, implementation and conduct of the public forum and the subsequent consultations on the LOIPR, adopts the NGO inputs and replies to the LOIPR. In addition to the consolidated NGO report, the Commission submits the following additional replies and comments to select LOIPR.

SPECIFIC INFORMATION ON THE IMPLEMENTATION OF ARTICLES 1 TO 71 OF THE CONVENTION

The policy of the State as set forth under RA 8042 and subsequently in RA 10022 that "*the State does not promote overseas employment as a means to sustain economic growth and achieve national development*" and shall "*continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development*"⁸¹ remains yet to be fulfilled.

⁸⁰ Government Organizations – Non – Government Organizations Forum is under the Treaty Monitoring program of the Commission and has received funding assistance from the United Nations Development Programme – Democratic Governance Portfolio's Strengthening the Human Rights Infrastructure Project.

⁸¹ RA 8042, sec. 2(c)

The lack of local employment in the country, the disparity in the distribution of wealth and benefits of development, and the country's poverty index which remains unchanged since 2006⁸² continue to be strong push factors for both regular and irregular migration. The 2011 South East Asia National Human Rights Institutions Forum (SEANF) research on Migration⁸³ exposed how migration remains to be the greatest vent for the country's severe unemployment⁸⁴. Over the last decade, the annual deployment far outnumbered the yearly job generation⁸⁵. In 2008, a record of 1.24 million workers were deployed compared to only 530,000 local jobs created⁸⁶.

In view of this, the Commission recommends the review and evaluation of the State's efforts to address unemployment, the creation of local employment opportunities and the affirmative actions undertaken in fulfilling its policy of not promoting overseas employment as a means to sustain economic growth and national development.

LIST OF ISSUES

1. Capacity of the State Party's Institutions for Effectively Implementing the CMW

The reported number of OFWs in comparison with the current number of Philippine Overseas Labor Offices (POLO), Overseas Welfare Offices and International Social Services for Filipino Nationals (ISWSFN) overseas⁸⁷ are clearly insufficient and inadequate. Despite substantial increase in the funding for the ISWSFN in the period covering 2009-2013 from some 4 Million to 52 Million⁸⁸, no additional Social Welfare Attaches (SWAt) were established. This is a clear gap in the delivery of services for OFWs, especially the most vulnerable --those in distress, trafficked, or victims of physical or sexual abuse.

The incongruence of the number of available consular offices/officers and the 217 destinations with considerable presence of OFWs has been repeatedly raised during conferences convened by the Commission with the CMA.⁸⁹ This highlights serious issues as to the capability of the consular offices to provide assistance and protection to OFWs. It was also posed that current consular support offered in Foreign Service posts are inefficient in dealing with trafficking victims. Either there are not enough case workers or case workers are unskilled in areas of human trafficking⁹⁰. This is further compounded when there is gender insensitivity on the part of front line service providers, oblivious to gender specific differences.⁹¹

⁸² Olchondra, Riza. PH Poverty incidence Unchanged since 2006. <http://newsinfo.inquirer.net/396237/ph-poverty-unchanged> Accessed on 20 February 2014. The article reports on the data released by the National Statistical Coordination Board (NSCB) last April 2013 which provided that the poverty incidence in the country stood at 27.9 per cent in the first semester of 2012, practically unchanged from the same period in 2009 (28.6 per cent). The article noted that economic growth over the past six years hardly made a dent in poverty incidence in the Philippines as the percentage of Filipinos living below poverty line remained practically the same between 2006 and 2012.

⁸³ Migrant Workers' Human Rights Research (2011), Implemented by the Commission on Human Rights and prepared by Migrante International in coordination with IBON Foundation.

⁸⁴ Id

⁸⁵ Id

⁸⁶ Id

⁸⁷ In the State's response to the list of issues, it provided information that it has established Philippine Overseas Labor Office (POLO) in 36 locations with a total complement of 58 Labor Attaches, 31 Overseas Welfare Offices (OWO) with 36 Welfare Officers and 32 Administrative Assistants. It also reports that it has established Social Welfare Attaches (SWAt) in three diplomatic posts from 2002-2010 pursuant to the International Social Welfare Services for Filipino Nationals (ISWSFN). These numbers, however, have to be appreciated vis-à-vis the number of OFWs deployed worldwide, as well as the concentration of OFWs per destination. The Commission on Filipinos Overseas (CFO) 2012 data reveals that there are an estimated 10,489,628 Filipinos overseas, in 217 country destinations. The same report identifies the top 10 destination countries of Filipinos: US, Saudi Arabia, UAE, Canada, Malaysia, Australia, Japan, UK, Kuwait and Qatar.

⁸⁸ Second State Report to the Committee

⁸⁹ Intervention during the Government Offices-Non-Government Organization Forum on the Concluding Statements, 30 September 2011, Zamboanga City. CHR in partnership with CMA

⁹⁰ Id.

⁹¹ Id.

Recommendation

Considering the obvious disparity in the number of deployed OFWs and the consular presence abroad, the Commission recommends the issuance of a Concluding Statement requesting for information on the measures undertaken by the State to complement and/or supplement the efforts and services of posts abroad and to address the gaps in the responses to overseas Filipinos' need for protection and legal assistance.⁹² It is likewise recommended that information be requested on the establishment of additional SWAt with the proper gender and human rights training prior to deployment.

2. Information on the progress made in gathering, processing and analyzing data

Fourteen (14) years after the mandate of the law, the Shared Government Information System on Migration (SGISM) remains unimplemented.⁹³ While data on trafficking is now managed through the National Recovery and Reintegration Data Base (NRRD), there is no equivalent for systemized and inter-agency data collection for Filipino Migrant Workers/overseas Filipinos. The launching of the Overseas Preparedness and response Team (OPRT) is welcomed as it aims to be an information and monitoring database to be tapped for emergency preparedness and response. The OPRT however, cannot be taken as compliance with SGISM. The SGISM envisions a broader base of information, to be used not only in emergency preparedness and response, but also for the design, implementation, and evaluation of programs for Filipino Migrant Workers/Overseas Filipinos and their families. Currently, data collection and dissemination is scattered between agencies and must be updated and harmonized⁹⁴. Aside from the disconnect in the data collection from Local Government Units (LGUs) to National Government Agencies, there is also an absence of consolidated data on return migrants and on their progress towards reintegration⁹⁵. Effective maintenance and management of migrant workers' data base is not only mandated by law, it is indispensable for comprehensive, effective, efficient and grounded State response to the issues of migrant workers and their families.

Recommendations

The Commission therefore recommends the issuance of a concluding statement seeking information from the State on the steps it has undertaken to rally resources and machinery for the creation of SGISM. It is also seeks information on whether existing data bases maintained by each agency has compatible software for consolidation and sharing of data.

3. State party's cooperation with civil society organizations working on migrants' rights

The State has been more open in its engagement with civil society organizations in the 2nd reporting cycle. The Presidential Human Rights Committee (PHRC), in consultation with the Commission and the CMA strategized on the dissemination of the LOIPR to stakeholders and in developing a more inclusive and consultative State Report. In September 2013, the State conducted the consultation/validation with CSOs in Manila on the State Report. This process could have been more inclusive if sufficient time was provided for stakeholders and CSOs to study the State Report prior to the scheduled validation/consultation. Since the Philippines consists of three major island groups, a more inclusive and broader consultative process could have been achieved through island-wide validation/consultation sessions to ensure maximum representation and attendance of stakeholders and NGOs from Visayas and Mindanao.

Recommendation

The Commission recommends that the State, subsequent treaty reporting cycles, should ensure a more inclusive and broader consultative process. NGOs/CSOs from other island groups like the Visayas and Mindanao in the consultations and validations, as well as women NGOs and other vulnerable groups in migration, should be engaged.

7. Mandate and activities of the Commission on Human Rights

The Constitutional mandate of the Commission specific to migrant workers and their families pertain to the '*protection of the human rights of all persons within the Philippines, as well as Filipinos residing abroad*'. Applicable to migrant workers and particularly to the Convention is the Commission's mandate to monitor the State's compliance with international treaty obligations on human rights. Pursuant to these, the Commission

⁹² Id.

⁹³ Sec. 20 of RA 8042 on the establishment of SGISM

⁹⁴ Manila Consultation convened by the CHR with CMA, 11 June 2013

⁹⁵ Id.

investigates human rights violations and/or provides legal assistance to migrant workers and their families.

Investigating Human Rights Violations. From January 2009-January 2014, the Commission, through its fifteen (15) regional field offices handled twenty four (24) cases pertaining to migrant workers. Majority were from migrants deployed in middle-east countries: Riyadh, Kuwait, Kingdom of Saudi Arabia, Doha Qatar, Lebanon, and Oman. Most problems referred for assistance were complaints in contract modification, illegal recruitment involving changes in the nature of work to be performed, non-payment of wages, maltreatment, withholding of passports/travel documents by employers. Majority involve women OFWs.

In these cases, the Commission has sought the assistance of the Department of Foreign Affairs (DFA) as well as the Embassy/Consulate involved.⁹⁶ While Commission appreciates the prompt assistance and action on referred cases, the importance of addressing concerns of OFWs as they occur: at the Embassy or consular level, at the POEA, OWWA or the NLRC, cannot be overemphasized. It has been the experience of the Commission that OFWs and their families resort to the Commission only when the National Agencies fail or refuse to address their concerns.

The Pending CHR Charter and 'Limited Fiscal Autonomy'. While the 1987 Constitution explicitly mandates the Commission "to provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad"⁹⁷ the inadequate budget and resources of the Commission limits the fulfilment of the latter mandate. Without any presence in Philippine embassies/consulates abroad, the responses of the Commission with respect to migrant complaints are limited. In instances where victims of alleged human rights violations are located abroad, and where the complaints are filed by their relatives in their behalf, the Commission proceeds by coordinating with the DFA, the Philippine Embassy involved or with the OWWA or POEA. The Commission has likewise coordinated with counterpart NHRIs in addressing human rights complaints involving migrant workers. With the passage of the proposed CHR Charter, it will be enabled to fully perform its mandate to respond to the needs of Filipino migrant workers.⁹⁸

Fiscal Autonomy has been greatly affected with the decision of the Supreme Court on CHREA vs. CHR⁹⁹. Since its promulgation, the Commission has been experiencing great difficulty in claiming its full fiscal independence, which was adduced in the said Supreme Court Ruling as 'limited'.¹⁰⁰ Succeeding this decision, the General Appropriations Act (GAA) of 2007 and 2008 had veto messages on the Commission's use of savings, citing the Supreme Court ruling and conditioning this on guidelines that since 2007 have yet to be issued by the Department of Budget and Management (DBM).

In 2014, the budget of the Commission for maintenance and other operating expenses have been reduced while the item on personnel services has not been fully released, citing that full release will be granted upon filling up of vacant positions. This portion of the

⁹⁶ In the ordinary course, complaints of migrant workers fall within the jurisdiction of the Philippine Overseas Employment Agency (POEA) for license cancellations of recruitment agencies, the National Labor Relations Commission (NLRC) in cases of money claims, and with the regular Courts in criminal cases such as trafficking and illegal recruitment.

⁹⁷ Section 18, Article XIII, Philippine Constitution

⁹⁸ One of the proposed versions of the CHR charter in the House of Representatives requires certain conditions to justify creation of CHR desks or designation of Human Rights Attaches. This include the prevalence/incidence of human rights violations and presence of a national human rights institution in the country of deployment.

⁹⁹ G.R. No. 155336 COMMISSION ON HUMAN RIGHTS EMPLOYEES' ASSOCIATION (CHREA) Represented by its President, MARCIAL A. SANCHEZ, JR., *petitioner*, vs. COMMISSION ON HUMAN RIGHTS, *respondent*.

¹⁰⁰ A reading of the said decision reveals that the 'limited fiscal autonomy' only pertains to the issue of implementing an upgrading and reclassification of personnel positions without the prior approval of the Department of Budget and Management.

budget pertaining to unfilled positions is considered savings on the part of the Commission who over the years has enjoyed independence on the use of its own savings. The Commission is strongly opposed to this move by the Department of Budget citing that the 'limited fiscal autonomy', in the absence of any guidelines, should be properly contextualized. 'Limited fiscal autonomy' can surely not mean the same treatment as any regular national agency of the Executive, which does not possess fiscal autonomy, while other constitutional bodies granted independence from government still enjoy the full release and non-reduction of its budget.

Recommendation

The Commission's fulfilment of its mandate is hindered in part by inadequate resources and the fact that the proposed Charter remains pending with the Legislature. It is therefore recommended that a concluding statement be issued on the status of the Commission's Charter and on the steps undertaken by the State, particularly by the Executive, to support its passage and enable its continued independence pursuant to the Paris Principles. In invoking the Commission's 'limited fiscal autonomy', we seek the Committee's support by urging the Government, particularly the Department of Budget and Management to respond to our pressing concerns without further delay. We request the Committee members to pose the question to Government on why there has been no action on the guidelines for the treatment of the Commission as an independent body with a 'limited fiscal autonomy' given its unique independent position in Government.

8. Measures taken to prevent public officials from using corrupt practices to (a) obstruct migrants' access to justice and (b) favor child labor

Not cited in the State Report but existing are the processes within the Civil Service Commission for the filing of administrative charges against errant public officials and those falling with the Office of the Ombudsman for administrative charges against public officials with salary grade 27 and above. Laws and mechanisms are in place to hold public officials accountable for corrupt practices. The problem however, has always been with effective implementation.

The most recent controversy is the alleged Sex-for Flight scheme of embassy officials in the Middle East, particularly in Kuwait. Under the alleged scheme, OFWs are forced to have sex in exchange for a ticket back to the Philippines. Another report alleged that embassy officials are running prostitution rings victimizing female wards in OFW shelters¹⁰¹. In response to the exposé, the Senate Committee on Accountability of Public Officers and Investigation (Blue Ribbon) and Committee on Labor, Employment and Human Resources Development conducted a joint inquiry on the case last August 2013. One of the women-complainant testified before the Senate that she was one of the victims of sexual advances of an Assistant Labor Attache when she sought the assistance of POLO after escaping ill treatment from her employer in Saudi Arabia. She added that she was also advised by the Assistant Labor Attache to accompany an Egyptian national in his trip to the Philippines for her immediate repatriation¹⁰². From the last Senate hearing last 29 August 2013, the DOLE and DFA conducted their investigation with the DOLE recommending the filing of administrative charges against three government officials tagged in the alleged sex for flight scheme victimizing OFWs in the Middle East¹⁰³. On 23 September 2013, the National Bureau of Investigation (NBI) recommended the filing of criminal charges of attempted rape and three counts of abuses against chastity against the Labor Attache¹⁰⁴. The women complainants were also admitted to the Witness Protection Program (WPP) of the Department of Justice. The latest news on the sex for flight issue were of the women

¹⁰¹Senate of the Philippines Press Release. Jinggoy Wants Justice for Victims of "sex-for-flight" modus http://www.senate.gov.ph/press_release/2013/0620_estrada1.asp accessed on 24 February 2014

¹⁰²Philippine Senate Press Release 28 August 2013. Senate Probe On Sex-For-Flight Scheme, Sexual Abuse Against Distressed Ofws To Continue – Jinggoy http://www.senate.gov.ph/press_release/2013/0828_estrada1.asp accessed on 20 February 2014

¹⁰³Cerda, Jovan. DOLE Recommends Charges Against Officials in "Sex for Fly" Scheme <http://www.philstar.com/headlines/2013/08/23/1126311/dole-recommends-charges-against-officials-sex-fly-scheme> accessed 24 February 2014

¹⁰⁴Mereguas, Mark. GMA News. Criminal Raps recommended vs. PHL labor attaché over 'sex-for-flight' scheme

complainants lamenting about their situation in the WPP that they not only were unable to work, they have also lost their freedom.

Actions pertaining to sex for flight should not be forgotten and laid to rest on the basis of charges having been filed against one Labor Attaché and women complainants placed under the DOJ's WPP. The State, being the primary duty bearer in the protection of the rights of migrant workers and in ensuring non-discrimination in accordance with CEDAW should exercise political will in pursuing the investigation and the prosecution of those involved in the sex-for-flight issue. The women-survivors/complainants in the sex-for-flight case are among the most vulnerable among migrant workers, they are migrant workers in distress and as such, they were seeking the assistance of the State through the POLO. To be victims of violence at the hands of public officials in such state of vulnerability is such an outrage that nothing less than a full and thorough investigation on the issue, availing the vast apparatus of the State, is expected.

Recommendation

Steps undertaken by the State on the issue of sex-for –flight including the conduct of legislative inquiry, the filing of administrative and criminal charges and the admission of the women-survivors to the witness protection program are positive steps which facilitate access to justice. Considering that the case remains pending, the same should be closely monitored towards its conclusion. The Commission recommends the issuance of a concluding statement from the Committee requesting information on the steps taken by the State to ensure thorough investigation, prosecution and monitoring of cases related to the 'sex-for flight' issue and measures undertaken to facilitate access to justice for the women-complainants.

9. Comprehensive study on the situation of children of migrant workers

The State has not undertaken nor supported a comprehensive study on the situation of children of migrant workers. Studies cited in the State report were independent undertakings of NGOs/CSOs and academics. There are complaints from abandoned families of OFWs unable to seek the support they are entitled by law, and these are reflected in the cases for legal assistance sought with the Commission. On the reverse, women OFWs also express concern on the management of resources/remittances, cases of infidelity and psychological and physical abuse from their husbands¹⁰⁵.

Recommendations

In order to provide a comprehensive and grounded response to the issues faced by children of migrant workers, the State should undertake its own comprehensive study or support a study to be undertaken by partner NGOs. The State should likewise develop a comprehensive program for the protection and promotion of the rights of families and children of OFW. On abandoned families and taking into account the difficulty faced by these families in seeking support from OFW family members obliged under the law to provide support, it is recommended that a concluding statement be issued requiring the State to provide information on the efforts are undertaken to aid abandoned families in seeking support from OFW family members. Additionally, it is recommended that the State be advised to include in its programs and services for families left behind counselling and financial literacy. Prior to deployment, family counselling should also be included to prepare the OFW family members for migration, including financial management.

11. Declarations provided for in articles 76 & 77 of the Convention

Recommendation

It is the view of the Commission that the State should agree to a communications procedure. If it is to uphold its claim to be a global model in migration, the ratification of the communications procedure is a demonstration of this assertion. The communications procedure will also provide a broader access to justice by Filipino migrant workers, their family members left behind as well as migrant workers that the Philippines hosts.

¹⁰⁵ CHR list of Migrant Workers' cases from January 2009-January 2014

14. Legal Assistance, Administrative and Judicial remedies, Complaints Mechanisms, Knowledge of laws and procedures of countries of employment

Access to Justice. OFWs face difficulties in seeking effective legal remedies and in asserting their rights against their employers from lack of capacity and a wide range of disincentives they face¹⁰⁶. They are already at a disadvantage as non-nationals of their host countries and this is exacerbated in instances where diplomatic posts where they seek assistance and protection are unable or unwilling to provide assistance, or are insensitive in the handling of their cases. The barriers of pursuing domestic claims with National Agencies like POEA, the NLRC or with the courts further adds to this difficulty.

The 2011 SEANF research noted reports of Filipinos frequently being advised by Philippine Authorities to remain with their employers even under unjust, exploitative and abusive conditions and that if they run away and seek refuge, government officials are still more inclined to mediate amicably towards settlements returning OFWs to their employers instead of addressing OFWs core concerns¹⁰⁷.

Recommendations

The provisions then in RA 10022 on Free Legal Assistance, Free Entitlement Under the Witness Protection Program, as well as the assistance rendered through the ATNs and POLOs should not only be accounted for in terms of quantity and clients served but also on the quality of the service rendered. Evaluation and monitoring tools should be in place to measure the efficacy of services/assistance rendered.

Migrant women's access to justice in VAW. Domestically, studies abound on how women's access to justice in cases of violence is faced with challenges from discriminatory laws, ingrained gender stereotypes and discrimination, insensitivity of duty bearers from law enforcers, to prosecutors, to judges, instances of revictimization, trivialization of violence and even outright impunity. These challenges are multiplied when the violence against women happen and occur outside of the country's jurisdiction. In the case of women domestic workers and in those in the service, entertainment industry, the challenges are even higher due to the nature of their work which exposes them to higher levels of violence.

Recommendations

Assistance provided by ATN and the POLO, the designation of Gender Focal Persons in Embassies and Consulates, and provision of legal fund are starting points that must be accompanied with training for front line service providers to render them sensitive to the plight of women migrants victims of violence. It requires training on the host country's laws and legal processes. This will equip service providers adequate information to respond to the needs of OFWs, providing legal assistance and support services, with end of facilitating access to justice for women migrant victim-survivors of violence – not mere reconciliation or immediate repatriation. In view of the recent issues on 'sex for flight' and pursuant to the passage of the Magna Carta of Women (RA 9710), the conduct of a gender audit is recommended to evaluate current capacities of embassy and consular offices to address gender and violence against women issues.

Migrant Workers in Death Row. There are thousands of Filipino workers stranded abroad and in difficult situations.¹⁰⁸ Recent figures from the Department of Foreign Affairs reveal that as of July 2013, some 5, 932 Filipinos are currently serving sentence and/or have pending criminal or labor cases abroad. Of these, 83 overseas Filipinos face death penalty for various criminal offenses. In this regard, there is a need to inquire into the efforts undertaken by the State to render assistance to these specific groups of OFWs.

Recommendation

A concluding statement from the Committee is earnestly requested to inquire into the efforts undertaken by the State to provide assistance to OFWs currently detained and/or serving sentence and those facing death penalty abroad. An inquiry should likewise be made into the programmes that the State has established and implemented for families of these OFWs.

¹⁰⁶ Southeast Asia National Human Rights Institutions Forum. *Migrant Workers' Human Rights Research*. 2011.

¹⁰⁷ Id.

¹⁰⁸ Southeast Asia National Human Rights Institutions Forum. *Migrant Workers' Human Rights Research*. 2011.

18. Pre-departure programmes for Filipino nationals

Issues in the inconsistencies pertaining to the implementation and the content of the Pre-Departure Orientation Seminar (PDOS) and Pre – Employment Orientation Seminar (PEOS) have been raised with NGOs expressing concern that the State allows recruitment agencies to conduct PDOS, the contents of PDOS vary from one service provider to another and country-specific PDOS is available only in 3-4 countries. These raise doubts as to the ability of the PDOS to prepare prospective migrants for overseas employment¹⁰⁹. Information as to available remedies in cases of violation is part and parcel of access to justice, thus the inclusion of the same in the PDOS will arm the migrant with important knowledge for their protection. In case of punitive laws, information regarding the same should be provided for prospective migrants so as to avoid a situation where they may be unwittingly committing acts which are penalized in the host countries.

Recommendation

The Commission agrees with the recommendations of NGOs on the review of the efficacy of current PDOS/PEOS modules and the implementation by different PDOS providers. Particularly, the standardization of PDOS and PEOS to ensure gender-sensitive and rights-based approaches and the inclusion of country-specific legal remedies in cases of human rights violation or in cases of trafficking or violence against women. Clarity in the accreditation process for PDOS providers is requested and the exclusion recruitment agencies as PDOS providers should be stressed. It is likewise suggested that an orientation/program be developed for family members left behind to help them cope with the migration process.

20. Right to join, form and to form part of the leadership of, associations and trade unions

Pending in Congress, particularly at the House of Representatives Committee on Labor and Employment is House Bill 2543 which provides the recognition of the freedom of association of foreign workers.

Recommendation

The Commission seeks the Committee's consideration of a concluding statement for Government to fully support the passage of this legislative proposal and other bills of similar import that would comply with the standards set by the Migrant Workers Convention as well as the ILO Convention 87.

22. Measures to prevent Irregular Migration

Irregular and undocumented migrants face various forms of vulnerability¹¹⁰. They are less able to assert claims on their rights and subject to greater abuse by virtue of their lesser legitimacy¹¹¹.

With the continuous crackdowns on irregular migrants in Malaysia, the 447, 590 Filipinos in irregular situation are in danger of detention and/or deportation. In the case of detained Migrants in irregular situation in Malaysia, the 2011 study of Kassim¹¹² shows the complex situation of Filipino migrants detained in Sabah. The detention centers reportedly have difficulty in determining nationalities of persons in their custody. Since many of the irregular migrants at the detention centers were born in Sabah but have no birth certificates to prove their nationalities, Malaysia would insist they are Filipinos while the Philippine authorities would insist otherwise. As a result, the Filipino migrants in irregular situation languish in the Malaysian temporary detention centers.¹¹³ The absence of a Philippines

¹⁰⁹ Manila Consulation

¹¹⁰ The Commission on Filipinos Overseas (CFO) in its 2012 stock estimates reports the number of Filipino irregular migrants at 1,342,790 with the most number in Malaysia with 447, 590 irregular migrants, followed by the United States of America with 271,000 and the United Arab Emirates at 207, 230.

¹¹¹ Southeast Asia National Human Rights Institutions Forum. *Migrant Workers' Human Rights Research*. 2011.

¹¹² Kassim, A. and Haji Mat Zin, R. (2011b). Policy on Irregular Migrants in Malaysia: An Analysis of its Implementation and effectiveness. Philippine Institute for Development Studies Discussion Paper Series No 2011-34. Retrieved from: <http://dirp4.pids.gov.ph/ris/dps/pidsdps1134.pdf>

¹¹³ Id. p. 88

Consulate in Sabah, which is due to the Philippines' continuing claim over the territory, also delays deportation of these detained Filipino nationals.

There is also the situation of migrants in irregular situation in Saudi Arabia who currently stand to be detained/deported as an effect of Saudization and of the country's crackdown of irregular migrants. Two grace periods have been granted, the latest ended in November of 2013, and with its lapse, an estimated 6,700 Filipino irregular migrants who were not repatriated and/or failed to regularize their status are in danger of detention. They were also reports of human rights violations against the irregular migrants in the midst of the crackdowns¹¹⁴. *Migrante* International, a support group for Filipino overseas workers, said 1,700 other workers remained stranded in Jeddah waiting for their documents to be processed so they can return home while about 5,000 more were scattered in Riyadh, Al Khobar, and Dammam and also needing consular assistance¹¹⁵.

Recommendations

The track undertaken by the State to address the issue of irregular and undocumented migrants is that of affording protection through ATNs and through facilitating registration in case of stateless children and representations to the host countries for regularization/documentation of irregular migrants. The number of irregular migrants and the vulnerability they face, however, calls for a more comprehensive response from the State. It is therefore recommended that a concluding statement be issued requesting information on the actions undertaken by the State to accurately document irregular migrants and the responses that the State has undertaken to (a) address the situation of Filipino Irregular Migrants in view of Saudization; and (b) its responses with respect the increasing number of irregular migrants and subsequently deportees from Malaysia.

23. Filipino migrant women

The feminization of migration is manifested not only in the number of deployed women but also in the kind of work/industries on which they dominate, the wages that they earn, their vulnerabilities to sexual discrimination, and the little power that they are able to exercise when they migrate¹¹⁶. From the issuance of the Committee's Concluding Comments in 2009 the State has not undertaken a thorough assessment of Filipino migrant women. There are no available studies undertaken by the State to look into their income in the informal sector or on the incidence of sexual and physical violence they have suffered as migrant workers. There were, however, positive efforts undertaken to address the needs of Filipino migrant women through legislation and bilateral agreements. The Magna Carta of Women (RA 9710) directs the designation of gender focal point in the consular section of Philippine embassies or consulates. These focal persons shall be primarily responsible in handling gender concerns of women migrants¹¹⁷. Despite all these however, the Commission reverts back to its recommendations on the previously discussed 'sex for flight' issue and the effects of Saudization.

¹¹⁴Filipinos Allege Abuse in Saudi Immigration Crackdown. 4 November 2013. <http://www3.interaksyon.com/article/74102/filipinos-allege-abuse-in-saudi-immigration-crackdown>

¹¹⁵ Id

¹¹⁶ UNDP, SEANF p. 32

¹¹⁷ Sec. 23 RA 9710

PHILIPPINE NGOs-TRADE UNIONS SUBMISSION OF INFORMATION

For the Second Periodic Report of the Philippines on the Implementation of the International Convention on the Rights of All Migrant Workers and Members of their Families UN Committee on Migrant Workers 20th Session

31 March-11 April 2014
Prepared and Consolidated¹¹⁸ by the Center for Migrant Advocacy¹¹⁹

The Center for Migrant Advocacy Philippines (CMA) is a migrant NGO based in the Philippines. Our work focuses on policy advocacy and facilitating assistance to distressed migrants and their families. These two programmes are enhanced by action research, information and education work with partner NGOs and community-based and local government units, academic institutions. CMA is a member of the Philippine Migrants Rights Watch (PMRW); Philippine Alliance of Human Rights Advocates (PAHRA); Clean Clothes Campaign (CCC) and Migrant Forum in Asia (MFA).

OVERVIEW OF FILIPINO LABOR MIGRATION

According to the Philippine Overseas Employment Agency's (POEA) statistics on overseas employment from 2008 to 2012, the number of workers deployed steadily increased every year, with 2012 reaching a new high of 1,802,031 workers, or daily departures of 4,937 OFWs.¹²⁰ This represents a staggering number of people that the Philippine government has an obligation to oversee and protect. The number does not even include those migrant workers who are undocumented. Nor does it include Filipinos overseas who migrate for reasons other than work. In 2012, it was estimated that there were 10.489 million overseas Filipinos (including temporary, permanent, and irregular).¹²¹ This sizeable number of Filipino migrants represents a number of challenges for the Philippine government. The government must keep track of its migrants despite the large outflow, it must protect the welfare of its migrants in destination countries, and it must implement effective programs domestically to regulate the process of migration. With its numerous initiatives and programs to extend protection to migrant Filipinos, the Philippines tends to be held up as a model for migration management in the Southeast Asia region.¹²² However, the government must not rest on its laurels but be responsive and proactive in the face of current trends and issues.

¹¹⁸ CMA with support from the Commission on Human Rights conducted 3 workshop-consultations with CSOs and Trade Unions on the CMW Concluding Observations and LOIPR for the Philippines – in Zamboanga City on September 30, 2011, in Manila on June 11, 2013 for Manila and Luzon-based groups and in Davao City on June 28, 2013 for Mindanao-based CSOs and Trade union

¹¹⁹ CMA prepared the final report with valuable inputs from the following participants of the workshop-consultations: Ateneo Migrant Center (Davao City), Bannuar Ti La Union/ PKKK, CBCP-Episcopal Commission on Migrants and Itinerants (CBCP-ECMI), Labor Education and Research Network (LEARN), Partido ng Manggagawa (PM), PSLink, Women and Gender Institute (WAGI), Center for Overseas Workers (COW), Batis Center for Women, Women's Legal and Human Rights Bureau (WLB), KAMPI, Migrant Forum in Asia (MFA), Development Action for Women Network (DAWN), ATIKHA, Kanlungan Center Foundation, Scalabrini Migration Center (SMC), Philrights, YMCA-Philippines, CATW Asia Pacific, Philippine Migrant Rights Watch (PMRW Secretariat), Manila Liaison Office-ARMM Governor's Office, PhilComdev, Kanlungan Center, Samahan ng Migrante at Pamilya Inc. (SAMAPI-Tarlac City), LUNA Legal Resource Center for Women and Children (Davao City), Dabawenya-Alliance of Progressive Labor (APL Davao City), BARUG (Davao City), ANAK OFW (Davao City), Mujeres Incorporated-Zamboanga City, AMIN NCR/BANGSA, APL-Cotabato City, Kinlene Sabaani-Tawi-Tawi Province, Sarah Bascones-Basilan Province, KAAGAPAY-Cotabato City, Kagkalimwa Federation of Returned Migrants-Cotabato-Maguindanao, SK-Maguindanao, CBCP-ECMI-Cagayan de Oro City, Mindanao Migrants Center for Empowering Actions, Inc. (MMCEAI-Davao City), PADC, Atty. Cecilia Jimenez, Gabriela Party List Representative Luz Ilagan, Commission on Human Rights –National and Regional offices; additional inputs were provided by partner CSOs abroad—Patnubay.org (Saudi Arabia), Humanitarian Organization for Migration and Economics (HOME-Singapore); Hope Workers' Center and Hsinchu Catholic Diocese Migrants & Immigrants Service Center (HMISC) from Taiwan; Catholic Tokyo International Center (CTIC) and KALAKASAN Migrant women empowerment Center /Submitted by Solidarity Network with Migrants Japan (SMJ) in Japan

¹²⁰ Table 1, "2008-2012 Overseas Employment Statistics," *Philippine Overseas Employment Agency*, http://www.poea.gov.ph/stats/2012_stats.pdf

¹²¹ Stock Estimate of Overseas Filipinos as of December 2012. Commission on Filipinos Overseas, <http://www.cfo.gov.ph/images/stories/pdf/StockEstimate2012.pdf>

¹²² United Nations Entity for Gender Equality and the Improvement of Women, *Review of Laws, Policies and Regulations Governing Labour Migration in Asian and Arab States* (Bangkok: UN Women, 2013), 216.

POEA's statistics reveal some interesting trends. Half of the top 10 destinations for new hires and rehires are countries of the Gulf Cooperating Council (GCC) namely Saudi Arabia, United Arab Emirates, Qatar, Kuwait, and Bahrain.¹²³ These countries have not ratified many of the migration-related conventions and instruments and have the *Kafala* system in place. Overseas Filipino Workers (OFWs) are found in 238 countries and territories but the top 10 destinations constitute 83.7% of the total number of deployed migrants. Sans Italy, all 9 other destinations in the top 10 are in Asia, making up 82% of total deployment. In 2012, 68% of deployment were rehires or those with renewed or previously-existing contracts. In terms of job categories, household service workers (HSW), also referred to as migrant domestic workers (DW) outnumbered the workers in all other occupational categories combined in 2012.¹²⁴ This is worrying because DWs have greater vulnerability due to the difficulties of regulating an industry that occurs primarily in private households. The steady rise of domestic workers employed abroad challenges the Philippine government to ensure the protection of this vulnerable sector.

REPLIES TO LOIPR

1. In light of the recommendations made by the Committee in paragraphs 14 and 50 of its concluding observations on the initial report of the Philippines (CMW/C/PHL/CO/1), please provide information on the measures taken to improve the capacity of the State party's institutions for effectively implementing the Convention by:

(a) Simplifying and streamlining the institutional structure dealing with migration issues;

Despite the large role migration plays in the Philippines, there is considerable lack of coordination in migration governance. Arguably, this stems from competing tensions within government of promoting migration versus regulating it. Over the years, this has created a broad policy framework that has had varying levels of success. Policies vary between National Government Agencies (NGA), between NGAs and Foreign Service Posts (FSP), among agencies within FSPs and between NGAs and Local Government Units (LGUs). Rather than having a single Department to attend to migration concerns, the Philippine government implements its policies via institutions that operate at different levels and different jurisdictions of government e.g. labor migration, immigration, and permanent migration have implementing agencies that are the responsibility of different Departments. Overlapping mandates and services among these providers causes confusion and issues of accountability. Section 3 of the Migrant Workers and Overseas Filipinos Act of 1995 or Republic Act 8042 as amended by Section 2 of RA10022 broadens the definition of an OFW from one who is not a legal resident in the destination country to one who is not a citizen. This implies that Filipinos who are permanent residents or immigrants in the destination country are now covered by the definition of an OFW. Ergo, all Department of Labor and Employment (DOLE) offices on labor migration should include in their constituents the Filipino immigrants who are under a distinct office –the Commission on Filipinos Overseas (CFO) which is under the Office of the President. Similarly, the expanded definition seemingly expands the mandate of CFO on migration and development.

Another case in point is the government's return and reintegration program. The National Reintegration Center for OFWs (NRCO) is currently under the administrative supervision of the Overseas Workers Welfare Administration (OWWA), another DOLE agency tasked to provide various programs and services to its "members" including return and reintegration. OWWA members are OFWs who pay the US\$25 contribution. On the other hand, ALL OFWs including OWWA members may avail of the NRCO programs.

Another example is the existence of various social security/ social protection programs for OFWs, namely Social Security System, Philhealth and Home Development Mutual Fund HDMF or Pag-ibig in addition to OWWA. Efforts to streamline these

¹²³Table 3, "2008-2012 Overseas Employment Statistics," *Philippine Overseas Employment Agency*.

¹²⁴Table 7, "2008-2012 Overseas Employment Statistics," *Philippine Overseas Employment Agency*.

programs and services were initiated in June 2010 by 6 agencies, namely DOLE, POEA, OWWA, SSS, Philhealth and Pag-Ibig. Under a Memorandum of Agreement, these agencies committed to adopt the unified multi-purpose identification card (UMID) as the OFW ID to facilitate availment of benefits and services from these agencies; (2) create a one-stop center at the Philippine Overseas Labor Offices (POLOs) to facilitate access to services and programs; (3) develop and disseminate information materials about these agencies; (4) lower remittance cost by adopting a single platform for collection and data reporting. The project however has been shelved.

There is also a lack of awareness and accessibility of these services at the rural level and even overseas¹²⁵, as the national agencies have not localized their services. International migration remains the domain of national government institutions and, absent from the agenda of local government units.¹²⁶ POEA is responsible for the promotion, regulation and monitoring of overseas employment. As part of its functions outlined in RA 10022, POEA must cooperate with other government agencies, including Local Government Units (LGUs) to disseminate overseas employment-related information.¹²⁷ However, in practice, coordination between government agencies is complex and often problematic. For example, even if an LGU has an officer assigned to migration-related issues, usually he/she is focused on organizing job fairs, instead of utilizing the LGU frontlines to better connect with migrants and their families.¹²⁸ Currently, civil society organizations (CSOs) are the ones taking up the mandate of the LGUs. Under RA 10022, Section 23 (d), LGUs must establish overseas Filipino worker help desks in their localities, thus they forge Memorandums of Understanding (MOUs) with OWWA for the establishment of OFW Help Desks.¹²⁹ However, no government agency is tasked to initiate funding for these help desks.

Section 3 of the Migrant Workers and Overseas Filipinos Act of 1995 or Republic Act 8042 was amended by Section 2 of RA10022 by broadening the definition of an OFW from one who is not a legal resident in the destination country to one who is not a citizen. This implies that Filipinos who are permanent residents or immigrants in the destination country are now covered by the definition of an OFW. Ergo, all offices of the DOLE on labor migration should include in their constituents the Filipino immigrants who are under the CFO. Another implication of the expanded definition is the seeming expansion of mandate of CFO on migration and development by virtue of application of the law.

Responding to the situation, two proposed legislative measures were filed in the 16th Congress for the creation of a Department of OFWs that will put under one department all agencies of government that deal with labor migration “in order to adequately support and give assistance to the OFWs wherever they may be.”¹³⁰

Recommendation to the CMW to include in its concluding observations:

- In order to provide clear mandates and to avoid duplication of services, lines of coordination and competencies, an Inter-Agency Council should be established and meetings should occur on a need-basis. By promoting communication and collaboration with other relevant government agencies, it can reduce instances of overlapping services and ensure greater transparency on migration policy.
- For the national government agencies to be truly effective throughout the Philippines, the DILG must be involved in migration governance and the LGUs must be strengthened.

¹²⁵ Sentiments expressed in CMA dialogues with OFW organizations in Jordan, Qatar, Saudi Arabia and reiterated by partner NGOS in Japan, Singapore and Taiwan

¹²⁶ Scalabrini Migration Center, *Minding the Gap: Migration, Development and Governance in the Philippines*, 14.

¹²⁷ Scalabrini Migration Center, *Country Migration Report: The Philippines 2013*, 172.

¹²⁸ Scalabrini Migration Center, *Minding the Gap: Migration, Development and Governance in the Philippines*, 14.

¹²⁹ Scalabrini Migration Center, *Country Migration Report: The Philippines 2013*, 110.

¹³⁰ House Bill 132 by Rep. Mark Villar and House Bill 191 by Rep Rosemarie Arenas and Johnny Revilla, accessed at http://www.congress.gov.ph/download/basic_16/HB00132.pdf & http://www.congress.gov.ph/download/basic_16/HB00191.pdf respectively

In order to better inform the public of their options, strategic information regarding government agencies and the programs & services they offer must be publicized. There needs to be a focus on capacity building for the LGUs, so that they can provide the same level of service that NGAs do.

- Funding of Migrant desks under RA 10022 should be implemented to strengthen and better service. OFWs and migrants abroad; thus far the government agency tasked to initiate funding is unclear to LGUs.¹³¹

(b) Allocating sufficient human and financial resources for agents within this structure to carry out their work efficiently;

Onsite, protection agencies of government are the Philippine embassies, consulates and Philippine Overseas Labor Offices (POLOs). Guided by the One- Country-team Approach (OCTA), they are expected to render effective services to OFWs and their families. However, these offices are very much wanting in terms of quantity and quality.

The House Committee on Foreign Affairs strongly recommended in 2012 the personnel augmentation of FSPs in the Middle East and Asia Pacific, two regions that are ATN (Assistance to Nationals)-intensive, citing that the ratio of government personnel to OFWs range from 1:50,000 in Saudi Arabia to 1:28,000 in Asia Pacific.¹³²

We take exception on the case of the closure of the PCG in Barcelona that was not in the recommendation. The decision was also opposed by the Filipino community in Barcelona who wrote to Congress about it¹³³. The signatories argued that the closure was unjustified as some 20,000 Filipinos out of some 33,000 total Filipino population in Spain were availing of the services of the PCG including seafarers.

Apart from FSP personnel, RA8042 and the amended RA10022 also mandated that “*In countries categorized as highly problematic by the Department of Foreign Affairs and the Department of Labor and Employment, and where there is a concentration of Filipino migrant workers, the government must provide a lawyer and a social worker for the Center.*” Since the enactment of this law in 1995, there has been no enforcement of this provision except for the intermittent deployment of a social welfare attaché by the Department of Social Welfare and Development (DSWD). CMA learned that DSWD could not proceed with regular deployment because the budget request was always disapproved by the Department of Budget and Management (DBM)¹³⁴. The latter turned around only a few weeks following the “sex-for-flight” controversy in June 2013¹³⁵ where DBM announced that social welfare attaches will be deployed to provide support and assistance to OFWs in need of special protection, allocating Php4M to support the creation of such positions. [More on “sex-for-flight” in Loipr Item 8]

¹³¹ OFW Family Party List representative Hon. Roy Seneres has introduced a bill in the 16th Congress, House Bill No. 2579, which seeks to require all heads of Local Government Units to create or establish an OFW Family Help Desks in their respective offices in order to strengthen and enhance the protection by the government of the families of OFWs, thus strengthening the provision in Section 16 (d.2) in RA 10022 while also expanding the Help Desks’ mandate to include families of OFWs.

¹³² In accordance with House Resolution 309 directing the Committee on Foreign Affairs to conduct a performance evaluation of Our Philippine Posts, filed on August 26, 2010 by members of the Committee. Report was released in 2011

¹³³ Letter was signed by officers of 19 organizations of Filipinos under the jurisdiction of Barcelona PCG

¹³⁴ This prompted CMA to write DFA, DOLE and DSWD in May 2013 to remind them of the unfulfilled provision particularly to the FSP in Saudi Arabia.

¹³⁵ House Resolution 22 introduced by Akbayan Representatives Walden Bello and Ibarra Gutierrez III.

Recommendation to the CMW to include in its concluding observations:

Noticeable also is the disparate treatment of local hired personnel in POLOs and those at the PE/PCG as in the case of Saudi Arabia¹³⁶. Local hires of POLO are not “organic staff” of DOLE and they only receive a monthly salary, all-in. In a meeting to clarify the matter, DOLE informed CMA that DBM disapproves their budget request for salaries and other benefits of local hires. This is not the case however for local hires of the embassy¹³⁷.

- To confirm from DFA and concerned agencies the actions taken on the recommendations cited above in the law and in the FSP evaluation study – in terms of personnel augmentation and establishment of additional FSPs and offices abroad; and why Barcelona was included for closure
- For DBM to approve and allocate sufficient funding for concerned agencies of government and to ensure that local hires of POLOs and FSPs get the same treatment in terms of wages and social benefits

c) Establishing proper follow-up procedures as well as clear, measurable and time-bound targets in order to facilitate tracking the implementation of the various initiatives and programmes in place to respond to challenges faced in the State party’s labor migration policy. Please also provide information on the results of any evaluation made in relation to the implementation the Convention and of relevant national legislation.

Monitoring of employers’ compliance with provisions in the standard employment contract (SEC) is one of the two biggest challenges for government. The other one is monitoring adherence of employers and recruiters to either zero placement fee for domestic workers or the present maximum allowable placement fee equivalent to one-month salary for other workers where placement fee collection is allowed. On paper, compliance, as may be claimed by POEA can be 100% as deployment will not be effected without doing so. However, reality is quite the opposite as SEC provisions are constantly violated specifically provisions on salaries, day off and rest days and other benefits.¹³⁸ In addition, migrants continue to be trapped in debt bondage because of exorbitant fees they pay to unscrupulous recruiters as in the case of OFWs in Hongkong¹³⁹ and Taiwan.¹⁴⁰

The Household Service Workers (HSW) policy reform package promulgated by POEA in 2006 was meant to improve the working and living conditions of migrant domestic workers. Provisions include zero placement fee and minimum entry level monthly salary of US\$400, both of which are not effectively enforced. Prevailing wages in the GCC and other Asian destinations of domestic workers remain at US\$200-250¹⁴¹.

Government remains weak in ensuring effective implementation of its policies, either due to lack of human and material resources or political will itself. At the same time, it remains weak in monitoring and tracking the same, especially on site, because of the absence of a clear mechanism and/or indicators to measure their effectiveness. Instead, government relies heavily on complaints reported or filed by OFWs while it bewails the fact that in many instances, OFWs do not automatically report infractions on their rights/ violations in their contracts for various reasons.

¹³⁶ The Condition of Overseas Filipino Workers in Saudi Arabia: Final report of the Investigating Mission of the Committee on Overseas Workers’ Affairs (COWA) to Saudi Arabia, June 9-13, 2011.

¹³⁷ Meeting between CMA and DOLE led by Sec. Baldoz on January 25, 2011 to clarify the status and benefits of local hires in POLOs.

¹³⁸ Report to Congress, Jan-June 2013. Department of Foreign Affairs

¹³⁹ License to Exploit: A Report on the Recruitment Practices and Problems Experienced by Filipino Domestic Workers in Hongkong. Alliance of Progressive Labor-HK and Progressive Labor Union of Domestic Workers in Hongkong. 2013

¹⁴⁰ Inputs from Hope Workers Center, Taiwan

¹⁴¹ Report to Congress, January-June 2013. Department of Foreign Affairs

Section 37-A on mandatory insurance for OFWs deployed by agencies is up for mandatory review this year, 2014, as provided for in RA10022.

Recommendation to the CMW to include in its concluding observations:

- (g) For POLO and POEA to be thorough and diligent in verifying job orders and work contracts and must work and coordinate with each other closely
- (h) For government to forge bilateral cooperation, arrangements and agreements with States of employment in monitoring compliance of employers to SEC and placement fee policies
- (i) Assessment of the implementation of Section 37-A must be undertaken this year because this provision was opposed by OFWs, NGOs and the executive agencies of government because of serious concerns with its intent and implementation.¹⁴²

2. Please provide information on the progress made by the State party in gathering, processing and analysing data relevant under the Convention, including through the Shared Government Information System on Migration (SGISM), and in improving the compilation of statistical data, or studies and estimates, on migrants in an irregular situation, in line with the recommendation contained in paragraph 20 of the Committee's previous concluding observations.

The inter-agency committee tasked to establish the SGISM under RA 10022 is co-chaired by the Department of Foreign Affairs (DFA) and the Department of Labor and Employment (DOLE). This sharing of responsibility results in the ongoing issue of a lack of leadership in initiating the large-scale data coordination project. Despite being mandated by law, the SGISM is nowhere near the implementation stage.

A national government agency needs to take the initiative and provide leadership for the establishment of the SGISM, which is necessary not simply to fulfill the Philippines' obligations under the convention, but also because there are pitfalls in the current practice of data collection.

For example, there is no information or statistics on returned migrants.¹⁴³ This lack of data creates a serious knowledge gap and makes it impossible for the government to have a well-rounded and comprehensive understanding of the current state of migration. Disaggregated data on return migration, including key variables such as age, gender/sexual orientation, education, and marital status, should be collected and processed, specifically by taking advantage of poorly utilized administrative data sources.¹⁴⁴

Recommendations to the CMW to include in its concluding observations:

- Encourage political leadership in order to increase the speed of SGISM's implementation.
- Coordinate at various levels –NGAs and LGUs; Filipino communities abroad and also with concerned agencies from States of employment of OFWs for verification and additional data mining including data on irregular migrants
- Collect disaggregated data on returning migrants

3. Please provide information on the State party's cooperation with civil society organizations working on migrants' rights in relation to the implementation of the Convention and the preparation of its periodic reports (see CMW/C/PHL/CO/1, paragraphs 22 (c), 50 and 52).

While the Philippine government has made efforts to collaborate with civil society organizations working on migrants' rights, the results have been inconsistent. The uneven

¹⁴² <http://business.inquirer.net/money/topstories/view/20091116-236582/Mandatory-insurance-benefits-recruiters-not-OFWs>

¹⁴³ Scalabrini Migration Center, *Minding the Gap: Migration, Development and Governance in the Philippines*, 13.

¹⁴⁴ Scalabrini Migration Center, *Country Migration Report: The Philippines 2013*, 286.

pattern of government and CSO cooperation stems from the government's lack of proactivity regarding civil society partnerships. The onus falls upon CSOs and NGOs to initiate and pursue collaborations with the government. As a result, many CSOs and NGOs are under unnecessary stress, as they must contend with a heavy workload and fluctuating support from the government. The government should provide better support in regards to knowledge sharing and finances. The lion's share of the work undertaken to protect migrant rights should not fall disproportionately upon civil society.

The Philippine government has improved its relations with CSOs and NGOs since the last Committee report in 2009, however, the initiative for these partnerships still generally originate from civil society, instead of government.

Recommendations to the CMW to include in its concluding observations:

- (f) Regularly convene the Land-based Tripartite Consultative Council (LTCC) for migration issues; and support the conduct of regular consultations between OFW representatives in governing boards of migration agencies such as OWWA, POEA and Philhealth
- (g) Government to build responsive, receptive, constructive and transparent relationships with CSOs and trade unions

5. Please describe the measures taken by the State party to widely disseminate the Convention and the Committee's previous concluding observations, in particular to government departments, Parliament, the judiciary, the national human rights institution and non-governmental organizations (CMW/C/PHL/CO/1, para. 53).

Currently, the government's dissemination of the Convention and the Committee's concluding observations has been lacking. The information is difficult to find and not always easy to understand. It would also be helpful for the government to translate relevant information into Tagalog in order to improve dissemination. Ideally, the information would be translated into as many local dialects as possible in order to reach as many Filipinos as possible.

Another question is how effective is the dissemination of this information. For example, how many booklets did the POEA print? And in what manner did they distribute them? Considering that approximately ten percent of the Philippines' population is overseas,¹⁴⁵ there are many who would benefit from learning about the convention.

With the advent of new technologies, the government should use them for their benefit when disseminating information. While physical publishing requires funds, many government agencies already have websites set up; therefore, it would only require minimal funds to use their already-established websites as instruments of dissemination.

Recommendations to the CMW to include in its concluding observations:

- Ensure that information relevant to the convention is widely available to Filipinos and migrant workers in the Philippines and easily found. Alternate methods of dissemination, such as via the Internet and social media, should also be considered; Disseminate widely
- Assess the effectiveness of the distribution system and approaches
- It is recommended that there be an agency in charge of information dissemination on the convention, including concluding observations and recommendations, as well as translating the information into other languages and ensuring it is easy to read for the general public.

6. Please provide information on measures taken to strengthen the protection of Filipino migrant workers abroad by reviewing and amending bilateral and multilateral

¹⁴⁵ Scalabrini Migration Center, *Asian Migration Outlook 2012*, (Quezon City, Philippines: Scalabrini Migration Center, 2013), 196.

agreements, Memoranda of Understanding or other protective measures with countries of employment of Filipino migrant workers (CMW/C/PHL/CO/1, para. 32 (a)).

While bilateral agreements are good steps, further work must be done for effective monitoring and implementation. Bilateral agreements promote good rights-based practices in the origin and destination countries, but the Philippine government must ensure that the agreement is strong enough to protect migrant workers and that these are effectively implemented; otherwise the agreements fail to adequately protect migrant workers. Currently, there are BLAs for domestic workers forged with Saudi Arabia and the UAE, and BLAs under consideration with Lebanon and Jordan. While on paper, these BLAs are laudable for the protections afforded to domestic workers, without proper monitoring and implementation, the BLAs will not improve the reality of domestic workers abroad. To compound the problems of implementation and monitoring, there is limited staff capacity for the Philippines government to adequately analyze BLAs and MOUs, as well as a lack of accessibility when it comes to relevant documents. Sufficient staff and access to these documents are key factors in formulating and implementing strong BLAs and MOUs.

In recent years, the Philippines has opted to negotiate MOUs, which do not need ratification and can be more focused, over BLAs, which are more difficult and take longer to negotiate.¹⁴⁶ The negotiation process excludes civil society, resulting in the drafting of agreements that CSOs and NGOs had no input in.

Recommendations to the CMW to include in its concluding observations:

- To review and assess the BLAs forged over the years in terms of rights-based and gender-sensitive elements to make sure that rights and entitlements of migrants are enjoyed de jure and de facto
- Pursue more directed/focused BLAs to enhance protection of specific vulnerable groups/under specific job categories, enjoining CSOs in the process

8. Please provide information on the measures taken to prevent public officials from using corrupt practices to (a) obstruct migrants' access to justice and (b) favor child labor, e.g. by stating a higher age of migrant children on birth certificates.

The State is duty-bound to afford protection to labor, local and overseas. Last year however, there was a big public outrage when Akbayan Representative Walden Bello, chair of the House Committee on Overseas Workers Affairs (COWA) raised the issue of sexual exploitation of distressed female OFWs in the Middle East by some FSP and POLO personnel. The controversy dubbed as "sex-for-flight" prompted DOLE and DFA to create investigation teams to look into the allegations. A few POLO personnel were meted with administrative penalties.¹⁴⁷ Investigations are still ongoing. The expose also prompted DFA and DOLE to make a comprehensive review of the OCTA, the operations and administration of Filipino Workers Resource Centers which also function as shelters, as needed.

Recommendations to the CMW to include in its concluding observations:

- Aggressively investigate and punish cases of corruption involving public officials.
- Ensure that checks and balances are in place to detect public officials abusing their power

9. Please indicate whether the State party has undertaken and/or supported a comprehensive study on the situation of children of migrant workers. Please also describe

¹⁴⁶ "Bilateral Labor Agreements and Social Security Agreements," Center for Migrant Advocacy, p. 28, <http://centerformigrantadvocacy.files.wordpress.com/2012/06/bilateral-labor-agreements-and-social-security-agreements1.pdf>

¹⁴⁷ DOLE Secretary Baldoz ordered the suspension of Labor Attache to Riyadh Adam Musa for "the less grave offense" of simple neglect of duty for one month and one day. Former welfare officer Mario Antonio was also suspended for "grave misconduct. Decision on Assistant Labor Attache Antonio Villafuerte is still pending. The special team tasked to investigate the allegations, however, failed to find evidence to prove the existence of the sex-for-flight scheme. <http://www.philstar.com/metro/2014/02/12/1289298/another-exec-sex-flight-scheme-suspended>

the progress made in developing and implementing strategies, policies and programmes, in collaboration with non-governmental organizations (NGOs), to ensure the protection and promotion of the rights of migrant children through, inter alia, community support programmes, education and information campaigns and school programmes (CMW/C/PHL/CO/1, para. 46).

A specific few CSO groups have shown interest in OFW children, collecting data and conducting studies, but no comprehensive state-funded study on the children of OFWs and migrants abroad. The registration of undocumented children of migrants abroad continues to be a great concern for CSOs alike. There is a need for greater information and focused study on children of migrants abroad and within the Philippines to better understand the issues and needs of children affected by migration. According to one of the few exploratory studies on this topic, children of migrant workers admitted to understanding the reason for parental migration, but still harbored resentment towards them; they indicated feelings of alienation and also spend considerable time outside their house, which may predispose them to high-risk behaviors and expose them to harmful temptations.¹⁴⁸ No comprehensive program to protect and promote the rights of children and family of OFWs has been established.

Recommendations to the CMW to include in its concluding observations:

- Conduct nationwide research on migrant children in order to create a demographic profile to be used as a springboard for policies and interventions.
- Enact a comprehensive program to promote and protect the rights of children and family of OFWs.

10. Please indicate whether the State party envisages ratifying International Labour Organization (ILO) No. 189 (2011) concerning Decent Work for Domestic Workers.

The Philippines ratified ILO Convention 189 on September 5, 2012. The Philippine Congress also enacted Republic Act 10361, the national domestic workers law on January 18, 2013. These instruments should inspire the government to pursue more vigorously efforts to make real the rights and entitlements of migrant domestic workers --*de jure* and *de facto*.

14. In light of paragraphs 26, 30 and 32 (b) of the Committee's previous concluding observations, please provide information on the measures taken by the State party to:

(a) Strengthen its legal assistance to Filipino migrant workers

Free legal assistance provided for in RA 10022 is not effective in anti-illegal recruitment considering the number of OFWs who have been illegally recruited or other recruitment violations (19,206 in 2009-2011¹⁴⁹) and were reported to POEA since 2009 and those many more who report to NGOs or do not bother to report. The same may be said for the POLO and ATN given the number of distressed OFWs who do and do not report to the post their problems onsite. The Legal Assistance Fund (LAF) of P100 Million may only availed of by distressed OFWs abroad, subject to recommendation of the FSP and approval of the Undersecretary for Migrant Workers Affairs at the DFA. A major stumbling block is the low level of awareness of OFWs on the LAF and other programs and services for OFWs. In several FSPs, government reaches out to NGOs to assist them on legal cases and even in securing pro bono lawyers¹⁵⁰.

POEA has a legal assistance division but is very much under staff. They provide legal advice and legal rights education to distressed OFWs who know of their programs.

¹⁴⁸ UN Women, *Valuing the Social Cost of Migration: An Exploratory Study*, (Bangkok: UN Women, 2013), 98.

¹⁴⁹ POEA Annual reports, 2009-2011, www.poea.gov.ph

¹⁵⁰ Information provided by HOME-Singapore and SMJ-Japan

One serious concern is the so-called “paper victories” of OFWs who pursue their legal cases. The decision will be in their favor but there no money to be garnished as the escrow deposit has long been depleted and the burden of identifying and locating the properties of the juridical respondents rests with the OFWs.

(b) Inform Filipino migrant workers of the administrative and judicial remedies available to them

PEOS (reaching only 230,877 in 2009-2011¹⁵¹ vis a vis the more than 4million deployed for the same period) and PDOS efforts to inform OFWs and the public on judicial remedies and legal aid are insufficient, ineffective and fall short as evidenced by the many OFWs and potential OFWs (the latter in case of illegal recruitment and other recruitment violations and human trafficking) who do not know how to seek remedy from government, those who approach NGOs or who do not even bother to do so. On occasions when FSPs and POLOs will inform OFWs of their legal rights, the information disclosed is usually incomplete.

(c) Increase awareness among Filipino migrant workers, especially women domestic workers, on the available mechanisms for bringing complaints against employers so that any abuses can be investigated and punished;

Conversations with distressed OFWs revealed their lack of awareness of available mechanisms for bringing complaints against abusive employers and recruitment agencies. In cases where they already approached the FSP and POLOs, they would indicate that their complaints are not acted upon promptly. This situation is not unique in Saudi. Similar complaints and sentiments against FSP and POLOs are commonplace in other places.

(d) Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families;

The disproportionate ratio of FSP and POLO personnel to the OFW population coupled with scarcity in human and material resources are real stumbling blocks to effective and quality consular services to OFWs and families. Moreover, the lack of monitoring and periodic needs assessment and related processes may further aggravate the situation.

(e) Ensure that its diplomatic and consular staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino migrant workers, especially in those countries categorized as “highly problematic” by the Department of Foreign Affairs (DFA) and the Department of Labour and Employment (DOLE);

This area of work requires more efforts. Knowledge of the laws and procedures in the States of employment can offer wider avenues for OFWs to access justice and seek redress.

(f) Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues.

DFA and DOLE’s respective semestral reports to Congress in compliance with RA8042 must be shared with the public for purposes of transparency and accountability. Avenues for discussion of the reports should be made available as well. Likewise, financial and performance audits of departments must also be disclosed.

Recommendations to the CMW to include in its concluding observations:

- Government should develop and support programs for continuing education and information particularly on legal rights of migrants in the country and abroad. This is on top of pre-departure information programs;

¹⁵¹POEA Annual report. 2009-2011. www.poe.gov.ph

- Utilization of LAF and ATN funds should be assessed and disclosed; and at the same time, strengthened as the processes for approval and availment are simplified and streamlined; at the same time, programs of public attorneys' offices must be adequately supported as they also take on lawyering pro bono for distressed OFWs
- Government must allocate timely and sufficient material and competent human resources to FSPs and POLOs for the effective conduct of work abroad
- Regular capacity building and skills enhancement must also be undertaken for FSP and POLO personnel. This should be complemented by immersions and regular interaction and dialogues with OFW communities in the country and abroad. Increase the transparency of embassies, POLO, ATN performance through the use of audits and the inclusion of OFWs and civil society in the evaluation process. Should be multi-stakeholder in nature
- Provide lawyers and legal assistance to victims of illegal recruitment and not just an amicable settlement and affidavit. Framework should be to claim their full rights especially through POEA and NLRC; the burden of escrow deposit replenishment should be with either POEA or NLRC and not on the complainant OFW

15. Please provide information on the assistance provided through embassy and consulate staff abroad to migrant workers victims of the “sponsorship” or kafalah system in Gulf countries, especially for women domestic workers, and on endeavours to negotiate a reform or review of such a system with the relevant countries of employment (CMW/C/PHL/CO/1, para. 32 (d)).

Recommendations to the CMW to include in its concluding observations:

- Should open the issue of the Kafala system in bilateral talks with other countries (GCC countries)-lobby GCC countries, bilaterally and multilaterally, to reform or abolish the kafala system
- Government should cater to the needs of those “trapped” OFWs
- Proper orientation of OFWs/families travelling to countries with Kafala System-include in PDOS and PEOS, maximize the multi-media

PART III OF THE CONVENTION

Article 29

17. Please provide information on the measures taken to promote the birth registration of Filipino migrant children abroad, including those in an irregular situation, and to ensure the birth registration of foreign migrant children in the State party.

A Filipino child born abroad may either be registered with the post or not, the latter being due to it being difficult (distance/access to post and/or security/lack of trust) and expensive. But even if they were registered with the post, if their parent/s are undocumented, so are they. Which also creates the problem of access to basic public social services, including the right to education and medical treatment, and unaffordable private social services in host countries¹⁵².

There are different cases demonstrating the array of difficulties that children in irregular situations face. Therefore, there should also be the creation of a nationwide campaign to promote birth registration and to update all relevant databases.

Recommendation to the CMW to include in its concluding observations:

- Sustain a nationwide campaign to promote birth registration and update all relevant databases.
- Ensure that shelters are proactively, not reactively, creating spaces for distressed family and children of OFWs; Partner with CSOs and NGOs on site.

¹⁵²UN Women, Valuing the Social Cost of Migration: An Exploratory Study, 115

- The Philippine government should reach out to destination countries who are parties to the UN Convention on the Rights of the Child to negotiate observance and compliance of the provisions of the CRC.

Article 33

18. Please provide information on pre-departure programmes for Filipino nationals considering migration. In this regard, please indicate the measures taken by the State party to implement the recommendations contained in paragraph 22 (b) to (d) of the Committee's previous concluding observations.

(b) Ensure orientation and pre-departure seminars for migrant workers with clear objectives, country-specific information and nationwide outreach using the rights-based approach;

While the module and trainers' training includes laws of the host country and the rights and responsibilities of workers as per their contract, these key content continues to be crowded out by sales talk by banks, remittance, telecommunications and/or real estate businesses and or compromised by the lack of time and poor timing (just before OFW departs). These hinder the PDOS' ability to fully benefit prospective or departing OFWs. PEOS reach only a very limited number of its target audience, considering that more than a million were deployed annually since 2009, reaching 1.8 M in 2012.

(d) Ensure the sufficient allocation of funds for training and, - in collaboration with relevant partners, including non-governmental organizations (NGOs), carry out capacity building training for the government agencies handling migration issues, such as the Overseas Workers Welfare Administration, Philippine Overseas Employment Agency, and the Department of Foreign Affairs.

While DFA through FSI involves NGOs in its training of its foreign service cadets, this is only for half a day session which is deemed very limiting. DOLE on the other hand has not involved NGOs in its training of its officials and personnel for deployment abroad. Their training is also for a much shorter period of time that is deemed insufficient for example to learn the laws in the destination countries.

There are several instances where initiatives and actual skills and knowledge trainings to capacitate government personnel come from NGOs.

Recommendations to the CMW to include in its concluding observations:

- OWWA and POEA as the agencies tasked to regulate and monitor pre-departure information programs like PEOS and PDOS must be diligent in monitoring the conduct of such by accredited groups and partners to ensure compliance with approved education and training modules and contents as well as other specifications for conducive and effective adult learning;
- To reiterate to OWWA and POEA that content of the training and education modules must be rights-based and gender-sensitive in approach and framework; that as needed, must be country-specific and job-specific;
- For OWWA not to accredit PRAs to conduct PDOS, especially to their own recruited OFWs to be deployed as this is seen as conflict of interest and to encourage instead more CSOs and community partners to engage in PDOs and other pre-departure information seminars
- Social media and online technology and platforms should be utilized and maximised by the State to inform and update OFWs and communities on developments and trends in labor migration
- For government to allocate financial and human resources to strengthen capacities of government, CSOs, educational institutions and LGU partners nationwide in the effective conduct of pre-departure information trainings and seminars
- For OWWA and POEA to revisit earlier studies and recommendations conducted by CSOs on how to improve pre-departure information courses.

PART IV OF THE CONVENTION

Article 41

(e) Please provide information on the measures taken to implement the recommendations contained in paragraph 36 of the Committee's previous concluding observations, with a view to ensuring the right of Filipino migrant workers to participate in public affairs and to vote and to be elected at elections of the State party.

For the low turn-out of votes in the May 2013 national elections, overseas Filipinos cited Comelec's and Department of Foreign Affairs' Overseas Absentee Voting secretariat's administrative and operational limitations, minimal/lack of information campaign due to limited budget, outdated Comelec registration records, wrong/incomplete addresses on postal packets and complicated voting instructions, foreign service posts' limited human power and support to and weak collaboration with Filipino communities abroad, inaccessibility of polling precincts/limited OFW mobility, disillusionment and apathy given it was a non-presidential election, limited suffrage (national elections only), and finally, limited stakeholding and NGOs' waning support¹⁵³

Recommendations to the CMW to include in its concluding observations:

- For Comelec, under the newly-created Office for Overseas Voting which replaced the Committee on Overseas Absentee Voting, and in cooperation with other stakeholders, to conduct a comprehensive assessment and evaluation of past overseas voting exercises in order to be more guided, effective and efficient in the conduct of overseas voting in the 2016 national elections; for the Joint Congressional Oversight Committee on Overseas Voting to do a similar project or it can be a coordinated undertaking; For government to ensure sufficient funding for overseas voting.

Article 64

22. Please provide information on the measures taken to prevent irregular migration, including through international agreements, policies and programmes. Please include information on how such measures have been mainstreamed in overall migration policies and programmes and whether a measurable result on the numbers of irregular migrants has been determined.

Government has various programs and initiatives to prevent irregular migration. However, we would like to call the attention of the Committee on the following:

According to former Immigration Commissioner Ricardo David, Jr., the BI's campaign against human trafficking requires stricter screening of Filipinos, especially those going to countries known to be destinations of OFWs. He said that it is natural for immigration officers to assess the entire circumstances of all Filipino travelers to determine if the departing passenger is indeed a legitimate tourist travelling for pleasure abroad or a worker that would try to find work abroad without work-related documents.¹⁵⁴

In furtherance of the above, the BI announced recently that all Filipinos travelling as tourists must show proof of financial capability for travel, proof of work and financial support from benefactors¹⁵⁵ BI however discloses that 40 Filipino travelers are offloaded everyday at the main airport terminal where 3 to 4 of them are genuine undocumented travelers¹⁵⁶.

The CHR chairperson Loretta Ann Rosales cautioned the BI to be careful in offloading passengers since Filipinos have a constitutional right to travel. She added that there should be enough evidence before the BI stops an individual from leaving the country.¹⁵⁷ Similarly,

¹⁵³Center for Migrant Advocacy, *Report on OAV 2013 Assessment Forum*

¹⁵⁴"Immigration defends tough screening of departing Pinoys," *The Philippine Star*

¹⁵⁵<http://www.mb.com.ph/bi-requires-all-tourists-proof-of-financial-capability-to-travel/> . March 14, 2014

¹⁵⁶<http://www.gmanetwork.com/news/story/351441/pinoyabroad/news/40-pinoys-get-offloaded-at-naia-1-every-day-bi> . March 6, 2014

¹⁵⁷*Ibid.*

Recommendation to the CMW to include in its concluding observations:

Article 65

there is serious concern in the interpretation and implementation of “stricter screening” for Filipinos travelling as tourists especially to destinations like Dubai, Hongkong, Singapore, Malaysia and Bangkok which are major transit points to their actual destinations.

For BI to come up with clear legal bases and guidelines for immigration screening and offloading so as not to compromise the right to travel of Filipinos

23. In line with the recommendations contained in paragraph 28 of the Committee’s previous concluding observations, please provide information on the measures taken by the State party to improve the situation of Filipino migrant women facing situations of vulnerability by:

(a) Conducting a thorough assessment of the situation of Filipino migrant women, including their income in the informal sector, and taking concrete measures to address the feminization of migration; comprehensively in its labour migration policies, and ensuring minimal social protection for Filipino migrant women; (b) Negotiating more secure employment opportunities and terms and conditions for Filipino migrant women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent; (c) Carrying out gender training and sensitization for government officials dealing with migration issues, in particular those providing legal and consular assistance to Filipino migrant workers abroad seeking justice against abuse in the workplace; (d) Implementing the outcome document of the International Conference on Gender, Migration and Development called the Manila Call to Action as a tool for informed policy decision-making and advocacy; (e) Liaising with local and international partner networks to provide services and support to migrants and to advocate for migrants’ rights.

Women migrants, remain concentrated in gender-stereotypical women’s job in the households as domestic workers. They comprise the biggest proportion of workers under one single job category in the annual deployment statistics.

Following the promulgation of the HSW policy, deployment figures for new hire HSWs are as follows: pre-HSW package in 2006: 91,412; first year of HSW, 2007: 47,877; 2008: 50,082; 2009: 71,557; 2010: 96,583; 2011: 142,689; 2012: 155,831. The top ten destinations of HSWs are: all GCC countries, Hongkong, Singapore, Malaysia, Italy. GCC HSW deployment combined comprises more than 60% of the total¹⁵⁸.

POEA will assert that all HSWs processed and deployed by POEA complied with the HSW reform package as manifested by the legally-binding SEC duly signed by the HSWs and the contracted employers. However, reality on the ground would belie this claim as HSWs continue to experience violations of their rights at work and as human beings. The entry level salary is not followed in many of the states of employment and they receive less. Instances are cited where the POEA mandated SEC was replaced by another work contract, the provisions of which are far more inferior. Worse, zero placement fee is not complied with as confirmed by the 2013 study of HSWs in Hongkong.¹⁵⁹

Through a focused survey and discussion groups among various stakeholders organized by Battistella and Asis of the Scalabrini Migration Center revealed that there was low awareness of basic rights and of government regulations among domestic workers despite the mandatory pre-departure training orientations. The study also found that the mandatory

¹⁵⁸POEA data. 2012.

¹⁵⁹License to Exploit: A Report on the Recruitment Practices and Problems Experienced by Filipino Domestic Workers in Hongkong. Alliance of Progressive Labor-HK and Progressive Labor Union of Domestic Workers in Hongkong. 2013. To be published in April 2014.

Comprehensive Pre departure Orientation Program which includes training on language, culture and stress management incurs extra costs onto to prospective migrant with no proven benefits.¹⁶⁰ Alternative evidence provided by a research study conducted by the Center for Migrant Advocacy (CMA) in March- June 2011 shows similar findings.¹⁶¹ Major findings of the study included a low level of awareness among HSW's of the new, protective policy. Also, findings suggested that the policy is not strictly implemented and different stakeholders follow and uphold the policy differently, a key reason why there are so many violations to the provisions.

Recommendations to the CMW to include in its concluding observations:

- For CHR, as gender ombud, per provision of the Magna Carta of Women, to audit all agencies of government for compliance to mandatory human rights and gender-sensitivity trainings
- For CHR and Philippine Commission on Women to revisit the Magna Carta of Women and assess the implementation of its provisions, 5 years after its enactment in 2009 and to confirm submission of periodic reports to Congress in regard to compliance of agencies and overall implementation with special attention to the provision of Gender Focal Point Officers at FSPs with high concentration of women migrants and how this improves the situation of women migrants
- Review and assess the efficacy of the Household Service Worker Package 2006 and work to expand employment opportunities for women.
- Conduct a systematic review of databases within all OFW related government agencies and create a unified and accurate database
- Create a standardized evaluation tool to monitor the implementation of the recommendations put forth in the Manila Call to Action

Article 66

24. Please provide information on the measures taken to review the role of private recruitment agencies and to strengthen the existing licensing system for recruitment agencies, migration regulation and control mechanisms to prevent private recruitment agencies from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters (CMW/C/PHL/CO/1, para. 42). Please also indicate whether the State party envisages ratifying ILO Convention No. 181 (1997) concerning Private Employment Agencies.

The concerns around recruitment tend to focus around the governments weak regulatory regime. Violations concerning recruitment regulations are due to a number of reasons like willful violation of recruitment agencies, unethical practices of foreign recruitment agencies, unrealistic standards of wages set by the POEA, collection of placement fee, lapses in verification and accreditation of recruitment agencies and the need to strengthen recruitment monitoring and inspection.¹⁶²

In 2013 a survey-research conducted among Filipino HSWs in Hongkong¹⁶³, 88% of the respondents used/paid a private recruitment agency for placement. The average total recruitment cost is P80,736. That is why recruitment costs have been identified as the central problem among domestic workers. It is very alarming as this kind of fee is excessive and illegal but still common and widespread. Also according to the study, more than 14% were forced by their agencies to accept salaries below the minimum wage, 36% were given wrong, outdated or no information at all by their agencies about Hong Kong laws concerning them,

¹⁶⁰Philippine Institute for Development Studies, *Protecting Filipino Transnational.*, 1, 1-56

¹⁶¹Center for Migrant Advocacy, *Survey Research on the Effectiveness of the Household Service Workers Policy Reform Package (2011)* 1-52

¹⁶²Scalabrini Migration Center, *Country Migration Report, The Philippines 2013*, p. 164

¹⁶³License to Exploit: A Report on the Recruitment Practices and Problems Experienced by Filipino Domestic Workers in Hongkong. Alliance of Progressive Labor-HK and Progressive Labor Union of Domestic Workers in Hongkong. 2013. To be published in April 2014.

and almost 10% were told by their agencies that they will not be getting one or several mandated benefits.¹⁶⁴

In Taiwan, “For 25 years Filipino migrant workers have been paying excessive placement fees to come to Taiwan to work. The Filipino government’s legal placement fee is one month’s salary (NT\$19,047 {US\$635} for factory workers, construction workers and fisher folk; and NT\$15,840 {US\$528} for caretakers and domestic workers) plus processing fees totaling about Php60,000. However, many Filipino migrant workers are paying twice this amount of money” which resulted to debt bondage.¹⁶⁵

One urgent issue at the moment is how the Philippines will respond to the changes in recruitment policies and regulations in Saudi Arabia which allow for the formation of “mega recruitment companies” (MRCs) that can function either as a (1) placement agency or recruiter or (2) as employer when it acts as labor service provider/ outsourcing to other companies¹⁶⁶. MRCs’ role as employers is problematic as it creates a new triangular configuration for the employment relationship. Accordingly, MRCs will have two distinct contracts –one with the employers and one with the workers with respect to wages to be paid for limited work and for a limited period of time. It is also stipulated in the regulation that employers can request MRC for substitute workers and may allow MRC to deduct from the wages of the workers upon request by the real employer. This triangular set up is already being implemented in Malaysia to the detriment of the workers¹⁶⁷. The Philippine government must NOT agree to this set up.

Recommendations to the CMW to include in its concluding observations:

- Ratify ILO C181 - Private Employment Agencies Convention, 1997 (No. 181)
- Adopt an across the board “no placement fee” policy as a matter of principle that MWs should not pay for their placement; this way it is also easy to monitor compliance
- Strengthen enforcement and monitoring of regulations on the charging of illegal recruitment fees; prosecute, penalize illegal recruiters. Inform the public and improve the performance of adjudication of POEA, improve justice system
- Review licensing procedures and make requirements stringent, strict monitoring including on the spot inspections; ensure that escrow funds are intact and maintained at all times;
- Simplify recruitment procedures and establish a one-stop shop to progressively eliminate brokers and intermediaries involved in the process
- Government must not agree to the MRC or any PRA to function as employer for outsourcing purposes
- Establish a publicly available and widely shared blacklist of errant recruiters and expose unscrupulous recruitment agencies and persons involved
- Establish Multi-sectoral Monitoring Committee including trade unions and civil society organizations to monitor implementation of ethical recruitment/bilateral agreements.

Article 67

25. Please describe the progress made by the State party in strengthening the reintegration of returning migrant workers and members of their families, as recommended in paragraph 44 (a)-(e) of the Committee’s previous concluding observations. Please indicate if bilateral agreements facilitate the return and reintegration of migrant workers and how the National Reintegration Centre for Overseas Filipino Workers operates and coordinates its activities with other relevant institutions to promote the return and reintegration of Filipino migrant workers.

¹⁶⁴Ibid

¹⁶⁵Inputs from Hsinchu Diocese Migrants & Immigrants Service Center (HMISC)-Taiwan

¹⁶⁶Mega Recruitment Agencies’ Labor System. Implementing Royal Decree No. 51 dated 23/08/1426H. Kingdom of Saudi Arabia

¹⁶⁷<http://charleshector.blogspot.com/2012/04/in-2011-115-groups-said-no-to-labour.htm> l. April 26, 2012

In 2011, the P2 Billion OFW Reintegration program was launched. According to DOLE, more and more OFWs avail of the loan and in the first quarter of 2013, 113 borrower-beneficiaries have been approved by the Land Bank of the Philippines.¹⁶⁸ However, the number is still very low compared to the number of returning migrants every month. While some OFWs appreciate the program, others complain that to be able to benefit from it, one must undergo a grueling process that includes preparing a business plan that needs to be approved. OWWA reiterates that special seminars are conducted to help in the making of business proposals.¹⁶⁹

Several other programs are available. However, these rarely reach returning migrants because of the lack of information dissemination. Also, some of those who are informed about these programs are not given access because they fail to adhere to the complicated requirements including collaterals. The returning OFWs who are enrolled in livelihood programs cannot sustain the enterprise due to the lack of skills in running a business.

Recommendations to the CMW to include in its concluding observations:

Article 68

- There is a need to intensify information on the assistance provided to returnee migrants
- Access and availment of programs and services on return and reintegration should be simplified, streamlined and migrant-friendly

26. Please provide information on the measures taken to implement the recommendations contained in paragraph 48 (a)-(f) of the Committee's previous concluding observations in order to combat trafficking in persons.

Human trafficking is prevalent due to fast pace, ease and in expense of migrating through illegal channels. Although there is both national and international legislation in place to protect migrants against trafficking, enforcement is difficult and costly. Difficulty arises as illegal recruiters are often relatives or the recruitment agency is out of the country. Cases that are filed against illegal recruiters often do not progress and are not given high enough priority over other concerns/cases.

Recommendations to the CMW to include in its concluding observations:

- Comprehensive documentation and disaggregated data of cases; Effective enforcement of all relevant/protective legislation at the national and international level.
- Strengthen AIR- provide funding towards provincial/local needs.
- Further streamline legal channels of migration in order to deter illegal migration
- Better equipped airport service booths with informed/trained personnel and place public information materials in other transport terminals to educate public about trafficking and protection of migrants

27. Please provide any additional information and measures adopted since the Committee's consideration of the State party's initial report in 2009 to implement the Convention and the Committee's previous concluding observation (CMW/C/PHL/CO/1 para 51), including relevant disaggregated statistical data, as well as information on any other important developments in the State party relating to the provisions of the Convention.

Following the lifting of the ban for young Filipinos to avail of the Au Pair program in Europe in 2010 and 2012 after 15 years of suspension because of reported abuses and exploitation

¹⁶⁸“OFWs evolving into successful entrepreneurs,” The Gulf News, <http://m.gulfnews.com/news/world/philippines/overseas-filipinoworkers-evolving-into-successful-entrepreneurs-1.1176224>

¹⁶⁹“OWWA: More OFWs mull returning to PHL for good amid strong economy,” GMA News, <http://www.gmanetwork.com/news/story/312313/pinoyabroad/news/owwa-more-ofws-mull-returning-to-phl-for-good-amid-strongeconomy>

against Filipino au pairs, already, there is evidence that the majority of au pairs from outside Europe are Filipinos.¹⁷⁰ Even as the au pairs are not considered migrant workers,

We recommend inclusion to CMW concluding observations that governments will closely monitor the status and well being of Filipino au pairs, most of whom are young women below 30 years old. They are vulnerable to illegal recruitment and trafficking and if not properly monitored, might end up once again as exploited domestic workers in European households or even undocumented migrants.¹⁷¹

¹⁷⁰Filipino au pairs make up a third to 80% of total au pair deployment in several European countries. (Policy Brief: PHILIPPINE MIGRATION AND AU PAIR PROGRAMS IN EUROPE. Center for Migrant Advocacy-Philippines. February 2014) They are the biggest, non-European au pairs in Norway (<http://www.newsinenGLISH.no/2012/04/04/philippines-leads-new-permitstatistics/>) April 4, 2012

¹⁷¹Policy Brief: PHILIPPINE MIGRATION AND AU PAIR PROGRAMS IN EUROPE. Center for Migrant Advocacy-Philippines. February 2014. In addition, CMA was approached by several au pairs to assist them in getting their refund for the P60,000 “good will deposit” each one paid to the au pair agency. They also paid P40,000 for the pre-departure “au pair training”. There were some 100 of them recruited by one agency.



MIGRANT FORUM IN ASIA SUBMISSION OF INFORMATION

For the Second Periodic Report of the Philippines on the Implementation of the Convention on the Rights of All Migrant Workers and Members of their Families

UN Committee on Migrant Workers 20th Session
31 March-11 April 2014

INTRODUCTION

This submission seeks to contribute to the List of Issues Prior to Reporting provided by the UN Committee on Migrant Workers with respect to the implementation of the Philippines on the UN Migrant Workers Convention.

Migrant Forum in Asia (MFA) is a regional network of non-government organizations (NGOs), associations and trade unions of migrant workers, and individual advocates in Asia who are committed to protect and promote the rights and welfare of migrant workers. As a regional migrants' advocacy network, this report provides perspective from destination countries particularly on select list of issues which the Philippine government needs to seriously address into to ensure that the rights and welfare of all migrant workers and members of their families are protected and upheld.

MFA acknowledges the contributions of its members in Japan, Taiwan and Singapore. MFA members who have contributed to this report are – Solidarity Network with Migrants Japan (SMJ), Hope Workers' Center (HWC) - Taiwan and Humanitarian Organization for Migration Economics (HOME) – Singapore.

The report also supports the submission of the Center for Migrant Advocacy which has spearheaded the process of consultations among civil society organizations and trade unions.

REPLIES TO LIST OF ISSUES PRIOR TO REPORTING

1. *In light of the recommendations made by the Committee in paragraphs 14 and 50 of its concluding observations on the initial report of the Philippines (CMW/C/PHL/CO/1), please provide information on the measures taken to improve the capacity of the State party's institutions for effectively implementing the Convention by:*

(b) Allocating sufficient human and financial resources for agents within this structure to carry out their work efficiently

MFA recognizes the efforts being undertaken by the Philippine government to strengthen the capacity of relevant government's institutions to effectively implement the Convention. One major concern though that MFA would like to highlight is the non-compliance of the government on the deployment of Social Welfare Attaches (SWATs) in the embassies/posts.

RA8042, enacted in 1995 and the amended RA10022 passed in 2010 also mandated that "In countries categorized as highly problematic by the Department of Foreign Affairs and the Department of Labor and Employment, and where there is a concentration of Filipino migrant workers, the government must provide a lawyer and a social worker for the Center." Since the enactment of the law, there has been no enforcement of this provision except for the intermittent deployment of a social welfare attaché by the Department of Social Welfare and Development (DSWD).

The Center for Migrant Advocacy reported that the DSWD under its International Social Welfare Services for Filipino Nationals (ISWSFN) Program has been submitting budget

requests for the deployment of social workers, however, the proposal was always denied by the Department of Budget and Management (DBM).

To date, out of 87 embassies only Malaysia and Saudi Arabia have been deployed with SWATs.

It was only when the 'Sex for Flight' scheme came out when the DBM acknowledged the need to deploy social workers in the posts abroad. More details on the "Sex for Flight" scheme are provided on LOIPR #8.

Recommendations to the CMW to include in its concluding observations:

1. Allocate resources and expedite the deployment of social welfare attaches in select countries where there is high concentration of OFWs to ensure that the government is effectively able to address the psycho-social needs and concerns of Overseas Filipino Workers (OFWs) in particular those that concern about the social cost of migration e.g. family disintegration and relationship issues.

3. Please provide information on the State party's cooperation with civil society organizations working on migrants' rights in relation to the implementation of the Convention and the preparation of its periodic reports (see CMW/C/PHL/CO/1, paragraphs 22 (c), 50 and 52).

The Philippine government has also been receptive to civil society organizations' contributions and participation in various intergovernmental processes both at local and international levels such as the ASEAN, Colombo Process, Abu Dhabi Dialogue and the Global Forum on Migration and Development.

However, this cooperation usually takes place through the initiative of CSOs. CSOs have established an open and inclusive engagement with different sectors including the government on issues concerning OFWs.

Specific to this review, according to CMA, while there is an improvement in the process as compared to the 2009 Committee review, the validation workshop took place upon the initiative CMA. In this validation workshop, only 5 CSOs were invited which demonstrate a lack of genuine cooperation and partnership with CSOs.

The Philippine government needs to improve in this regard if they want a genuine CSO participation. The role of CSOs and NGOs as partners of government has been institutionalized both in the Philippine Constitution and in RA 8042. The government could benefit immensely from collaborating with civil society organizations advocating for the rights of migrant workers. Some of these civil society organizations are focused exclusively on improving the rights of migrant workers and thus can have valuable information and analysis compiled from their work over the years. Many of the changes in the country and in the region are reflective of CSOs advocacies that have persisted overtime.

Further, many migrant workers abroad contact civil society organizations in the Philippines directly when faced with abuse or exploitation. This gives CSOs a deeper understanding of some of real life instances of abuse taking place against migrant workers abroad.

All of this information could prove to be invaluable information in the creation of bilateral agreements, MOUs, national laws and/or policies for the Department of Labour & Employment (DOLE). As well as provide information in the proper implementation of international human rights and labor rights conventions.

Recommendations to the CMW to include in its concluding observations:

1. The Philippine government should uphold its commitment to promote an open and inclusive process of consultation and cooperation with civil society.
2. Report of this second review should be communicated to civil society organizations in various foras.

6. Please provide information on measures taken to strengthen the protection of Filipino migrant workers abroad by reviewing and amending bilateral and multilateral agreements, Memoranda of Understanding or other protective measures with countries of employment of Filipino migrant workers (CMW/C/PHL/CO/1, para. 32 (a)).

The Philippines has the highest number of bilateral agreements and MOUs than any other origin countries. The country has signed over 50 agreements with destination countries. However, majority of these agreements are centered on seafarers and immigrants and not on the most vulnerable sector of OFWs such as domestic workers, construction workers and other OFWs in service sector.

Only in recent years where BLAs were forged to address the issues of domestic workers particularly those who work in the Gulf. These include Jordan, Kuwait, Lebanon and Saudi Arabia. In the case of Saudi Arabia, the process was expedited following a fact-finding report of Congressman Walden Bello about the situation of OFWs in the Kingdom.

However, despite of these agreements widespread abuse is still extensive. This calls into question the strength of these bilateral agreements. One case in point is the provisions in the Household Service Workers Reform Package (HSW) which was promulgated in 2006 states that OFWs need not pay placement fee and that the entry salary should \$400.00. In reality, these provisions are not observed by many of the destination countries. The government needs to come up with effective monitoring system to ensure that destination countries adhere to the rules set out in the HSW reform package. Prevailing wages in the GCC and other Asian destination countries of domestic workers remain from USD200-250.00

While the situation of having an MOU is better than a situation of no agreement at all, MFA still believes that multi-lateral and regional frameworks are still better as BLAs/MOUs are influenced by relative bargaining power of contracting parties and in most cases the interests of the destination countries supersedes and where greater focus on regulation and less on protection of rights. BLAs and MOUs are also only one of the many options to govern labour migration and protect the rights of migrant workers and members of their families.

CSOs in the Philippines are hardly included or involved in drafting and monitoring of BLAs and MOUs. While the Philippines is more transparent when it comes to providing information about BLAs/MOUs, they are only made available in the POEA once they are signed.

Follow up action by the Philippine government after signing a bilateral agreement must be a priority. This may entail inflexibly scheduling joint committee hearings annually to deliberate on the success of the agreement between the two countries and/or conducting 'fact finding' missions to countries of origin to ensure they are enforcing their side of the bilateral agreement and revising old agreements updating them with rights-based provisions.

Recommendations to the CMW to include in its concluding observations:

1. The Philippine government should consider broad-based consultations in designing and monitoring BLAs/MOUs. Among others, a clause should be provided on how the government and destination countries intend to disseminate the provisions in the agreements in particular to employers to ensure compliance with the agreement.

2. The monitoring and evaluation mechanism should be made mandatory. Areas to be monitored should be identified which would become the basis for monitoring and evaluation.
3. In order to ensure effective monitoring and evaluation, the government should consider allocating financial resource and competent staff to carry out the task.
4. Results of monitoring and evaluation should be widely disseminated to relevant stakeholders including CSOs.
5. The Philippine government to initiate a process among origin countries or Colombo Process countries to identify core elements which need to be considered in developing BLAs/MOUs.

8. Please provide information on the measures taken to prevent public officials from using corrupt practices to (a) obstruct migrants' access to justice and (b) favor child labor, e.g. by stating a higher age of migrant children on birth certificates.

Curbing corruption is one major agenda of the current administration. Efforts have been intensified and mechanisms are in place to punish public officials who are involved in corrupt practices and abuse of authority. But the big question is how serious the government is in combating this practice which has existed in the country since time immemorial.

One case in point is the alleged “Sex for flight” scandal which involves embassy officials in Jordan, Kuwait, Lebanon and Saudi Arabia who are on trial for alleged sexual favours in exchange of repatriation and for organizing prostitution rings of OFWs and for bribing an OFW so as not to file a complaint obstructing an OFWs access to justice. The “Sex for Flight” scheme came out mid-2013 upon reports received by Cong. Walden Bello from credible sources. Congressman Bello is a member of the House of Representatives and chairs the Philippine Congressional Committee on Overseas Workers Affair.

The House of Representatives initially led this investigation and trial, and then handed it over to the Department of Justice. Since these cases emerged, there has been little action taken. One of the largest hindrances to the progression of these cases is the lack of coordination between the different departments involved. The House of Representatives initiated the investigation then handed it over to the Department of Justice. Meanwhile, the Department of Labor and Employment (DOLE) also conducted their own investigations.

It is not apparent that the different departments have been collaborating or even sharing information on the cases. These cases could progress at a much faster rate with a higher level of collaboration among the different departments

To date, the DOLE only filed a 4-month suspension to one official involved while administrative cases were filed against the officials who were found not guilty of the allegations but merely dereliction of duty.

The Department of Foreign Affairs moved to increase the number of female staff members at shelters for distressed migrant workers, and enacted other measures such as prohibiting workers in distress from full-time or part-time employment in Philippine embassy or labor offices overseas, forwarding all requests for repatriation tickets to Philippine Overseas Labor Office heads, and requiring receiving agencies to act on these requests within 48 hours.¹⁷²

¹⁷² Paterno Esmaquel II, “To prevent sex for flight, females to staff OFW shelters,” Rappler, August 8, 2013 <http://www.rappler.com/nation/35962-more-females-staff-ofw-shelters>

Recommendation to the CMW to include in its concluding observations:

1. There is a serious need to look into the practices of the public officials working abroad, especially in countries that receive a large number of OFWs. It is crucial that all government official deployed abroad are extensively trained in a gender sensitive manner to assist migrant workers while representing the Philippines abroad.
2. Aggressively investigate and punish cases of corruption involving public officials.
3. Ensure that checks and balances are in place to detect public officials abusing their power.
4. Code of ethics and appropriate sanctions should be in place and implemented to give justice to OFWs who have been victims of embassy officials and other public officials.
5. Re-echoing Congressman Bello's recommendation, ambassadors or heads of missions should have a hands-on approach in overseeing the operation of the embassies or consulates.
6. Pre-departure orientation seminars should also tackle real problems or issues that OFWs may encounter in the destination countries.

9. Please indicate whether the State party has undertaken and/or supported a comprehensive study on the situation of children of migrant workers. Please also describe the progress made in developing and implementing strategies, policies and programmes, in collaboration with non-governmental organizations (NGOs), to ensure the protection and promotion of the rights of migrant children through, inter alia, community support programmes, education and information campaigns and school programmes (CMW/C/PHL/CO/1, para. 46).

MFA has not heard of any studies conducted by the government with respect to the situation of children of migrant workers but only on the social costs of migration which was commissioned the DSWD and where MFA's member, ATIKHA, was also involved.

Likewise, MFA members are also not aware of any study on the situation of children of migrant workers in the destination countries initiated by the Philippines.

In the case of Japan, a study was made by an individual on the situation of the half-Filipino and half-Japanese children and the struggles they encounter in Japan.

Recommendations to the CMW to include in its concluding observations:

1. Conduct a comprehensive study on the situation of migrant children both in the country and countries of destination in order to create a demographic profile necessary to come up with appropriate policies and programs for children of migrant workers.
2. Enact a comprehensive program to promote and protect the rights of children and family of OFWs.
3. Ensure that government policy, programs, and officials are sensitive to the needs of women and children.
4. Ensure that children of migrant workers are involved in drafting policies and programs that would serve their best interest.

10. Please indicate whether the State party envisages ratifying International Labour Organization (ILO) No. 189 (2011) concerning Decent Work for Domestic Workers.

The President of the Philippines signed the instrument of ratification on ILO Convention 189 on 18 May 2012 and was subsequently concurred by the Philippine Senate on 6 August 2012. The ratification was deposited with the ILO on 5 September 2012 making it the second country to ratify the Convention. Following its ratification, Republic Act 10361, a national legislation for domestic workers called "Kasambahay Law" was enacted on 18 January 2013 as part of the Philippines' compliance to the Convention. Mechanisms were set up to implement the law.

In the recent assessment and planning of the Technical Working Group for Domestic workers where representatives from government line agencies were present some issues and concerns surfaced: information dissemination on C189 and the kasambahay law, unified system of payment of basic social protection benefits such Social Security, Philhealth and PAG-ibig, retroactive collection of SS premiums which discourages employers to register and give accurate information on the duration of the employment of their domestic workers, no budget allocated to staff the domestic workers help desk set up in the regional offices of the Department of Labor and Employment.

The findings of the draft survey on the living arrangements of domestic workers commissioned by the International Labour Organization also revealed that majority of the 200 local domestic workers interviewed are not aware of the Kasambahay Law. For those who know, do not really understand what the law is about.

While it is still premature to judge the implementation of the law, the above concerns need to be addressed to ensure that domestic workers will be able to benefit from the law and ensure that their rights and welfare are protected.

With respect to migrant domestic workers, MFA hopes that with the ratification of C189, the Philippine government would vigorously work to ensure the rights and entitlements of OFWs are upheld and promoted. In particular, review the implementation and effectiveness of the HSW reform package.

Recommendations to the CMW to include in its concluding observations:

1. Intensify information dissemination on the Domestic Workers Convention and the Kasambahay Bill at the community level. The local government units should take a proactive role in this regard.
2. Mechanism should be placed for the unified payment system. This would be an incentive for employers and would encourage them to regularly pay premiums.
3. The SS should not continue the retroactive arrangement of paying premiums to encourage employers to register domestic workers and/or share their contributions. They should devise an arrangement where they would still be able to collect previous premiums but not necessarily starting from the time the domestic worker was employed.
4. Budget should be allocated to effectively run the regional help desk centers.

14. In light of paragraphs 26, 30 and 32 (b) of the Committee's previous concluding observations, please provide information on the measures taken by the State party to:

(a) Strengthen its legal assistance to Filipino migrant workers;

MFA noted that the efforts of the Philippine government to strengthen its legal assistance to Filipino migrant workers still fall short in addressing the increasing number of OFWs who need legal intervention. While the budget for the Assistance to Nationals (ATN) has been increased, some embassies in particular in Japan, Taiwan and Singapore still rely on pro-bono legal services and assistance from NGOs.

In Japan, the Consular Section's Assistance to Nationals (ATN), minimally entertains cases brought by migrants to their attention where they provide minimal information to migrants about their rights. In case the problems need legal intervention (needing lawyer for court process or other legal action) usually these are being referred to NGOs. This is the experience of Kalakasan Migrant Women Empowerment Center where the Philippine Embassy has referred a number of cases of Filipino women victims of domestic violence perturbed about divorce, custody of children and processing of visa in the Japanese immigration. In most cases, Kalakasan provides advice to ATN staff on the important points to negotiate with the particular government agency. This scenario calls the need for appropriate budget allocation to be able to effectively provide legal assistance and further strengthen capacities of embassy officials in dealing with legal cases.

Recommendations to the CMW to include in its concluding observations:

In the case of Singapore, HOME proactively reaches out to the Philippine Embassy to assist distressed OFWs especially those who have been victims of contract substitution and exorbitant recruitment fees. In one case, HOME provided a lawyer to represent Filipinas who have been abused by their employers during court proceedings.

1. Strengthen the implementation of legal assistance (here and abroad) and ensure accountability in cases of human rights violation, violence against women, and not just repatriation. – Utilize the LAF, choose reliable lawyer and maximize existing free legal assistance groups
2. Increase financial and human resources of embassies that would enable them to hire full time lawyers who are knowledgeable of the laws of the land.

(b) Inform Filipino migrant workers of the administrative and judicial remedies available to them;

MFA noted the deficiency in terms of OFWs knowledge of their rights and available judicial remedies both in the Philippines and in countries of destination. While OFWs undergo pre-departure orientation seminars, they still are still not aware of their rights and who to approach.

In most cases, OFWs approach the NGOs or a friend because they are not aware of the services the Philippine embassy provides. While these services are available in the website, not all OFWs are computer literate. The most common service they know is the passport renewal. For other concerns like labor issues, Filipinos mostly go to different NGOs or Community Unions for assistance.

In the case of Japan, OFWs who have sought the assistance of SMJ and Kalayaan are not even aware of what the (POLO) Philippine Overseas Labor Office can do for them.

In Taiwan, OFWs are aware of the administrative and judicial remedies but according to OFWs that MFA members encounter the information does not come from MECO.

In Singapore, most of the workers are not aware of the POEA regulations and entitlements under the Philippines Overseas Employment Administration (POEA) system. The Philippines Embassy says that it is delivering orientation training for workers on arrival in Singapore. For example, excessive agency fees are still charged by many employment agents. HOME recently held a forum for workers titled “POEA and You”, attended by approximately 500 Filipino domestic workers who confirmed that they did not know about the zero agency fee rule or of the possibility of claiming these fees back under POEA. An Embassy Labour Attache was invited to address the claims, but HOME considers that holding such forums and coordinating filing of claims should be the responsibility of the Philippines Embassy, rather than a Singaporean NGO.

HOME provides a 24-hour helpdesk and in 2014 has commenced a program to refer agency fee claims to the Philippine Embassy in Singapore for processing by POEA. However, HOME considers that the failure to educate and empower workers about their rights and options before and after they arrive in Singapore must be remedied by the Philippine government as a matter of urgency.

Recommendations to the CMW to include in its concluding observations:

1. First and foremost, embassy officials should not only be aware of the existing administrative and judicial remedies provided by the Philippine government but also being familiar with the judicial remedies and procedures available in the destination countries. There should be on-going learning programs to be given to them to ensure effective delivery and dissemination of information to migrant workers.

2. The government should exert more effort in disseminating information about the administrative and judicial remedies available for OFWs both in the country as well in the destination countries.
3. Philippine embassies should have a 24-hour helpdesk to ensure that urgent cases are immediately attended to.
4. If possible, a common curriculum focused on understanding laws and policies should be made available to all embassies/consulates should be given to ensure that important information is captured and delivered to migrant workers. This curriculum should be periodically period. This process will ensure continuity whenever there is turnover of post personnel.

(c) Increase awareness among Filipino migrant workers, especially women domestic workers, on the available mechanisms for bringing complaints against employers so that any abuses can be investigated and punished;

Information about redress and complaints mechanisms are not easily accessible to women domestic workers. Women domestic workers' concerns are often brought to the aid of NGOs. They feel more comfortable asking help from the NGOs rather than the Philippine Embassy.

In Japan, Filipino migrants who are actually workers in Japan are not informed by the Philippine government of any mechanism for bringing complaints against their employers.

As Japan does not hire foreign domestic workers for its own citizens, only embassy officials and expatriates with high position working in multi-national companies can hire them. The visa category of domestic workers is not for work but labeled as 'special designated activity'. Domestic workers in Japan are not recognized as workers, they do not have worker's rights. They can bring their complaints to the embassy under its labor section (POLO) however, in the past, in most cases labor authorities would favor maintaining the employment rather than negotiate respect for their workers' rights (wage according to contract, no maltreatment, etc). As domestic workers are mostly employed by embassy officials, they are already at a disadvantaged position.

The POLO (Philippine Overseas Labor Office) webpage does not provide information on how it tackles the issue on women domestic workers, but rather states general labor concerns. In all, the Philippine Embassy does not have much mechanism in disseminating this information.

NGOs and Church deliver to the migrants and migrant communities the information about migrant's rights and how to file complaints when their rights are violated.

In Taiwan, while field visits in places where OFWs gather such as churches and places of worship and radio program every Sunday are being conducted, MFA members notice that these efforts are not enough to ensure that OFWs are aware of their rights both in the Philippines and in Taiwan and the services available to them and how to access them. This information should be made available in PDOs especially those provided by private recruitment agencies that are contracted by the government.

In order to address this lack of information dissemination, the Council of Labor Affairs (CLA) set up a system where upon arrival migrant workers are oriented on basic information where to seek assistance in case of problems with their work, broker and employers. Hope Workers' Center gives monthly education in the church and has set up a Facebook account wherein workers can read updated labor and other related information.

The above is also true in the case of Singapore. Given the limited knowledge, domestic workers oftentimes resort to running away and would approach HOME rather than addressing their complaints using available administrative avenues.

The Embassy advertises an after-hours number for “urgent” matters on its website. However, according to some Filipino workers, they are unable to get through when they try to contact the Embassy. The Embassy is also located in a relatively inaccessible area of Singapore, and does not have an outreach office at popular locations such as Lucky Plaza. As a result, many Filipino workers prefer to contact organizations like HOME. HOME has provided shelter to about 800 Filipina domestic workers per year for the past 10 years. That is 8000 workers who have been assisted by HOME to settle their complaints.

Recommendations to the CMW to include in its concluding observations:

1. The Philippine government should provide alternative contacts, such as HOME’s 24-hour hotline number, so that they can access advice and assistance when they need it.
2. Philippine embassies or consulates should expand its reach to ensure that relevant information become accessible to OFWs. Visits to dormitories and places where migrant workers converge and giving them education and empowering them on their right would be a welcome sign.

(d) Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families;

MFA noted that embassies are also trying their best to respond to the requests of OFWs. However, the problem always lies on the resources and the capacity of embassy/consular staff to effectively respond to the problems of OFWs. Embassies always resort to referrals and approach NGOs for help e.g. to provide shelter, welfare aid and legal assistance and other assistance needed by distressed OFWs.

Members also noted that embassies are not able to address some pressing issues that deal with family relationships. In Singapore, HOME has encountered many Filipino migrant workers who have family-related problems as a result of their work abroad. A key issue for workers is family breakdown as a result of their absence, and the financial and custody issues that result. Because the Philippine government does not allow divorce, many Filipina domestic workers are concerned that their hard-earned wages may end up in the hands of their separated husband and his new partner, rather than going to their children. Again, this situation strongly calls for expeditious deployment of SWATs.

Another concern is the accessibility of services. In Singapore, the majority of domestic workers staying in HOME’s shelter are OFWs which is an indication that many of these workers have difficulty accessing the shelter services provided by the Embassy.

Recommendations to the CMW to include in its concluding observations:

1. Consular Section needs more staff equipped with skills and knowledge about the policies and practices related to welfare and rights protection of Filipino migrants in Japan to be able to respond effectively to the needs of Filipino migrants and their families here.
2. The government should seriously address family disintegration and other relationship issues associated with migration. Support services both at home and destination countries should be provided.

(e) Ensure that its diplomatic and consular staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino migrant workers, especially in those countries categorized as “highly problematic” by the Department of Foreign Affairs (DFA) and the Department of Labour and Employment (DOLE);

While Japan, Singapore and Taiwan are not considered “highly problematic” countries, MFA members in these countries would like to draw the attention of the Philippine government about the limited knowledge of embassy/consular staff on the laws and

procedures of employment in these countries. Members noted that majority of the cases they received revealed that OFWs approach NGOs first rather than seeking help from the embassy. At times, they even approach recruitment agencies for any concerns pertaining to laws and employment procedures in the destination countries.

To illustrate this seemingly lack of knowledge, in Singapore's employment law requires employers to pay for repatriation (even if the worker has been terminated and has not served out the duration of the contract) but there are instances when embassy staff request airlines to donate air tickets to send workers back to the Philippines. This supersedes workers' POEA contracts, which state that workers will pay the cost of repatriation if they are terminated for just cause.

In HOME's experience, migrant workers often rely on their agents to provide information about the laws and procedures in Singapore. This is problematic as much of the information they receive is incorrect (as agents may have business objectives that do not align with the worker's rights or welfare). Workers also help each other, which can sometimes lead to misinterpretations and inaccuracies.

As many workers are unsure whether to go to their Embassy for information, they rely on the services of NGOs such as HOME. HOME provides ad-hoc advice, encourages workers to empower themselves by finding information on the internet and in 2014 will be conducting a legal training course for foreign domestic workers about their rights and responsibilities under Singapore law.

HOME also noted the widespread contract substitution in Singapore that has not been addressed by diplomatic and consular staff. Despite the safeguards contained in the POEA standard-form employment contract for Filipino domestic workers, almost all workers will be asked by their employer or agent in Singapore to sign a new contract once they arrive in Singapore. This second contract contains conditions less favourable to the worker, such as lower salary and higher agency fees.

HOME is not aware that Philippine Embassy is taking any action to stop this widespread practice of exploitation that, so far, has not been addressed by the Singapore government either. There is also no representative from the POEA has been posted to work at the Philippine Embassy in Singapore.

Recommendations to the CMW to include in its concluding observations:

1. Relevant national laws and employment procedures in the countries of destination should be part of PDOS trainings.

15. Please provide information on the assistance provided through embassy and consulate staff abroad to migrant workers victims of the "sponsorship" or kafalah system in Gulf countries, especially for women domestic workers, and on endeavours to negotiate a reform or review of such a system with the relevant countries of employment (CMW/C/PHL/CO/1, para. 32 (d)).

While none of the respondents are from the Gulf where sponsorship system is legally allowed, in Singapore, the migrant workers legal presence is tied to their employer. Employers may legally repatriate their migrant workers without any reason, and without the knowledge of Embassy or giving the worker the opportunity to contact authorities or seek help from HOME. This system leaves Filipino workers in Singapore vulnerable to exploitation and forced labour, as they risk immediate repatriation if they raise concerns about their work conditions with employers or with authorities.

HOME is not aware of any endeavours taken by the Philippine Embassy to negotiate a reform or review of the system. HOME made a submission to the Singapore Ministry of Manpower's review of employment legislation in 2013 that set out our concerns with the sponsorship system in Singapore.

Recommendations to the CMW to include in its concluding observations:

1. The Philippine government must initiate efforts to challenge Singapore's employment legislation to ensure that OFWs rights and welfare are protected.

17. Please provide information on the measures taken to promote the birth registration of Filipino migrant children abroad, including those in an irregular situation, and to ensure the birth registration of foreign migrant children in the State party.

MFA members noted that the Philippine embassy in Japan and MECO in Taiwan also take measures to promote birth registration including those in an irregular situation.

In the case of Japan, they conduct consular mission outside Tokyo or Osaka where those in irregular situation could avail of this service without fear of being apprehended. However, members are not aware of any services available for the children in particular and even there is such a service, it is not widely disseminated among Filipinos or even NGOs.

In Taiwan, Filipino migrant workers, including those in an irregular situation, who give birth to children in Taiwan, can seek assistance from MECO to obtain a Filipino passport for their children. If the child's father or mother is Taiwanese the parents can apply for the child's Taiwan identification card.

Meanwhile, the case in Singapore, is equally opposite. Filipina workers on Work Permits who become pregnant will be repatriated (all foreign domestic workers and other low-skilled, low-wage workers will be on Work Permits). Workers are prohibited from getting pregnant or delivering a child in Singapore during the validity of their Work Permit (unless they are already married to a Singapore Citizen or Permanent Resident).

Filipina domestic workers are not entitled to maternity leave (as the Employment Act does not apply to foreign domestic workers), and their employment can be terminated if they fall pregnant which is discriminatory and restrictive of the reproductive rights of women migrant workers. Another discriminatory policy is the government's requirement for all domestic workers to undergo periodic pregnancy and HIV testing.

Recommendations to the CMW to include in its concluding observations:

1. The Philippine government to take up the issues above with relevant government particularly during bilateral talks or dialogues.
2. The Philippine government to take up issues of migrants' discrimination especially during the ASEAN Summit and other relevant regional intergovernmental processes.

26. Please provide information on the measures taken to implement the recommendations contained in paragraph 48 (a)-(f) of the Committee's previous concluding observations in order to combat trafficking in persons.

While the Philippine government's response has started to move beyond sex trafficking to include the labor dimension, the question is always about effective enforcement as in the case of OFWs who are trapped into debt bondage.

One case in point is the situation in Taiwan. Information provided by the HWC revealed that since 1989, documented OFWs have been paying excessive placement fees to work in Taiwan. The Filipino government's legal placement fee is one month's salary (NT\$19,047 {US\$635} for factory workers, construction workers and fisher folk; and NT\$15,840 {US\$528} for caretakers and domestic workers) plus processing fees totalling about 60,000 Pesos. However, most OFWs pay twice this amount of money. About 72% of the salaries received by OFWs for the first three years go into the pockets of brokers and recruiters and 5% goes to the workers. In order to augment the scarce money that they have, workers would often resort to overtime work which is also detrimental to their health.

Accordingly, the Philippine government is aware of this corrupt system that leaves all Filipino migrant workers in Taiwan in debt bondage. However, the government has done very little to eradicate this corruption.

A study in 2013 entitled “*License to Exploit: A Report on the Recruitment Practices and Problems Experienced by Filipino Domestic Workers in Hong Kong*” which was commissioned by the Alliance of Progressive Labor (APL) and will soon be published found out that 88% of the respondents used a private agency for placement. The average total recruitment cost is Php80, 736. Under the HSW Reform Package, it obliges the employer to incur the cost of deployment through the “no placement fee policy”. Also according to the study, more than 14% were forced by their agencies to accept salaries below the minimum wage, 36% were given wrong, outdated or no information at all by their agencies about Hong Kong laws concerning them, and almost 10% were told by their agencies that they will not be getting one or several mandated benefits.¹⁷³

Recommendations to the CMW to include in its concluding observations:

1. The government in particular the POEA to effectively monitor its anti-illegal recruitment campaign to curb labor trafficking resulting to debt bondage.
2. Provide incentives for ethical recruitment practice to encourage PRAs to uphold and promote the rights of migrant workers.
3. Regulation and monitoring of private recruitment agencies must be strengthened at stages of pre-departure, en route, and return.

¹⁷³ Alliance of Progressive Labor-Hong Kong & Progressive Labor Union of Domestic Helpers Hong Kong, License to Exploit.2013.

JOINT SUBMISSION OF MIGRANTE INTERNATIONAL (MI) AND THE ASIA PACIFIC MISSION FOR MIGRANTS (APMM) TO THE UNITED NATIONS COMMITTEE ON MIGRANT WORKERS

On its 20th Session, April 2014

Submitted By: *Migrante International (MI)*¹⁷⁴ and
*Asia Pacific Mission (for Migrants (APMM))*¹⁷⁵

In this, the 20th session of the Committee for Migrant Workers (CMW), Migrante International (MI) and the Asia Pacific Mission for Migrants (APMM) hereby present the following report examining the steps (or lack thereof) that the administration of President Benigno Aquino III in the Philippines have taken to address the recommendations detailed in the concluding report of the 10th session of the CMW. The information presented relates to each of the articles of the Convention.

A. GENERAL PRINCIPLES

Articles 7 & 83

1. On the measures taken by the State party to: (a) Strengthen its legal assistance to Filipino migrant workers; (b) Inform Filipino migrant workers of the administrative and judicial remedies available to them; (c) Increase awareness among Filipino migrant workers, especially women domestic workers, on the available mechanisms for bringing complaints against employers so that any abuses can be investigated and punished; (d) Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families; (e) Ensure that its diplomatic and consular staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino migrant workers, especially in those countries categorized as “highly problematic” by the Department of Foreign Affairs (DFA) and the Department of Labour and Employment (DOLE);

(a) The Philippine government has one of the most sophisticated infrastructure for labour export in the world. It has enacted many laws that supposedly enshrine the protection of migrants’ rights. It has established many agencies and created a system that would supposedly attend to the myriad of issues. But while it is very systematic and persistent in the collection of state exactions, government response to the implementation of these laws, or even to demand from host countries to recognize the basic human rights, is phlegmatic and, based on many OFWs declarations, “criminally negligent”.

(b) For the first time in history, four Filipinos were executed abroad under one presidency. The number of Filipinos on death row has increased from 108 to at least 125 (Migrante database). At least 7,000 Filipinos are languishing in jails abroad and most of them are without legal assistance. No less than the officials of DFA’s Office of the Undersecretary for Migrant Workers’ Affairs (OUMWA) have informed Migrante that DFA only provides lawyers for those OFWs on deathrow (which is also under question because some OFWs formerly on deathrow have declared that they were only given lawyers only after a campaign was launched to save their lives). “No budget” is the main reason that they have given. The Philippine government has also remained silent on OFWs who were victims of torture while in jail.

¹⁷⁴ **Migrante International** is a grassroots organization of Filipino migrant workers based in Quezon City, Philippines. It was founded in December 1996 and now has 90 member-organizations in over 22 countries, making it the biggest organization of overseas Filipino workers (OFWs). It has the following contact information: #45 Cambridge Street Cubao, Quezon City, Philippines; Tel. (632) 9114910; Email migrante2007@yahoo.com.ph; **Website** <http://migranteinternational.org/>

¹⁷⁵ **APMM** is a regional migrant service institution based in Hong Kong. Founded in 1984, it is committed to supporting the migrants’ movement through advocacy, organizing, building linkages for the advancement of migrants’ rights. It has the following contact information: G/F, No. 2 Jordan Road, Kowloon, Hong Kong; Tel. (852) 2723-7536; Email apmm@hknet.com; Website <http://www.apmigrants.org/>

(c) Congress, through the interventions of some representatives of the Lower House and the Senate and at the behest of NGOs and people's organizations, has sometimes conducted congressional investigations of cases of OFWs in crisis and erring officials. Many OFWs have stated in these investigations that there are many instances where domestic workers who abscond from their abusive employers were ordered by Philippine embassy officials to go back to their employers and just "endure" the abuse. To date, there have been no noticeable results to these investigations.

(d) Relatives of OFWs on deathrow, or in jail or those who have issues about deportation or repatriation are not informed of the developments of the cases of their relatives, nor are they informed of what judicial and other remedies they can take. For those in jail, they are not given a lawyer. At least 25,000 are stranded continue to await repatriation in the Middle East alone.

(e) The government has instituted reforms to combat trafficking. For one, the IACAT under the DOJ's administration has so far been responsive in providing assistance to victims of human trafficking. They have been actively helping in the filing of charges against human traffickers and have included labor trafficking as human trafficking. Since 2010, the IACAT has successfully pursued 89 convictions of human trafficking out of over a hundred cases brought to them, way past the record of the past administration of 29 in 6 years. The DOJ has also increased its anti-trafficking prosecutors from the 17 anti-trafficking prosecutors in the past years and 72 prosecutors in regional DOJ offices.

The main problem is that out of the over 400,000 victims of human trafficking (according to government data), only 2, 021 cases (IACAT 2013 statistics) have been filed. Of these, only 108 were convicted and 359 were dismissed. Nine hundred ninety six (996) are still at various levels of the case and 334 were archived for various reasons.¹ This shows a low conviction rate and the slow process of the justice system in the country. Resolution of cases take too long and the OFW has to leave for another job.

The costs of filing and pursuing a case in the Philippines are quite also prohibitive, especially if one lives in a remote village. From transportation costs to reproducing affidavits, victims need to have a significant amount to pursue the case.

More importantly, OFWs are not aware that they are victims of human trafficking. Government officials, still unfamiliar with the Anti-Trafficking law advise to file other charges such as illegal recruitment or even kidnapping. In the case of over a hundred teachers who were duped of their hard earned money for a "supposedly" good job in Washington D.C, they were informed by the National Bureau of Investigation to file only an estafa case even if they were clear victims of human trafficking².

2. On the assistance provided through embassy and consulate staff abroad to migrant workers victims of the "sponsorship" or kafala system in Gulf countries.

The Agreement on Domestic Worker Recruitment between Saudi Arabia and the Philippines only accredits selected recruitment agencies to hire and deploy OFWs to Saudi Arabia, but this agreement has not dismantled the *kafala* system which is embedded in the labor and immigration policies of Saudi Arabia. This means that OFW workers still need a sponsor even if there is a job order.

The *kafala* or sponsorship system is one of the main policies that has caused the surge in the number of undocumented migrant workers in the Middle East. It is an immigration and labor policy imposed by many Gulf Cooperation Countries (GCC) on migrant workers. Under the *kafala*, no migrant worker is allowed to enter the country without an "in-country" sponsor, usually the employer. The sponsor is primarily responsible for the workers' visa and legal status.

Also under the *kafala*, migrant workers' residency permits are bound to their "sponsors" whose written consent is required for workers to change employers or leave the country. Employers often abuse this power to confiscate passports, withhold wages and force migrant workers into slave-like conditions. In effect, the *kafala* makes migrant workers more vulnerable to abuses and modern-day slavery.

The sponsorship system is in direct violation of Article 13 of the Universal Declaration of Human Rights and the Universal Declaration on the Protection of Migrant workers and their Families.

MARILOU RANARIO AND THE KAFALA SYSTEM

In 2005, the highest court in Kuwait sentenced a Filipina domestic worker, Marilou Ranario, to death after Ranario allegedly murdered her employer. After significant lobbying and the mobilization of overseas workers across the world orchestrated by Migrante International, the former president of the Philippines personally asked the Emir of Kuwait to commute the sentence to life imprisonment. The Emir granted this request in 2007, and Ranario is currently serving a life sentence in a Kuwaiti prison.

Ranario arrived in Kuwait in 2002 and began to work for a Kuwait employer as a domestic worker. She wrote numerous letters to her family detailing the variety of the abuse that she experienced at the hands of her employer. These letters describe regular physical abuse, starvation, overwork and few rest periods. Ranario clearly began to suffer from severe psychological abuse and felt as though she had no other alternatives. The details of the case remain unclear, but Ranario allegedly killed her employer in 2005, possibly in self-defense.

The kafala system trapped Ranario in this situation. She could not find anyone to help her or any alternatives. She may have paid thousands of dollars for her visa and needed to continue working to pay off the debt. Since her employer most likely confiscated her passport and residency card, she could not even leave the house without permission of the employer. The employer who paid a large recruitment fee most likely felt a sense of ownership over her, potentially coupled with racist ideas about Filipino women. Thus, she treated Ranario however she felt was "appropriate."

Once arrested Ranario had little access to legal council or translation services (APMM, 2012). She finally received two defense attorneys who tried to use her mental state as evidence, but it was "too little too late".

B. PART III OF THE CONVENTION

Articles 10 & 11

1. On the measures taken to fight the exploitation of prostitution of migrant women in the State party, particularly in the context of sex tourism, as well as on the measures taken to protect migrant children in the State party from forced labour and from sexual exploitation and abuse.

Migrante laments that the feminization of migration has led to a burgeoning flesh trade. In the guise of hiring women for domestic help, factory worker and entertainers, sex traffickers posing as recruiters have lured their victims with promises of good pay and benefits abroad only to be abused or sold for profit. Known international destinations for sex trafficking victims include Australia, Germany, United States, Japan, Malaysia, Singapore, Hong Kong, Taiwan, New Zealand, Middle east and Northern Marianas Islands.

Migrante has worked closely with the largest women's alliance in the Philippines, GABRIELA, to combat sex trafficking. Despite numerous cases of trafficked women, the Department of Foreign Affairs recently listed 235 cases, but rarely are traffickers arrested or charged.³ Tenaganita (Women's Force) of Malaysia also reported that of the 210 rescued in 2008 75 percent were Filipina women and no one was charged for this crime. Furthermore, despite RA6955 (An Act Declaring Unlawful the practice of matching Filipino Women for

Marriage to Foreign Nationals on Mail Order) passed in 1986, the continuous increase in the number of mail-order brides, or marriage migrants, has been noted.

The State has practically no monitoring system on such practices proliferating on the Internet. In many cases, brides suffer in the hands of their new-found husbands. They become not only domestic slaves but sex slaves as well. Cases of mail-order brides eventually being sold or rented out either as domestic help or sex slaves have likewise been reported. It is estimated that there are 20,000 Filipina mail-order brides in Australia alone and that 5,000 Filipinas enter the US annually as mail-order brides.

ARTICLE 26 AND MARRIAGE MIGRATION

Karen Protacio came to Japan in May 2000 after marrying Yasuhiro Takahashi in the Philippines that same year. Her marriage lasted only four (4) years and she did not bear a child by him.

In 2003, Karen met and fell in love with Filipino migrant worker Danilo Herrera, 39 years old and single. At that time, Karen's marriage to Yasuhiro was already problematic after she discovered that her husband was having an affair with another Japanese woman which he began barely two years after they got married in 2000.

Karen and Danilo began their relationship in December of 2003 when the latter's troublesome marriage became irreconcilable. The former subsequently filed for divorce in May 2004 one month after she received her permanent visa and soon after she became pregnant with her first child by Danilo.

After Karen's divorce from her Japanese husband, she could have married Danilo and this would have become a basis to legalize the latter's stay in Japan. However, pursuant to Article 26 of the revised Family Code of the Philippines (1987), Karen first needs to prove in a competent Philippine court that her marriage to and divorce from Takahashi were legally obtained and valid in Japan before she may be allowed to marry Danilo.

Danilo and Karen's current predicament is largely attributed and covered by the provisions of Article 26 of the revised Family Code of the Philippines which states that:

"Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law."

A strict implementation of the above provisions of the law would not allow Karen to marry Danilo unless she files for annulment of her marriage in a Philippine court simply because she was the one who initiated the divorce not her former Japanese husband.

2. On the measures taken to promote the birth registration of Filipino migrant children abroad, including those in an irregular situation, and to ensure the birth registration of foreign migrant children in the State party.

The children of the 'undocumented' deported from Sabah by Malaysian authorities whenever they implement crackdowns on undocumented workers are prime examples of how remiss the Philippine government is in implementing the Philippine Constitution and meeting its obligations to the Convention especially on the rights of a child to nationality. Children of parents with clearly Filipino parentage have not been recognized at all as Filipinos by Philippine government authorities, even while they were interned at the temporary shelter in Zamboanga City, Philippines (from the Fact Finding Mission Reports of Deportations of Sabah Residents to the Philippines conducted by Migrante International). The Department of Social Work and Development (DSWD), the agency that operates the

center, do not have any records of these ‘stateless’ children and could not cite how many children they had in their shelter, much less their names and ages.

To date, government has not designed or adopted a monitoring system regarding the registration of children abroad.

Article 33 *1. On pre-departure programmes for Filipino nationals considering migration;*

(a) Pre-departure Orientation seminars (PDOS) provided by OWWA mostly focus on general tips of what and what not to do. The specific information on destination countries contain general information on what to expect. In short, the seminars have not adopted a rights-based approach. The Convention and basic laws of both the country and the destination country that impact on the exercise of their rights are not very well presented.

Information materials on destination countries are similar to the conduct and contains only general information of the country and basic tips but do not impart knowledge about laws which OFWs can use in the exercise of their rights. Only a few countries (9) are covered by the information materials.

(b) Meanwhile, the Pre-employment Orientation Seminar is conducted by the POEA and is offered to anyone interested for free. Though it provides more information on laws such as illegal recruitment and is obviously preventive by objective and the HSW Guidelines, it could improve the content by covering other laws starting from the Magna Carta of Migrant Workers. Like the PDOS materials, the POEA has developed information materials for only a few countries.

(c) The report of the government highlights the PDOS and the PEOS as their information mechanisms for OFWs. PDOS does not provide sufficient, or any, information or knowledge on migration policies of the receiving countries and existing grievance mechanisms if they encounter problems with their employment among others, much less its immigration laws and guidelines on entry and exit visas. OWWA accredits recruitment agencies as PDOS providers. Under their supervision, PDOS has become another money making activity. Resource persons/sponsors come from the banks, real estate business and they prioritize on wealth rather than the welfare of OFWs. PDOS is also only conducted in the last stage of the deployment process. PEOS are just mechanisms to facilitate, promote and systematize recruitment and deployment of OFWs and not to provide helpful information to the OFW.

Article 41 *1. On the measures taken to implement the recommendations contained in paragraph 36 of the Committee’s previous concluding observations, with a view to ensuring the right of Filipino migrant workers to participate in public affairs and to vote and to be elected at elections of the State party.*

The low participation of Overseas Absentee Voting (OAV) in the recently-concluded 2013 Elections cannot just be dismissed as the result of a so-called “growing apathy” among overseas Filipino workers (OFWs).

While OAV turn-out was indeed low, it is more important and urgent to review and evaluate the limiting provisions in Republic Act 9189 or the OAV Act, as well as the indifference of some government agencies, particularly the Commission on Elections (Comelec) and the Department of Foreign Affairs (DFA), to OFWs’ issues and complaints pertaining to the actual processes and implementing procedures of the OAV. These, primarily, are the main reasons for the massive disenfranchisement of overseas Filipino voters.

For one, voters’ education is very limited, especially with regard to the party-list system. There is no absentee voting for local elective positions. For another, the registration period

is short, despite the numerous demands of OFWs to lengthen the period. A third limitation is the fact that the number of voting centers is few and inaccessible to many OFWs. There is a need for the government to set up a mechanism to allow qualified Filipino voters to register as absentee voters inside and outside the country, all-year round.

Special attention must be given to the huge number of Filipino domestic workers in the Middle East who are forbidden to leave their employers' houses and whose travel documents have been unjustly confiscated by their employers. Because of their sheer number alone, it would be unforgivable if the government allows them to be disenfranchised.

Steps must also be undertaken by Philippine embassies to ensure that Filipino domestic workers be able to register and exercise their right to vote. The POEA Guidelines on the Deployment of Filipino Household Service Workers (HSW) that explicitly states that the employer is mandated by contract to "present the person of the HSW to the Philippine Embassy when so required" should be strictly implemented. The exercise and compliance of Philippine embassies to this provision will not only solve disenfranchisement of OFWs but prevent and address numerous human and labor rights violations against OFWs.

For Filipino seafarers, mechanisms and steps should be enacted to ensure that they be accorded the opportunity to register at any Philippine post worldwide all year round. The COMELEC should also explore the possibility of including them in the sectors allowed "mobile voting" or to vote via the Internet.

Likewise, Philippine Embassies and Consulates should give undocumented OFWs the chance to register and vote, regardless of their status. RA 9189 clearly states that "All citizens of the Philippines abroad, regardless of their immigration status, can participate in Philippine elections via the OAV."

Calls for the setting-up of a permanent committee to take charge of the implementation of the OAV must be supported and upheld. Said committee must be headed by the COMELEC and not the DFA, as suggested by its Undersecretary. The Constitution is very specific when it stated that only the COMELEC is the sole authority in electoral concerns and practices. Moreover, RA 9189 clearly states that the COMELEC has exclusive charge in the implementation of this Act.

The COMELEC must also explore the viability of adopting other means of voting such as online and postal voting. However, steps and safeguards must be undertaken so that these are secured and fraud-free. Even as the COMELEC has allowed voting by email, it is only applicable in certain countries.

D. PART IV OF THE CONVENTION

Article 64

1. On the measures taken to prevent irregular migration, including through international agreements, policies and programmes.

"Responding effectively to irregular migration is hampered by a serious lack of verifiably accurate data, making it difficult to identify trends or compare the scale of the phenomenon in different parts of the world" (IOM).

This statement characterizes the measures taken by the Philippine government in responding to irregular migration. Since there are varied forms of becoming an irregular migrant such as overstaying, the use of a tourist visa to gain entry to a destination country, documentation irregularities, and many other reasons, it is, indeed, quite difficult to monitor, much less prevent irregular migration. However, the massive promotion of the government itself to export its labor without resolutely finding solutions to the high unemployment rate and poverty situation in the country actually encourages irregular migration.

Although there is a strong legal framework in place, there is a wide gap between policy and legislation and between legislation and its implementation. There is also a lack of Philippine government initiatives to conduct bilateral agreements with receiving country governments that have large numbers of undocumented Filipino migrant. The labor export policy must be scrapped and government should look more into the creation of local jobs with decent wages.

OVERCHARGING AND ILLEGAL CHARGING IN HONG KONG

Prior to leaving for Hong Kong to work as a migrant domestic worker, Marife Galisim was asked to pay PhP90,000 – 30,000 in cash and 60,000 (HKD10,726) in the form of a loan that she would have to pay in five months. In her first 3 months of stay in Hong Kong, she had to pay HKD3,281 out of her HKD3,740 monthly salary.

Finding difficulty in making ends meet, she made inquiries and was referred to the Mission for Migrant Workers (MFMW), a migrant service NGO. Upon learning that such placement charges have been illegal under Philippine and Hong Kong laws for several years now and upon advice by the MFMW, she filed a complaint at the Philippine Consulate General (PCG) in Hong Kong. At this time, she was also fired by her employer after accusing her of theft and arson, and she had to seek shelter at the Bethune House while she fought out her employer's accusations in court. Her placement agency, Apec Manpower Agency, failed to assist her in seeking claims for illegal termination from the employer.

At the Assistance to Nationals (ATN) desk of the PCG, she was advised not to pursue her case as her situation was "difficult". Upon her insistence, however, her case was later subjected to "conciliation" by the Philippine Overseas Labor Office (POLO) at the PCG, a program wherein victims of overcharging and illegal charges and the involved recruitment agencies are made to settle out of court.

Initially, her placement agency only offered to waive the unpaid portion of her loan, which by this time nearly paid up anyway. She refused this offer, instead asserting that she ought to have all her money back (a total of HKD16,089). At the second meeting, the agency now offered to give her HKD500, and then later went up to HKD5,000 when she remained adamant. It was only in the third meeting, when she threatened to file a case against Apec at the National Labor Relations Commission (NLRC) in the Philippines, that her counter-offer of HKD10,000 plus the cancellation of her remaining debts were accepted by the agency. During the negotiations, the POLO representative merely listened and took down notes. There was also no move to penalize Apec for charging illegal fees from Galisim.

Article 65

1. On the measures taken by the State party to improve the situation of Filipino migrant women facing situations of vulnerability.

As Filipino women continue to be the face of Filipino migration, government has taken very few steps to improve their situation abroad. Apart from a cursory presentation of demographic data regarding age, what country they work in and their occupational category, there is hardly an in depth study made by government in addressing the increasing feminization of migrant labor and making a thorough assessment of their vulnerabilities.

The government has not crafted more gender sensitive policies for women migrants nor have they adopted any specific policy to improve the lot of women domestic workers and caregivers. Though the Kasambahay law aims to reinforce ethical policies on placement fees, many placement agencies continue to charge exorbitant fees, preying on the needs of those who desperately want to earn a living. They are also victims of loan sharks, oftentimes in cahoots with the placement agencies. In deportation centers in Malaysia, Singapore and

even in many Gulf Countries, deportation centers are filled up with women and, even children, with no added service for their specific needs.

The PDOS and the PEOS modules do not contain any specific topic that deals with gender issues. Even the handling of cases of sexual and domestic abuse by embassies and consulates abroad needs to be evaluated also from a gender perspective

THE UNIFIED MULTI-PURPOSE ID IN TAIWAN

A Unified Multi-purpose ID (UMID) card has been imposed by the Taiwanese government on their Filipino migrant workers, with the tacit approval of the Manila Economic and Cultural Office (MECO) that serves as the Philippine government's diplomatic mission in Taiwan.

The memorandum was issued effective May 15, 2013 as part of the Executive Yuan's response to the Philippine government's refusal to apologize for the shooting of a 65-year old Taiwanese fisherman by a Philippine coast guard last May 9, 2013. The requirements stayed in place even after the diplomatic tiff was resolved, the requirement remained. These include payment of 300 New Taiwan Dollars (NTD) per application (except for first-time applicants).

The UMID is also designed to incorporate membership a Filipino citizens to government-run social security schemes supposedly to facilitate their transactions under these schemes. These fund schemes include (a) Social Security System (SSS), (b) Philhealth and (c) Pag-IBIG Fund, or Home Development Mutual Fund. Filipino migrant organizations in Taiwan, however, consider it a form of compulsory state exaction scheme that was opportunely adopted by the MECO in the wake of last year's diplomatic impasse, and are demanding for its abolition.

Article 66 *1. On the measures taken to review the role of private recruitment agencies and to strengthen the existing licensing system for recruitment agencies, migration regulation and control mechanisms to prevent private recruitment agencies from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters*

In 2012, the POEA launched its Campaign Against Illegal Recruitment, Trafficking and Irregular Migration (CAIRTIM). It is touted as an integrated approach prioritizing key issues in migration. Though it has made some inroads in identifying dubious and outrightly illegal recruitment agencies, the time it takes to resolve administrative cases against such recruitment agencies is too long for many OFWs, thereby, denying them to a swift and speedy trial, a basic civil political right. Migrante has monitored that many case officers of the POEA urge OFWs who have cases against their agencies to settle, sometimes for a very small amount, rather than go through the long tedious process of hearings and waiting for the resolution of cases, which could take 2 years or more. Because of this tedious process, recruitment agencies are able to go scot free.

There also seems to be no monitoring of recruitment agencies, blacklisted or suspended for violations, merely change names to be able to operate again. There have also been many reports that many officials of the POEA officials, together with embassy officials, are in the pockets of large recruitment agencies or actually even are "hidden" owners of some recruitment agencies. These reports should be investigated thoroughly, otherwise any campaign against illegal recruitment and human trafficking will surely fail.

The recently forged "mega-recruitment" agreement between the labor departments of Saudi Arabia and the Philippines has highlighted that privatization policy is starting to encroach on government's migrant related agencies. The regulatory function of government is slowly being passed on to the private sector while government continues to lessen its accountability.

However, what is most worrisome is the mandate of the POEA as directed by Presidential Administrative Order (PA) 247 of December 2008, an order being implemented to this day. PA 247 orders the POEA to “craft aggressive overseas employment strategies that defy the trend of a constricting job market.” This directive is in breach of Section (2) of RA8042 which states that “While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittance, the State does not promote overseas employment as a means to sustain economic growth and achieve national development.” Migrant organizations and advocates have raised questions now about the priorities of the POEA.

MANDATORY INSURANCE FOR OFWS

Albien Undajon, a Filipino migrant worker in Gyeonggi-do, South Korea accidentally injured his finger while at work on October 22, 2013. He was admitted to the Korean Hospital in Osan City, where his finger was deemed to be severely damaged and so had to be amputated.

He stayed four weeks in the hospital, racking up a bill of 2,570,000 Won (USD2,402). The payment was offset by his medical insurance in Korea, but he also applied for additional medical benefits at the Philippine Embassy because he is a member of Overseas Workers Welfare Assistance, Social Security System, and the government’s PhilHealth medical insurance. But the staff at OWWA said that since he had already received medical insurance from his Korean provider, he was no longer eligible to receive benefits from the Philippine side.

Undajon’s case illustrates the fact that the Philippine government imposes rather than convinces migrant workers regarding availment of insurance, but makes it difficult for them to avail of its benefits. Beginning last year, the Aquino government even increased SSS and PhilHealth premiums, while making it obligatory for migrant workers to avail of the Pag-Ibig Fund, a housing loan window managed by the government. Filipino migrant workers in South Korea and elsewhere aver that some insurance and social security providers abroad provide much better terms, and thus the matter of choosing their own insurers should be left to them.

Article 67

1. On the progress made by the State party in strengthening the reintegration of returning migrant workers and members of their families.

There is a lack of comprehensive and sustainable reintegration program for returned OFWs. What the Aquino government offers are mere dole-outs and band-aid solutions that are not long-term solutions to unemployment, low wages and lack of social services.

In his three years, Aquino failed to address the immediate evacuation and repatriation of OFWs affected by conflicts, calamities and crackdowns in the Middle East and North Africa (MENA) region. He has also failed in dealing with the thousands of returned workers who need immediate financial assistance just so they can get back on their feet and jobs which can support their families.

The government’s reintegration programs for returned OFWs are made up of loans and one-time livelihood programs which usually play because of the lack of support mechanisms. Returned OFWs have complained about the P2 billion OWWA reintegration program that Aquino inaugurated in 2011 because of its stringent requirements for collateral and onerous interest rates. What is most condemnable is that the loans come from the funds which OFWs own and for them to be charged onerous interest rates and asked for collateral is an insult. It is like going through the process of applying for a job abroad except that it is government the one that is overcharging. What is needed is a genuine and sustainable reintegration program for returned OFWs, not on the basis of loans such as the OWWA P2B Reintegration Package, but as a result of land reform and national industrialization programs that would generate jobs and develop industry.

Article 68

1. On the measures taken to implement the recommendations contained in paragraph 48 (a)-(f) of the Committee's previous concluding observations in order to combat trafficking in persons.

This year, the Aquino regime pursued cosmetic reforms, among them signing the Expanded Anti-Trafficking in Persons Act, which upgraded the Philippines to Tier 1, meaning that the country has complied with the minimum standards for the elimination of trafficking.

The 2003 Anti-Trafficking in Persons Act, otherwise known as Republic Act 9208, defines “trafficking of persons” as the “recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.”

This definition of “trafficking in persons” sets a very thin line between human trafficking and illegal recruitment, especially for our OFWs. For Migrante, illegal recruitment is just a form of human trafficking just as labor trafficking is.

Though government efforts through the IACAT have started to respond to the challenge, the efforts have have hardly scratched the surface of the anti-trafficking campaign, however much it lauds itself in the media. The ratio of resolution of cases of human trafficking/illegal recruitment in agencies such as the IACAT or POEA are close to nil, with most of perpetrators or recruitment agencies being given mere administrative sanctions only to be able to operate again.

Also, many victims, with the help of Migrante International and other concerned organizations, have filed charges of violations of RA 9208. Unfortunately, the government lacks the political will to fully address the cases. There are also reports of immigration and police officers who are coddlers of trafficking syndicates but, so far, no public or government official at any level has been prosecuted.

The Philippines remains as one of the top source/sending countries for human trafficking in different parts of the world. Filipinos, mostly women and children, are being trafficked for labor and/or sexual trade to Saudi Arabia, Kuwait, the UAE, Qatar, Bahrain, Malaysia, Hong Kong, Singapore, Japan, South Africa, North America and Europe.

The Aquino government conservatively estimates the number of Filipino victims of trafficking from 300,000 to 400,000, with the number of children victims ranging from 60,000 to 100,000. Many of them migrate to work through legal and illegal means but are later coerced into exploitative conditions, drug trade or white slavery.

PREPARING FOR THE CMW ENGAGEMENT

All three categories of duty bearers made parallel and collective preparations for the CMW engagement starting off from the CMW issuance of the first concluding observations in 2009 for the first periodic report of the Philippines.

CHRONOLOGY OF EVENTS

	GOVERNMENT	CSOs and CMA
Aug 2009		Feedback forum on the conclusions and workshop on recommendations but plans lacked details; started wide information dissemination re conclusions and recommendations; informed CSOs that next government report is due 2011. But while we feedbacked on the 1 st reporting process, there was no clear agreement what to do with it.
2010		Echoed results for Mindanao CSOs
CMW revised alternative reporting for 2012: LOIPR guidelines for 2011; solicited LOIs; much improved process	PHRC views re LOIPR was solicited.	CMA submitted LOI
Dec 2012	Dec 5 LOIPR forum; Lead agency DOLE issued Administrative Order establishing preparatory team; mobilized participation from many GOs (DSWD, DFA, UNIO, OUMWA, CFO, BI, DoJ-IACAT) that provided more details for the report, highlighted relevant programs	Started collective preparation, forum agreed on the process leading to the submission of the 2 nd party report, without prejudice to CSOs submitting its own report, especially since government report will not be able to cover all issues
June 2013		NCR/Luzon consultation workshop for the 2 nd alternative report, Mindanao/ Visayas consultation workshop
Sept 2013	PHRC-sponsored GO-NGO validation of 1 st draft of state party report but only for NCR-based CSOs; Results incorporated into the draft, with CHR assisting	
Dec 20 2013	DOLE finalized responses to LOIPR	
Jan 2014	Submitted state report to DFA for sending to Geneva	Consolidation of CSO and CHR submissions
February 2014		Consolidation of CSO and CHR submissions
Mar 25, 2014	Simulation Exercise/practice session for the Revalida with CHR as one of the panelists	Submission of alternative CSO report: cut down to no more than 10 pp as per new guidelines

<p>March 28, 2014</p> <p>DOLE arranged a meeting between DOLE officials and CMA in the lead up to Geneva</p>	<p>With DOLE Sec. Baldoz and Party</p>	<p>CMA</p>
<p>April 2014</p>	<p>High-level Philippine government delegation went to Geneva and engaged with the CMW</p>	<p>Only CMA (one representative) was able to send a representative to Geneva for the session with the Philippines; was able to participate in the CMW open session for NGOs and delivered an oral intervention; was also able to conduct an extra informal briefing with some members of the CMW as well as with the CMW Secretariat prior to day 1 of Philippine government engagement.</p>
<p>CMW issued 2nd Concluding observations and recommendations</p>	<p>Philippine delegation immediately submitted a rejoinder to the CMW in response to the concluding observations and recommendations</p>	
<p>June 25, 2014</p> <p>GO-NGO Forum to feedback on the CMW engagement and disseminate the Concluding Observations and recommendations and initiate a process again to implement the recommendations thereto in the lead up to the 3rd periodic State party reporting in 2019.</p> <p>Organized by CHR, PHRC and CMA</p>	<p>Graced by DOLE Secretary Baldoz, Representative of Office of the Vice President</p> <p>Attendance included DFA UNIO and OUMWA representatives; OWWA, DOLE ILAB, NRCO, NLRC, POEA, TESDA, PCW, etc and also from Congress</p>	<p>Attended by migrant groups and trade unions; also in attendance were representatives from the recruitment sector</p>
<p>Draft Mapping of Concluding Observations and responsible agencies (GOs and NGOs)</p>	<p>To serve as working matrix for next GO-NGO consultations</p>	<p>To serve as working matrix for next GO-NGO consultations</p>
<p>January 2015</p> <p>CHR Handbook on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</p>		<p>CMA assists CHR</p>

SIMULATION EXERCISE/ PRACTICE SESSION FOR THE REVALIDA

ENGAGEMENT WITH THE CMW

This was the final activity conducted by the Philippine government delegation before departing for Geneva. The simulation exercise was important especially for members of delegation who will face the CMW for the first time. The activity prepared the delegation on potential questions that may be raised. In hindsight, the questions here were actually harder than what were actually raised in the CMW.

a. Informal meeting of CMW with CSOs and NHRIs –This is convened prior to CMW engagement with States Parties to provide opportunity to CMW to gather additional information in regard to compliance of States parties. Due to limited time, participating CSOs and NHRIs must submit a request to the CMW Secretariat of intent to participate and deliver a statement not longer than 5 minutes. At the pleasure of the CMW and within the allotted time, members may ask questions and clarifications from the CSOs and NHRIs. They may provide the Committee members with copies of their oral intervention. This is on top of the written submissions the groups may have submitted to the Committee way ahead of time.

b. Constructive Dialogue between the State Party and the CMW: Consideration of the Philippine Report

In this section a brief documentation of the dialogue between the treaty body and the State party is presented. This is to provide the reader with a sense of how an actual consideration takes place.

According to the Committee's working methods, the dialogue is structured in the following manner:

In the established practice of each of the United Nations human right treaty monitoring bodies, representatives of the reporting States should be present at the meetings of the Committee when their reports are examined in order to ensure a constructive dialogue with the Committee.

The following procedure is generally observed: the representative of the State Party, usually the head of delegation, is invited to introduce the report by making brief introductory comments and introducing any written replies to the LOIPR.

After the oral presentation, the CMW Chairperson will normally invite questions or comments from Committee members in relation to each issue and then invites the State Party representatives to reply immediately to questions that do not require further reflection or research. Any remaining questions are taken up at a subsequent meeting or, if necessary, may be the subject of additional information provided to the Committee in writing. Members of the Committee are free to pursue specific issues in the light of the replies thus provided, although they are urged not to (a) raise issues outside the scope of the Convention; (b) repeat questions already posed or answered; (c) add unduly to an already long list on a particular issue; or (d) speak for more than five minutes in any one intervention. Representative of relevant specialized agencies and other international bodies may also be invited to contribute at any stage of the dialogue .

The dialogue is usually for two half days. It is open to the “public”. At the end of the discussions on the last session, the CMW Chair thanks the delegation and will invite a member of the Committee, usually the one tasked to be the rapporteur for the engagement, to make the final comments before the Committee sits in executive session for the drafting and adoption of the concluding observations and recommendations.

CONCLUDING OBSERVATIONS

The final phase of the Committee's examination of the report consists of the drafting and adoption of its concluding observations. For this purpose, the Committee usually sets aside a brief period in closed session immediately after the conclusion of the dialogue to enable its members to express their preliminary views. The country rapporteur then prepares, with the assistance of the secretariat, a draft set of concluding observations for consideration by the Committee. The agreed structure of the concluding observations is as follows: introduction of positive aspects, factors and difficulties impeding the implementation of the Convention, principal subjects of concern and suggestions and recommendations. At a later stage, the Committee then discusses the draft again in private session, with a view to adopting it by consensus.



CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 74 OF THE CONVENTION

THE PHILIPPINES

Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Tenth Session, 20 April – 1 May 2009

CMW/C/PHL/CO/1

22 May 2009

The Committee considered the initial report of Philippines (CMW/C/PHL/1) at its 105th and 107th meetings (see CMW/C/SR105 and SR 107), held on 23 and 24 April 2009, and adopted at its 114th meeting, held on 30 April 2009, the following concluding observations.

INTRODUCTION

The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues. The Committee appreciates the constructive and fruitful dialogue with a competent, high-level delegation, which built on the report and the written responses to the list of issues giving more specific information on questions of both a legal and practical nature concerning the implementation of the Convention.

The Committee recognizes that the Philippines is mainly a country of origin with a large number of migrant workers overseas.

The Committee notes the fact that many of the countries employing Filipino migrant workers are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

POSITIVE ASPECTS

The Committee notes with appreciation the State party's commitment to migrant workers' rights, as illustrated by the national constitutional, legislative, judicial, and administrative frameworks that include several institutional mechanisms.

The Committee appreciates that the State party considers the issue of migration as a priority in its domestic and foreign policy agenda.

The Committee also notes with appreciation the active role that the Philippines is playing to promote the ratification of the Convention by countries of origin, transit and destination.

The Committee also welcomes the active role of the Philippines in regional efforts to combat trafficking in persons, especially within ASEAN.

The Committee further welcomes the recent ratification of, or accession to, the following instruments:

The United Nations Convention on the Rights of Persons with Disabilities;

Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography;

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;

The ILO Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers Convention (Supplementary Provisions), 1975 (No. 143), making the Philippines one of only a few States to have ratified all the treaties relating to the rights of migrant workers.

The Committee welcomes the bilateral social security agreements concluded by the State party in so far as such agreements promote the rights of migrant workers and members of their families.

The Committee notes the important role civil society plays as a partner in implementing the provisions of the Convention.

FACTORS AND DIFFICULTIES

The Committee acknowledges that the geography of the thousands of islands in the State party makes it challenging to effectively monitor the movement of people and control borders to prevent irregular migration and to safeguard the rights of all migrant workers.

Principal subjects of concern, suggestions and recommendations

The Committee notes with interest the multitude of initiatives and programmes undertaken by the State party in response to challenges faced in its labour migration policy. At the same time, the Committee is concerned that implementation, follow-up and evaluation of these programmes are insufficient.

The Committee recommends proper follow-up procedures as well as clear measurable and time-bound targets in order to facilitate tracking their implementation.

The Committee welcomes the information given by the State party's delegation on the labour migration policy and, in particular, its efforts to ensure that Filipino migrant workers are only deployed to countries where their rights are respected. However, the Committee is concerned that State party's policies, especially through Administrative Order Nos. 247 and 248, 2008 and 2009 respectively, would seem to be aimed at the promotion of foreign employment of migrant workers.

The Committee recommends that the State party review its labour migration policy in order to give primary importance to human rights of migrant workers, in line with the State party's own professed goal as set out in RA 8042.

1. General Measures of Implementation (Arts. 73 And 84) *Legislation and application*

The Committee notes that the Philippines has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.

Data collection

The Committee notes with interest the statistics provided by the State party but is concerned at the paucity of information measuring stock and flows of Filipino migrant workers. The

Committee regrets that the Inter-Agency Committee on the Shared Government Information System on Migration (SGISM) foreseen to be established by Executive Order is yet to be implemented. Further the Committee notes with regret the scarce information concerning the number of Filipino migrants abroad, their skills and employment, accurate data on returnees, second and third generation Filipinos overseas, and the little information relating to foreign migrant workers in the State party.

The Committee recalls that reliable, quality information is indispensable to understand the situation of migrant workers in the State party, to assess the implementation of the Convention and to develop adequate policies and programmes. In this regard, the Committee encourages the State party to:

Establish the Shared Government Information System on Migration (SGISM) as a harmonized database, in line with the Convention including disaggregated data, as a tool for a more effective labour migration policy and the application of the provisions of the Convention;

Strengthen collaboration with Philippine Embassies and Consulates for improving data collection;

Adopt a harmonized mechanism for gathering statistics on irregular migrants including through studies or estimated assessments when information is insufficient;

Continue collaboration with relevant partners on analysis and interpretation of statistical data and flow;

Ensure an adequate allocation of funds for the above purposes.

Training in and Dissemination of the Convention

The Committee notes with interest that informational and educational materials on the Convention have been developed by the State party as well as by NGOs. However, the Committee is concerned that from the information received, the target groups for whom training programmes and material were developed remain unclear as well as how the dissemination of the Convention was carried out. The Committee notes that pre-departure seminars and orientation for Filipino workers promote the rights under the Convention but regrets that little information was provided on any existing assessments of the effectiveness of these sessions.

The Committee encourages the State party to:

Carry out an evaluation of ongoing training programmes and information campaigns to ensure their effectiveness and impact on public officials working in the area of migration, including consular officials, border police officers, social workers, judges and prosecutors;

Ensure orientation and pre-departure seminars for migrant workers with clear objectives, country-specific information and nationwide outreach using the rights-based approach;

Work with civil society organizations and other relevant partners to disseminate information on migrants' rights under the Convention and accurate information to Filipino workers considering migrating abroad. Similarly, take measures to partner with the media;

Ensure the sufficient allocation of funds for training and, - in collaboration with relevant partners, including non-governmental organizations (NGOs), carry out capacity building training for the government agencies handling migration issues, such as the Overseas Workers Welfare Administration, Philippine Overseas Employment Agency, and the Department of Foreign Affairs.

2. General Principles (Arts. 7 And 83)

Non-discrimination

The Committee notes with interest that the principle of non-discrimination exists de jure in the Philippine Constitution, RA 8042, as well as a number of legislative measures. The Committee is concerned however, that, in practice, foreign workers in the Philippines are granted rights only under certain conditions, such as reciprocity, which may not be in line with the Convention.

The Committee reiterates that the exercise of human rights is not based on the principle of reciprocity and recommends that the State party take the necessary steps to align its domestic legislation with the Convention.

Regarding Filipino workers abroad, the Committee notes the role of the Department of Foreign Affairs and the activities of the Legal Assistant for Migrant Workers' Affairs to pursue the rights on behalf of Filipino migrant workers, in case individual complaints are legally impossible. Moreover, the Committee notes with interest the Legal Assistance Fund that has been established for Filipino migrant workers but regrets that no sufficient information was provided regarding the issues that were dealt with and in which countries.

The Committee recommends that the State party continue its efforts to:

Continue and strengthen its activities to provide legal assistance to Filipino migrant workers;

Inform Filipino migrant workers of the administrative and judicial remedies available to them through the Department of Foreign Affairs.

3. Human Rights of All Migrant Workers and Members of Their Families (Arts. 8-35)

While noting with appreciation the activities undertaken by the National Commission on the Role of Filipino Women (NCRFW) and the national legislation enacted to improve the situation of migrant Filipino women, the Committee notes with interest the prominent numbers of female migrant workers. Moreover, the Committee, like the Committee on Cultural, Economic and Social Rights, notes with concern that women are most often employed in gender-specific industries such as care givers, entertainers and domestic workers where they are vulnerable to physical, sexual, and verbal abuse, unpaid/delayed/underpaid wages, and may face inequitable working conditions.

The Committee urges the State party to continue its efforts to promote the enhancement and empowerment of migrant women facing situations of vulnerability by inter alia:

Conducting a thorough assessment of the situation and taking concrete measures to address the feminization of migration comprehensively in its labour migration policies, including income of women in the informal sector, and minimal social protection for women;

Negotiating more secure employment opportunities and terms and conditions for women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent;

Carrying out gender training and sensitization for government staff dealing with migration issues, in particular those providing legal and consular assistance to Filipino nationals abroad seeking justice against abuse in the workplace;

Implementing the outcome document of the International Conference on Gender, Migration and Development called the *Manila Call to Action* as a tool for informed policy decision-making and advocacy.

Liaising with local and international partner networks to provide services and support to migrants and to advocate for migrants' rights.

The Committee is concerned about the documented cases where embassy/consulate personnel abroad did not properly assist their nationals because the former were not sufficiently aware of processes in the host country. While noting the information provided by the delegation on the alternative dispute settlement mechanism, the Committee is concerned at information that Filipino migrants are unwilling to file cases of abuse by their employers abroad for lack of trust in the justice system or fear of retaliation and unfamiliarity with the redress possibilities.

The Committee recommends that the State party:

Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families;

Take measures to ensure that its embassy and consulate staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino foreign workers, especially in those countries categorized as “highly problematic” by the DFA and the DOLE.

Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues and their progress monitored.

The Committee notes with concern that, despite the State party's efforts to protect the rights of Filipino migrant workers abroad, abuse and exploitation continue, especially of women migrants and that these are underreported.

The Committee recommends that State party:

Conduct a review of bilateral and multilateral agreements, Memoranda of Understanding or other protective measures with countries of employment of Filipino foreign workers;

In case that no bilateral agreement can be finalized, continue cooperation arrangements with countries receiving Filipino migrant workers in areas of mutual concern;

Increase dissemination channels to increase awareness among migrant workers, especially women in domestic service, on the available mechanisms for bringing complaints against employers and so that all abuses, including ill-treatment, be investigated and punished;

Provide adequate assistance through embassy and consulate staff abroad to migrant workers victims of the “sponsorship” or *kafalah* system especially for women domestic

workers and most notably in the Gulf countries and endeavour to negotiate a reform or review of such a system with the relevant countries of destination.

4. Other Rights of Migrant Workers and Members of Their Families Who are Documented or in a Regular Situation (Arts. 36-56)

The Committee is concerned about the fact that restrictions exist on the exercise of foreign migrant workers lawfully residing in the Philippines to engage directly or indirectly in trade union activities, as this right is only recognised for those migrant workers who are lawfully residing and working in the Philippines if they are nationals of a country which grants the same or similar rights to Filipino workers. The Committee is concerned that holding the right to join and establish a trade union subject to reciprocity is in violation of the Convention.

The Committee reiterates the 2008 request by the ILO Committee of Experts on the Application of Conventions and Recommendations in relation to ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise that the State party take the necessary measures, including legislative amendments to sections 269 and 272(b) of the Labour Code, to guarantee to all migrant workers and members of their families lawfully residing within the Philippines the right to join, form and to form part of the leadership of, associations and unions, in accordance with article 40 of the Convention on Migrant Workers, as well as with ILO Convention No. 87, not subject to reciprocity.

The Committee appreciates that the Filipino migrant workers' right to participate in democratic decision-making processes is recognized under RA 8042. While also noting the efforts undertaken by the State party to facilitate the participation of migrant workers abroad in elections for President, Vice-President, Senators and Party-list representatives, the Committee is concerned that the pre-required "affidavit of Intent to Return to the Philippines within 3 years" for immigrants/permanent residents abroad may limit the exercise of their right to vote. Further, the Committee is concerned at the very small percentage of Filipino workers abroad that have registered to vote in elections.

The Committee encourages the State party to continue its efforts to:

Encourage Filipino workers abroad to register and participate in elections;

Maintain a register of overseas voters and take additional steps to facilitate the exercise of voting rights by Filipino migrant workers residing abroad.

Invite the Philippine Congress to consider the proposals to amend RA 9189 to delete the requirement of an "Affidavit of intent to return".

The Committee appreciates the State party's efforts to enter into bilateral agreements with countries of destination with a view to promoting employment as well as the welfare and rights of migrant workers. However, the Committee is concerned that the provisions contained in bilateral agreements so far concluded do not sufficiently promote and protect the fundamental human rights of migrants.

The Committee recommends that the State party, to the extent possible, progressively mainstream relevant and appropriate provisions of the Convention into bilateral agreements.

5. Promotion of Sound, Equitable, Humane and Lawful Conditions in Connection with International Migration of Workers and Members of Their Families (Arts. 64-71).

The Committee notes with interest the labour migration policy implemented by the State party, with the Government playing a supportive and regulatory role. The Committee further notes the efforts taken by the State party to strengthen the Philippine Overseas Employment Agency and the Department of Foreign Affairs' handling of irregular migration. At the same time, the Committee is concerned about the large numbers of Filipino workers overstaying their visas and the continuing existence of irregular and undocumented Filipino migrants abroad, of which most are women serving as domestic workers, who may be more vulnerable to abuses.

The Committee recommends that the State party continue to provide assistance to irregular Filipino migrants in need of protection and to:

Step up its efforts to prevent irregular migration of Filipino nationals;

Continue its efforts to secure cooperation agreements with host countries;

Encourage collaboration of its consular services and Labour Attachés abroad and the countries which receive Filipino workers to promote sound, equitable, humane and lawful conditions for migrant workers.

While noting that the State party has increased the penalty for agencies with exorbitant placement fees, the Committee expresses concern at claims that private recruitment agencies continue to overcharge fees for their services and act as intermediaries for foreign recruiters, which may in certain instances, increase the vulnerability of migrants.

The Committee recommends that the State party review the role of private recruitment agencies and endorses the recommendation of the Special Rapporteur on the human rights of migrants to strengthen the existing government-regulated licensing system for recruitment agencies, migration regulation and control mechanisms.

The Committee notes with interest information given by the delegation on the State party's strategic reintegration programme for migrant workers returnees, including family members. Nevertheless, the Committee notes the lack of information available to the Committee on this programme.

The Committee encourages the State party to:

Work in partnerships with all relevant partners to strengthen the existing reintegration programme, especially with regards to addressing brain drain and developing knowledge transfer initiatives or brain gain schemes;

Allocate sufficient budget to reintegration programmes, and in particular to the reintegration centre which opened in 2007;

Strengthen reintegration programmes in order to ensure migration gains and involvement of Filipino returnees in projects that can lead to job creation in the State party;

Continue and strengthen skills, technical capacities and entrepreneurship trainings for preparing an eventual reintegration into the Philippines;

Adopt measures in accordance with the principles of the Convention in considering setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.

The Committee expresses concern over the situation of children and the negative impact on children whose parents have migrated abroad. Information presented before the Committee points to children with at least one parent working overseas living with loose family ties and performing worse in school, notably in the case of an absent mother. This is of concern to the Committee given that 50 per cent of all Filipino migrant workers are women.

The Committee encourages the State party to support a comprehensive study on the situation of children of migrant families, with the aim of developing adequate strategies to ensure their protection and the full enjoyment of their rights through, inter alia, community support programmes, education and information campaigns and school programmes. The Committee encourages the State party to continue its collaboration with NGOs in favour of these children and their mothers.

While noting the significant efforts of the State party such as the recent convictions of traffickers and the “We are not for sale” campaign, the Committee is concerned about the significant number of Filipino workers abroad who are victims of trafficking. The Committee further regrets the very limited number of cases of filing, prosecution, and conviction of perpetrators of trafficking with many of those cases being dismissed at preliminary stages.

The Committee endorses the recommendations of the Committee on the Elimination of All Forms of Discrimination against Women in this regard and recommends that the State party:

Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to better combating trafficking, especially of women and children;

Vigorously ensure effective enforcement of anti-trafficking legislation and increase efforts to improve the record of prosecutions, convictions, and punishment for traffickers and public officials who profit from or are involved in trafficking and bring perpetrators to justice;

Strengthen the Anti-Illegal recruitment campaign and provide adequate funding for the implementation of the National Strategic Plan of Action against Trafficking;

Continue collaboration with all relevant partners to increase advocacy, information, education and overall public awareness activities. Likewise, continue its ongoing early detection and prevention activities.

Coordinate and monitor the implementation of laws regarding forced labour and slavery, and continue training programmes in identifying and providing the necessary intervention and assistance to trafficked persons. Continue training of prosecutors to make them fully aware of the nuances of anti-trafficking law. Similarly, continue partnerships to increase technical capacity building and training of law enforcers, prosecutors and service providers.

Continue partnership with national and international relevant partners, including NGOs to provide services to victims of trafficking.

The Committee notes the large number of government departments and attached agencies as well as legislation dedicated to migration issues, including RA 8042, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers' Welfare Administration (OWWA). Nevertheless, the Committee is concerned that institutional responsibilities are spread among different ministries without a coordinating entity and about their limited means and capacity to fulfil their mandate in a proper manner and little coordination in the effective implementation of the promotion and protection of the rights of migrant workers.

The Committee recommends that, in order to improve institutional capacity to respond to problems affecting migrant workers, the State party simplify and streamline the institutional structure dealing with migration issues and allocate sufficient resources, human and financial, for agents within this structure to carry out their work efficiently. Furthermore, the Committee recommends that the State party guarantee broader participation of civil society NGOs

6. Follow-Up and Dissemination

Follow-up

The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to all relevant national and local authorities.

The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second report.

Dissemination

The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Filipino migrants abroad and foreign migrant workers residing or in transit in the Philippines.

7. Next Periodic Report

The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting (HRI/MC/2006/3 and Corr.1).

The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 May 2011.



**CONCLUDING OBSERVATIONS ON
THE SECOND PERIODIC REPORT OF THE PHILIPPINES¹⁷⁶**
**Committee on the Protection of the Rights of All Migrant Workers
and Members of Their Families**

CMW/C/PHL/CO/2
2 May 2014

1. The Committee considered the second periodic report of the Philippines (CMW/C/PHL/2) at its 249th and 250th meetings (CMW/C/SR.249 and SR.250), held on 3 and 4 April 2014. At its 260th meeting (CMW/C/SR.260), held on 11 April 2014, the Committee adopted the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the second periodic report of the State party, in response to the list of issues prior to reporting, and the additional oral information provided by the large, multisectoral and high-level delegation that was headed by Rosalinda Dimapilis Baldoz, Minister of Labour and Employment of the Philippines, was co-headed by Cecilia B. Rebong, Permanent Representative of the Philippines to the United Nations in Geneva, and included five Deputy Ministers representing the Department of Foreign Affairs, the Department of Labour and Employment, the Philippine Overseas Employment Administration, the Department of Justice, and the Presidential Human Rights Committee, as well as other government officials. This enabled the Committee to better understand the extensive and advanced legal and policy framework for implementing the Convention in the State party.

3. The Committee recognizes that the Philippines, which is predominantly a country of origin and has more than 10 million migrant workers overseas, has made substantial progress in protecting the rights of its migrant workers abroad. The country, however, continues to face several challenges as a country of origin, transit and destination for migrant workers.

4. The Committee notes that some of the countries in which Filipino migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.

**B. POSITIVE
ASPECTS**

5. The Committee reiterates its appreciation for the expressed high-level political will by the State party to respond to the needs of migrant workers abroad, as evidenced by the multitude of programmes and support structures for overseas Filipino workers, covering all stages of the migration process. The Committee in particular appreciates the review of the State party's policies to advance the rights of migrant workers and strengthen programme implementation procedures, capacity-building and the rationalization of resources.

6. The Committee welcomes as a positive step the adoption of the following instruments:

- (a) The Magna Carta of Women (Republic Act No. 9710), in August 2009;
- (b) The Migrant Workers and Overseas Filipinos Act, as amended (Republic Act No. 10022), in March 2010;
- (c) Executive Order No. 34 creating the Overseas Preparedness and Response Team, which provides for assistance to migrants in times of crisis; Executive Order No. 41 reactivating the Presidential Task Force Against Illegal Recruitment, in April 2011; and

¹⁷⁶ Adopted by the Committee at its 20th session (31 March–11 April 2014).

the campaigns against illegal recruitment to raise awareness among migrant workers about pre-employment and pre-departure requirements;

(d) The Guidelines and Procedures which shall be adopted to harmonize the forging of bilateral labour agreements between the Philippines and other countries (Administrative Order No. 28), in 2012;

(e) The Domestic Workers Act (Republic Act No. 10361), on 18 January 2013; and

(f) The Expanded Anti-Trafficking in Persons Act (Republic Act No. 10364), which provides additional protection to victims of trafficking and service providers, in January 2013.

7. The Committee welcomes the ratification by the State party of the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 17 April 2012; and

(b) International Labour Organization (ILO) Convention No. 189 (2011) concerning decent work for domestic workers, on 5 September 2012.

C. PRINCIPAL SUBJECTS OF CONCERN, SUGGESTIONS & RECOMMENDATIONS

1. General measures of implementation (arts. 73 and 84)

Legislation and application

8. The Committee appreciates the detailed information on the achievements in establishing the necessary legal and policy framework and other practical measures that form part of the infrastructure for regular migration. However, it notes that the State party has not supplied sufficiently detailed information on legal and practical measures taken to implement the Committee's previous concluding observations (CMW/C/PHL/CO/1). The Committee reiterates its previous recommendations (CMW/C/PHL/CO/1, paras. 40 and 44) to step up efforts to prevent irregular migration of Filipino nationals, and to strengthen the reintegration programmes, including by means of job-creating measures.

9. The State party is requested to implement all the recommendations addressed to it by the Committee and to take the necessary steps to ensure that its national laws and policies are in line with the provisions of the Convention.

10. The Committee is concerned that section 29 (a) (2) of the Immigration Act, which allows for the prohibition of entry or expulsion on the grounds that the immigrant worker is suffering from an infection or illness or is pregnant, irrespective of the performance of the tasks for which the worker has been recruited, may result in discrimination against migrant workers.

11. While noting the enactment of the Anti-HIV/AIDS Discrimination Law, the Committee recommends that the State party amend the Immigration Act in order to avoid discrimination against migrant workers on the basis of one's health situation, including real or perceived HIV status or pregnancy, and ensure that any health testing is voluntary and free from coercion.

12. The Committee is concerned at the lack of sufficient information, including statistics, on the effectiveness of the Household Service Workers Programme of 2006 on the protection of the rights of migrant workers employed in household service.

13. The Committee recommends that the State party assess the effectiveness and monitor the implementation of the Household Service Workers Programme of 2006, in particular the compliance with contracts of employment by employers abroad as regards the payment of adequate salaries and provision of labour benefits, and that it include relevant qualitative information and statistical data in its next periodic report.

14. The Committee notes that the State party has not made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

15. The Committee reiterates its previous recommendation and encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention as soon as possible (CMW/C/PHL/CO/1, para. 18).

16. The Committee notes that the State party has not acceded to ILO Convention No. 131 (1970) concerning Minimum Wage Fixing, ILO Convention No. 167 (1988) concerning Safety and Health in Construction, or ILO Convention No. 181 (1997) concerning Private Employment Agencies.

17. The Committee invites the State party to consider acceding to ILO Convention No. 131 (1970) concerning Minimum Wage Fixing, ILO Convention No. 167 (1988) concerning Safety and Health in Construction, and ILO Convention No. 181 (1997) concerning Private Employment Agencies.

*Data
collection*

18. The Committee notes with interest the expanded range of statistics on the flows of Filipino migrant workers, and welcomes the commitment by the State party to arrange for sharing of electronic information between the Department of Foreign Affairs, the Overseas Workers Welfare Administration, the Philippine Overseas Employment Administration and the Bureau of Immigration. However, it observes the existence of several departmental information systems, which results in a lack of centralized disaggregated data to evaluate the effective implementation of the Convention, particularly with regard to Filipino migrant workers abroad and their conditions of employment, the situation of returnees, migrants in transit, women and unaccompanied child migrants and foreign migrant workers in the State party, including seasonal migrant workers.

19. Reiterating its previous recommendations (CMW/C/PHL/CO/1, para. 20), the Committee encourages the State party to create a sound, centralized and comprehensive database covering all aspects of the Convention and to include in it disaggregated data, to the extent possible, in order to facilitate the adoption of migration policies for effective implementation of the provisions of the Convention. The State party should ensure that the Shared Government Information System on Migration receives adequate human and financial resources, should enhance collaboration with the country's embassies and consulates to compile data and, among other measures, should endeavour to systematically evaluate the situation of irregular migrants.

*Training on and
dissemination of
the Convention*

20. The Committee notes the insufficient clarity regarding the target groups for whom training programmes and materials on the Convention have been developed and regarding the means of dissemination of such information among all relevant stakeholders, including national, regional and local government bodies and civil society organizations.

21. The Committee encourages the State party to:

- (a) Intensify training on rights under the Convention for all officials working in the area of migration, in particular police and border personnel, judges, prosecutors, and responsible consular officers, as well as national, regional and local government officials and social workers;
- (b) Take further steps to ensure access by migrant workers to information and guidance on their rights under the Convention in all commonly used languages in the State party, in particular through the Pre-Employment and Pre-Departure Orientation Seminars; and
- (c) Continue to work with civil society organizations and the media, including in the provinces, in order to disseminate information and promote the Convention.

2. General principles (arts. 7 & 83)

Non-discrimination

Right to an effective remedy

22. While noting with interest that the principle of non-discrimination is stipulated in the State party's laws, the Committee regrets that foreign workers can enjoy fundamental rights of workers only on the basis of restrictive conditions, such as reciprocity, in contravention of the Convention.

23. The Committee reiterates its previous recommendation that the exercise of human rights is not based on the principle of reciprocity and recommends that the State party amend domestic laws so that all migrant workers and members of their families residing within the country can enjoy the rights under the Convention without any discrimination, in conformity with articles 1 and 7 of the Convention.

24. While noting the measures and mechanisms adopted by the State party to protect the rights of migrant workers abroad, the Committee expresses its concern at the persistence of some obstacles to access to justice, including delays in proceedings, corruption and abuse of authority, such as in the cases of exploitation of distressed Philippine women workers abroad by some foreign service, labour and welfare personnel. It is also concerned at the lack of legal assistance in cases of illegal recruitment, limited access to the Legal Assistance Fund, and the low number of complaints reported to the Philippine Overseas Employment Administration and the Philippine Overseas Labour Office. The Committee notes the lack of adequate information on available administrative and judicial remedies, and on remedies sought and received by migrant workers and in which countries, as well as the insufficient numbers and the inadequate awareness of the diplomatic and consular staff abroad about the remedies available in countries of employment.

25. The Committee recommends that the State party should:

- (a) Investigate and punish all cases of corruption involving public officials, implement mechanisms to detect public officials abusing their authority, and enhance the safeguards at the Filipino Workers Resource Centres;**
- (b) Systematically inform migrant workers and members of their families, including those in an irregular situation, about the available judicial and other remedies; and guarantee their equal access to complaints procedures and effective legal assistance, including through the Legal Assistance Fund, as well as to redress from the courts and other mechanisms when their rights under the Convention have been violated; and**
- (c) Allocate sufficient material resources and competent foreign service, labour and welfare personnel for the effective conduct of work abroad and ensure regular capacity-building and skills enhancements for such personnel, in cooperation with the relevant civil society and workers' communities, on the available remedies in countries of employment, in particular those categorized as "highly problematic".**

26. The Committee recognizes the commitment by the State party to the human rights of migrant workers and members of their families; however, it notes with concern that the Commission on Human Rights of the Philippines does not have a comprehensive mandate pertaining to rights of migrant workers, and that it lacks adequate financial and human resources to conduct work effectively as well as clear and transparent selection and dismissal procedures for the Commissioners.

27. The Committee requests the State party to:

- (a) Provide the Commission on Human Rights of the Philippines with a broad mandate to effectively carry out the promotion and protection of the rights of migrant workers and members of their families under the Convention;**
- (b) Provide adequate financial and human resources to the Commission to enable it to effectively discharge its mandate in full compliance with the Paris Principles (General Assembly resolution 48/134, annex); and**

- (c) Establish clear and transparent selection and dismissal procedures for the Commissioners.

3. Human rights of all migrant workers and members of their families (arts. 8–35)

28. The Committee notes with concern that the granting of a work permit is conditional on the existence of employment and that loss of employment results in the loss of the work permit, which impacts on the legal situation of migrant workers.

29. The Committee recommends to the State party to bring its laws and practice into line with article 8, paragraph 1, of the Convention, to ensure that the right of a migrant worker to reside in the country for the purpose of employment shall not be revoked if the migrant worker loses employment prematurely.

30. The Committee notes with appreciation the progress made in improving and expanding the State party's consular services, including the deployment of female officers and welfare wardens. Nonetheless, the Committee notes with concern the insufficient consular staffing and the lack of information on the protection and assistance provided by the State party's consulates to migrant workers abroad, especially in cases involving deprivation of liberty and/or expulsion orders.

31. The Committee recommends that the State party take further steps to strengthen consular staffing, so that its consular services can respond more effectively in order to protect and promote the rights of Filipino migrant workers and members of their families, where necessary, and can provide, in particular, the necessary assistance to any of them who are deprived of liberty or subjected to an expulsion order. The Committee also recommends that the State party enhance the assistance provided through embassies and consulates to migrant workers who are victims of the *Kafalah* (sponsorship) system, particularly in the Gulf countries, so that all exploitation and abuses can be effectively reported, investigated and punished.

32. The Committee is concerned that, notwithstanding the efforts by the State party, Filipino migrant workers abroad, especially women domestic workers, continue to suffer from widespread exploitation and abuse in several host countries.

33. The Committee recommends that the State party continue to:

- (a) Monitor and assess the implementation of bilateral and multilateral labour agreements and memorandums of understanding between the origin and destination countries, and of other protective measures, in order to ensure the effective enjoyment of the rights and benefits by Filipino workers abroad, in particular women, in line with the Convention;
- (b) Address the situation of migrant workers who are victims of the *Kafalah* system, in particular in the Gulf countries, and consider raising this issue with a view towards abolishment of this system by the Governments concerned, as well as concluding specific bilateral agreements with the countries receiving Filipino migrant workers, with the involvement of concerned civil society actors, to enhance protection of specific categories of workers, in particular women, against exploitation and abuse; and
- (c) Offer adequate information to migrant workers and members of their families travelling to countries with the *Kafalah* system on the regulatory framework, and on the rights and benefits, as part of the Pre-Employment and Pre-Departure Orientation Seminars.

34. Although the Committee recognizes the measures taken by the State party to provide mobile services for registering the birth of Filipino migrant children abroad, the Committee is concerned at the reported difficulties in accessing birth registration for Filipino migrant children abroad in some instances, including those in an irregular situation, for example due to the distance to the foreign service posts and the costs incurred.

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)

35. The Committee encourages the State party to take further steps to reach out to the destination countries in respect of the registration of children of migrant workers, both those in regular and those in irregular situations, and to update the relevant databases.

36. The Committee expresses concern that sections 269 and 272 (b) of the Labour Code impede the exercise by migrant workers in the State party of the right to freedom of association and the right to form or join a trade union.

37. The Committee recommends that the State party should adopt all necessary measures, including legislative amendments, to guarantee the right of migrant workers and members of their families to form associations and trade unions, in accordance with article 40 of the Convention.

38. The Committee appreciates the efforts of the State party to facilitate the right to participate in public affairs and the right to vote, on the basis of the Overseas Absentee Voting Act, in the elections for President and Vice-President and for senators and party list representatives, but it regrets the low level of participation by Filipino workers abroad in the national elections in May 2013.

39. The Committee recommends that the State party strengthen its efforts to guarantee the right to vote of Filipino migrant workers living abroad by facilitating their registration and participation in the next presidential and national elections, that it continue measures for voting by mail and via the internet, and that it secure sufficient funding for overseas voting.

40. While noting with appreciation the State party's information that a foreign migrant worker has the freedom to remit all or a portion of his or her earnings, the Committee notes that under section 22 of the Labour Code, certain categories of Filipino workers abroad, such as seafarers, are reportedly obliged to remit up to 80 per cent of their foreign exchange earnings to their families and dependents and other beneficiaries in the State party.

41. The Committee recommends that the State party review its legislation in this regard to bring it into line with article 47 of the Convention, so that migrant workers can transfer their earnings and savings as they may desire.

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)

42. While recognizing the State party's commitment to pursuing ethical recruitment principles, such as through the Code of Ethics for Manning Agencies, as well as its efforts to strengthen the system for the licensing of recruitment agencies, the Committee is concerned that private recruitment agencies continue to charge excessive placement fees, to provide often incomplete information, which may result in acceptance of salaries below the minimum wage and deprivation of other labour benefits, and to serve as intermediaries for abusive foreign recruiters.

43. The Committee recommends that the State party undertake the following measures:

- (a) Reinforce the regulatory regime for private recruitment agencies and strengthen the existing licensing system for recruitment agencies;**
- (b) Enhance recruitment monitoring and inspections to prevent private recruitment agencies from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters;**
- (c) Ensure that private recruitment agencies provide complete information to individuals seeking employment abroad and that they guarantee the effective enjoyment of all agreed employment benefits, in particular salaries;**
- (d) Investigate and punish illegal practices by recruiters, with a view to exposing errant practices; and**
- (e) Adopt a “no placement fees” policy for persons intending to work abroad.**

44. The Committee notes the State party's efforts to secure the welfare of the children of migrants in situ and those left behind in the country of origin, including through the pilot education, entrepreneurial and training programmes. However, the Committee is concerned at the limited number of such measures, and their reliance primarily on civil society input and participation, and at the vulnerability of children left behind in the country of origin to violence, abuse, neglect and exploitation. The Committee also regrets the lack of clarity about the measures taken to facilitate the resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country of origin.

45. The Committee recalls its previous recommendation and recommends that the State party:

- (a) Conduct nationwide research on children of migrant workers in situ and on those left behind in the country of origin to establish the demographic profile of this population in order to guide its policies and programmes; and**
- (b) Adopt a comprehensive strategy to promote and protect the rights of children and families of Filipino workers, in particular through education, entrepreneurial, training and community welfare programmes, and further its cooperation to that effect with civil society actors in situ and in the country of origin;**
- (c) Provide information in its next periodic report on the measures taken to facilitate the resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country.**

46. The Committee takes note of the State party's efforts to prevent and combat trafficking in persons, including the operation of the Inter-Agency Committee Against Trafficking and the Philippine Anti-Trafficking Database, and particularly notes the increased number of convictions of traffickers in the past few years, whereby 121 cases of human trafficking resulted in convictions involving 140 traffickers and 340 trafficked persons. It expresses its concern, however, that the prosecution rate for trafficking in persons, especially women and children, remains low, due to difficulties in law enforcement, as illegal recruiters are often relatives of the persons trafficked, or foreign recruitment agencies, according to information received by the Committee. The Committee also notes with concern that many judges, prosecutors, social service workers and law enforcement officials seem to have insufficient knowledge of the legislation against trafficking in persons, which may hinder both the successful investigation, prosecution and punishment of such acts and the providing of assistance to the victims.

47. The Committee recommends that the State party strengthen its efforts to combat trafficking in persons, particularly women and children, through vigorous implementation of the national strategic plan to that effect, which should include measures to:

- (a) Enhance mechanisms for proper identification and referral to improve assistance to victims of trafficking;**
- (b) Promptly, effectively and impartially investigate, prosecute and punish all acts of trafficking in persons and other related offences, and deal expeditiously with the cases filed against illegal recruiters;**
- (c) Reinforce the mechanisms of support, rehabilitation, protection and redress, including the State-funded social rehabilitation services and assistance with reporting incidents of trafficking to the police, and ensure their availability to all victims of trafficking, including at the provincial and local levels;**

- (d) Enhance training for police officers, law enforcement officers, judges, prosecutors, labour inspectors, teachers, health workers, and the staff of the State party's embassies and consulates, and distribute the Manual of Procedures in Handling Complaints of Trafficking in Persons, Illegal Recruitment and Child Labour, and the Manual on Labour Dimensions of Trafficking in Persons for Investigators, Prosecutors, Labour Inspectors and Service Providers;
- (e) Place public information materials in all transport terminals in order to educate the public about trafficking and the protection of migrants; and
- (f) Systematically collect disaggregated data on trafficking in persons.

6. Follow-up and dissemination

Follow-up

48. The Committee requests the State party to include in its third periodic report detailed information on measures taken to follow up on the recommendations made in the present concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and the Parliamentary Assembly, as well as to local authorities.

49. The Committee requests the State party to involve civil society organizations more closely in the preparation of the State party's third periodic report, and in the implementation of the recommendations made in the present concluding observations.

Dissemination

50. The Committee likewise requests the State party to disseminate these concluding observations widely, particularly to public agencies and the judiciary, non-governmental organizations, and other members of civil society, including those in all provinces, and to bring them to the attention of Filipino migrants abroad and foreign migrant workers in transit or residing in the Philippines.

7. Next periodic report

51. The Committee requests the State party to submit its third periodic report by 1 May 2019. Alternatively, the State party may follow the simplified reporting procedure whereby the Committee draws up a list of issues which is then transmitted to the State party for a response. The State party's replies to the list of issues constitute its report under article 73 of the Convention, without the State party having to submit a traditional periodic report. This new optional procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, para. 26).

COMMENTS AND OBSERVATIONS ON THE ADVANCE UNEDITED CONCLUDING OBSERVATIONS OF THE 'COMMITTEE ON MIGRANT WORKERS

on the Second Periodic Report of the Philippines on the Implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The Philippine Government has taken note of the Concluding Observations of the Committee on Migrant Workers on the Second Periodic Report of the Philippines on the Convention on the Rights of Migrant Workers and Members of Their Families, and would like to take this opportunity to provide its comments and observations thereto, as follows:

1. The Concluding Observations fails to highlight one of the key achievements of the Philippines in the last five years, which was the implementation of response mechanisms during emergencies or crisis situations abroad. The Minister of Labor and Employment, in her Opening Statement (pp. 7-8), highlighted that the Department of Foreign Affairs (DFA) and/or Department of Labor and Employment (DOLE) have undertaken emergency repatriation of migrant workers in Libya, Syria, Yemen, and Egypt. Such Philippine crisis management efforts have been recognized no less than the UN Special Representative of the Secretary-General for International Migration, Mr Peter Sutherland, in the recent High Level Dialogue on Migration held last October 2013 in New York City

2. With respect to strengthening reintegration programs referred to in paragraph 8 of the Concluding Observations, paragraphs 80-84 of the Second Periodic Report mentioned that in 2011, Overseas Workers Welfare Administration (OWWA) and the Land Bank of the Philippines launched a 2 Billion Peso National Reintegration Program for Migrant Workers. The 2-B program is a special loan facility of the Overseas Workers Welfare Administration (OWWA) in partnership with the Land Bank of the Philippines (Land Bank) intended to support enterprise development among Overseas Filipino Workers (OFWs) and their families, providing them with steady income stream to support their needs and creating employment opportunities. It aims to provide OFWs with a sustainable alternative to overseas employment. Total loans thus far reached 648, with a loan value of P443.7 million, involving livelihood projects that generated 2,995 jobs.

3. The Committee expressed concern over Section 29 (a) (2) of the Immigration Act, specifically the exclusion from entry into or expulsion from the Philippines of an immigrant worker suffering from an infection or illness or is pregnant. The said provision, however, applies to persons afflicted with a loathsome or dangerous contagious disease, or epilepsy. The term "disease" is taken to mean infectious diseases or those which are contagious, or those which are likely to pose a threat to public health and safety. Pregnancy is not mentioned as it is not a disease. It bears stressing that the Philippine Immigration Act was enacted in 1940, during which time epilepsy, tuberculosis and the like are considered as dreadful diseases. Amendments have been proposed and are currently pending consideration by the Philippine Congress.

Further, said Section 29(a) (2) is implemented when so necessitated and only in extreme cases, usually in response to an alert of an impending epidemic. In any case, the

implementation of the policy is always undertaken in compliance with the requirements of due process.

Finally, the immigration authority adheres to Republic Act No. 8504 which prohibits the commission of discriminatory acts against persons with AIDS/HIV. Under the law, the freedom of abode, lodging and travel of a person with HIV shall not be abridged, and that no person shall be quarantined, placed in isolation, or refused lawful entry into or deported from Philippine territory on account of his/her actual, perceived or suspected HIV status. HIV is not among the dangerous, loathsome or contagious diseases referred to in Section 29 (a) (2) of the Immigration Act.

4. On the review of the policy on household service workers (HSWs) under paragraph 13 of the Concluding Observations, the Philippine Government articulated during the revalida, in response to the question of the same nature, that the main strategy over the last 4 years is to tighten enforcement and focus on effective implementation of the HSW Reform Package, namely:

- USD400 minimum entry-level salary
- Minimum employable age of not less than 23 years old
- No placement fees
- National Certification 2 skills certification requirement

Aside from administrative recourse before the Philippine Overseas Employment Administration (PO EA) and the National Labor Relations Commission (NLRC) for violation of the policy, the Philippine Government has engaged recruitment industry associations to implement the reform package. SHARP and ALRAS, recruitment industry associations for Hong Kong and Singapore, respectively, have declared adherence to the reform package, and are currently working with the government to address abusive practices.

It bears stressing that a total of 336 private recruitment agencies were cancelled from 2009 to 2013 for collection of excessive placement fees. 30% (100) of cancelled recruitment agencies were penalized for violations of the Household Service Worker Reform Package and found to be collecting placement fee or implementing salary deductions scheme which is strictly prohibited under the Reform Package. Licensed agencies mostly deploying workers to Hong Kong, Malaysia, Singapore and

Taiwan are the most frequent violators of the HSW Rules.

On the bilateral, regional, and multilateral fronts, the Philippines:

- a. aggressively pursues bilateral agreements and standard contracts with host countries or destinations, such as KSA, Jordan, Lebanon, Kuwait, Bahrain, UAE, and Qatar (paragraph 49, in relation to paragraph 68 of the Second Periodic Report);
- b. is at forefront in discussions on migrant worker through the draft Instrument to Implement the 2007 ASEAN Declaration on the Protection and Promotion of Rights of Migrant Workers (p' 13 of the Opening Statement);
- c. Promotes ratification of ILO C189, and Chairs the Abu Dhabi Dialogue that crafted the Manila Communiqué on the Framework for Regional Collaboration between

Sending and Receiving Member States, which includes protection of vulnerable workers (p. 12 of the Opening Statement).

5. On the issue of the existence of several departmental information systems which result in a lack of centralized disaggregated data as contained in paragraph 18 of the Concluding Observations, the Minister, in her Opening Statement (p. 10) and as contained in the Second Periodic Report (paragraphs 16 and 17), stated that incremental yet significant efforts have been undertaken to improve data collection and management, enhancing and complementing the Shared Government Information System (SGISM), a system that will allow free flow data exchanges and sharing among migration-related agencies. This was further elaborated in the response of the Philippine Government on a similar question during the revalida, stating that in 2011, the Overseas Filipino Information System (OFIS) was created under Executive Order 34 which established the Overseas Preparedness and Response Team. It was envisioned to be the core element of the SGISM. This project is a collaboration between the DFA, POEA, OWWA and the Bureau of Immigration (BI), with the technical assistance of the Advanced Science and Technology Institute (Department of Science and Technology), National Computer Center and the National Statistical Coordination Board.

The OFIS will generate a clear and accurate picture of the number of overseas Filipinos, their profile, whereabouts and movements in all destination countries at a given time. This requires the element of mapping which the Department (Ministry) of Foreign Affairs has been undertaking through Foreign Service posts and sending out teams to map out areas which are not covered by such posts. It will provide important decision-making information in situations of migrants in crises and for routine requests for consular services.

To date, the system contains data from the DFA, OWWA, POEA and BI. Replication servers are in place. It is slated for launch in the middle of this year. It includes an e-registration component that will allow for the online voluntary registration for overseas Filipinos.

7. On the issue of lack of legal assistance, paragraph 41 of the Second Periodic Report adequately stated the comprehensive legal services available for migrant workers at all stages of the migration process, from pre-departure to on-site, until return. The Philippines will seek to address the perceived lack of information on legal assistance of migrant workers to guarantee access to legal procedures and afford effective legal remedies.

With reference to the Committee's concern about limited access to the Legal Assistance Fund (LAF), the utilization of the LAF increased to 66% in 2013 from just 24% in 2009. This suggests expanded rather than limited access to the LAF. The expansion of the Legal Assistance Fund does not only cover the inclusion of labor cases, but also a commensurate increase in the financial assistance, including administrative costs, dues, and fees. New guidelines expanding the coverage of the LAF were issued in July 2013 to this effect.

Moreover, in cases where the penalty that has been or will be meted out by the host government is capital punishment or death, the Philippine government extends legal assistance, through the LAF, even if there is an existing system in the host country for the provision of pro bono legal services to the accused Filipino migrant worker.

8. On the issue of obstacles to access to justice such as in the cases of abuse and exploitation by some foreign service, labor and welfare personnel as contained in paragraph 24 of the Concluding Observations, the Minister of Labor and Employment and the Deputy Minister of Foreign Affairs had responded to the same question during the revalida by stating the updates and results in the investigation of the personnel involved and the reforms instituted to address the issue. With regard to enhancing safeguards at the Migrant Workers and

Overseas Filipinos Resource Centers in paragraph 25 (a) of the Concluding Observations, the Minister stressed the policy reforms in the management of the said centers.

9. on paragraph 30 of the Concluding Observations relating to the Committee's concern about insufficient consular staffing and lack of information on migrants with expulsion orders, the budget of the 20 top migrant-serving Posts, which includes earmarks for salaries of additional personnel, increased by P 383 million or 17.8% from 2009 to 2013. These 20 Posts have a combined staff of 792 people. The Philippines is providing resources where it matters. As for information on migrants with expulsion orders, the Philippines processed 5,927 Filipinos affected by 'Saudiization' as of 04 November 2013. The Philippines has information where it matters.

10. The call for stronger bilateral engagements in paragraph 33 of the Concluding Observations fails to lay the basis for the Philippine efforts in this regard. In 2012-2013, the Philippine government successfully negotiated agreements with host countries and destinations such as Saudi Arabia, Jordan, Lebanon, and Kuwait, which identified specific rights and measures to strengthen protection of migrant workers (paragraph 49 of the Second Periodic Report). In particular, the agreements with Saudi Arabia and Jordan focused on protection of domestic workers, with recognized rights embodied in agreed Standard Employment Contracts pertaining to, among others, payment of wages, working hours, rest days and rest periods, and non-withholding of passports (p.6 of the Opening Statement of the Minister).

11. On the assistance to Filipinos in an irregular situation or who were subject to expulsion orders mentioned in paragraph 30 of the Concluding Observations, the draft fails to mention that, in the case of the recent crackdown on undocumented workers in Saudi Arabia, the Department of Foreign Affairs facilitated either their regularization or repatriation. As of 4 November 2013, repatriated Filipinos totalled 5,927, while regularized Filipinos amounted to 157,000.

12. On the issue of access to birth registration for Filipino migrant children abroad as stated in paragraph 34 of the Concluding Observations, the Second Periodic Report adequately mentions the efforts to register children of Filipino migrants born in destination countries. As stated in paragraph 52 of the said report, all Philippine Consuls serve as civil registrars in their respective jurisdictions. They are responsible for reporting all foreign vital events (births, marriages, deaths) that occur among Filipinos abroad, even if they are irregular migrants. They also conduct consular missions to places which are far from the embassies and consulates in order to, among other tasks, register Filipino children. In addition, representations are also being made with the host countries to allow registration of Filipino children born in the territories regardless of immigration status of Filipino parents.

13. On the issue of the right to vote as contained in paragraphs 38 and 39 of the Concluding Observations, the Opening Statement of the Minister and the Second Periodic Report Mentioned that the Philippine Government also enacted Republic Act No. 10590 in 2013, Amending Republic Act No. 9189~otherwise known as "The Overseas Voting Act of 2003". The law and the amendment fast-track the registration of overseas absentee voters and provides for the setting-up of field and mobile registration centers, the automatic registration of voters, and alternative modes of voting. Moreover, the requirement for an "Affidavit of Return" as a requirement for registration for immigrants and permanent residents was repealed.

14. On the issue of strengthening regulation of private recruitment agencies, in relation to charging of excessive fees (paragraph 42 of the Concluding Observations), the Second Periodic Report (paragraphs 75-78) already provided for measures adopted to strengthen

the licensing system. These include the institutionalization of continuing education program for private recruitment agencies as a requirement for extension or renewal of license. New applicants also undergo a pre-licensing orientation. The report also stressed that charging excessive fees is a serious offense and is dealt with administratively (with penalty of cancellation of license) and criminally (with penalty of imprisonment). Philippine private recruitment agencies are also jointly and severally liable with their foreign principals to fulfil contractual obligations and claims of workers. OFW money claims are satisfied from escrow accounts that the private recruitment agencies open as part of the licensing requirements. Regular inspection visits of licensed recruitment agencies are undertaken to determine their continued compliance with rules, regulations and applicable laws. Violation of recruitment rules may result in either suspension or cancellation of agency license. One hundred ten (110) licenses of private recruitment agencies were cancelled in 2012-2013.

15. On the enforcement of laws on charging of excessive fees in paragraphs 43 (b) and (d), the Minister emphasized in her opening statement (pp.9-10, in relation to paragraph 77 of the Second Periodic Report) the cancellation of licenses of 336 recruitment agencies for violating the one-month salary ceiling or “no placement fee” regulations in the case of domestic workers or workers destined for countries that prohibit such fee-charging. In addition, the Philippine government provides incentives and awards to recruitment agencies that do not charge any placement fees to deployed workers. In 2009 and 2014, eighteen (18) such non-fee charging recruitment agencies have received the highest distinction from the President of the Philippines.

16. With respect to the issue on the measures taken to facilitate the resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country, as mentioned in paragraph 44 of the Concluding Observations, the Minister highlighted in her opening statement that the Philippines provides reintegration assistance to victims of trafficking through the Department of Social Welfare and Development and Department of Labor and Employment. The assistance consists of package of services to address psycho-social and economic needs of trafficked persons and their families. A one hundred million pesos annual budget has been allocated for the program Paragraph 84 of the Second Periodic Report also mentioned that the State party reinforced its reintegration agenda with the guidelines for the implementation of Comprehensive Delivery of Reintegration Services for Deportees, Repatriates and Returned Irregular Overseas Filipino Workers and made it a regular programme of DSWD On the issue to adopt a comprehensive strategy to promote and protect the rights of children and families of Filipino workers, as contained in paragraph 45 (b) of the Concluding Observations, paragraph 34 (5) of the Second Periodic Report mentioned the initiative of the State on provision of venues for regular livelihood and entrepreneurial activities and trainings and family values formation and reorientation families and children left behind by migrant parentis. This undertaking is in partnership with OFW Family Circles, religious organizations, NGOs and private institutions.

Moreover, in her opening statement (p. 11), the Minister emphasized that the Philippines provides care and protection to children left behind by migrant workers. They may avail of services provided by the Department of Social Welfare and Development, which includes a supplementary feeding program, temporary shelters, alternative parental care and psycho social services. Children of OWWA members can avail of scholarship programs and can join the OFW Family Circles that serve as support groups,

17. The existing initiatives and measures of the Philippines closely reflect the recommendations the Committee advances to strengthen efforts to combat trafficking in persons as mentioned in the Concluding Observations (paragraph 47 and its sub-paragraphs). As the government shares the Committee’s deep concern about ensuring the

prevention of trafficking persons and the protection victims of trafficking through the prompt delivery of appropriate services and prosecution of their traffickers, the Philippines continues to enhance these measures by monitoring the implementation of the national strategic plan against trafficking as mentioned in paragraph 11 of the Second Periodic Report. On the recommendation for referral mechanisms to improve assistance to victims of trafficking referred to in paragraph 47 (a) of the Concluding Observations, the IACAT has already established the National Referral System in 2009 as contained in paragraph 86 of the Second Periodic Report. The Department of Social Welfare and Development has been organizing referral networks across the country.

The call for stronger enforcement of anti-trafficking laws in paragraphs 46 and 47 of the Concluding Observations fails to consider the creation of joint law enforcement and prosecution task forces and the issuance of circulars from the Executive and Judiciary directing the speedy disposition of trafficking cases as mentioned by the Minister in her Opening Statement (pp. 8-9) in relation to paragraph 90 of the Second Periodic Report. On ensuring availability of services and assistance to victims of trafficking, including at provincial and local levels mentioned in paragraph 47(c) of the Concluding Observations, the IACAT has established local committees in 17 regions, 48 provinces, 38 cities and 82 municipalities as described in paragraph 89 of the Second Periodic Report.

Finally, on paragraph 47 (f) of the Concluding Observations, specifically on collection of disaggregated data on trafficking, the IACAT has already set-up the Philippine Anti Trafficking Database as mentioned in paragraph 85 of the Second Periodic Report.

(Endnotes)

¹ IACAT. March 2014. "Updates on Trafficking in Person (TIP) Convictions". Accessed in <http://www.iacat.net/index.php/human-trafficking-related-statistics>.

² Interaksyon. December 18, 2013. Accessed in <http://www.interaksyon.com/article/77039/recruiter-accused-of-offering-fictitious-u-s-jobs-to-hundreds-of-filipino-teachers>.

³ US State Department. 2009. "Trafficking in Persons Report 2009". Accessed in <http://www.state.gov/j/tip/rls/tiprpt/2009/123137.htm>

WAY FORWARD, FOLLOW UP

Follow up on the concluding observations and recommendations of treaty bodies, will mainly consist of the periodic convening of the GO-NGO Forum and other activities which will be used as a platform for constructive dialogues and action at the national and regional levels to thresh out issues and remind government of its role to implement the Committee's recommendations.

In the course of performing the Commissions' role to disseminate the Convention, its implementation by government of the recommendations of the Committee, the Mapping Document will be the Commission's companion in ensuring that national and local processes are grounded on specific issues raised in the treaty reporting process.

GO-NGO Forum on CMW Concluding Observations

The first GO-NGO-NHRI forum workshop was held on June 25, 2014. Co-organized by CHR, PHRC and CMA, it was the first forum workshop convened to (1) feedback on the GO-NGO engagement in Geneva in April 2014; (2) revisit the process of preparations both the GO and NGO-CHR; (3) reflect on the concluding observations and recommendations; (4) identify agencies concerned and invite concerned CSOs to engage and be involved; (5) agree on steps forward in the lead up to the next reporting cycle in 2019.

Government was duly represented with Labor Secretary leading the attendance. Other agencies of government were present also including among others the following: Office of the Vice President as Advisor on OFW affairs; DFA UNIO and OUMWA; DOLE ILAB, POEA, OWWA, PCW, IACAT, NLRC, NRCO, TESDA, CFO. Also represented was Congress from the COWA and Committee on Women. A member of the CMW, former Ambassador Jose Brillantes was also invited and graced the occasion.

From the CSOs, we had migrant NGOs, academe, trade unions, recruitment agencies. There was representation also from migrant groups from Luzon and Mindanao.

CHR was represented not only by officers and staff from the head office but also from select regional offices.

The programme was opened by CHR Commissioner Jose Mamauag. Messages were also delivered by DOLE Secretary Baldoz and a representative from the Office of the Vice President.

After the plenary sharing, the afternoon was devoted to workshop groups were participants, in mixed composition as GOs and NGOs –discussed the concluding observations and recommendations. The topics were clustered accordingly for to facilitate tracking and discussions. The group levelled off on the issues, discussed the details, made initial plans on how to implement the recommendations.

The participants agreed to stay onboard in the process both as stakeholders and monitors.

MAPPING OF CONCLUDING OBSERVATIONS VIS-À-VIS RESPONSIBLE AGENCIES

The section presents concluding of reporting observations vis a vis a mapping of state responsibility, which is the outcome document that guides the Commission on Human Rights in monitoring the progress of the recommendations arising from the treaty reporting process.

The Mapping Document is a product of the 'Human Rights Approach' tools that the Commission has applied in its monitoring work. This will be used as a template for the Government's report card on how it has fared in considering and acting on the Committee on Migrant Workers' recommendations.

The Mapping features 4 categories of duty bearers, the three branches of government, independent, constitutionalizing bodies (including the CHRP) alongside civil society. The three branches of government has been renamed to reflect the State's primary obligation to human rights and as such, the Commission has chosen to call it the 'Branches of State Responsibility': the Executive, the Legislative, and the Judiciary with Constitutional, Independent Bodies'

This Mapping document also signals 'Human Rights Cooperation' as a mode of engagement among the duty bearers and necessitates the inclusion of claim holders or rights bearers in the process implementation monitoring. Cooperation involves two objectives:

First is to build awareness and capacities in government institutions in order that they are able to adopt rights based approaches in performing their functions and to enable them to fulfil their responsibility to promote and protect human rights;

Second, To develop mechanisms to formalize collaborative efforts to capacitate government in promoting and protecting human rights.

DRAFT MAPPING OF RESPONSIBLE AGENCIES¹

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
					United Nations ADVANCE UNEDITED VERSION Distr. GENERAL CMW/C/PHL/CO/1 1 May 2009 Original: ENGLISH COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS OF THEIR FAMILIES Tenth Session Geneva, 20 April – 1 May 2009 CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 74 OF THE CONVENTION	United Nations ADVANCE UNEDITED VERSION Distr. GENERAL CMW/C/PHL/CO/1 1 May 2009 Original: ENGLISH COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS OF THEIR FAMILIES Tenth Session Geneva, 20 April – 1 May 2009 CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 74 OF THE CONVENTION
					United Nations ADVANCE UNEDITED VERSION Distr. GENERAL CMW/C/PHL/CO/2 2 May 2014 Original: ENGLISH COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS OF THEIR FAMILIES Twentieth Session Geneva, March 30 – 11 April 2014 CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 74 OF THE CONVENTION	CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

¹ This is a working matrix containing the Committee's recommendations from the two reporting cycles in 2009 and 2014. The State agencies responsible were identified on the basis of their mandates; the CSOs and other non-State entities were initially identified based on their attendance and participation to the GO-CSO Forum to discuss the CMW Recommendations held in 2014. In the lead up to the third reporting cycle in 2019, GO and CSOS must get together again in order to firm up the tasks to implement the recommendations.

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
Initial Statements					<p>1. The Committee considered the second periodic report of the Philippines (CMW/C/PHL/2) at its 249th and 250th meetings (CMW/C/SR.249 and SR.250), held on 3 and 4 April 2014. At its 260th meeting (CMW/C/SR.260), held on 11 April 2014, the Committee adopted the following concluding observations.</p>	<p>1. The Committee considered the initial report of Philippines (CMW/C/PHL/1) at its 105th and 107th meetings (see CMW/C/SR/105 and 107), held on 23 and 24 April 2009, and adopted the following concluding observations at its 114th meeting, held on 30 April 2009.</p>
					A. Introduction	
					<p>2. The Committee welcomes the submission of the second periodic report of the State party, in response to the list of issues prior to reporting, and the additional oral information provided by the large, multisectoral and high-level delegation that was headed by Rosalinda Dimapilis Baldoz, Minister of Labour and Employment of the Philippines, was co-headed by Cecilia B. Rebong, Permanent Representative of the Philippines to the United Nations in Geneva, and included five Deputy Ministers representing the Department of Foreign Affairs, the Department of Labour and Employment, the Philippine Overseas Employment Administration, the Department of Justice, and the Presidential Human Rights Committee, as well as other government officials. This enabled the Committee to better understand the extensive and advanced legal and policy framework for implementing the Convention in the State party.</p>	<p>2. The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues. The Committee appreciates the constructive and fruitful dialogue with a competent, high-level delegation, which built on the report and the written responses to the list of issues giving more specific information on the questions of both a legal and practical nature concerning the implementation of the Convention.</p>

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
					3. The Committee recognizes that the Philippines, which is predominantly a country of origin and has more than 10 million migrant workers overseas, has made substantial progress in protecting the rights of its migrant workers abroad. The country, however, continues to face several challenges as a country of origin, transit and destination for migrant workers.	3. The Committee recognizes that the Philippines is mainly a country of origin with a large number of migrant workers overseas.
					4. The Committee notes that some of the countries in which Filipino migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.	4. The Committee notes the fact that many of the countries employing Filipino migrant workers are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.
						B. Positive Aspects
					5. The Committee reiterates its appreciation for the expressed high-level political will by the State party to respond to the needs of migrant workers abroad, as evidenced by the multitude of programmes and support structures for overseas Filipino workers, covering all stages of the migration process. The Committee in particular appreciates the review of the State party's policies to advance the rights of migrant workers and strengthen programme implementation procedures, capacity-building and the rationalization of resources.	5. The Committee notes with appreciation the State party's commitment to migrant workers' rights, as illustrated by the national constitutional, legislative, judicial, and administrative frameworks that include several institutional mechanisms.

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
					<p>6. The Committee welcomes as a positive step the adoption of the following instruments:</p> <p>(a) The Magna Carta of Women (Republic Act No. 9710), in August 2009;</p> <p>(b) The Migrant Workers and Overseas Filipinos Act, as amended (Republic Act No. 10022), in March 2010;</p> <p>(c) Executive Order No. 34 creating the Overseas Preparedness and Response Team, which provides for assistance to migrants in times of crisis; Executive Order No. 41 reactivating the Presidential Task Force Against Illegal Recruitment, in April 2011; and the campaigns against illegal recruitment to raise awareness among migrant workers about pre-employment and pre-departure requirements;</p> <p>(d) The Guidelines and Procedures which shall be adopted to harmonize the forging of bilateral labour agreements between the Philippines and other countries (Administrative Order No. 28), in 2012;</p> <p>(e) The Domestic Workers Act (Republic Act No. 10361), on 18 January 2013; and</p> <p>(f) The Expanded Anti-Trafficking in Persons Act (Republic Act No. 10364), which provides additional protection to victims of trafficking and service providers, in January 2013.</p>	<p>6. The Committee appreciates that the State party considers the issue of migration as a priority in its domestic and foreign policy agenda.</p>
						<p>7. The Committee also notes with appreciation the active role that the Philippines is playing to promote the ratification of the Convention by countries of origin, transit and destination.</p>

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
						8. The Committee also welcomes the active role of the Philippines in regional efforts to combat trafficking in persons, especially within ASEAN.
					7. The Committee welcomes the ratification by the State party of the following international instruments: (a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 17 April 2012; and (b) International Labour Organization (ILO) Convention No. 189 (2011) concerning decent work for domestic workers, on 5 September 2012.	9. The Committee further welcomes the recent ratification of, or accession to, the following instruments: (a) The United Nations Convention on the Rights of Persons with Disabilities; (b) Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Sale of Children, Child Prostitution and Child Pornography; (c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol Against the Smuggling of Migrants by Land, Sea, Air, Supplementing the United Nations Convention against Transnational Organized Crime; (d) And the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers Convention (Supplementary Provisions), 1975 (No. 143), making the Philippines one of only a few states to have ratified all the treaties relating to the rights of migrant workers.

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
						10. The Committee further welcomes the bilateral social security agreements concluded by the State party in so far as such agreements promote the rights of migrant workers and members of their families.
						11. The Committee notes the important role civil society plays as a partner in implementing the provisions of the Convention.
						C. Factors and Difficulties
						12. The Committee acknowledges that the geography of the thousands of islands in the State party makes it challenging to effectively monitor the movement of the people and control borders to prevent irregular migration and to safeguard the rights of all migrant workers.
					C. Principal Subjects of Concern, Suggestions and Recommendations	D. Principal Subjects of Concern, Suggestions and Recommendations

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
Information on implementation of previous concluding observations	PHRC, DOLE, DFA OUMWA PHRC, OP LEDAC, PLLO, NAPC, DOLE CFO	Congress Oversight HOR • Committee on Overseas Workers Affairs • Committee on Foreign Affairs • Committee on Justice Senate • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations	CHRP	CMA and other Concerned CSOs	<p>Legislation and application</p> <p>8. The Committee appreciates the detailed information on the achievements in establishing the necessary legal and policy framework and other practical measures that form part of the infrastructure for regular migration. However, it notes that the State party has not supplied sufficiently detailed information on legal and practical measures taken to implement the Committee's previous concluding observations (CMW/C/PHL/CO/1). The Committee reiterates its previous recommendations (CMW/C/PHL/CO/1, paras. 40 and 44) to step up efforts to prevent irregular migration of Filipino nationals, and to strengthen the reintegration programmes, including by means of job-creating measures.</p> <p>9. The State party is requested to implement all the recommendations addressed to it by the Committee and to take the necessary steps to ensure that its national laws and policies are in line with the provisions of the Convention.</p>	

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations, First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/Independent Bodies			
Tracking implementation and evaluation of programs on labor migration	All concerned executive agencies	All concerned legislative agencies	All concerned Judiciary agencies	CMA and All concerned CSOs		<p>13. The Committee notes with interest the multitude of initiatives and programmes undertaken by the State party in response to challenges faced in its labour migration policy. At the same time, the Committee is concerned that implementation, follow-up and evaluation of these programmes are insufficient.</p> <p>14. The Committee recommends proper follow-up procedures as well as clear measurable and time-bound targets in order to facilitate tracking their implementation.</p>
Amendment of Immigration Act vis a vis Anti HIV/AIDS Discrimination	PHRC, OP, LEDAC, PLLO, DOLE, DFA, DOJ – BI, DOH	COWA		Migrant Health Network and other CSOs	<p>10. The Committee is concerned that section 29 (a) (2) of the Immigration Act, which allows for the prohibition of entry or expulsion on the grounds that the immigrant worker is suffering from an infection or illness or is pregnant, irrespective of the performance of the tasks for which the worker has been recruited, may result in discrimination against migrant workers.</p> <p>11. While noting the enactment of the Anti-HIV/AIDS Discrimination Law, the Committee recommends that the State party amend the Immigration Act in order to avoid discrimination against migrant workers on the basis of one's health situation, including real or perceived HIV status or pregnancy, and ensure that any health testing is voluntary and free from coercion.</p>	

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
Review of Labor Migration Policy	POEA, PHRC OP, LEDAC, PLLO, NAPC, DOLE, DFA, OUMWA, CFO	HOR • Committee on Overseas Workers Affairs • Committee on Labor and Employment • Committee on Revision of Laws Senate • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations • Committee on Constitutional Amendments, Revision of Codes & Laws	CHRP	CMA, PMRW, other concerned CSOSs		<p>15. The Committee welcomes the information given by the State party's delegation on the labour migration policy and, in particular, its efforts to ensure that Filipino migrant workers are only deployed to countries where their rights are respected. However, the Committee is concerned that State party's policies, especially through Administrative Order Nos. 247 and 248, 2008 and 2009 respectively, would seem to be aimed at the promotion of foreign employment of migrant workers.</p> <p>16. The Committee recommends that the State party review its labour migration policy in order to give primary importance to human rights of migrant workers, in line with the State party's own professed goals as set out in RA 8042.</p>

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/Independent Bodies			
Statistics on Household Service Workers	DOLE, NSO, POEA, DFA (Foreign Service Posts) LGUs	COWA		CMA and other concerned CSOs and Trade unions	<p>11. The Committee is concerned at the lack of sufficient information, including statistics, on the effectiveness of the Household Service Workers Programme of 2006 on the protection of the rights of migrant workers employed in household service.</p> <p>12. The Committee recommends that the State party assess the effectiveness and monitor the implementation of the Household Service Workers Programme of 2006, in particular the compliance with contracts of employment by employers abroad as regards the payment of adequate salaries and provision of labour benefits, and that it include relevant qualitative information and statistical data in its next periodic report.</p>	
Declaration on communications procedure	DFA – OLA DFA - UNIO DOLE OP	Senate Committee on Foreign Relations	CHRP	CMA and other CSOs	<p>13. The Committee notes that the State party has not made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.</p> <p>14. The Committee reiterates its previous recommendation and encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention as soon as possible (CMW/C/PHL/CO/1, para. 18).</p>	

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
Consider accession to ILO Convention Nos. 131, 167 and 181	DFA – OLA, DFA – UNIO, DOLE, OP	Senate Committee on Foreign Relations	CHRP	CMA, MFA and concerns CSOs and Trade Unions (LTCC)	<p>15. The Committee notes that the State party has not acceded to ILO Convention No. 131 (1970) concerning Minimum Wage Fixing, ILO Convention No. 167 (1988) is concerning Safety and Health in Construction, or ILO Convention No. 181 (1997) concerning Private Employment Agencies.</p> <p>16. The Committee invites the State party to consider acceding to ILO Convention No. 131 (1970) concerning Minimum Wage Fixing, ILO Convention No. 167 (1988) concerning Safety and Health in Construction, and ILO Convention No. 181 (1997) concerning Private Employment Agencies.</p>	
						<p>1. General measures of implementation (arts. 73 and 84)</p>
Legislation & Application	OP, PHRC DFA, OUM-WA DOLE	<p>HOR</p> <ul style="list-style-type: none"> • Committee on Overseas Workers Affairs • Committee on Foreign Affairs <p>Senate</p> <ul style="list-style-type: none"> • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations 	CHRP	CMA and Concerned CSOs		<p>Legislation and application</p> <p>17. The Committee notes that the Philippines has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States Parties and individuals.</p> <p>18. The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.</p>

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations, First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
Data collection	DFA, OWWA BI, POEA, CFO, NSO, IACAT, POLO, DOJ, DSWD, LGU, NRCO, TESDA, NLRC	COWA		CMA and Concerned CSOs	<p>Data collection</p> <p>18. The Committee notes with interest the expanded range of statistics on the flows of Filipino migrant workers, and welcomes the commitment by the State party to arrange for sharing of electronic information between the Department of Foreign Affairs, the Overseas Workers Welfare Administration, the Philippine Overseas Employment Administration and the Bureau of Immigration. However, it observes the existence of several departmental information systems, which results in a lack of centralized disaggregated data to evaluate the effective implementation of the Convention, particularly with regard to Filipino migrant workers abroad and their conditions of employment, the situation of returnees, migrants in transit, women and unaccompanied child migrants and foreign migrant workers in the State party, including seasonal migrant workers.</p> <p>19. Reiterating its previous recommendations (CMW/C/PHL/CO/1, para. 20), the Committee encourages the State party to create a sound, centralized and comprehensive database covering all aspects of the Convention and to include in it disaggregated data, to the extent possible, in order to facilitate the adoption of migration policies for effective implementation of the provisions of the Convention. The State party should ensure that the Shared Government Information System on Migration receives adequate human and financial resources, should enhance collaboration with the country's embassies and consulates to compile data and, among other measures, should endeavour to systematically evaluate the situation of irregular migrants.</p>	<p>Data Collection</p> <p>19. The Committee notes with interest the statistics provided by the State party but is concerned at the paucity of information measuring stock and flows on Filipino migrant workers. The Committee regrets that the Inter-Agency Committee on the Shared Government Information System on Migration (SGISM) foreseen to be established by Executive Order is yet to be implemented. Further the Committee notes with regret the scarce information concerning the number of Filipino migrants abroad, their skills and employment, accurate data on returnees, second and third generation Filipino overseas, and the little information relating to foreign migrant workers in the State party.</p>

Subject Index	Responsible State Agencies			Concerned Civil Society Groups	Text of the Concluding Observations, Second Periodic Reporting, 2014	Text of the Concluding Observations First Periodic Reporting, 2009
	Executive	Legislative	Judiciary/ Independent Bodies			
SGISM	PHRC, DFA OUMWA (and attached agencies) CFO DOLE (and attached agencies) POEA, OWWA NLRC, TESDA ILAS, ILS, DOT, DOJ BI, NBI, NSO NCC, NSCB, NCRFW Philhealth IACAT DFA, NCC, DOLE, ILAS CFO, POLO PHRC, DOLE NSCB PHRC, DOLE DFA, NCC POEA, OWWA OP & DBM	HOR • Committee on Overseas on Workers Affairs • Committee on Labor and Employment • Committee on Foreign Affairs • Committee on Women and Gender Equality Senate • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations • Committee on Youth, Women and Family Relations HOR Comm on Appropriations	Supreme Court, CHRP Embassies in the Philippines as possible source of information Foreign Embassies for Foreign Workers and Philippine Embassies for Filipino migrant workers	CMA and Concerned NGOs		<p>20. The Committee recalls that reliable, quality information is indispensable to understand the situation of migrant workers in the State party, to assess the implementation of the Convention and to develop adequate policies and programs. In this regard the Committee encourages the State to:</p> <p>(a) Establish the Shared Government Information System on Migration (SGISM) as a harmonized database, in line with the Convention including disaggregated data, as tool for a more effective labour migration policy and the application of the provisions of the Convention.</p> <p>(b) Strengthen collaboration with Philippine Embassies and Consulates for improving data collection.</p> <p>(c) Adopt a harmonized mechanism for gathering statistics on irregular migrants including thorough studies or estimated assessments when information is sufficient.</p> <p>(d) Continue collaboration with relevant partners on analysis and interpretation of statistical data and flow.</p> <p>(e) Ensure an adequate allocation of funds for the above purposes.</p>

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Training and Dissemination of the Convention	DOLE, POEA, CFO, DFA, DILG-LGUS		CHR	KBP PIA Veritas Asia CMA	<p>Training on and dissemination of the Convention</p> <p>20. The Committee notes the insufficient clarity regarding the target groups for whom training programmes and materials on the Convention have been developed and regarding the means of dissemination of such information among all relevant stakeholders, including national, regional and local government bodies and civil society organizations.</p> <p>21. The Committee encourages the State party to:</p> <p>(a) Intensify training on rights under the Convention for all officials working in the area of migration, in particular police and border personnel, judges, prosecutors, and responsible consular officers, as well as national, regional and local government officials and social workers;</p> <p>(b) Take further steps to ensure access by migrant workers to information and guidance on their rights under the Convention in all commonly used languages in the State party, in particular through the Pre-Employment and Pre-Departure Orientation Seminars; and</p> <p>(c) Continue to work with civil society organizations and the media, including in the provinces, in order to disseminate information and promote the Convention.</p>	<p>Training in and dissemination of the Convention</p> <p>21. The Committee notes with interest that informational and educational materials on the Convention have been developed by the State Party as well as by NGOs. However, the Committee is concerned that from the information received, the target groups for whom training programmes and material were developed remain unclear as well as how the dissemination of the Convention was carried out. The Committee notes that pre-departure seminars and orientation for Filipino workers promotes the rights under the Convention but regrets that little information was provided on any existing assessments of the effectiveness of the sessions.</p>

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	PHRC, DOLE POEA, OWWA, DFA, DOJ, DND, NBI, BI DSWD, NCRFW, LGUs DILG, OP DBM	HOR • Committee on Appropriations	PHILJA CHRP	Concerned NGOs		22. The Committee encourages the State party to: (a) Carry out an evaluation of ongoing training programmes and information campaigns to ensure their effectiveness and impact on public officials working in the area of migration, including consular officials, border police officers, social workers, judges and prosecutors. (b) Ensure orientation and pre-departure seminars for migrant workers with clear objectives, country-specific information nationwide outreach using the rights-based approach. (c) Work with civil society organizations and other relevant partners to disseminate information on migrants' rights under the Convention and accurate information to the Filipino workers considering migrating abroad. Similarly, take measures to partner with the media. (d) Ensure the sufficient allocation of funds for training and – in collaboration with relevant partners, including the Non-governmental organizations (NGOs) – carry out capacity building training for the government agencies handling migration issues, such as the Overseas Workers Welfare Administration, Philippine Overseas Employment Agency, and the Department of Foreign Affairs.

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Non-discrimination	OP, PLLO, LEDAC, DFA – OLA, DOLE ILS, ILAS DOJ, BI, POEA, OWWA	HOR • Committee on Overseas Workers Affairs • Committee on Labor and Employment Senate Committee on Labor, Employment and Human Resource Development	Supreme Court CHRP	Concerned NGOs and Trade Unions	<p>Non-discrimination 22. While noting with interest that the principle of non-discrimination is stipulated in the State party's laws, the Committee regrets that foreign workers can enjoy fundamental rights of workers only on the basis of restrictive conditions, such as reciprocity, in contravention of the Convention.</p> <p>23. The Committee reiterates its previous recommendation that the exercise of human rights is not based on the principle of reciprocity and recommends that the State party amend domestic laws so that all migrant workers and members of their families residing within the country can enjoy the rights under the Convention without any discrimination, in conformity with articles 1 and 7 of the Convention.</p>	<p>2. General Principles (arts 7 and 83)</p> <p>Non-discrimination 23. The Committee notes with interest that the principle of non-discrimination exists <i>de jure</i> in the Philippine Constitution, RA 8042, as well as a number of legislative measures. The Committee is concerned however, that, in practice, foreign workers in the Philippines are granted rights only under certain conditions, such as reciprocity, which may not be in line with the Convention.</p> <p>24. The Committee reiterates that the exercise of human rights is not based on the principle of reciprocity and recommends that the State party take necessary steps to align its domestic legislation with the Convention.</p>

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Legal Assistance Fund	DFA, OUMWA Embassies, DOLE, OWWA POEA, POLO	Congress Oversight		Concerned CSOs NGOs Kanlungan/ FDC, CMA RHRC Kaagapay VF MMCEAI		<p>25. Regarding Filipino workers abroad, the Committee notes the role of the Department of Foreign Affairs and the activities of the Legal Assistant for Migrant Workers' Affairs to pursue the rights on behalf of Filipino migrant workers, in case individual complaints are legally impossible. Moreover, the Committee notes with interest the Legal Assistance Fund that has been established for Filipino migrant workers but regrets that no sufficient information was provided regarding the issues that were dealt with and in which countries.</p> <p>26. The Committee recommends that the State Party continue its efforts to:</p> <p>(a) Continue and strengthen its activities to provide legal assistance to Filipino migrant workers</p> <p>(b) Inform Filipino migrant workers of the administrative and judicial remedies available to them through the Department of Foreign Affairs</p>

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Effective Remedy	DFA, OUMWA Embassies DOLE, OWWA POEA, DOJ POLO		Courts (local, national, supreme)	Kanlungan/ FDC, CMA RHRC Kaagapay VF MMCEAI	<p>Right to an effective remedy</p> <p>24. While noting the measures and mechanisms adopted by the State party to protect the rights of migrant workers abroad, the Committee expresses its concern at the persistence of some obstacles to access to justice, including delays in proceedings, corruption and abuse of authority, such as in the cases of exploitation of distressed Philippine women workers abroad by some foreign service, labour and welfare personnel. It is also concerned at the lack of legal assistance in cases of illegal recruitment, limited access to the Legal Assistance Fund, and the low number of complaints reported to the Philippine Overseas Employment Administration and the Philippine Overseas Labour Office. The Committee notes the lack of adequate information on available administrative and judicial remedies, and on remedies sought and received by migrant workers and in which countries, as well as the insufficient numbers and the inadequate awareness of the diplomatic and consular staff abroad about the remedies available in countries of employment.</p>	
					3. Human rights of all migrant workers and members of their families (arts. 8-35)	3. Human rights of all migrant workers and members of their families (arts. 8-35)

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	PCW, DOH, POEA, OWWA POLO, DFA OUMWA, CFO DOLE, TESDA DSWD	CCESR COWA		FMA PHRCS UP Center for Women Studies		27. While noting with appreciation the activities undertaken by the National Commission of the Role of Filipino Women (NCRFW) and the national legislation enacted to improve the situation of migrant Filipino women, the Committee notes with interest the prominent numbers of female migrant workers. Moreover the Committee – like the Committee on Cultural, Economic and Social Rights – notes with concern that women are most often employed in gender-specific industries such as care givers, entertainers, and domestic workers where they are vulnerable to physical, sexual, and verbal abuse, unpaid/delayed/underpaid wages, and may face inequitable working conditions.
	OP, DFA OUMWA, NCRFW, DSWD, POEA PCW	HOR • Committee on Overseas Workers Affairs • Committee on Labor and Employment • Committee on Foreign Affairs • Committee on Women and Gender Equality	CHRP	Concerned NGOs		28. The Committee urges the State Party to continue its efforts to promote the enhancement and empowerment of migrant women facing situations of vulnerability by <i>inter alia</i> : (a) Conducting a thorough assessment of the situation and taking concrete measures to address the feminization of migration comprehensively in its labour migration policies, including income of women in the informal sector, and minimal social protection for women.

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	OP, PHRC, DOLE, ILS ILAS, DFA – OLA, Embassies Consulates	Senate • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations • Committee on Youth, Women and Family Relations	CHRP	Concerned NGOs Academe		(b) Negotiating more secure employment opportunities and terms and conditions for women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent; (c) Carrying out gender training and sensitisation for government staff dealing with migration issues, in particular those providing legal and consular assistance to Filipino nationals abroad seeking justice against abuse in the workplace; (d) Implementing the outcome document of <i>Manila Call to Action</i> as a tool informed policy decision-making and advocacy. (e) Liaising with local and international partner networks to provide services and support to migrants and advocate for migrants' rights.
	PHRC, NCRFW CHRP- WHRC DOLE, DOJ DFA, CFO DOLE, NCRFW, DFA	HOR • Committee on Overseas Workers Affairs • Committee on Labor and Employment • Committee on Foreign Affairs • Committee on Women and Gender Equality	CHRP			

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	DFA, DOLE	Senate • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations • Committee on Youth, Women and Family Relations	CHRP with other NHRIs & the UN System	International and national NGOs concerned with the Rights of Migrant Workers		

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Strengthening of the Commission on Human Rights	PHRC DESLA PLLO DOJ DFA DOLE DBM	Senate Committee on Justice and Human Rights HOR Committee on Human Rights		Concerned CSOs	<p>26. The Committee recognizes the commitment by the State party to the human rights of migrant workers and members of their families; however, it notes with concern that the Commission on Human Rights of the Philippines does not have a comprehensive mandate pertaining to rights of migrant workers, and that it lacks adequate financial and human resources to conduct work effectively as well as clear and transparent selection and dismissal procedures for the Commissioners.</p> <p>27. The Committee requests the State party to:</p> <p>(a) Provide the Commission on Human Rights of the Philippines with a broad mandate to effectively carry out the promotion and protection of the rights of migrant workers and members of their families under the Convention;</p> <p>(b) Provide adequate financial and human resources to the Commission to enable it to effectively discharge its mandate in full compliance with the Paris Principles (General Assembly resolution 48/134, annex); and</p> <p>(c) Establish clear and transparent selection and dismissal procedures for the Commissioners.</p>	

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Work permit vis a vis loss of employment	DOLE, DOJ DOJ - BI	Senate Committee on Labor and Employment		Concerned CSOs, Trade Unions	<p>28. The Committee notes with concern that the granting of a work permit is conditional on the existence of employment and that loss of employment results in the loss of the work permit, which impacts on the legal situation of migrant workers.</p> <p>29. The Committee recommends to the State party to bring its laws and practice into line with article 8, paragraph 1, of the Convention, to ensure that the right of a migrant worker to reside in the country for the purpose of employment shall not be revoked if the migrant worker loses employment prematurely.</p>	
Consular and Welfare, other Services (assistance)	DFA DOLE OWWA DBM POLO PCW OUMWA Embassies	HOR • Committee on Overseas on Workers Affairs • Committee on Labor and Employment • Committee on Foreign Affairs • Committee on Women and Gender Equality		Concerned CSOs Members: Kanlungan/ FDC CMA RHRC Kaagapay VF, MMCEAI	<p>30. The Committee notes with appreciation the progress made in improving and expanding the State party's consular services, including the deployment of female officers and welfare wardens. Nonetheless, the Committee notes with concern the insufficient consular staffing and the lack of information on the protection and assistance provided by the State party's consulates to migrant workers abroad, especially in cases involving deprivation of liberty and/or expulsion orders.</p>	

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		Senate <ul style="list-style-type: none"> • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations • Committee on Youth, Women and Family Relations 			31. The Committee recommends that the State party take further steps to strengthen consular staffing, so that its consular services can respond more effectively in order to protect and promote the rights of Filipino migrant workers and members of their families, where necessary, and can provide, in particular, the necessary assistance to any of them who are deprived of liberty or subjected to an expulsion order. The Committee also recommends that the State party enhance the assistance provided through embassies and consulates to migrant workers who are victims of the <i>Kafalah</i> (sponsorship) system, particularly in the Gulf countries, so that all exploitation and abuses can be effectively reported, investigated and punished.	
Training and Regular Financial and Performance Audits regarding assistance to Nationals by embassies/consulate	DFA Embassies Consulates FSI DOLE DOJ ILS ILAS POEA OWWA	HOR <ul style="list-style-type: none"> • Committee on Overseas Workers Affairs • Committee on Foreign Affairs Senate <ul style="list-style-type: none"> • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations 	COA	Concerned NGOs in the country and overseas, Overseas Filipino Groups		29. The Committee is concerned about the documented cases where embassy/consulate personnel abroad did not properly assist their nationals because the former were not sufficiently aware of processes in the host country. While noting the information provided by the delegation on the alternative dispute settlement mechanism, the Committee is concerned at information that Filipino migrants are unwilling to file cases of abuse by their employers abroad for lack of trust in the justice system or fear of retaliation and unfamiliarity with the redress possibilities.

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						<p>30. The Committee recommends that the State party:</p> <p>(a) Ensure that consular services respond effectively to the need for protection of Filipino migrant workers and members of their families;</p> <p>(b) Take measures to ensure that its embassy and consulate staff abroad are knowledgeable about the laws and procedures of the countries as employment of Filipino foreign workers, especially in those countries categorized as "highly problematic" by the DFA and the DOLE</p> <p>(c) Undertake regular performance and financial audits of government personnel and agencies dealing with migration issues and their progress monitored.</p>
Women Domestic Workers, Kafalah system	OP PHRC DFA POEA DOLE NCMF Embassies/ Consulates POLOS	HOR • Committee on Overseas on Workers Affairs • Committee on Foreign Affairs	CHRP	Concerned NGOs FMA PHRCS UP Center for Women Studies	32. The Committee is concerned that, notwithstanding the efforts by the State party, Filipino migrant workers abroad, especially women domestic workers, continue to suffer from widespread exploitation and abuse in several host countries.	31. The Committee notes with concern that, despite the State party's efforts to protect the rights of Filipino migrant workers abroad, abuse and exploitation continue, especially towards women migrants and that these are underreported.

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		Senate <ul style="list-style-type: none"> • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations 			<p>33. The Committee recommends that the State party continue to:</p> <p>(a) Monitor and assess the implementation of bilateral and multilateral labour agreements and memorandums of understanding between the origin and destination countries, and of other protective measures, in order to ensure the effective enjoyment of the rights and benefits by Filipino workers abroad, in particular women, in line with the Convention;</p> <p>(b) Address the situation of migrant workers who are victims of the <i>Kafalah</i> system, in particular in the Gulf countries, and consider raising this issue with a view towards abolishment of this system by the Governments concerned, as well as concluding specific bilateral agreements with the countries receiving Filipino migrant workers, with the involvement of concerned civil society actors, to enhance protection of specific categories of workers, in particular women, against exploitation and abuse; and</p> <p>(c) Offer adequate information to migrant workers and members of their families travelling to countries with the <i>Kafalah</i> system on the regulatory framework, and on the rights and benefits, as part of the Pre-Employment and Pre-Departure Orientation Seminars.</p>	<p>32. The Committee recommends that State party:</p> <p>(a) Conduct a review of bilateral and multilateral agreements, Memoranda of Understanding or other protective measures with countries of employment of Filipino migrant workers;</p> <p>(b) In case that no bilateral agreement can be finalized, continue cooperation arrangements with countries receiving Filipino migrant workers in areas of mutual concern;</p> <p>(c) Increase dissemination channels to increase awareness among migrant workers, especially women in domestic service, on the available mechanisms for bringing complaints against employers and so that all abuses, including ill-treatment, be investigated and punished;</p> <p>(d) Provide adequate assistance through embassy and consulate staffs broad to migrant workers victims of the "sponsorship" or <i>kafalah</i> system especially for women domestic workers and most notably in the Gulf countries and endeavor to negotiate a reform or review of such a system with the relevant countries of destination.</p>

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Registration of Filipino migrant children	DFA NSO CWC CFO DOJ IACAT DFA - Embassies DSWD			Concerned NGOs Batis ECMI CBCP CMA	<p>34. Although the Committee recognizes the measures taken by the State party to provide mobile services for registering the birth of Filipino migrant children abroad, the Committee is concerned at the reported difficulties in accessing birth registration for Filipino migrant children abroad in some instances, including those in an irregular situation, for example due to the distance to the foreign service posts and the costs incurred.</p> <p>35. The Committee encourages the State party to take further steps to reach out to the destination countries in respect of the registration of children of migrant workers, both those in regular and those in irregular situations, and to update the relevant databases.</p>	
					4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)	Part IV. Other rights of migrant workers and members of their families who are documented or in regular situation (arts 36–56).

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Freedom of Association and right to join trade Unions by Foreign Migrant Workers	DFA DOLE DOJ BI	HOR • Committee on Overseas on Workers Affairs • Committee on Labor and Employment Senate • Committee on Labor, Employment and Human Resource Development	SC Courts	Concerned NGOs and Trade Unions	<p>36. The Committee expresses concern that sections 269 and 272 (b) of the Labour Code impede the exercise by migrant workers in the State party of the right to freedom of association and the right to form or join a trade union.</p> <p>37. The Committee recommends that the State party should adopt all necessary measures, including legislative amendments, to guarantee the right of migrant workers and members of their families to form associations and trade unions, in accordance with article 40 of the Convention.</p>	<p>33. The Committee is concerned about the fact that restrictions exist on the exercise of foreign migrant workers lawfully residing in the Philippines to engage directly or indirectly in trade union activities, as this right is only recognized for those migrant workers who are lawfully residing and working in the Philippines if they are nationals of a country which grants the same or similar rights to Filipino workers. The Committee is concerned that holding the right to join and establish a trade union subject to reciprocity is in violation of the Convention.</p> <p>34. The Committee reiterates the 2008 request by the ILO Committee of Experts on the Application of Conventions and Recommendations in relation to ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise that the State Party take the necessary measures, including legislative amendments to sections 269 and 272(b) of the Labour Code, to guarantee to all migrant workers and members of their families lawfully residing within the Philippines the right to join, form and to form part of the leadership of, associations and unions, in accordance with article 40 of the Convention on Migrant Workers, as well as with ILO Convention No. 87, not subject to reciprocity.</p>

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OFW Right to Vote	COMELEC OFOV DFA OVS Embassies Consulates DOLE (pre-departure) POEA DILG LGUs CFO MIAA	HOR • Committee on Overseas on Workers Affairs • Committee on Suffrage and Electoral Reforms Senate • Committee on Labor, Employment and Human Resource Development • Committee on Justice and Human Rights	CHRP	CMA, PMRW and other CSOs, and Overseas Filipinos Groups Media	<p>38. The Committee appreciates the efforts of the State party to facilitate the right to participate in public affairs and the right to vote, on the basis of the Overseas Absentee Voting Act, in the elections for President and Vice-President and for senators and party list representatives, but it regrets the low level of participation by Filipino workers abroad in the national elections in May 2013.</p> <p>39. The Committee recommends that the State party strengthen its efforts to guarantee the right to vote of Filipino migrant workers living abroad by facilitating their registration and participation in the next presidential and national elections, that it continue measures for voting by mail and via the internet, and that it secure sufficient funding for overseas voting.</p>	<p>35. The Committee appreciates that the Filipino migrant workers' right to participate in democratic decision-making processes is recognized under RA 8042. While also noting the efforts undertaken by the State party to facilitate the participation of migrant workers abroad in elections for President, Vice-President, Senators and Party-list representatives, the Committee is concerned that the pre-required "affidavit of Intent to Return to the Philippines within 3 years" for immigrants/permanent residents abroad may limit the exercise of their right to vote. Further, the Committee is concerned at the very small percentage of Filipino workers abroad that have registered to vote in elections.^{36.} The Committee encourages the State party to continue its efforts to:</p> <p>(a) Encourage the Filipino workers abroad to register and participate in elections;</p> <p>(b) Maintain a register of overseas voters and take additional steps to facilitate the exercise of voting rights by Filipino migrant workers residing abroad.</p> <p>(c) Invite the Philippine Congress to consider the proposals to amend RA 9189 to delete the requirement of an "Affidavit of Intent to Return."</p>

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Bilateral Agreements vis a vis Convention						<p>37. The Committee appreciates the State party's efforts to enter into bilateral agreements with countries of destination with a view to promoting employment as well as the welfare and rights of migrant workers. However, the Committee is concerned that the provisions contained in bilateral agreements so far concluded do not sufficiently promote and protect the fundamental human rights of migrants.</p> <p>38. The Committee recommends that the State party, to the extent possible, progressively mainstream relevant and appropriate provisions of the Convention into bilateral agreements</p>
Sec 22 of Labor Code of remittance obligation of Seafarers vis a vis Article 47	DFA -OLA DOLE ILS ILAS	HOR • Committee on Overseas on Workerts Affairs • Committee on Foreign Affairs Senate • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations	CHRP	Concerned NGOs in the country and overseas Media	<p>4.0. While noting with appreciation the State party's information that a foreign migrant worker has the freedom to remit all or a portion of his or her earnings, the Committee notes that under section 22 of the Labour Code, certain categories of Filipino workers abroad, such as seafarers, are reportedly obliged to remit up to 80 per cent of their foreign exchange earnings to their families and dependents and other beneficiaries in the State party.</p> <p>41. The Committee recommends that the State party review its legislation in this regard to bring it into line with article 47 of the Convention, so that migrant workers can transfer their earnings and savings as they may desire.</p>	

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					5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)	Part VI. Promotion of sound, equitable, humane, and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71).
Private Recruitment Agencies' Role and No Placement Fee	DOLE POEA DFA OUMWA DOLE POEA DOJ DILG LGUs	Oversight Committee HOR • Committee on Overseas on Workers Affairs • Committee on Labor and Employment Senate Committee on Labor, Employment and Human Resource Development		Private recruitment agencies & their organizations Concerned NGOs in the country and overseas MFA LBS	42. While recognizing the State party's commitment to pursuing ethical recruitment principles, such as through the Code of Ethics for Manning Agencies, as well as its efforts to strengthen the system for the licensing of recruitment agencies, the Committee is concerned that private recruitment agencies continue to charge excessive placement fees, to provide often incomplete information, which may result in acceptance of salaries below the minimum wage and deprivation of other labour benefits, and to serve as intermediaries for abusive foreign recruiters.	41. While noting that the State party has increased the penalty for agencies with exorbitant placement fees, the Committee expresses concern at claims that private recruitment agencies continue to overcharge fees for their services and act as intermediaries for foreign recruiters, which may in certain instances, increase the vulnerability of migrants.

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					<p>43. The Committee recommends that the State party undertake the following measures:</p> <p>(a) Reinforce the regulatory regime for private recruitment agencies and strengthen the existing licensing system for recruitment agencies;</p> <p>(b) Enhance recruitment monitoring and inspections to prevent private recruitment agencies from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters;</p> <p>(c) Ensure that private recruitment agencies provide complete information to individuals seeking employment abroad and that they guarantee the effective enjoyment of all agreed employment benefits, in particular salaries;</p> <p>(d) Investigate and punish illegal practices by recruiters, with a view to exposing errant practices; and</p> <p>(e) Adopt a "no placement fees" policy for persons intending to work abroad</p>	<p>42. The Committee recommends that the State party review the role of private recruitment agencies and endorses the recommendation of the Special Rapporteur on the human rights of migrants to strengthen the existing government-regulated licensing system for recruitment agencies, migration regulation and control mechanisms.</p>

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Irregular Migration	DOLE POEA DOJ BI DFA Embassies Consulates Labor Attaches POLOs	HOR • Committee on Overseas on Workers Affairs • Committee on Labor and Employment Senate • Committee on Labor, Employment and Human Resource Development HOR • Committee on Overseas on Workers Affairs • Committee on Foreign Affairs Senate • Committee on Labor, Employment and Human Resource Development • Committee on Foreign Relations	Concerned Agencies of Host Countries	Concerned NGOs in the country and overseas		<p>39. The Committee notes with interest the labour migration policy implemented by the State party, with the government playing a supportive and regulatory role. The Committee further notes the efforts taken by the State party to strengthen the Philippine Overseas Employment Agency and the Department of Foreign Affairs' handling of irregular migration. At the same time, the Committee is concerned about the large numbers of Filipino workers overstaying their visas and the continuing existence of irregular and undocumented Filipino migrants abroad, of which most are women serving as domestic workers, who may be vulnerable to abuses.</p> <p>40. The Committee recommends that the State party continue to provide assistance to irregular Filipino migrants in need of protection and to:</p> <p>(a) Step up its efforts to prevent irregular migration of Filipino nationals</p> <p>(b) Continue its efforts to secure cooperation agreements with host countries.</p> <p>(c) Encourage collaboration of its consular services and Labour Attaches abroad and the countries which receive Filipino workers to promote sound, equitable, humane, and lawful conditions for migrant workers.</p>

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Reintegration Program for Migrant Workers	NEDA DOLE POEA DSWD LGU DILG DSWD CHED DOLE POEA OWWA DBM TESDA LGU DSWD DILG DEPED NRCO DOST ETC	HOR • Committee on Appropriations		Concerned NGOs in the country and overseas Overseas Filipinos Groups UNLAD Ople Center Sumapi Kanlungan		<p>43. The Committee notes with interest information given by the delegation on the State party's strategic reintegration program for migrant workers returnees, including family members. Nevertheless the Committee notes the lack of information available to the Committee on this program.</p> <p>44. The Committee encourages the State party to:</p> <p>(a) Work in partnership with all relevant partners to strengthen the existing reintegration program, especially with regards to addressing brain drain and developing knowledge transfer initiatives or brain gain schemes.</p> <p>(b) Allocate sufficient budget to reintegration programs, and in particular to the reintegration centre which opened in 2007.</p> <p>(c) Strengthen reintegration programmes in order to ensure migration gains and involvement of Filipino returnees in projects that can lead to job creation in the State party.</p>

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Children left behind	DSWD CWC DepEd CHED NCRFW LGU DILG		CHRP	NGO support groups	44. The Committee notes the State party's efforts to secure the welfare of the children of migrants in situ and those left behind in the country of origin, including through the pilot education, entrepreneurial and training programmes. However, the Committee is concerned at the limited number of such measures, and their reliance primarily on civil society input and participation and at the vulnerability of children left behind in the country of origin to violence, abuse, neglect and exploitation. The Committee also regrets the lack of clarity about the measures taken to facilitate the resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country of origin.	<p>(d) Continue and strengthen skills, technical capacities and entrepreneurship trainings for preparing an eventual reintegration into the Philippines</p> <p>(e) Adopt measures in accordance with the principles of the Convention in considering setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social cultural reintegration.</p> <p>45. The Committee expresses concern over the situation of children and the negative impact on children whose parents have migrated abroad. Information presented before the Committee points to children with at least one parent working overseas living with loose family ties and performing worse in school, notably in case of an absent mother. This is of concern to the Committee given that 50% of all Filipino migrant workers are women.</p>

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					<p>45. The Committee recalls its previous recommendation and recommends that the State party:</p> <p>(a) Conduct nationwide research on children of migrant workers in situ and on those left behind in the country of origin to establish the demographic profile of this population in order to guide its policies and programmes; and</p> <p>(b) Adopt a comprehensive strategy to promote and protect the rights of children and families of Filipino workers, in particular through education, entrepreneurial, training and community welfare programmes, and further its cooperation to that effect with civil society actors in situ and in the country of origin;</p> <p>(c) Provide information in its next periodic report on the measures taken to facilitate the resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country.</p>	<p>46. The Committee encourages the State party to support a comprehensive study on the situation of children of migrant families, with the aim of developing adequate strategies to ensure their protection and the full enjoyment of their rights through, <i>inter alia</i>, community support programs, education and information campaigns and school programmes. The Committee encourages the State party to continue its collaboration with NGOs in favour of these children and their mothers.</p>

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Trafficking in Persons	DOJ Ombudsman NBI BID IACAT (and all member-agencies) DOLE POEA AIR DBM Presidential Anti-Illegal Recruitment Task Force Presidential Anti-Human Trafficking Task Force DOLE DOJ NBI DSWD DILG PNP	HOR • Committee on Overseas on Workers Affairs • Committee on Labor and Employment • Committee on Women and Gender • Committee on Children • Committee on Justice Senate • Committee on Labor, Employment and Human Resource Development • Committee on Women • Committee on Justice and Human Rights	Supreme Court PHILJA CHRP	Concerned NGOs Media ECPAT CATWAP	46. The Committee takes note of the State party's efforts to prevent and combat trafficking in persons, including the operation of the Inter-Agency Committee Against Trafficking and the Philippine Anti-Trafficking Database, and particularly notes the increased number of convictions of traffickers in the past few years, whereby 121 cases of human trafficking resulted in convictions involving 140 traffickers and 340 trafficked persons. It expresses its concern, however, that the prosecution rate for trafficking in persons, especially women and children, remains low, due to difficulties in law enforcement, as illegal recruiters are often relatives of the persons trafficked, or foreign recruitment agencies, according to information received by the Committee. The Committee also notes with concern that many judges, prosecutors, social service workers and law enforcement officials seem to have insufficient knowledge of the legislation against trafficking in persons, which may hinder both the successful investigation, prosecution and punishment of such acts and the providing of assistance to the victims.	47. While noting the significant efforts of the State party such as the recent convictions of traffickers and the "We are not for sale" campaign, the Committee is concerned about the significant number of Filipino workers abroad who are victims of trafficking. The Committee further regrets the very limited number of cases of filing, prosecution, and conviction of perpetrators of trafficking with many of those cases being dismissed at preliminary stages. 48. The Committee endorses the recommendations of the Committee on the Elimination of All Forms of Discrimination against Women in this regard and recommends the State party to: (a) Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to better combating trafficking, especially of women and children. (b) Vigorously ensure effective enforcement of anti-trafficking legislation and increase efforts to improve the record of prosecutions, convictions, and punishment for traffickers and public officials who profit from or are involved in trafficking and bring perpetrators to justice.

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					<p>47. The Committee recommends that the State party strengthen its efforts to combat trafficking in persons, particularly women and children, through vigorous implementation of the national strategic plan to that effect, which should include measures to:</p> <p>(a) Enhance mechanisms for proper identification and referral to improve assistance to victims of trafficking;</p> <p>(b) Promptly, effectively and impartially investigate, prosecute and punish all acts of trafficking in persons and other related offences, and deal expeditiously with the cases filed against illegal recruiters;</p> <p>(c) Reinforce the mechanisms of support, rehabilitation, protection and redress, including the State-funded social rehabilitation services and assistance with reporting incidents of trafficking to the police, and ensure their availability to all victims of trafficking, including at the provincial and local levels;</p> <p>(d) Enhance training for police officers, law enforcement officers, judges, prosecutors, labour inspectors, teachers, health workers, and the staff of the State party's embassies and consulates, and distribute the Manual of Procedures in Handling Complaints of Trafficking in Persons, Illegal Recruitment and Child Labour, and the Manual on Labour Dimensions of Trafficking in Persons for Investigators, Prosecutors, Labour Inspectors and Service Providers;</p>	<p>(c) Strengthen the Anti-illegal recruitment campaign and provide adequate funding for the implementation of the National Strategic Plan of Action against Trafficking.</p> <p>(d) Continue collaboration with all relevant partners to increase advocacy, information, education, and overall public awareness activities. Likewise, continue its ongoing early detection and prevention activities.</p> <p>(e) Coordinate and monitor the implementation of laws regarding forced labour and slavery, and continue training programs in identifying and providing the necessary intervention and assistance to trafficked persons. Continue training of prosecutors to make them fully aware of the nuances of anti-trafficking law. Similarly, continue partnerships to increase technical capacity building and training of law enforcers, prosecutors and service providers.</p> <p>(f) Continue partnership with national and international relevant partners, including NGOs to provide services to victims of trafficking.</p>

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Streamlining Agencies on Migration	OP PHRC DFA POEA DOLE OWWA DBM NRCO NLRC OUMWA CFO		CHRP	Concerned NGOs	<p>(e) Place public information materials in all transport terminals in order to educate the public about trafficking and the protection of migrants; and</p> <p>(f) Systematically collect disaggregated data on trafficking in persons</p>	<p>49. The Committee notes the large number of government departments and attached agencies as well as legislation dedicated to migration issues, including RA 8042, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers' Welfare Administration (OWWA). Nevertheless, the Committee is concerned that institutional responsibilities spread among different ministries without a coordinating entity, their limited means and capacity to fulfill their mandate in a proper manner and little coordination in the effective implementation of the promotion and protection of the rights of migrant workers.</p>

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						50. The Committee recommends that, in order to improve institutional capacity to respond to problems affecting migrant workers, the State party simplify and streamline the institutional structure dealing with migration issues and allocate sufficient resources, human and financial, for agents within this structure to carry out their work efficiently. Furthermore, the Committee recommends that the State party guarantee broader participation of civil society NGOs.
					6. Follow-up and dissemination	7. Follow-up and dissemination
Follow-up					48. The Committee requests the State party to include in its third periodic report detailed information on measures taken to follow up on the recommendations made in the present concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and the Parliamentary Assembly, as well as to local authorities.	51. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the state party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to all relevant national and local authorities.
Civil Society participation					49. The Committee requests the State party to involve civil society organizations more closely in the preparation of the State party's third periodic report, and in the implementation of the recommendations made in the present concluding observations.	52. The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second report.

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Dissemination	PHRC DOLE DFA		CHRP	Concerned NGOs	50. The Committee likewise requests the State party to disseminate these concluding observations widely, particularly to public agencies and the judiciary, non-governmental organizations, and other members of civil society, including those in all provinces, and to bring them to the attention of Filipino migrants abroad and foreign migrant workers in transit or residing in the Philippines.	Dissemination 53. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Filipino migrants abroad and foreign migrant workers residing or in transit in the Philippines.
					7. Next periodic report	8. Next periodic report
Next periodic Report	PHRC DOLE DFA		CHRP		51. The Committee requests the State party to submit its third periodic report by 1 May 2019. Alternatively, the State party may follow the simplified reporting procedure whereby the Committee draws up a list of issues which is then transmitted to the State party for a response. The State party's replies to the list of issues constitute its report under article 73 of the Convention, without the State party having to submit a traditional periodic report. This new optional procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, para. 26).	54. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting (HR/MC/2006/3 and Corr.1). 55. The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 May 2011.



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