



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

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COMMITTEE ON THE PROTECTION OF THE  
RIGHTS OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES  
Tenth session, 20 April - 1 May 2009

**WRITTEN REPLIES BY THE GOVERNMENT OF THE PHILIPPINES CONCERNING  
THE LIST OF ISSUES (CMW/C/PHL/Q/1) RECEIVED BY THE COMMITTEE ON THE  
PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF  
THEIR FAMILIES RELATING TO THE CONSIDERATION OF THE INITIAL  
REPORT OF THE PHILIPPINES (CMW/C/PHL/1)\***

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

## I. GENERAL INFORMATION

**1. Please describe the role, if any, of non-governmental organizations in the implementation of the Convention and in the preparation of the State party's report (see the Committee's provisional guidelines regarding the form and content of initial reports, paragraph 3 (d)).**

1. The important role of non-governmental organizations, as partners of government entities, in the implementation of the Convention is recognized by the Philippine Government. Section 2 (h) of the Republic Act No. 8042 or "The Migrant Workers and Filipino Act of 1995" explicitly provides, to wit:

“(h) Non-governmental organizations, duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect.”

2. The report incorporated inputs and information received from the Philippine government agencies, particularly the Department of Labor and Employment and its attached agencies, i.e., Philippine Overseas Employment Administration and the Overseas Workers Welfare Administration, Department of Foreign Affairs, Department of Justice and its attached agency, i.e., Bureau of Immigration, Department of Interior and Local Government (DILG) and its attached agencies, the Philippine National Police (PNP), the Department of National Defense, the Department of Finance and its attached agencies, i.e., Bureau of Customs and the Bureau of Internal Revenue, the Department of Education, the National Commission on the Role of Filipino Women, the National Commission on Indigenous Peoples, the National Economic Development Authority, the Commission on Filipinos Overseas, the Social Security System, the Bangko Sentral ng Pilipinas (Central Bank of the Philippines), the Presidential Human Rights Committee, the Commission on Human Rights (CHR), in consultation with various non-governmental organizations (NGOs) and civil society organizations (CSOs) and international organizations, e.g., UNIFEM, ILO, UNICEF, WAGI-Miriam College, Migrant Forum Asia and the newly-established local NGO, Lola Grande Foundation for Women and Children, Inc.

**2. Please explain whether domestic legislation provides for the application of the Convention to refugees and stateless persons (art. 3 (d) of the Convention).**

3. The following domestic legislation, rules and regulations were promulgated for the purpose of applying the provisions of the Convention to the refugees and stateless persons under article 3(d) of the Convention:

- BUREAU OF CORRECTIONS OPERATING MANUAL (30 March 2000)  
“SECTION 11. Stateless inmates. — A national of a State without diplomatic or consular representation in the country and a refugee or stateless person shall also be allowed to communicate with the diplomatic authorities of the state which takes charge of his or her interests or any national or international authority tasked to protect such person.”

- Department of Foreign Affairs ORDER NO. 11-97, providing for the rules and regulations for the implementation of Republic Act No. 8239, otherwise known as the "Philippine Passport Act of 1996" defines a travel document as a means a certification or identifying document containing the description and other personal circumstances of its bearer, issued for direct travel to and from the Philippines valid for short periods or for a particular trip.

A Travel Document is issued only to persons, whose claim to Philippine citizenship is doubtful or who fall under any of the categories enumerated hereunder: "X X X 5) A stateless person who is likewise a permanent resident, or a refugee granted such status or asylum in the Philippines."

Section 13 (e) of the Philippine Passport Act of 1996 provides, moreover, that "a travel document, in lieu of a passport, may be issued to a stateless person who is likewise a permanent resident, or a refugee granted such status or asylum in the Philippines."

- Department of Labor and Employment Order No. 012-01 entitled, "OMNIBUS GUIDELINES FOR THE ISSUANCE OF EMPLOYMENT PERMITS TO FOREIGN NATIONALS," provides the following:

"Pursuant to the provisions of articles 5, and 40 of PD 442, as amended, the provisions of Rule XIV, Book 1 of its Implementing Rules and Regulations, Section 17 (5), Chapter 4, Title VII of the Administrative Code of 1987, the following Omnibus Guidelines for the issuance of Employment Permits are hereby promulgated:

"RULE I. Coverage and Exemption. —

"1. The following shall apply for Alien Employment Permit (AEP):

"1.1 All foreign nationals seeking admission to the Philippines for the purpose of employment:

X X X

"1.5. Non-Indo Chinese Refugees who are asylum seekers and given refugee status by the United Nations High Commissioner on Refugees (UNHCR) or the Department of Justice under DOJ Department Order No. 94, series of 1998; "Resident foreign nationals seeking employment in the Philippines."

- Proclamation No. 984 (26 March 1997) entitled, "Creating And Designating The Municipality Of Morong, Province Of Bataan, Including The Area Of The Philippine Refugee Processing Center Complex (PRPCC) as The Morong Special Economic Zone Pursuant to

Republic Act No. 7227 and Transferring the Land Comprising the PRPCC To The Bases Conversion Development Authority (BCDA)”

- Executive Order No. 249 (29 May 1995) entitled, “Granting Permanent Resident Status to Certain Vietnamese Citizens and Filipino-Vietnamese Children Pursuant to Section 47 of The Immigration Act Of 1940”
- Executive Order No. 332 (12 August 1988) entitled, “Reconstituting the Task Force on International Refugee Assistance and Administration, and for other purposes”
- Executive Order No. 554 (21 August 1979) entitled, “Creating a Task Force on International Refugee Assistance and Administration, Providing Funds therefor and for other purposes”
- Section 47(b) of the Philippine Immigration Act of 1940; and
- Department Order No. 94, s. 1994, entitled, “Establishing A Procedure for Processing Applications for the Grant of Refugee Status.”
- DOJ Department Order No. 12, s. 2001 entitled, “Omnibus Guidelines for the Issuance of Employment Permits to Foreign Nationals”
- DOLE Department Order No. 19-02, series of 2002: “Amending Certain Provisions of Department Order No. 12, Series of 2001 Entitled Omnibus Guidelines for the Issuance of Employment Permits to Foreign Nationals”
- DOLE Memorandum: “Implementation of Rule II, Paragraphs 3.2 and 3.3 of Department Order No. 12, Series of 2001 Entitled “Omnibus Guidelines For the Issuance of Employment Permits to Foreign Nationals”

**3. Please provide further information on measures taken for the dissemination and promotion of the Convention. Please also indicate whether specific training programmes on the Convention are implemented for relevant public officials, such as border police officers, embassy and consulate officials and social workers, but also judges, prosecutors and relevant government officials.**

4. The Philippine Overseas Employment Administration (POEA), an attached agency of the Department of Labour and Employment, has, as one of its core functions to ensure workers’ protection, intensified its public education and information campaign. This is being done through the conduct of the pre-employment orientation seminars (PEOS) and other anti-illegal recruitment seminars nationwide and the Pre-Deployment Orientation Seminars (PDOS) to all workers hired through government-to-government arrangement and name hires.

5. The PEOS is a pre-requisite for the issuance of passports to work abroad and it provides prospective overseas Filipino workers information on how to avoid illegal recruitment, the labour and employment condition in several countries of destination, and the realities of working in another country. In the implementation of the PEOS program, the POEA is widening its

network of partners, getting the support of various national agencies, local government units, industry associations, and professional groups.

6. The PEOS programme is a strategy of the Government to protect workers from exploitation and abuse by unscrupulous recruiters and employers.

7. Its counterpart, the Pre-departure Orientation Seminar (PDOS) under DOLE Overseas Workers Welfare Administration (OWWA) supervision, also requires the orientation of OFWs on the culture of their host countries before they leave for abroad.

8. Through these existing systems, the Philippine Government has strengthened its stands on the promotion of migrant workers' rights under the Convention.

9. The Philippine Foreign Ministry also requires Pre-Departure Orientation Seminar (PDOS) for Filipino diplomats, consular officials and embassy staff leaving for their first foreign assignment. The PDOS consists of, among others, an extensive briefing on Assistance to Nationals (ATN), one of the major pillars of the Philippine Foreign Service. Through this briefing, Foreign Service corps posted abroad would be sensitized on the profile of their respective assigned Filipino migrant communities, the challenges that the community faces and the assistance they require as well as the legal/systemic remedies to address such challenges.

**4. Please provide information on how the various government agencies dealing with overseas employment and the protection of Filipino migrant workers coordinate their activities.**

- Section 20 of R.A. 8042 provides for the establishment of a shared government information system for migration, the salient portions of which are quoted hereunder for ease of reference:

“SECTION 20 - an inter-agency committee composed of the Department of Foreign Affairs and its attached agency, the Commission on Filipinos Overseas, the Department of Labor and Employment, the Philippine Overseas Employment Administration, the Overseas Workers Welfare Administration, the Department of Tourism, the Department of Justice, the Bureau of Immigration, the National Bureau of Investigation, and the National Statistics Office shall be established to implement a shared government information system for migration. The inter-agency committee shall initially make available to itself the information contained in existing databases/files. The second phase shall involve linking of computer facilities in order to allow free flow data changes and sharing among concerned agencies.

The inter-agency committee shall convene to identify existing databases which shall be declassified and shared among member agencies. These shared databases shall initially include, but not be limited to, the following information:

- (a) Master lists of Filipino migrant workers/overseas Filipinos classified according to occupation/job category, civil status, by country/state of destination including visa classification;
  - (b) Inventory of pending legal cases involving Filipino migrant workers and other Filipino nationals, including those serving prison terms;
  - (c) Master list of departing/arriving Filipinos;
  - (d) Statistical profile on Filipino migrant workers/overseas Filipinos/tourists;
  - (e) Blacklisted foreigners/undesirable aliens;
  - (f) Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with large numbers of Filipinos;
  - (g) List of labour and other human rights instruments where receiving countries are signatories;
  - (h) A tracking system of past and present gender disaggregated cases involving male and female migrant workers; and
  - (i) Listing of overseas posts which may render assistance to overseas Filipinos, in general, and migrant workers, in particular.
- Section 23 of R.A. 8042 also provides that the following government agencies shall perform the following tasks to promote the welfare and protect the rights of migrant workers and, as far as applicable, all overseas Filipinos:
- (a) Department of Foreign Affairs. - The Department, through its home office or foreign posts, shall take priority action its home office or foreign posts, shall take priority action or make representation with the foreign authority concerned to protect the rights of migrant workers and other overseas Filipinos and extend immediate assistance including the repatriation of distressed or beleaguered migrant workers and other overseas Filipinos;
  - (b) Department of Labor and Employment - The Department of Labor and Employment shall see to it that labor and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos including the grant of legal assistance and the referral to proper medical centers or hospitals:
    - (b.1) Philippine Overseas Employment Administration - Subject to deregulation and phase out as provided under Sections 29 and 30 herein, the Administration shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements.
    - (b.2) Overseas Workers Welfare Administration - The Welfare Officer or in his absence, the coordinating officer shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals. In the performance of this function, he shall make representation and may call on the agencies or entities concerned to

conferences or conciliation meetings for the purpose of settling the complaints or problems brought to his attention.

- The so-called “Country-Team Approach” is underscored in Section 28 of R.A. 8042, *viz*:

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

“Upon receipt of the recommendation of the ambassador, the Secretary of the Department of Foreign Affairs shall, in the case of officers, representatives and personnel of other departments, endorse such recommendation to the Department Secretary concerned for appropriate action. Pending investigation by an appropriate body in the Philippines, the person recommended for recall may be placed under preventive suspension by the ambassador.

“In host countries where there are Philippine consulates, such consulates shall also constitute part of the country-team under the leadership of the ambassador.

“In the implementation of the country-team approach, visiting Philippine delegations shall be provided full support and information.”

- Section 20 of R.A. 9208, otherwise referred to as the “Anti- Trafficking in Persons Act of 2003” also provides the following, *viz*:

“SECTION 20. INTER-AGENCY COUNCIL AGAINST TRAFFICKING. - There is hereby established an Inter-Agency Council Against Trafficking (IACAT), to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-Chairperson and shall have the following as members:

“(a) Secretary, Department of Foreign Affairs;

“(b) Secretary, Department of Labour and Employment;

“(c) Administrator, Philippine Overseas Employment Administration;

“(d) Commissioner, Bureau of Immigration;

“(e) Director-General, Philippine National Police;

“(f) Chairperson, National Commission on the Role of Filipino Women; and

“(g) Three (3) representatives from NGOs, who shall be composed of one (1) representative each from among the sectors representing women, overseas Filipino workers (OFWs) and children, with a proven record of involvement in the prevention and suppression of trafficking in persons. These representatives shall be nominated by

the government agency representatives of the Council, for appointment by the President for a term of three (3) years.”

– The mandate and functions of IACAT are set forth in Section 21 of R.A. 9208, viz: “The Council shall have the following powers and functions:

“(a) Formulate a comprehensive and integrated programme to prevent and suppress the trafficking in persons;

“(b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;

“(c) Monitor and oversee the strict implementation of this Act;

“(d) Coordinate the programmes and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;

“(e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the LGUs, concerned agencies, and NGOs;

“(f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;

“(g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;

“(h) Formulate a programme for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;

“(i) Secure from any department, bureau, office, agency, or instrumentality of the Government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;

“(j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995" with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and programme direction;

“(k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;

“(l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;

“(m) Coordinate with the Department of Transportation and Communications (DOTC), Department of Trade and Industry (DTI), and other NGOs in monitoring the promotion of advertisement of trafficking in the internet;

“(n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;

“(o) Initiate training programmes in identifying and providing the necessary intervention or assistance to trafficked persons; and

“(p) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of the Act.”



**5. Please provide information on the activities undertaken by the National Commission on the Role of Filipino Women to improve the situation of migrant women (para. 68 of the report). How does the National Commission address the situation of feminization of overseas employment?**

10. The National Commission on the Role of Filipino Women (NCRFW) was established on 7 January 1975 through Presidential Decree No. 633, as an advisory body to the President and the Cabinet on policies and programmes for the advancement of women. It is mandated “to review, evaluate, and recommend measures, including priorities to ensure the full integration of women for economic, social and cultural development at national, regional and international levels, and to ensure further equality between women and men.”

11. NCRFW provides technical assistance to agencies involved in migration such as the DFA, DOLE-POEA, OWWA specifically to integrate the gender perspective in their policies, organizational mechanisms (e.g. planning, monitoring and evaluation) and programmes and services.

12. The recent technical assistance activities conducted for DFA were done as part of the NCRFW project on building the capacities of selected agencies to address the concluding comments to the Philippines’ combined fifth and report under the Convention on the Elimination of All Forms of Discrimination against Women. The project, done in partnership with the United Nations Joint Programme (UNJP) focused on capability building for monitoring and evaluation (M&E) on priority concerns in the Concluding Comments, among which are migration and trafficking in women. Through the project, the DFA was able to clarify and enhance its coordination/ link with other concerned agencies such as the National Bureau of Investigation for tracking actions taken and progress of the cases of victims of repatriated victims of trafficking.

13. As part of its monitoring function, NCRFW also closely tracks the compliance of the Department of Foreign Affairs (DFA), Department of Labour and Employment (DOLE), Overseas Workers Welfare Administration (OWWA) with the Gender and Development (GAD) Budget policy. Special attention is given to the types and the content of the planned as well as the outputs, outcomes of implemented programmes and activities.

14. As a result of the constant monitoring and engagement with agencies involved in migration, they have initiated measures to respond to concerns related to migration of women. An example is the initiative of POEA to provide more secure employment opportunities and terms and conditions for women in vulnerable sectors such as household service workers and those in the entertainment industry.

15. The Gender Responsive Economic Actions for the Transformation of Women (GREAT Women) Project, is an on-going project of NCRFW with the support from the Canadian International Development Agency (CIDA). Under the project, NCRFW with identified national and local government units as partners works to enhance the enabling environment (i.e. policies, institutional mechanisms, technical capabilities of officials, programmes and services) to promote the growth of women in micro-enterprises. The project helps address some factors of migration, such as (a) poverty, (b) lack of productivity and vulnerability of enterprises and

income of women in the informal economy, who comprise a significant number in the sector, and (c) minimal or absence of social protection of women.

16. In August 2008, NCRFW and partner international organizations, namely, the UNIFEM, ILO, UNICEF, WAGI-Miriam College, Migrant Forum Asia and the newly-established local NGO, Lola Grande Foundation for Women and Children, Inc., conducted the International Conference on Gender, Migration and Development. The two-day conference brought together representatives from governments, trade unions, employers' organizations, private sector, civil society organizations, academe from 36 countries in five continents. Aside from the productive exchanges of knowledge, good practices and concerns on the gender aspects of migration, the participants identified issues and corresponding recommendations and measures to address the concerns, to integrate the gender perspective and promote rights-based approach to policies, programmes and services on migration. The Manila Call to Action, the outcome document of the conference commits to continue working towards the implementation of recommendations. In particular, the following recommendations were highlighted and prioritized: (a) gender-sensitive information dissemination and pre-departure programmes for migrants, (b) complete socio-economic and psychosocial reintegration of women migrants, (c) legal protection for domestic workers, (d) sex-disaggregated data on remittances, and (e) stronger implementation of anti-trafficking laws. Said document can be used as an advocacy instrument by the participating countries to continuously work for the promotion, protection and fulfilment of the human rights of women migrants in countries of origin, transit and destination.

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

### (a) General principles

**6. Please clarify which laws are not applicable to migrant workers and explain why migrant workers do not have the right to own real property in the Philippines (para. 76 of the report).**

17. The Philippines, cognizant of the fundamental norms of human rights, has ensured that all people sojourning within its territory, without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other indicators of status, are accorded fair and equal treatment in line with the "equal protection" clause of the Philippine Constitution.

18. It has been noted that neither the Convention nor the two major Covenants, i.e., the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights do not exist in a vacuum. Both Covenants accord recognition to the fact that the implementation of the State party's obligations to give effect to the rights recognized therein shall be in accordance with its domestic constitutional processes, taking into account considerations appurtenant to national security, and public policy, inter alia.

19. In this context, Philippine laws are applicable to non-resident foreign migrants sojourning in the country except those laws which are political in nature and are explicitly applicable to the citizens of the country alone. The equal protection clause is, thus, not without limitations

There are rights/privileges that the law reserves only to Filipino citizens, such as:

- (a) The right of suffrage;
- (b) The right to hold public office;
- (c) To operate public services;
- (d) The application of the rules on succession of foreign nationals as provided under article 16, paragraph 2, and article 1039 of the Civil Code of the Philippines;
- (e) The limited right to acquire ownership over corporations or enterprises, such as: enterprises with paid-up capital of the equivalent in Philippine Pesos of less than US\$ 2,500,000.00 shall be reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens; and forty per cent interest or shares of stock in a condominium project shall be exclusively owned by Filipino citizens; and
- (f) The right to acquire lands, except if the acquisition was made prior to the 1935 Constitution, acquisition through hereditary succession, or acquisition by a foreign national who is a former natural born citizen subject to the limitations prescribed under Batas Pambansa Bilang (“National Law No. 185 and the Republic Act No. 8179.

20. Ownership of lands by Filipinos is founded on reasons of public policy, which are enshrined in the Constitution. Thus, Section 3, article XII (National Economy and Patrimony) of the 1987 Constitution provides:

“Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.”

21. Aliens, including non-resident foreign migrant workers, are neither allowed to acquire lands of the public domain nor acquire private lands except in cases of hereditary succession, as provided under section 7, article XI of the Constitution, to wit:

“Sec 7. Save in cases of hereditary successions, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.”

22. The Supreme Court has consistently ruled that the phrase “hereditary succession” in the afore-mentioned constitutional provision is interpreted to mean intestate succession (i.e., by operation of law) and not testamentary succession (i.e., through a last will and testament), as otherwise the prohibition can easily be circumvented.

23. Other exception to the prohibition on the ownership of lands in the Philippines by a foreign citizen is that provided under Section 8, Article XII of the 1987 Constitution, which provides:

“Sec. 8. Notwithstanding the provision of Section 7 of this Article, a natural born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.”

**7. Please provide examples of judicial decisions where the Convention has been directly applied by the courts.**

24. Since its ratification by the Philippines in 1995, the Convention, which incidentally entered into force only in 2006, there are no judicial decisions directly applying its provisions. The Philippines would like to inform the Committee, however, that even prior to the inception of the Convention, cases concerning Filipino migrant workers between 1997-2006 have been decided pursuant to Republic Act 8042 or the “Migrant Workers and Overseas Filipinos Act of 1995,” which took effect on 16 July 1995 and its Omnibus Implementing Rules.

25. Further, for the period 2005-2008, the Legal Assistance Division (LAD) of the Philippine Overseas Employment Administration (POEA) assisted a total of 20,172 victims of erring licensed recruited agencies for recruitment violations and has assisted a total of 3,592 victims of illegal recruitment. For the same period, the POEA Prosecution Division received from POEA LAD a total of 1,545 illegal recruitment cases involving 2,673 victims and out of the 1,545 cases received, 1,123 cases were filed to the proper Prosecution Office for the conduct of preliminary investigation.

**8. Please provide more information on the activities of the Legal Assistant for Migrant Workers Affairs under section 24 of the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042). In particular, how many Filipino migrant workers have benefited from legal assistance (para. 83 of the report)? Please provide more information on when the Legal Assistance Fund was established and how it has been used in practice (paras. 85 and 86 of the report). How many Filipino migrant workers have received disbursements from the Fund and for what legal services in which countries?**

26. The Legal Assistant for Migrant Workers is primarily responsible for the provision and overall coordination of all legal assistance services to Filipino migrant workers as well as overseas Filipinos in distress. In the exercise of these primary responsibilities, he/she discharges the following duties/functions:

- Issue guidelines, procedures and criteria for the provision of legal assistance services to Filipino migrant workers;
- Establish close links with the relevant government agencies such as, among others, the Department of Labor and Employment (DOLE), Philippine Overseas Employment Administration (POEA) and Overseas Workers’ Welfare Association (OWWA), as well as with non-governmental organizations assisting migrant workers, to ensure effective coordination in providing legal assistance to migrant workers;
- Tap the assistance of the Integrated Bar of the Philippines (IBP), other bar associations, and reputable law firms, as the need arises, to complement government services and resources to provide legal assistance to migrant workers;

- Administer the Legal Assistance Fund for Migrant Workers and to authorize its disbursement, subject to approved guidelines and procedures, governing its use, disposition and disbursement;
- Keep and maintain an information system for migration as provided in Section 20 of RA 8042; and
- Prepare its budget for inclusion in the budget of the Department of Foreign Affairs in the annual General Appropriations Act.

27. From 1996 to November 2008, a total of 14,662 Overseas Filipino Workers (OFWs) have been assisted through the disbursement of the Assistance to Nationals (ATN) Fund and Legal Assistance Fund (LAF). The LAF is provided for under Section 25 of RA 8042 and shall be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress.

28. Pursuant to a Department of Foreign Affairs Order 12-08, the LAF can be used for:

- Fees for competent private counsel, local or foreign, not exceeding US\$ 3,000 per accused;
- Bail bonds to secure the temporary release of workers under detention not exceeding US\$ 3,000 per accused;
- Court fees not exceeding US\$ 500 per accused;
- Charges and other reasonable litigation expenses, including expenses necessary to reach an amicable settlement of the case, up to US\$ 3,000 per accused;
- Travelling expenses, including reasonable transportation expenses and per diems, in accordance with applicable rules and regulations; and
- Communication expenses in connection with legal assistance cases, in accordance with applicable rules and regulations.

**9. In relation to the State party's claim that it will only deploy Filipino migrant workers to countries where their rights are protected (para. 89 of the report), please explain how this commitment is implemented in practice.**

29. Pursuant to Migrant Workers and Overseas Filipinos Act (1995), the State allows the deployment of OFWs only in countries where the rights of Filipino Migrant Workers are protected based on existing labour and social laws, bilateral agreements concluded, multilateral conventions, declarations and resolutions and other protective measures.

30. Human resource development (HRD) cooperation has been an important element of the bilateral labor agreements that the Government negotiates with labor receiving countries of Filipino workers. To date, the Government has forged agreements with the HRD component with the Western provinces of Canada, namely Saskatchewan, British Columbia and Manitoba and UAE.

31. The Government has also forged an agreement with Bahrain that will promote cooperation between the Philippines and Bahrain on health services cooperation including AHRD programmes for Filipino Health professionals

32. Given the difficulties encountered in forging BLAs with some receiving States, not to mention the tedious process for their negotiation, the Philippines has also resorted to adopting

alternative approaches to strengthen mechanisms to protect OFWs, especially with host countries with no bilateral agreements with the Philippines. This involves the pursuit of bilateral agreements which are less formal and deals with operational arrangements on areas of mutual concern such as entry procedures, verification of recruitment documents, shared information and database to facilitate deployment, the creation of Joint Commissions which meet at regular intervals to dialogue and informally resolve bilateral concerns, including labor issues, and formation of technical committees with foreign embassies.

33. As of 20 November 2008, there were nineteen (19) Bilateral Labour Agreements (BLAs) concerning Filipino Overseas Land-based workers entered by and between the Government of the Philippines and the following Governments:

1. United States of America – 28 December 1968;
2. United Kingdom – 30 July 2003;
3. United Arab Emirates – 9 April 2007;
4. Taiwan – 12 January 2001 (renewed on 20 March 2003 and 30 March 2006);
5. Switzerland – 9 July 2002;
6. Spain – 29 June 2006;
7. Qatar – 5 May 1981; 10 March 1997; 18 October 2008;
8. Papua New Guinea – 14 March 1979;
9. Norway – 26 June 2001;
10. Libya – 18 October 1979; 17 July 2006;
11. Kuwait – 14 September 1997;
12. Republic of Korea – 23 April 2004; 20 October 2006;
13. Jordan – 5 November 1981; 3 November 1988;
14. Iraq – 25 November 1982;
15. Indonesia – 18 January 2003;
16. Commonwealth of the Northern Mariana Island (CNMI) – 14 September 1994; amended on 18 December 2000;
17. Canada (Alberta) – 1 October 2008;  
Canada (British Columbia) – 29 January 2008;  
Canada (Manitoba) – 8 February 2008;  
Canada (Saskatchewan) – 18 December 2006;
18. Bahrain – 4 April 2007

34. On the other hand, there were five (5) Bilateral Labour Agreements (BLAs) concerning Filipino Overseas Sea-based workers entered by and between the Government of the Philippines and the following Governments:

1. Cyprus – 7 September 1984;
2. Denmark – 2000;
3. Liberia – 10 August 1985;
4. Netherlands – 31 May 2001;
5. Singapore – 25 August 2001

35. Aside from the BLAs for Sea-based workers, there were thirty four (34) Standard for Training, Certification and Watch keeping (STCW) Conventions held in the following countries:

- (1) Antigua – 16 October 2001
- (2) Australia – 21 October 2002
- (3) Bahamas – 10 September 2001
- (4) Barbados – 22 April 2002
- (5) Belgium – 12 June 2003
- (6) Belize - 1978, as amended
- (7) Brunei – 23 August 2001
- (8) Cambodia – 14 October 2002
- (9) Commonwealth of Dominica – 25 April 2003
- (10) Cyprus – 13 September 2001
- (11) Denmark – 3 August 2001
- (12) Georgia – 6 May 2003
- (13) Hellenic Republic – 12 March 2003
- (14) Hong Kong SAR – 29 October 2001
- (15) Indonesia – 16 September 2002
- (16) Ireland – 18 March 2003
- (17) Isle of Man – 11 January 2002
- (18) Italy – 24 April 2002
- (19) Japan – 21 January 2000
- (20) Kuwait - 1995
- (21) Liberia – 5 June 2002
- (22) Luxembourg – 28 June 2002
- (23) Malaysia – 31 July 2002
- (24) Malta – 20 December 2001
- (25) Marshall Islands – 08 October 2001
- (26) Mongolia – 5 June 2003
- (27) Netherlands – 31 May 2001
- (28) Norway – 19 November 2001
- (29) Panama – 3 April 2002
- (30) Poland – 2 September 2004
- (31) Singapore – 25 August 2001
- (32) Sweden – 29 February 2002
- (33) Ukraine – 2 September 2004
- (34) Vanuatu – 2001

**10. Please indicate what types of initiatives the Department of Foreign Affairs has undertaken to promote the accession to the Convention of countries receiving Filipino workers (para. 92 of the report).**

36. On 27-30 October 2008 in Manila, the Department of Foreign Affairs spearheaded the Philippines' hosting of the Second Global Forum on Migration and Development (GFMD) with the central theme "Protecting and Empowering Migrants for Development." The Manila GFMD brought together countries of migrant origin, transit and destination, countries at all stages of economic, social and political development, represented by policymakers from a wide range of government agencies, including Ministries and Departments of Immigration, Development, Labour, Foreign Affairs, Gender Equality, Home Affairs, Justice, Interior, Integration and Nationals abroad.

37. The Manila GFMD also drew on the knowledge and experience of international agencies, including those that make up the Global Migration Group (UNCTAD, ILO, IOM, World Bank, UNHCHR, UNHCR and others), regional organizations and bodies, academia, NGOs, trade unions, the private sector, and above all the migrants.

38. The Philippine Government chose as its flagship theme “Protecting and Empowering Migrants for Development” to highlight the human face of migration in a debate that often only addresses the rational economic implications of migration for development. Governments from both origin and host countries welcomed the opportunity to discuss the rights of migrants and ways of protecting and empowering them to enhance their development, without being doctrinaire. Participating governments expressed their participation in the discussion in the a spirit of shared responsibility and partnership”

39. Within ASEAN, the Philippines is thus far the only country that has ratified the 1990 International Convention on the Protection of the Rights of All Migrants and Members of the Their Families.

40. In 2007, at the initiative of the Philippines in the ASEAN Summit it hosted in Cebu, ASEAN made a groundbreaking move to address the issue of migrant workers when its leaders signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Declaration mandates ASEAN countries to promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions of migrant workers. The Declaration calls for clear commitments to protect the rights, dignity and welfare of migrant workers, by providing them access to legal services, fair and just conditions or work, and promoting tolerance between migrant communities and populations of the receiving state, among others.

41. As a follow-up, the Philippines also hosted the ASEAN Ministerial/Post Ministerial Meeting in Manila which produced the Statement on the Establishment of a Committee to Implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Committee is tasked to develop/draft the ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers.

## **(b) Part III of the Convention**

### **Article 11**

#### **11. Please provide further information on:**

##### **(a) Measures adopted to combat the practice of mail-order brides and their impact (para. 69 of the report).**

42. The following legislations/regulations were enacted to combat the practice of “mail-order” brides:

- Republic Act No. 6955 (13 June 1990) entitled, “An Act to declare unlawful the practice of matching Filipino women for marriage to foreign nationals on a mail-order basis and other similar practices, including the advertisement, publication, printing or



distribution of brochures, fliers and other propaganda materials in furtherance thereof and providing penalty therefore.”

- Republic Act No. 8042 (7 June 1995): “An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for other purposes”
  - RA 9208 Anti-Trafficking in Persons Act of 2003 – For Women and children
43. The Philippine Government has enacted the following regulations to ensure the protection of Filipino migrant workers wherever they may be and to prevent prostitution of OFWs:
- Guidelines for the Registration of Filipino emigrants and departing spouses and other partners of foreign nationals (15 June 2004 and 8 February 2007)
  - Executive Order No. 406 (8 February 2005): ”Creating a Special Task Force to Address the Human Trafficking Problems specially those involving Filipino entertainers in Japan and vesting such Powers and Responsibilities appurtenant thereto”
  - Executive Order No. 425 (12 October 1990): “Placing under the Control and Supervision of the Autonomous Regional Government the line agencies and offices of the national government within the Autonomous Region in Muslim Mindanao dealing with Labor and Employment, local government, tourism, environment and natural resources, social welfare and development, and science and technology, and for other purposes”
  - Letter of Instructions No. 1367 (25 November 1983)- Applications for the purchase of foreign exchange for whatever purposes (including prizes and travel) filed by and/or in behalf of foreign entertainers, incoming/outgoing cultural groups, fashion/benefit shows, sports (golf, basketball, etc.) and other similar non-vital undertakings shall not be given due course.
  - Rules and Regulations Governing Overseas Employment, as amended, (21 May 1985)  
“Rule II - Issuance of license and authority-  
“For agencies or entities recruiting and hiring or employing entertainers, the following additional staff and facilities:  
“(1) A studio, provided with dressing rooms, balance bars and other training gadgets with reasonable floor space for training or auditioning or actual performance of dancers;  
“(2) A complete set of musical instrument to test, train or practice musical groups or bands or singers;  
“(3) A professional music instructor, arranger or composer commissioned by the agency or entity to teach, train, and develop vocalists and instrumentalists; and  
“(4) A professional dance instructor commissioned by the agency or entity to teach and train dancers, create or choreograph dance routines  
“Such other requirements as may be imposed by the Administration.”

**(b) Measures adopted to ensure that women recruited abroad, in particular in Japan, as “entertainers” or “overseas performing artists” do not become involved in prostitution (para. 53 of the report).**

44. In order to ensure protection of Filipina entertainers in Japan, an agreement was entered between the Japan International Training Cooperation Organization (JITCO) and Technical Skills Development Authority (TESDA).

45. With the recent entry into force of the Japan-Philippines Economic Partnership Agreement (JPEPA) on 11 December 2008, the Philippine Overseas Employment Administration (POEA) and the Japan Cooperation of Welfare Services (JICWELS) entered into a Memorandum of Understanding (MOU) for the recruitment of Filipino candidates for “*kangoshi*” (“nurses”) and “*kaigofukushishi*” (“caregivers”) for employment in Japan. The MOU covers the deployment and acceptance of Filipino nurses and caregivers, as well as delineates the roles and responsibilities of the two countries, to ensure that Overseas Filipino Workers (OFWs) have adequate welfare and protection arrangements while training and working in Japan.

46. In general, Philippine Government authorities hunt down unscrupulous recruiters, who engage their employees into prostitution to neutralize their activities, and prevent them from taking advantage of other unwary victims.

47. The Department of Labor and Employment (DOLE) gives strong warning to would-be Overseas Filipino workers (OFWs) to be wary of illegal recruiters, and to immediately report to government authorities any suspicious activities. The cooperation of the would-be OFWs helps alert authorities to neutralize illegal recruitment activity, and prevent people from being victimized. Such cooperation is crucial in prosecuting illegal recruiters.

48. Adjunct to all its employment facilitation efforts, the DOLE has boosted the ongoing drive against illegal recruitment, in cooperation with the National Bureau of Investigation (NBI), the Philippine National Police (PNP), as well as the Local Government Units (LGUs).

49. With the Anti-illegal Recruitment campaign, the POEA has now forged agreements with LGUs in Metro Manila such as those entered into with the cities of Valenzuela, Malabon, Mandaluyong, Las Piñas, Muntinlupa and Quezon City. The guiding light for such move is the President's Executive Order No. 548-A clearly defining and strengthening the role of the Government in the fight against illegal recruitment.

50. Further, with 33 overseas labour offices (POLOs) in four continents, the DOLE focused on assisting and servicing some 1.221 million overseas Filipino workers, most of whom are women, in over 190 host countries.

51. The Philippine Government also continues to maintain its existing ban in the hiring of Filipina au pairs in European countries.

52. At the regional level, the Philippines shall continue to pursue its task as the ASEAN's focal point in the efforts to fight human trafficking and in promoting the rights of women, children,

migrant workers among others, while simultaneously integrating human-rights issues in transnational crimes, migration and HIV/AIDS.

## Article 16

**12. With regard to the information contained in paragraph 208 of the report that “at the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason of the arrest, *if any*” (emphasis added), please clarify whether migrant workers and members of their families can be arrested without any reason (para.208 of the report). Please provide data on foreigners in detention in the Philippines. Please clarify whether and how their right to the free assistance of an interpreter is guaranteed in practice.**

53. No person, including migrant workers and members of their families, may be arrested without any reason. A person may only be arrested when there is a warrant duly issued by a competent court for his/her arrest or in cases of valid warrantless arrests under Rule 113 of the Revised Rules on Criminal Procedure and reiterated in Rule 11 of the PNP Operational Procedures.

54. In addition, it is the duty of the person effecting the arrest to inform the suspect/ accused in a language known to him of his rights under the law. This would obligate the arresting/ investigating officer to get the services of interpreters in case the arrested person is a foreigner. As such, coordination with the appropriate government agencies and embassies is undertaken. (Section 2 of RA7438).

55. Information from the Bureau of Immigration revealed that as of 26 January 2009, there are sixty-two (62) foreigners detained at the Bureau of Immigration Detention Center, Camp Bagong Diwa, Bicutan, Taguig City. There are 125 foreign inmates detained in city and municipal jails all over the Philippines as of 31 December 2008.

56. As a standard operating procedure, all detained foreigners are notified of their right for consular visitation by accredited consular officers of their respective embassies/consulates in line with the Vienna Convention on Consular Relations.

57. In the case of *Lao Alfonso vs. Vivo*, 16 SCRA 10, the Supreme Court ruled that Section 37(a) of the Philippine Immigration Act of 1940 speaks of two warrants – one for the arrest and the other for the deportation of the alien. The warrant of arrest is issued by the Commissioner of Immigration, or any officer authorized by him, whereas the warrant of deportation is issued by the Commissioner of Immigration “upon determination by the Board of Commissioner of the existence of the ground for deportation as charged against the alien.”

58. Moreover, in the case of *Neria vs. Vivo*, 29 SCRA 701, it was held that no warrant of arrest can be issued by immigration authorities before a final order of deportation is made. For until it is established that an alien lawfully admitted gained entry into the country through illegal means and his expulsion is finally decreed, his arrest cannot be ordered. (emphasis supplied)

*Limitations on warrants of arrest by the Commissioner of Immigration in deportation cases*

59. In the cases of *Po Siok Pin vs. Vivo* (62 SCRA 363) and *Ang Ngo Chiong vs. Galang* (67 SCRA 338), the Supreme Court consistently ruled that the Immigration Commissioner may order the arrest of an alien upon a final determination of deportability by the Board of Commissioners. However, no warrant of arrest for deportation may be issued by immigration authorities before a final order of deportation is made or before the charges have been fully substantiated [Cf: *Tiu vs. Vivo* (47 SCRA 23); *Santos vs. Commissioner of Immigration* (74 SCRA 96)]. In fact, the Supreme Court ruled in the Santos case that it is not indispensable that the alien be arrested during the investigation.

60. In the cases of *Dalamal vs. Deportation Board* (9 SCRA 382), *Morano vs. Vivo* (20 SCRA 562), *Contemprate vs. Acting Commissioner of Immigration* (35 SCRA 624) and *Sy vs. Commissioner Domingo* (G.R. Nos. 97152 and G.G. No. 97159) dated 20 March 1991, the Supreme Court had the occasion to rule that the issuance of arrests warrants by the Immigration Commissioner solely for the purposes of investigation and before a final order of deportation is issued, is contrary to the right of a person to due process, whether he/she be a citizen or an alien. Likewise, the Immigration Commissioner cannot be allowed to circumvent the law by the mere expediency of re-naming the order of arrest as a simple “mission order” for the purpose of bringing a subject foreigner to the immigration authorities for preliminary investigation. It had also been consistently ruled by the Supreme Court, i.e., Court of Appeals, that a mission order under the guise of a warrant of arrest issued by the Immigration Commissioner only for purposes of investigation is null and void for being unconstitutional [Cf: *Rossi et al. vs. Board of Commissioners* (G.R. No.27853, 28 May 1992), *Qua Chee Gan vs. Deportation Board* (9 SCRA 27) *Ng Hua To vs. Galang* (10 SCRA 411), *Board of Commissioners vs. De la Rosa* (197 SCRA 853)].

**Article 17(7)**

**13. Please explain why, under the rules for deportation proceedings, foreigners who are detained cannot be released on bail (paras. 222 and 238 of the report). Please also indicate what measures are in place to ensure that foreigners who are detained in the Philippines pending deportation are given adequate access to courts and lawyers and that their cases are reviewed by competent authorities without undue delay (para. 239 of the report).**

61. The power to deport aliens is an attribute of sovereignty. Such power is based on the accepted maxim of international law, that every sovereign nation has the inherent power essential to self preservation, to forbid entrance of foreigners within its dominions (*Morano vs. Vivo*, 20 SCRA 63)

62. Since a deportation proceeding does not constitute a criminal action (Cf: *Lao Tang Bun vs. Fabre*, 81 Phil. 682; *Bengzon vs. Ocampo et al.* 84 Phil. 611; *Harvey et al. vs. Commissioner Santiago et al*), and an order of deportation is not a punishment for a crime (Cf: *US vs. Gosiaco*, 12 Phil. 490), the right to bail guaranteed under the Constitution may not be invoked by an alien. Neither the Constitution nor the Administrative Code guarantees the right of aliens facing deportation to provisional liberty on bail (Cf: *Tiu Chun Hai et al. vs. Deportation Board*, 104 Phil. 949).

63. Release on bail in deportation proceedings is not a matter of right to the foreigner, but a matter of discretion on the part of the Immigration Commissioner. Thus, in the case of *Ong See Hang vs. Commissioner of Immigration*, 4 SCRA 442), the granting of bail in deportation proceedings was elucidated, to quote:

“Section 39 of the Philippine Immigration Act of 1940 (Comm. Act No. 613, as amended) confers upon the Commissioner of Immigration, to the exclusion of courts of justice, the power and discretion to grant bail and to impose the conditions thereof, in deportation proceedings, but does not grant aliens the right to be released on bail. The power of the Commissioner of Immigration to grant bail in deportation proceedings should be exercised while the alien is still under investigation, and not after the order of deportation has been issued by the Board of Immigration. Since deportation proceedings do not constitute criminal actions (*Lau tang Bun vs. Fabre*, 81 Phil. 682; *US ex. Rel Zapp vs. District Director of Immigration and Naturalization*, 120 F 2d762), and an order of deportation is not a punishment for a crime (*U.S. vs. Go-Siaco*, 12 Phil. 490; *Mahler vs. Eby*, 264 U.S. 32), the right to bail guaranteed by the Constitution may not be invoked by an alien in said proceedings.”

64. Quoted hereunder is the governing rules on deportation as provided under Memorandum Order No. 04-92: “RULES OF PROCEDURE TO GOVERN DEPORTATION PROCEEDINGS), to quote:

“RULE VII - Bail

“SECTION 1. Bail Not a Matter of Right — Aliens, in deportation proceedings, have no inherent right to bail. The release on bail of arrested aliens shall be discretionary with the Commissioner of Immigration who shall have the power to exact cash bonds in such amounts and under such conditions as he may prescribe to insure the appearance of aliens released from custody during the course of the deportation proceedings. No bail shall be allowed if there is already a deportation order by the Board of Commissioners, or when the evidence of guilt is strong and the probability of the alien jumping bail is high.

“SECTION 2. Application for Bail — After the filing of a charge sheet, an application for release on bail may be filed by the alien personally with the Special Prosecutor assigned to the case. The Special Prosecutor shall evaluate the application in accordance with the immediately preceding section and submit his recommendation to the Commissioner of Immigration who shall either approve or deny the application.

“SECTION 3. Conditions of Bail — All kinds of bail are subject to the following conditions:

“(a) The undertaking shall be in force at all stages of the proceedings until its final determination;

“(b) The alien shall appear before the Board of Commissioners whenever so required;

“(c) The failure of the alien to appear at any hearing without justification shall be deemed an express waiver of his right to be present and the hearing shall proceed in absentia;

“(d) The alien shall surrender himself for execution of the final order of deportation;

“(f) The bond shall answer for all expenses incident to the arrest and apprehension of the alien should the latter fail to appear before the immigration authorities, and for all other expenses incurred in connection with the deportation, exclusion and departure of the alien.

“SECTION 4. Forfeiture of Bail and Re-arrest of Alien — In case of failure to comply with the conditions of the bail, the same shall be forfeited and the cash deposits shall be turned over to the National Treasury.

“The alien released on bail who fails to comply with the conditions of the bail or attempts to escape justice may be re-arrested without the necessity of a warrant for his arrest.

“SECTION 5. Cancellation of Bail — The bail shall be cancelled when its conditions are fulfilled, or upon the death of the alien, or upon the departure of the alien pursuant to an order of deportation, or his acquittal in the deportation case.

*Protective measures to ensure that deportation cases are given due course without delay*

65. Republic Act No. 4906, entitled “An Act Requiring Judges of Courts to Speedily Try Criminal Cases Wherein the Offended Party is a Person about to Depart from the Philippines with No Definitive Date of Return” provides the following, to wit:

“X X X the trial of criminal cases wherein the offended party is a person who is about to depart from the Philippines without a definite date of return, shall take precedence over all other cases before our courts, except election and habeas corpus cases. The trial in these cases shall commence within three (3) days from the date the accused is arraigned and no postponement of the initial hearing shall be granted except on the ground of illness on the part of the accused, or other grounds beyond the control of the accused.”

## Article 21

**14. Please explain the measures the State party has taken to prevent the retention of identity documents by the employers/employment agencies of migrant workers.**

66. All embassies, missions, and consulates accredited to the Government of the Republic of the Philippines are advised by the Department of Foreign Affairs that Philippine Passports belong to the Government. Philippine Foreign Service Establishments also inform their respective host governments of such fact.

67. As such, the Department of Foreign Affairs regularly informs all accredited embassies, missions and consulates of reported lost Philippine passports and requests that if found, they should be surrendered to the Department or Philippine Foreign Service Establishments abroad.

68. Holders of Philippine passports, notably Filipino migrant workers, are always reminded that inasmuch as Philippine passports are the property of the Government of the Philippines, they must always be in their possession, and must not be surrendered to their employers/employment agencies.

69. In cases where Filipino migrant workers are forced to surrender their passports to their employers/employment agencies, they are instructed to seek the assistance of the nearest Philippine diplomatic/consular post in recovering their passports.

## Article 22

**15. Please explain whether and how a migrant worker subject to an expulsion order can submit reasons why he or she should not be expelled and whether appeals from decisions of expulsion have suspensive effect.**

70. Section 69 of the Revised Administrative Code provides that:

“A subject of the foreign power residing in the Philippine Islands shall not be deported, expelled or excluded from said Islands or repatriated to his own country by the President of the Philippines except upon prior investigation, conducted by said Executive or his authorized agent, of the ground upon which said action is contemplated. In such case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three (3) days for the preparation of his defence. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross examine his opposing witness.” (emphasis supplied).

71. The right to hearing and information may be exercised through the following proceedings:

- A.O. No. 1 (Immigration Rules and Regulations of 1 January 1941), created a Board of Special Inquiry composed of a Chairman and two (2) members appointed by the President. The board is vested with the authority to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded. For this purpose, the board or any member thereof, may administer oath, issue subpoena and *subpoena duces tecum*, and take evidence.
- The decision of any two members of the board shall prevail and must be promulgated not later than two (2) days from the deliberation. Appeal may be filed by the alien with the board of special inquiry which decided the case within forty eight (48) hours from the time of receipt of the decision. All records shall be then forwarded to the Commissioner of Immigration for consideration by the Board of Commissioner.
- The alien or his counsel may submit a memorandum to the Board of Commissioner from date of notice. The Commissioner of Immigration, in his discretion, may allow or permit oral argument before the Board of Commissioner. The decision of any of the two members of the Board of Commissioner shall prevail and said decision in the case shall be final.
- At any time before the alien is deported but not later than seven (7) days from receipt of a copy of a decision, a petition for rehearing may be filed but only on the ground of newly discovered evidence. It shall have the effect of staying the order of deportation. For good cause shown, the Commissioner of Immigration may suspend any order of exclusion or deportation upon deposit by the interested party of an amount to be determined by the Commissioner to defray expenses which may be incurred in connection therewith (*Commissioner of Immigration vs. Fernandez*, No. L-22696, May 29, 1964).

## Article 26

**16. Please clarify whether and how migrant workers, including irregular migrant workers, can exercise their right to engage in trade union activities, and explain why such exercise is subject to reciprocity (para. 179 of the report). How is this requirement applied in practice? Furthermore, please explain the rationale behind article 272 of Presidential Decree 442 providing that foreign nationals violating article 269 of the same Decree on trade union activities are immediately deported and permanently barred from re-entering the country, and comment on its compatibility with article 26 of the Convention (para. 181 of the report).**



72. For migrant workers lawfully residing in the Philippines, the Philippine Government accords those foreign nationals their right to self-organization. They are allowed and can freely form associations, social clubs and related groupings for purposes not contrary to law. In an enterprise level, however, foreign nationals are not allowed from engaging, directly or indirectly in all forms of trade union activities which includes, among others, the following:

- (a) Organization, formation and administration of labor organizations;
- (b) Negotiation and administration of collective bargaining agreements;
- (c) All forms of concerted union action;
- (d) Organizing, managing or assisting union conventions, meetings, rallies, referenda, teach-ins, seminars, conferences and institutes;
- (e) Any form of participation or involvement in representation proceedings, representation election, consent election and union elections.

73. However, the aforesaid prohibition is not absolute. Foreign migrant workers are allowed to form, join and assists labour unions of their own choosing provided the said foreign nationals have valid working permits issued by the appropriate government agencies and an employer-employee relationship exists between the Company and the said migrant workers.

74. In addition, Department Order No. 40-C-05, which amended Section 2, Rule II of Department Order No. 40-03 also grants trade union rights 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, consistent with the provision of article 269 of the Labour Code, as amended. It is well to note that the principle of reciprocity is in the context of international law and is grounded on the effort to extend protection to Filipino nationals working in other countries of their right to form their own associations by providing the nationals of the host countries the same protection.

75. This is anchored on the Government's desire to continuously uphold its constitutional responsibility to protect its citizens through lawful measures, including those intended to promote reciprocal or fair treatment to Filipino nationals in foreign countries in accordance with the principle of *parens patriae*.

76. Significantly, it bears reiterating that the Philippine Government recognizes and respects the basic right to association accorded to workers/employees including migrant workers. We have constitutional and legislative provisions which guarantee the workers' freedom of association and to join any organization, to wit:

#### **A. Constitution**

77. The 1987 Philippine Constitution reads as follows:

1. Section 8, Article III under which the State affirms the right of the people including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged;
2. Section 18, Article II under which the State affirms labor as a primary social economic force and undertakes to protect the rights of workers and promote their welfare;

3. Section 3, Article XIII (Social Justice and Human Rights) which mandates the State to (a) provide full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all; (b) guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful and concerted activities including the right to strike in accordance with law; (d) ensure workers' rights and benefits; (e) promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes; and (f) recognize the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns of investments, and to expansion and growth.

## **B. Legislation**

78. The Labour Code of the Philippines employing the constitutional mandates, specifically provides legal protection to workers in the exercise of the right to self-organization, through the following provisions:

(a) Article 269 of the Labour Code, as amended, provides that all aliens, natural or juridical, as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labour unions and recognized international labour centres: Provided, however, That aliens working in the country with valid permits issued by the Department of Labour and Employment, may exercise the right to self-organization and join or assist labour organization of their own choosing for purposes of collective bargaining: provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers.

(b) Article 243 (Coverage and Employee's Right to Self-Organization), of the Labour Code, as amended, provides that the right to self-organization may be exercised by all employees in commercial, industrial and agricultural enterprises and in religious, charitable, medical or educational institutions, whether they are operating for profit or not. The coverage includes ambulant, intermittent and itinerant workers, self-employed, rural workers and those without definite employers.

(c) Republic Act No. 9481 or "An Act Strengthening the Workers' Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines," was signed on 25 May 2007 and became effective on 14 June 2007. This law expands the capacity of legitimate federations and national unions to organize and help their local chapters acquire representation status for purposes of collective bargaining. Any legitimate federation or national union can directly create a local chapter and vest it with a legal personality for purposes of filing a petition for certification election even without the statutory twenty per cent (20 per cent) minimum membership requirement (although this requirement still applies to independent unions).

## **C. Administrative Issuances**

79. DOLE Department Order No. 40, series of 2003 sets up the mechanism for alternative modes of organizing for industry unions and mutual aid associations. For this purpose, the rules clarify the distinction between organizations for collective bargaining (trade union) and organizations for purposes other than collective bargaining (workers associations including those in the informal sector).

80. DOLE Department Order No. 40-C, series of 2005 sets forth who may join labour unions and workers' associations. The rules specifically include foreign nationals with valid working permits as among those entitled to exercise the right to self-organization.

81. Anent the rationale behind article 272 of Presidential Decree No. 442 otherwise known as the Labour Code of the Philippines, said provision was enacted to insure the stability of labour-management relations and to protect the economic interest of this country and its citizens. It is noteworthy that the stability of labour-management relations and of industrial peace is essential to our national security as an independent State and to the purposeful pursuit of economic development and social justice for all the Filipino people. Thus, to ensure such stability, it is necessary to regulate the activities of certain persons, organizations and entities, whether foreign or national, which includes imposition of reasonable and adequate administrative controls over the activities of migrant workers and foreign organizations in the labour field, including the friends of our country whose concern for the welfare of the Filipino worker is deeply appreciated.

#### **Article 29**

**17. Please provide information on measures adopted to encourage and facilitate the registration of children born abroad to Filipino migrant workers, in particular women migrant workers returning from abroad with their children, irrespective of whether they are documented or not (paras. 265-268 of the report).**

82. Pursuant to the provisions of the Philippine Constitution and in line with the nationality principle enshrined in the Civil Code of the Philippines, children born of Filipino fathers or mothers are also natural-born Filipinos.

83. The registration of birth of a Filipino child is within the purview of the mandate of accredited consular officers in all embassies and consulates abroad being deputized civil registrars. The registration of birth of Filipino children abroad is irrespective of the immigration status of their Filipino parent(s).

84. Pursuant to the existing rules and regulations, the registration of a Filipino child's birth is recorded by the Consular Officer in the Civil Registry Book, and provides the Filipino parent(s), Civil Registrar General of the Philippines-National Statistics Office, and the Department of Foreign Affairs with original copies of the Report of Birth, which is executed in four (4 original copies). The Consulate retains the remaining original copy as part of its Civil Registration files. In addition to the embassy/consular websites, postings in the consular section and frequent interactions with the Filipino community, through outreach programmes and occasional guestings in community radio stations (in cities where they exist) are utilized by embassies/consulates to render consular services, such as but not limited to, registration of births.

### Article 30

**18. Please explain whether the children of migrant workers in an undocumented situation have the right to access to education and how this right is implemented in practice.**

85. It is the policy of the Philippine Government as embodied in its Constitution that it shall “protect, foster and promote the right of all citizens to affordable quality education at all levels and shall take appropriate steps to ensure that education shall be accessible to all”.

86. The right to access education has been reaffirmed by the Philippine Government in its ratification of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. With the ratification of the said Conventions, the State provides all children born to migrant workers with birth registration and access to basic education and health care.

### Article 33

**19. Please specify what information on the rights protected by the Convention is provided to migrant workers during the Pre-Departure Orientation Seminar (PDOS). In particular, what information are migrant workers given on the administrative and judicial remedies that are available to them in the event of a violation of their rights, e.g. a list of contact numbers, especially that of embassies or consular offices and non-governmental organisations (para. 299 of the report). Please provide information on the number of migrant workers benefiting from the PDOS and their country of destination.**

87. The POEA conducts a Pre-Departure Orientation Seminar (PDOS) for Name Hires and Government Placement Branch (GPB) Hires. The PDOS is divided into three modules:

- (a) America/Europe/Trust Territories;
- (b) Middle East/Africa; and
- (c) Asia and the Pacific

88. All modules contain the following topics:

- (a) Introduction (What is PDOS? Why is mandatory?);
- (b) Processing procedure after PDOS for name hires and documentary requirements;
- (c) Airport procedure (origin, stop-over and destination points) and Travel Tips;
- (d) On-site realities such as country profile, cultural and tradition, climate, common problems encountered by OFWs, and their Rights and Obligations in the Employment Contract; and
- (e) Bank Partner’s Programmes such as remittance services and other programmes/products.

89. During the PDOS, the workers are oriented and informed about the on-site realities such as country profile, cultural and tradition climate; common problems encountered by OFWs and coping up mechanisms; institutional support system; obligations based on the Code of Discipline for OFWs; and their Rights and Obligations in the Employment Contract.

90. During the PDOS, the workers are advised of their rights under the Migrant Workers Act and to inform the Philippine Embassy of their arrival in the host country. They are provided with brochures/leaflets of their country of destination which contain the address, telephone and fax numbers, and e-mail addresses of the Philippine Embassy, Philippine Overseas Labour Office (POLO) and OWWA Office. They are also advised to get in touch with the Labour Attaché or Welfare Officer in their worksite on matters pertaining to their work in case there is a breach of contractual obligation.

91. For the period of September 2007 to December 2008, a total of 42,108 migrant workers benefited from PDOS conducted by the POEA Workers Education Division (WED). (For September to December 2007-12,463 migrant workers while for January to December 2008-29,645 migrant workers)

92. The following are the countries of destination by continent:

1. Africa (Angola, Equatorial Guinea, Algeria, Congo, Madagascar, etc.)
2. Americas (Canada, United States, Cayman Island, Bermuda, Guam, etc.)
3. Asia (Taiwan, Hongkong, Singapore, Japan, South Korea, etc.)
4. Europe (Italy, Spain, Cyprus, United Kingdom, Russia, etc.)
5. Middle East (Saudi Arabia, United Arab Emirates, Qatar, Kuwait, Bahrain, etc.)
6. Oceania (Australia, New Zealand, Papua New Guinea, Tonga Samoa and Nauru)
7. Trust Territories (Saipan, Palau, Yap Island, Micronesia, Commonwealth of the Northern Mariana Island, etc.)

#### (c) Part IV of the Convention

#### Article 41

**20. Please provide information on the level of participation of Filipino migrant workers living abroad in elections held in the Philippines and on any measures taken by the State party to facilitate such participation in practice (paras. 325-330 of the report). Please clarify whether Filipino migrant workers can exercise their right to vote only if they commit themselves to return to and live in the Philippines within the three years following their registration as a voter.**

93. The Department of Foreign Affairs, through its Foreign Service Posts, as deputized Election Registrars by the Commission on Elections, was able to register additional 144,828 overseas Filipinos during the 2006 registration. Adding the 2003 figure of registrants which is 359,296 and the new registrants in 2006, a total of 504,124 registered overseas absentee voters were eligible to vote in the May 2007 elections.

#### *Participation of Voters*

94. Out of the 504,124 registered overseas voters in 2007, only 81,732 actually voted, resulting to 16 per cent voter's turnout, compared to a 65 per cent turnout during the 2004 National Elections. The reasons for the low turn-out of voters are as follows:

- (a) The first major reason for the low turn-out of voters was the non-presidential nature of the mid-term 2007 elections. In foreign service posts that used the same mode of voting as that used in the 2004 elections, which is personal voting, the turn-out was also low, which

was an indication that despite the fact that there was no change in the mode of voting, there was a general lack of interest of overseas absentee voters to participate in the mid-term elections;

- (b) The second major reason cited was the mobility of the Filipino workforce abroad. In most instances, contract workers had fixed-term contracts, their status highly volatile and their addresses changeable. After the 2004 elections, most of them have either gone back to the Philippines or relocated to other countries or addresses. Unfortunately, communicating their change in addresses to the Commission on Elections (COMELEC) or OAVS was farthest from their minds. Thus, despite the adoption of voting by mail to enfranchise as many as overseas voters as possible, the change of addresses was a major set back in the overall efficiency of this particular mode of voting.

*Measures taken/proposed to facilitate participation*

95. The following are the measures taken to facilitate participation:

- (a) To facilitate the implementation of the Overseas Absentee Voters Act, the Commission on Elections (COMELEC) and the Overseas Absentee Voting Secretariat (OAVS) introduced "Voting by Mail" to 57 posts in 2007, in order to provide a more convenient way to cast votes.
- (b) Posts also conducted field voting and drop box/ pick up point voting in places with large numbers of voters.
- (c) COMELEC and OAVS embarked on a massive campaign to purge the Certified List of Overseas Absentee Voters (CLOAV) of errors, particularly the data on voters' addresses.
- (d) On 20 July 2007, the OAVS in coordination with COMELEC conducted a non-binding test on Internet Voting in Singapore. The project lasted 20 days (20 July – 8 August 2007) and simulated the recently concluded mid-term elections in May 2007. The Philippine Embassy in Singapore supervised the pilot-study and reported that 311 voters took part in the exercise. It took the Singapore Embassy only 2 hours and 30 minutes to count the votes and finally announce the winners. The test was declared a success by COMELEC. A final report on the result of the pilot-test will be submitted by COMELEC to the Joint Congressional Oversight Committee in due time, for its consideration and approval.

*Affidavit of Intent to Return*

96. Section 5(d) of RA 9189 provides that,

"An immigrant or a permanent resident who is recognized as such in the host country, unless he/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of his/her registration under this Act. Such affidavit shall also state that he/she has not applied for citizenship in another country. Failure to return shall be cause for the removal of the name of the immigrant or permanent resident from the National registry of Absentee Voters and his/her permanent disqualification to vote in absentia"

97. Furthermore under Section 24 (9) it is also provided that, “Immigrants and permanent residents who do not resume residence in the Philippines as stipulated in their affidavits under Section 5 (d) within three (3) years after approval of his/her registration under this Act and yet vote in the next elections contrary to the said section, shall be penalized by imprisonment of not less than one (1) year, and shall be deemed disqualified as provided in Section 5(c) of this Act. His/her passport shall be stamped “not allowed to vote”.

*Proposed amendments to the Law on Overseas Absentee Voting*

98. Proposals had been submitted to the Philippine Congress to amend RA 9189 for the purpose of deleting the requirement for the execution of an “Affidavit of Intent to Return” for immigrants/permanent residents abroad and in case of approval of internet voting, to delete the requirement of personal delivery of “Certificates of Canvass” (COCs) by the SBOC Chairpersons to COMELEC in Manila.

**Article 46**

**21. Please indicate whether Filipino migrant workers enjoy exemption from import duties and taxes in respect of their personal and household effects upon their final return.**

99. Section 105 of the Tariff and Customs Code of the Philippines, as amended by Executive Order no. 206, provides duty and tax free privileges to returning residents, overseas Filipino workers and former Filipinos.

100. The tax and duty free privileges granted are as follows:

1. Returning Resident – Personal effects and household goods used by him abroad for at least 6 months and the dutiable value of which is not more than 10,000 Pesos are exempt from duties and taxes. Any amount in excess of P10,000 shall be subject to 50 per cent ad valorem duty across the board.
2. Overseas Filipino Worker (OFW) – In addition to the privileges granted to returning residents, an OFW is allowed to bring in duty and tax free used home appliances worth 10,000 Pesos, provided that:
  - (a) The quantity is limited to one of each kind (e.g. one TV set, one microwave oven, one washing machine, etc.);
  - (b) The privilege has not been enjoyed previously during the calendar year;
  - (c) Presentation of the owner's passport at the airport or port of entry;
  - (d) Any amount in excess of 10,000 Pesos, Philippine Currency, will be subject to duty and tax;
3. Returning Filipino – Professional instruments and implements, tools of trade, occupation or employment; wearing apparel, domestic animals, and household goods shall be exempt from payment of customs duties and taxes, provided that:
  - (a) The change of residence was bonafide;
  - (b) The privilege of free entry was never previously availed of;
  - (c) That the articles are brought from their former place of abode;

101. It is to be noted that the family members of returning residents, OFWs and former Filipinos are also entitled to certain privileges provided that they satisfy or comply with the above-mentioned requirements.

#### Article 47

**22. Please provide information on any measures adopted to facilitate transfers of migrant workers' earnings and savings to the Philippines, including any agreement to reduce the cost of such transactions for migrant workers (paras. 296-298 of the report). Please clarify whether article 22 of the Labour Code in relation to Executive Order No. 857 requires that Filipino migrant workers remit 50-70 per cent of their earnings in foreign currency to their families in the Philippines. Are any taxes levied on incoming remittances?**

102. Section 23 (B) & (C) of the National Internal Revenue Code provides:

"(B) A non resident citizen is taxable only on income derived from sources within the Philippines;

(C) An individual citizen of the Philippines who is working and deriving income from abroad as an overseas contract worker is taxable only on income from sources within the Philippines: Provided, That a seaman who is a citizen of the Philippines and who receives compensation for services rendered abroad as a member of the complement of a vessel engaged exclusively in international trade shall be treated as an overseas contract worker."

103. Section 22 (E) of the Tax Code defines the term "non-resident citizen" as:

- (1) A citizen of the Philippines who establishes to the satisfaction of the Commissioner the fact of his physical presence abroad with a definite intention to reside therein.
- (2) A citizen of the Philippines who leaves the Philippines during the taxable year to reside abroad, either as an immigrant or for employment on a permanent basis.
- (3) A citizen of the Philippines who works and derives income from abroad and whose employment thereat requires him to be physically present abroad most of the time during the taxable year.
- (4) A citizen who has previously considered as non-resident citizen and who arrives in the Philippines at any time during the taxable year to reside permanently in the Philippines shall likewise be treated as a non-resident citizen for the taxable year in which he arrives in the Philippines with respect to his income derived from sources abroad until the date of his arrival in the Philippines.

104. Accordingly, OFWs/migrant workers who are physically present and working abroad most of the time of the year are considered non-resident citizen. They are taxable on their income from sources within the Philippines. However, as such, income from outside the Philippines is exempt from income tax.

105. Corollary to the foregoing, OFWs'/migrants' and immigrants' income in foreign currency forwarded/remitted to their families in the Philippines are not taxable as these form part of their income from sources outside the Philippines. However, any interest earned on remittances deposited in banks such as savings account shall be subject to the final tax of 20 per cent.



(c) Part VI of the Convention

Article 64

**23. Please indicate whether further bilateral agreements and memoranda of understanding are under negotiation with countries and regions hosting substantial numbers of Filipino migrant workers and provide information on the content of such agreements, particularly regarding the protection of migrant rights (paras. 263 and 338 of the report).**

106. As of the end of 2008, the top ten destination countries of new-hire OFWs were: (a) Saudi Arabia (34.2 per cent); (b) United Arab Emirates (19.7 per cent); (c) Qatar (12. per cent); (d) Taiwan (8.2 per cent); (e) Kuwait (4.7 per cent); (f) Hong Kong (4.5 per cent); (g) Canada (2.3 per cent); (h) Bahrain 1.3 per cent; (i) Singapore 1.2 per cent); (j) Australia 1.0 per cent)

107. As of 20 November, 2008, there were nineteen (19) Bilateral Labour Agreements (BLAs) concerning Filipino Overseas Land based workers and five (5) Bilateral Labour Agreements (BLAs) concerning Filipino Overseas Sea-based workers entered by and between the Government of the Philippines and other host countries.

108. The BLAs ensures that the basic conditions of employment that are applicable to both the employee and the employer are set out in a mutually agreed individual employment contract which conforms with the relevant laws, rules and regulations of both countries who are parties therein. This would in effect help promote the welfare of workers of the concerned countries. Out of those BLAs, there are several employment/welfare/general labour cooperation agreements entered into between our Government and the following countries hosting substantial numbers of Filipino migrant workers which concern either land-based or sea-based workers:

1. United Arab Emirates entered into on 9 April 2007;
2. Qatar entered into on 5 May 1981, 10 March 1997, and 18 October 2008;
3. Taiwan entered into on 12 January 2001 (renewed on 20 March 2003 and 30 March 2006);
4. Kuwait entered into on 14 September 1997;
5. Alberta, Canada entered into on 1 October 2008;
6. British Columbia, Canada entered into on 29 January 2008;
7. Manitoba, Canada entered into on 8 February 2008
8. Saskatchewan, Canada entered into on 18 December 2006;
9. Bahrain entered into on 4 April 2007;
10. Singapore entered into on 25 August, 2001

109. To further bolster OFWs protection, negotiations are ongoing with Australia, Greece and Sweden on the possibility of establishing a social security agreement. For Greece, a second round of negotiations is scheduled in April 2009, following the initial negotiation in May 2008. The proposed social security agreement with Greece is consistent with the International Labour Organization conventions on social security. It primarily seeks to ensure that Filipino migrants and family members are accorded social security coverage and equal entitlement to benefits granted to national of the host country and vice versa.

110. The Philippine has also entered into several agreements to ensure protection of the right of Filipino migrant workers and their families. Among these are the following:

- Japan-Philippine Economic Partnership Agreement (December 2008) which provides for adequate welfare and protection arrangements for Filipinos while training and working in Japan;
- RP-Japan Consular Consultations (February 2008);
- RP-China Consular Agreement Negotiations (April 2008);
- Memorandum of Understanding between DOLE and the provinces of Saskatchewan, Manitoba and British Columbia (December 2006, January 2008 and February 2008);
- MOU with UAE on Labour (9 April 2007);
- MOU with Republic of Korea on the sending and receiving of workers under ROK's; Employment Permit System (EPS) (20 October 2006);
- MOA with Libya on Labour (17 July 2006);
- MOU with Saipan on the hiring of Filipino workers (Spain, 29-30 June 2006);
- RP-Lao PDR MOU on Technical Cooperation on Labour and Employment (28 December 2005);
- MOU with the United Kingdom on health-care cooperation and Government recruitment of nurses (30 July 2003);
- MOU between Philippines and Indonesia labour departments (January 2003);
- MOU with Brunei Darussalam on the recognition of certificates of seafarers for service on vessels registered in Brunei Darussalam (23 August 2001).

**24. Please provide information on the regional efforts to promote sound, equitable and humane migration conditions initiated, pursued and supported by the State party.**

111. As previously mentioned, on 27 to 30 October 2008, the Philippines hosted the Second Global Forum on Migration and Development (GFMD) with the central theme "Protecting and Empowering Migrants for Development." The Manila GFMD brought together countries of migrant origin, transit and destination, countries at all stages of economic, social and political development, represented by policymakers from a wide range of government agencies, including Ministries and Departments of Immigration, Development, Labour, Foreign Affairs, Gender Equality, Home Affairs, Justice, Interior, Integration and Nationals abroad.

112. The Philippine Government chose as its flagship theme "Protecting and Empowering Migrants for Development" to highlight the human face of migration in a debate that often only addresses the rational economic implications of migration for development. Governments from both origin and host countries welcomed the opportunity to discuss the rights of migrants and ways of protecting and empowering them to enhance their development, without being doctrinaire. Participating Governments expressed their participation in the discussion in the a spirit of "shared responsibility and partnership."

113. Within ASEAN, the Philippines is thus far the only country that has ratified the 1990 International Convention on the Protection of the Rights of All Migrants and Members of the Their Families and actively promotes the aims of the Convention with its ASEAN neighbours.

114. The inclusion of a provision on the establishment of an ASEAN Human Rights Body in the ASEAN Charter is a Philippine initiative. It is the first in the history that ASEAN, as a body, has taken the bold step forward to agree to establish a human rights mechanism. The ASEAN Foreign Ministers Meeting established a High Level Panel (HLP) on the Terms of Reference of the ASEAN Human Rights Body at the forty-first AMM in Singapore in July 2008.

115. In 2007, at the initiative of the Philippines in the ASEAN Summit it hosted in Cebu, ASEAN made a groundbreaking move to address the issue of migrant workers when its leaders signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Declaration mandates ASEAN countries to promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions of migrant workers. The Declaration calls for clear commitments to protect the rights, dignity and welfare of migrant workers, by providing them access to legal services, fair and just conditions of work, and promoting tolerance between migrant communities and populations of the receiving state, among others.

116. As a follow-up, the Philippines also hosted the ASEAN Ministerial/Post Ministerial Meeting in Manila which produced the Statement on the Establishment of a Committee to Implement the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Committee is tasked to develop/draft the ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers.

117. Other initiatives related to the migrant workers issues actively promoted by the Philippines in ASEAN, include the following:

- Bangkok Declaration on Irregular Migration (1999) – declares that migration, particularly irregular migration, should be addressed in a comprehensive and balanced manner, considering its causes, manifestations and effects, both positive and negative, in the countries of origin, transit and destination.
- Vientiane Action Programme (2004) – mandates the development of an ASEAN instrument on the promotion and protection of migrant workers.
- ASEAN Political-Security Community Blueprint (ASPC) and ASEAN Socio-Cultural Community Blue Print (ASCC) (2008) – have provisions related to the protection and promotion of rights of migrant workers without distinction between undocumented and legal ones.
- Joint Declaration of the ASEAN-EU Commemorative Summit (2007) – both ASEAN and UN agreed to identify ways to cooperate in ensuring that the rights and welfare of migrant workers are protected.

*Human Rights Council (HRC) resolutions on migration and trafficking*

118. The Philippines is a strong advocate of the protection and promotion of the human rights of all migrants, including migrant workers, women migrants and undocumented or irregular migrants, as well as members of their families.

119. Migration is a cross-cutting issue. It is not simply a labour issue. It is also a trade issue, a development issue, a human rights issue, a health issue, etc.

120. The Philippines have always been vocal in expressing serious concerns at the growing incidence of xenophobia, acts of violence and gross human rights violations being perpetrated against migrants. In this respect, the Philippines continues to voice its grave apprehension at the alarming volume of anti-migrant and anti-immigration rhetoric in various parts of the world, as if migration and immigrants could be blamed for all the problems and woes of a country before the United Nations.

121. During the eighth session of the Human Rights Council in June 2008, the Philippines supported the Mexican Resolution on the Mandate of the Special Rapporteur on the Human Rights of Migrants.

122. During the same session, the Philippines co-sponsored with Germany Council resolution 8/12 on the mandate of the Special Rapporteur on trafficking in persons, especially women and children.

123. During the ninth session of the Human Rights Council in September last year, the Philippines also co-sponsored with Mexico the resolution on the human rights of migrants, which was adopted without a vote.

#### **Article 65**

**25. Please provide information on the impact of the Migrant Advisory and Information Network (MAIN). What services does it currently provide? In which countries are Migrant Advisory and Information centres currently located? (para. 69 of the report)**

124. The Migrant's Advisory and Information Network (MAIN) is an information campaign against trafficking in persons created in 1995. With the signing of a Memorandum of Agreement, MAIN desks has been established in municipalities and provinces facilitated and in coordination with eleven (11) government agencies:

- Department of Interior and Local Government;
- Department of Foreign Affairs;
- Department of Labor and Employment;
- Department of Social Welfare and Development;
- Philippine Information Agency;
- Commission on Human Rights;
- Philippine Overseas Employment Administration;
- Overseas Workers Welfare Administration;
- National Commission on the Role of Filipino Women.

125. The MAIN desks provides the clients and/or victims of trafficking in persons and their families, the following information:

- Filing of cases or reporting of suspected alleged trafficking incidents;
- Programmes that address trafficking in persons;
- Legal Protection to Trafficked Persons;
- Preferential Entitlement under the Witness Protection Program;
- Trafficked Persons who are foreign nationals;
- Other services for trafficked persons;

- Repatriation of trafficked persons;
- Rights of the Person arrested, investigated or detained.

**26. Please indicate what measures have been taken to enable consular services to respond more quickly and effectively to the protection needs of Filipino migrant workers and members of their families, and, in particular, to provide assistance to those suffering from the hands of abusive employers and victims of trafficking. What assistance do migrant workers receive to file complaints? Please also specify what assistance is offered to Filipino migrant workers who are the victims of a system of “sponsorship” designed to give the sponsor control over them for the duration of their stay in the State of employment, and sometimes even to prevent them from returning to the Philippines. Please specify how migrant workers and members of their families have benefited from the services provided by the Migrant Workers and Other Overseas Filipinos Resource Centers and report on their impact (para. 350 of the report). How many of these Resource Centres have been open and in which countries? What are the main challenges/obstacles to their effective functioning?**

126. Systems/Procedures that enable consular services to respond more quickly and effectively to the protection needs of Filipino migrant workers and members of their families include the following:

- Philippine embassies and consular offices, through the Philippine Overseas Employment Administration (POEA) shall issue travel advisories or disseminate information on labor and employment conditions, migration realities and other facts, and adherence of particular countries to international standards on human and workers' rights, which will adequately prepare individuals into making informed and intelligent decisions about overseas employment;
- With regard to underage migrant workers, the Foreign Service shall without delay repatriate said workers and advise the Department of Foreign Affairs (DFA) through the fastest means of communication available of discovery of such workers and other relevant information;
- The Office of the Undersecretary for Migrant Workers Affairs (OUMWA) at the Department of Foreign Affairs assist Filipino migrant workers' concerns/problems, such as detention cases filed against them (including cases of adultery/immorality, illegal drugs, falsification of documents/forgery, murder/homicide, rape/sexual harassment, embezzlement/fraud, possession of illegal/restricted materials); cases involving unpaid salaries, maltreatment, work contract problems, etc; shipment of remains; money claims; delivery of benefits; shipment of personal effects; shipment of remains; contacting of relatives; airport assistance; saving lives of hostages; individual repatriation; mass amnesty; whereabouts and financial support; cases of illegal recruitment and trafficking n persons.
- With regard to trafficking in persons, the operative law is Republic Act No. 9208 (Anti-Trafficking Persons Act of 2003). Under RA no, 9208, the Inter-Agency Council Against Trafficking (IACAT) was established, composed of the Secretary of the Department of Justice as Chair and the Secretary of Social Welfare and Development as Co-chair. The Secretary of Foreign Affairs is a member of IACAT.
- The DFA acts as a link between Philippine embassies and consulates, which report cases of trafficking in persons, and concerned Philippine government agencies, which provides

services for trafficked victims. Philippine embassies and consulates coordinate closely with host country authorities and/or NGO partners in providing immediate assistance to victims of trafficking. The cost of repatriation is shouldered by the Philippine Government through the ATN Fund.

127. Each victim is interviewed by the embassy/consulate and is encouraged to file an affidavit detailing their case, for onward transmittal to OUMWA, for proper disposition of the case (referral to the National Bureau of Investigation – NBI – and to IACAT, for appropriate action).

128. For investigation of possible human trafficking cases and determination of bases for filing complaints of human trafficking, the DFA refers cases directly to the NBI and IACAT. Trafficking victims that present themselves to OUMWA are asked to file an affidavit detailing their case and are immediately referred to NBI, for appropriate action.

129. Filipino Workers' Resource Centres (FWRCs) are established in countries where there are large concentrations of Filipino migrant workers. Under Section 46 of the Implementing Rules and Regulations of the Migrant Workers and Overseas Filipino Act of 1995, each Filipinos Resource Center shall be staffed by a minimum of four (4) personnel composed of a Labour Attaché (DOLE), Foreign Service personnel (DFA), Welfare Officer (OWWA), Center Coordinator (OWWA), and an Interpreter, when necessary (local hire).

130. Also, there are 33 Philippine Overseas Labour Offices (POLOs) which are headed by Labour Attaches and Welfare Offices. In countries without POLO, embassy/consulate personnel assume POLO functions. As per Governing Board Resolution No. 07, Series of 2007, complaints by on-site OFWs pertaining to violations of POEA rules and regulations shall be received by the concerned POLOs. The said POLOs shall assist on-site complainants in the preparation of affidavits and reception of evidence, which shall be endorsed to the POEA for appropriate action. In docketed POEA cases involving complainants or witnesses deployed for work overseas, the POEA Adjudication Office should have all reasonable means to ascertain the facts and information on such cases. To this end, the Adjudication Office shall be allowed to send written interrogatories or questions to the complainant-OFW, through the concerned POLO. POEA Repatriation Unit acts on POLO reports of employment related problems and imposes documentary suspension in cases where agencies failed to comply with its undertaking to repatriate a distressed worker (Section 4, Rule III, Part VIII of the 2002 POEA Rules and Regulations).

131. The utilization of a Blacklisting system has proven to be effective in getting rid of abusive employers and problematic workers.

132. The members of the migrant worker's family could also seek assistance from the POEA Legal Assistance Division for legal advice. The report of the migrant worker's family will then be endorsed to the POEA Repatriation Unit, for appropriate action; or as provided under the Bilateral Agreement, in the event of any difference or dispute between the employer and worker arising from the employment contract, such dispute shall be submitted to the concerned authority within the Ministry of Civil Service Affairs and Housing for amicable settlement. In the event

this amicable settlement fails, the matter shall be referred to the competent judicial authorities in the host country.

#### **Article 66**

**27. In the light of article 66, please indicate what efforts have been undertaken to better regulate recruitment activities within the State party. In particular, please provide information on:**

- (a) Measures adopted to address violations such as contract substitution or exaction of "exorbitant" placement fees charged on prospective migrants;**
- (b) The handling by the Philippine Overseas Employment Agency (POEA) of cases filed by victims of illegal recruitment;**
- (c) The number of successful prosecutions for illegal recruitment;**
- (d) The plans for the Supreme Court to designate special courts to hear and decide illegal recruitment cases.**

#### **Article 67**

**28. Please provide information on the number of returning Filipino migrant workers and the measures adopted to facilitate the return of these migrant workers, when they decide to return, to facilitate their durable social and cultural reintegration. What types of reintegration programmes are available to returning migrants? Please clarify whether these services are provided to returning Filipino migrant workers.**

#### **Article 68**

**29. In the context of the State party's obligations under article 68, please provide further information on the activities of the Inter-Agency Council Against Trafficking (IACAT) and their impact (para.163 of the report). Please also provide further information on:**

- (a) The scale of the phenomenon of trafficking of persons in, through and from the State party's territory;**
- (b) The establishment of the Migrant Workers Loan Guarantee Fund as envisaged by section 21 of the Migrant Workers Act (RA 8042) and its practical application (para.366 of the report);**
- (c) The number of victims of trafficking who have benefitted from the protection afforded by section 44 of the Anti-Trafficking in Persons Act of 2003 (RA 9208) and for how long (para.164 of the report);**
- (d) The status of the cases which the IACAT has assisted in filing since it was created in 2003, including data on prosecutions, convictions and sanctions;**

- (e) The measures which have been adopted to improve the low rates of prosecution and conviction of traffickers under the Anti-Trafficking in Persons Act of 2003 (RA 9208);**
- (f) The status of the cases reported to embassies and consulates abroad;**
- (g) The level of assistance provided to victims of trafficking whose cases are reported to embassies and consulates abroad. Please clarify whether these services are also available to victims of trafficking who do not wish to testify against their traffickers.**

133. The Inter-Agency Council Against Trafficking (IACAT) is the body created by law to coordinate and monitor the implementation of Republic Act No. 9208, otherwise known as the “Anti-Trafficking in Persons Act of 2003”. Its members are composed of the Secretaries and heads of government agencies and sectoral representatives, namely:

- (a) Secretary of Justice;
- (b) Secretary of Social Welfare and Development ;
- (c) Secretary of Foreign Affairs;
- (d) Secretary of Labour and Employment;
- (e) Commissioner of the Bureau of Immigration;
- (f) Director General of the Philippine National Police;
- (g) Administrator of the Philippine Overseas Employment Agency;
- (h) Chairperson of the National Commission on the Role of Filipino Women;
- (i) Children’s Sector NGO Representative from End Child Prostitution, Pornography and Trafficking (ECPAT Philippines);
- (j) Women’s Sector NGO Representative from Coalition Against Trafficking in Persons – Asia-Pacific (CATW-AP);
- (k) OFW Sector Representative.

134. The ex-officio members are:

- (a) Secretary of Interior and Local Government ;
- (b) Head of the Philippine Centre for Transnational Crime;
- (c) Director of the National Bureau of Investigation.

135. IACAT conducts different projects geared towards the elimination of trafficking in persons in the Philippines, prevention of the occurrence of trafficking, the protection and rehabilitation of victims and the conviction of trafficking offenders. To date, IACAT has obtained the conviction of eleven (11) offenders of Republic Act 9208, to wit:

- Two (2) convictions in Batangas City, on 15 and 28 November 2005, respectively. Each of the accused was allowed to plead guilty to violation of Section 11 of RA 9208 (Use of Trafficked Persons). They were each sentenced to render six (6) months of community service.
- One (1) conviction in Zamboanga City on 29 November 2005. Three (3) persons sentenced to life imprisonment and PHP 2 Million Pesos in fines for violation of Sec. 4 in relation to Sec. 6 (c) and 10 (c) (Qualified Trafficking).



- Four (4) convictions, Quezon City on 8 December 2005, i.e., two (2) persons (spouses) were sentenced to 4 life imprisonment and pay Php 8M in fines for violation of Sec. 4 in relation to Sec 6 (a) and (c) (Qualified Trafficking)
- One (1) conviction, Zamboanga City, 27 March 2007, i.e., One (1) person sentenced to Life Imprisonment and to pay Php 6M in fines for violation of Sec. 4 in rel. to Sec. 6 (c) and 10 (c) (Qualified Trafficking);
- One (1) conviction, Cebu City, 20 July 2007, i.e., two (2) persons sentenced to Life Imprisonment and to pay PHP 3 Million Pesos in fines for violation of Sec. 6(a) (Qualified Trafficking)
- One (1) conviction, Davao City, 27 July 2007, i.e., one (1) person sentenced to Life Imprisonment and to pay the sum of Php 2M in fines for violation of Section 6(a), (c) and (d) in relation to Section 3, 4(a) and 10(c) of R.A. No. 9208. (Qualified Trafficking);
- One (1) conviction, Batangas City (10 March 2008), i.e., one (1) person was sentenced to suffer the penalty of Life Imprisonment for violation of Sec. 4 (a) in relation to Sec. 6 (a) and Sec. 10 (c) (Qualified Trafficking);
- One (1) conviction, Parañaque City (27 November 2008), i.e., two (2) persons were sentenced to suffer each the penalty of twenty (20) of imprisonment and to pay a fine of PHP 1 Million Pesos each.

136. As a signatory to the Protocol to Prevent, Suppress and Punish Trafficking in Persons (TIP), especially Women and Children (otherwise known as the Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, the IACAT contributes to the Global Trafficking in Persons Report (GTIP report ) released by the US Department of State. Annually, the United States Department of State comes out with a report on the global situation of trafficking in persons. Based on country reports submitted to the American Embassy, the State Department evaluates the country's performance in combating TIP. It measures the country's efforts in the three areas of the anti-trafficking campaign based on the standards in the 2000 Trafficking Victims Protection Act (TVPA). These are:

- (a) Prevention;
- (b) Protection and
- (c) Recovery and reintegration.

*Establishment of the Migrant Workers Loan Guarantee Fund as envisaged by section 21 of Republic Act 8042*

137. Section 21 of RA 8042 establishes a Migrant Workers Loan Guarantee Fund (MWLGF) in order to further prevent unscrupulous illegal recruiters and loan sharks from taking advantage of workers seeking employment abroad. OWWA, in coordination with government financial institutions was tasked to develop financing schemes i.e., Pre-departure Loan and Family assistance Loan for ready to leave Filipino overseas workers and their families.

138. In 2004, the Joint OWWA-LBP (Land Bank of the Philippines) Implementing Rules and Regulations were adopted for the operationalization of the MWLGF.

139. The MWLGF is the credit guarantee fund in the amount of one hundred million pesos (PhP100,000,000.00) administered by the Overseas Workers Welfare Administration (OWWA). MWLGF was established to increase the access of OWWA member-Overseas Filipino Workers (OFWs) to formal sources of non-collateralized financing by providing a guarantee cover against the risk of default in the repayment of pre-departure loan and family assistance loan obtained from the participating Government Financial Institution (GFI).

140. Stipulated in the IRR are the varied loans available such as, among others, the pre-departure loan and family assistance loan and their corresponding requirements.

141. The objectives of the MWLGF are the following:

- To foster the socio-economic development of the OFWs and their families by providing them with development services such as technology transfer, market linkages, business management skills, and provision of project information with high economic return and positive impact to the OFWs; and
- To provide credit facility to OFWs for their livelihood and enterprise ventures.

*Number of victims rescued and repatriated by the Department of Foreign Affairs (DFA)*

142. As of the year 2007, the Department of Foreign Affairs has assisted and/or repatriated a total of three hundred fifteen (315) victims of trafficking. As shown in the following chart, most of the victims that the DFA has assisted were trafficked to the Middle East, Malaysia and Brunei.

<b>Country</b>	<b>No. of Victims Assisted/Repatriated</b>
Middle East (Dubai/Manama)	76
Malaysia	71
Brunei	43
Cote d'Ivoire	27
Thailand	18
Turkey	18
Vietnam	8
UAE	8
China	7
Japan	7
Palau	7
Saipan (CNMI)	6
Greece	5
United States of America	4
Bangladesh	2
South Korea	2
Hong Kong	2
New Zealand	1
Australia	1
Singapore	1
Timor Leste	1
<b>TOTAL</b>	<b>315</b>

*Cases filed by the DOJ Task Force Against Trafficking*

143. From 2003 to 2008, a total of 554 Trafficking in Persons (TIP) cases were filed at the Department of Justice and its regional offices. The status of disposition of these cases as of 30 April 2008 are as follows:

<i>Status of Cases</i>	<i>No. of Cases</i>
Filed in Court for violation of R.A. 9208	203
Filed in Court for violation of Other Penal Laws	20
Pending Resolution	196
Dismissed, dropped or withdrawn	120
Provisionally dismissed	1
Archived	2
Acquitted	1
Conviction under R.A. 9208	11
<b>TOTAL</b>	<b>554</b>

*Number of victims assisted by the Department of Social Welfare and Development (DSWD)*

144. The DSWD, as Co-Chair of the IACAT, plays a central role in the social case management of the victim-survivors of trafficking. The chart below shows the number of victims that have been assisted by the DSWD, as of last update.

<b>Year</b>	<b>Sex</b>		<b>Total # of Victims</b>
	<b>Male</b>	<b>Female</b>	
2003	6	116	122
2004	23	141	164
2005	154	320	474
2006	69	120	189
NCR 2003-2006	22	478	500
2007	25	334	359
<b>Total</b>	<b>299</b>	<b>1,509</b>	<b>1, 808</b>

*IACAT projects*

**Manual on the Law Enforcement and Prosecution of Trafficking in Persons Cases**

145. The Manual is a step-by-step guide to surveillance, investigation and apprehension of suspected traffickers and prosecution of trafficking cases. It was put together by law enforcers and prosecutors with the help of a consultant. Following its adoption by the IACAT members

and some updates, the Manual is being disseminated and currently used in the trainings of prosecutors and law enforcers.

### **Manual on the Recovery and Reintegration of Victim-Survivors of Trafficking**

146. The Manual is a guide for social workers and other service providers in the proper case management of victim-survivors of trafficking, so as to ensure their recovery and reintegration into the mainstream society. Likewise, the Manual is being disseminated and currently used in the trainings of social workers and other service providers.

### **Standard Orientation Module on Trafficking in Persons for Service Providers**

147. The Module provides basic information on trafficking that service providers needs to know in the course of performing their tasks. It also provides updates on the trafficking situation in the Philippines, such as the number and demographics of victims, points of origin, transit and destination, number of cases and convictions and other data.

### **Ninoy Aquino International Airport Task Force Against Trafficking (NAIA Task Force Against Trafficking)**

148. The Ninoy Aquino International Airport Task Force Against Trafficking in Persons (NAIA Task Force) was formed to investigate occurrences of trafficking at the airports, intercept undocumented passengers, provide assistance to returning trafficking victims, and file cases against traffickers. It is composed of the airport police, NBI agents and other law enforcers assigned at the NAIA. It is chaired by Assistant Chief State Prosecutor Severino H. Gana, Jr., in his capacity as chair of the National Inter-Agency Task Force Against Trafficking (NIATFAT).

149. The Task Force was launched on February 26, 2007. Its members underwent first-level training on the law enforcement aspect of RA 9208 in Tagaytay on July 26-27, 2007 and on August 16-17, 2007.

150. As of the latter part of 2007, the Task Force has intercepted a total of ninety one undocumented passengers and referred them to the proper authorities for appropriate action. It has also filed five complaints with the Department of Justice and the NAIA Resident Ombudsman, against immigration officers alleged to have been involved in trafficking activities. However, the Task Force does not have the funding for administrative matters such as office supplies, air-conditioning for their office, internet access, legal counsel, etc.

151. On 1 August 2008, the NAIA Task Force, headed by Assistant Chief State Prosecutor Severino H. Gaña, Jr., Department of Justice, and the Office of the Vice-President, represented by Political Staff Pablo Cinco, in coordination with the PNP-AVSEG Group, PNP-CIDG, PNP R-2-NCRPO, NBI-NAIA, NBI-ATHRAD, PIID-APD, IJM and VFFI, conducted a joint rescue operation, resulting to the successful rescue of thirty six (36) persons, twenty (20) of whom are minors, from the holding centre of the recruitment agency located at Maharlika Village, Taguig, Metro Manila, all of whom are females and allegedly of being trafficked as overseas workers or in Saudi Arabia.

### **Model Local Ordinance on Anti-Trafficking in Persons Project**

152. The drafting of a model ordinance on anti-trafficking was one of the main agenda of the IACAT for the year 2007. In the latter part of the year, the IACAT, with support of The Asia Foundation, engaged the services of a consultant to undertake the project. A comparative analysis of existing anti-trafficking ordinances was made to come up with a comprehensive model ordinance that showcases the essential features of a good ordinance against trafficking, and incorporating the powers of local government unit (LGU) to regulate businesses and establishments in their respective jurisdictions, and providing sanctions for its violations.

153. As a preliminary step in lobbying for adoption by the LGUs, the model ordinance was also presented and disseminated in the Annual Convention of the Mayor's League of the Philippines held last May this year in Bohol and Pampanga.

### **2007 Sub-National Conferences on Anti-Trafficking in Persons**

154. As follow up to the First National Conference Against Trafficking in Persons held in September 2006, series of Sub-National Conferences on Anti-Trafficking in Persons were held in the three major island groups of the Philippines, namely:

Luzon: 11-12 December 2007, at the Bayview Park Hotel in Manila

Visayas: 28-29 November 2007, at the Montebello Villa Hotel in Cebu; and

Mindanao: 15-16 November 2007, at the Marco Polo Hotel in Davao City.

155. The theme of the Conferences is "Harnessing Local Efforts Towards a Comprehensive National Agenda Against Trafficking in Persons". Participants came from government agencies, Regional Inter-Agency Committees Against Trafficking (RIACAT), Regional Development Councils (RDCs), NGOs, LGUs, civil society groups, faith-based and media groups, Hotel and Restaurant Association of the Philippines, and international development institutions.

### **Filipino Initiative Against Trafficking (FIAT)**

156. The FIAT is a series of activities aimed to raise public awareness about trafficking in persons. It is conducted in selected areas nationwide. The USAID Rule of Law Effectiveness Project (USAID ROLE) funds the FIAT. Activities include:

- Road shows;
- Training for service providers (Prosecutors, Law Enforcers and Social Workers);
- Press Conferences;
- Coordination meetings with the local government units;
- Creation of Local Inter-Agency Committee Against Trafficking and oath taking of its members .

### **UNICEF-supported Training of Service Providers**

157. The IACAT conducted training for prosecutors in the Bicol Region on 5-7 September 2007. The training was supported by the United Nations Children's Fund (UNICEF). Activities for October – March 2009 have been approved by the UNICEF. These activities include:

- Second-level training for service providers based on the Manual on the Law Enforcement and Prosecution of Trafficking in Persons Cases;
- Creation of a TIP database for children;
- Publication of IEC materials on trafficking;

- Creation of Task Force Against Trafficking in international airports of Laoag, Clark and Davao;
- Overseeing the functionalities of Local IACATs.

### **Philippine Guidelines for the Protection of Trafficked Children**

158. The IACAT, in coordination with other government agencies, non-government organizations and other stakeholders, initiated the formulation of the Guidelines. It was created to ensure the protection of the rights of trafficked children by providing minimum standards to be observed by service providers at all stages of care and handling of children who are victims of trafficking, specifically during the investigation and prosecution of trafficking in persons cases.

### **Creation of Regional Inter-Agency Committees Against Trafficking**

159. In accordance with the IRR of RA 9208, Regional Inter-Agency Committees Against Trafficking have been created. The DSWD Regional Offices act as chair and the DOJ Regional Offices act as co-chairs of the RIACATs. As of 2007, there were 15 RIACATs, 15 Provincial IACATs, 17 City IACATs and 34 Municipal IACATs.

160. The RIACAT members attended the 2007 Series of Sub-National Conferences Against Trafficking in Persons, where they formulated Regional Action Plans Against Trafficking. Follow-up activities will be done on the implementation of these Action Plans.

### **Proposed Implementing Rules and Regulations (IRR) on Organ Trafficking**

161. Pursuant to the authority of IACAT under Section 29 of R.A. No. 9208 (The Anti-Trafficking in Persons Act of 2003), the proposed IRR are promulgated to implement section 4 (g) in relation to section 3 (a) of said Act, to fully protect the vulnerable sector of our society who are mostly poor from the growing commercial traffic in human organ; and institute policies, establish the institutional mechanism for the support and protection of trafficked persons.

162. A technical working group (TWG) was created to draft the IRR, it is composed of the Department of Justice (DOJ), Department of Health (DOH), Department of Social Welfare and Development (DSWD) and the IACAT. Resource persons coming from the medical associations and hospitals were invited to give inputs and recommendations on the medical aspect of the IRR. TWG meetings were held on 9, 22, and 29 July 2008. A public forum was held on 15 October 2008. The IRR is on its final stage of approval of the TWG, namely, the DOJ, DSWD and DOH.

### *Policies to regulate recruitment practices/ measures to improve efficiency and reduce cost of recruitment*

163. The following are the policies to regulate recruitment practices/ measures to improve efficiency and reduce cost of recruitment

- (a) Licensing system: joint and solidary liability policy; "no placement fee policy for vulnerable categories and countries which prohibit charging of recruitment cost form workers;
- (b) Registration of employers and documentation of workers: ensures that migrant workers are provided decent terms and conditions of employment;

- (c) The E-link for OFWs: E-governance system for quicker, more efficient service delivery system;
- (d) Government to Government/Territory arrangements to address recruitment malpractices (e.g. in Korea and Taiwan) .

164. Our best practices on recruitment regulation are constituted in our systematic recruitment network, through licensed private recruitment agencies and Government Placement Facility; in the proper documentation of workers and employers for effective and efficient monitoring; and in our overseas employment programme which is basically focused on the welfare and protection of the overseas Filipino worker.

*Measures adopted to address violations such as contract substitution or extraction of “exorbitant” placement fees charged on prospective migrants*

165. The most common provisions in the contract that are violated are the following: (a) salary (e.g. delayed payment, underpayment of salary and other benefits); (b) job description and (c) overtime pay. Contracts violated usually involve low skilled workers and domestic workers. The POEA has a package reforms for these types of workers by providing stringent requirements which include among others the pre-qualification of employers (together with the foreign placement agency).

166. The POEA ensures that all workers deployed overseas are amply protected and that their interest, well-being, and welfare are promoted. It requires that agencies shall be responsible for the faithful compliance by their foreign principals of all obligations under the employment contract. The employment contract must comply with host government and the Philippine law and jurisprudence which prescribe minimum employment standards.

167. To respond to the issue of collection of “exorbitant” placement fees, the POEA has adopted stricter regulations for administrative offenses and penalties for malpractices by agencies and employers for recruitment violations, including violations on charging of excessive placement fees.

168. Prior to the implementation of the 2002 POEA Rules and Regulations, 75 per cent of the cases resolved involved agencies that were charges of collection of fees in excess of the allowed rate. Realizing the grave repercussion to Filipino workers who were victimized, the 2002 POEA Rules increased the previous penalty of two months license suspension to license cancellation.

169. In 2008, of the 64 agencies whose licenses where cancelled, 41 of them were cancelled on the ground of collection of excessive placement fees [violation of Section 2 (b), Rule I. Part VI of the 2002 POEA Rules and Regulations].

170. The POEA also has a conciliation mechanism to resolve complaints on recruitment malpractices.

171. Employers who commit rampant contract violations are blacklisted by POEA and disqualified from participating in the overseas employment programme, either temporarily or permanently depending on the gravity of the violations. The blacklisting system has proven to be effective in getting rid of abusive employers and problematic workers.

172. The following are the governing rules and policies on recruitment:
- Rationalizing the Commission on Filipinos Overseas (18 October 2007);
  - Executive Order No. 120 (30 January 1987): “Reorganizing the Ministry of Tourism, Defining its Powers and Functions, and for other purposes;”
  - Presidential Decree No. 1412 (9 June 1978): “Further Amending Certain Provisions of Book I, Presidential Decree no. 442, otherwise known as the Labor Code of the Philippines”
    - “Article 38. Illegal Recruitment. —
    - “a) Any recruitment activities to be undertaken by non-licenses or non-holders of authority shall be deemed illegal and punishable under Art. 39 of this Code.
    - “(a) The Secretary of Labor or his duly authorized representative shall have the power to recommend the arrest and detention of such non- licensee or non-holder of authority if after proper investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job seekers.”
    - "Article 41. Prohibition and Penal Sanctions. —
    - “(a) After the issuance of employment permit, the alien shall not transfer to another job or change his employer without prior approval of the Secretary of Labor.
    - “(b) Any non-resident alien who shall take up employment in violation of the provision of this Title and its implementing rules and regulations shall be punished in accordance with the provision of articles 289 and 290 of the Labor Code.
    - “In addition, the alien worker shall be subject to deportation after service of his sentence.”
  - Rules and Regulations governing Overseas Employment (as amended) (21 May 1985)

*Handling of cases filed by victims of illegal recruitment by the Philippine Overseas Employment Agency (POEA)*

173. The POEA provides free legal assistance to victims of illegal recruitment and related cases, which are administrative or criminal in nature, including but not limited to legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counselling assistance during preliminary investigation and hearings.

174. The Incentive Programme for Victims and Witnesses of Illegal Recruitment was created to assist victims and witnesses of large scale/syndicated illegal recruitment who are willing to actively participate in the prosecution of illegal recruitment cases. The incentives and benefits package consists of free legal assistance pursuant to POEA mandate under R.A. 8042, financial assistance; welfare assistance; and skills training assistance.

*Number of successful prosecutions for illegal recruitment*

175. In 2008, the Supreme Court and Regional Trial Courts of Malolos City, Baguio City, Makati City and San Fernando City, La Union meted decisions of conviction for illegal recruitment in seven (7) POEA-endorsed cases.



176. From 2005 to 2008, the Anti-Illegal Recruitment Branch-Prosecution Division received a total of 1,545 illegal recruitment cases. Out of 1,545 cases received, 1,123 cases were filed before the proper Prosecution Offices for the conduct of preliminary investigation.

*On the plan of the Supreme Court to designate special courts to hear and decide illegal recruitment cases*

177. The Government strongly supports the proposal for the designation of special courts exclusively to hear and decide illegal recruitment cases by the Supreme Court. The approval of said proposal will surely expedite the disposition of illegal recruitment cases.

*Level of assistance provided to victims of trafficking whose cases are reported to embassies and consulates abroad*

178. Embassies and consulates are tasked to expedite cases of trafficking reported to them by the Office of the Undersecretary for Migrant Workers' Affairs (OUMWA). In most instances, these cases are brought to the attention of OUMWA by NGOs. In this regard, OUMWA also maintains close coordination with NGOs in actions on these cases.

179. Once the victims are found, repatriation to the Philippines is expedited. When flight details are finalized, these are communicated to the victims (s) next-of-kin, concerned government agencies as well as NGOs in order for them to meet and assist them.

180. If, however, the repatriation of the trafficked persons shall expose them to greater risks, the Department, through its embassies and consulates, makes representations with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.

181. During the first half of 2008, the Philippines attended to fifty-six (56) human-trafficking cases involving 155 victims. The cases were referred to the Inter-Agency Council Against Trafficking (IACAT), the National Bureau of Investigation (NBI) for investigation and prosecution, and to the Commission on Filipinos Overseas (CFO) for other forms of assistance.

182. Diplomatic and consular posts have established extensive network i.e., police and immigration, judicial authorities in the host governments, Filipino volunteers, international organizations (e.g. International Organization for Migration) and NGOs, notably groups providing free legal assistance and counselling services, in order to gather information on the usual destinations of trafficked victims, operations of their traffickers and other relevant facts that could assist in the investigation and prosecution of the case.

183. The marginalized status of undocumented Filipinos in Belgium has prompted the Philippine Embassy in Brussels, for example, to launch a flagship programme denominated as "COMPASS," which stands for Community Participation in Assistance to Philippine Nationals. This project entails the immediate reporting of cases of Filipinos in distress, particularly those residing outside Brussels, to provide the Embassy ample latitude in coordinating with Belgian authorities and providing immediate assistance. For this purpose, Filipino volunteers in each

commune are obliged to report on the status of Filipinos residing in their respective areas via the existing “Duty-Officer” Hotline maintained by the Philippine Embassy on a 24/7 basis.

184. Post likewise exhaust remedies available under the laws of the host government against human-trafficking. For example in the case of China, the following:

- Mekong Sub-regional Project to Combat Trafficking in Children and Women
- The Mekong Challenge – Human Trafficking: redefining Demand
- Destination Factors in the Trafficking of Children and Young Women in the Mekong sub-region

## Article 69

**30. Please provide more details on the rescue operations which have been conducted to protect irregular Filipino migrants who are victims of trafficking in their country of destination. Please clarify whether any programmes exist to facilitate the return of irregular Filipino migrants who are not victims of trafficking (paras. 369 to 371 of the report).**

185. The Philippines, through the Department of Foreign Affairs (DFA), exerts all possible diplomatic and legal means and resources to assist its distressed migrant workers/nationals abroad.

186. The DFA acts as a link between Philippine embassies and consulates, which report cases of trafficking in persons, and the Philippine Government agencies which provides services for trafficked victims. Philippine embassies and consulates coordinate closely with host country authorities and/or NGO partners in providing immediate assistance to victims of trafficking. The cost of repatriation is shouldered by the Philippine Government through the Assistance to nationals (ATN) Fund.

187. Each victim is interviewed by the embassy/consulate and is encouraged to file an affidavit detailing their case, for onward transmittal to OUMWA, for proper disposition of the case (referral to the National Bureau of Investigation – NBI – and to IACAT, for appropriate action).

188. For investigation of possible human trafficking cases and determination of bases for filing complaints of human trafficking, the DFA refers cases directly to the NBI and IACAT. Trafficking victims that present themselves to OUMWA are asked to file an affidavit detailing their case and are immediately referred to NBI, for appropriate action.

189. The Department, through its embassies and consulates abroad, also exhaust available legal remedies in the host government to ensure that the rights of distressed documented and undocumented workers are upheld. This is especially true in ensuring that the repatriation of undocumented Filipinos are done in a humane and dignified manner.

190. In Europe, for example, the Philippine Embassy to the Kingdom of Belgium and the Grand Duchy of Luxembourg had assisted undocumented Filipinos in filing petitions for regularization under the Belgian Regularization Act of 1999 and the Luxembourg Regularization

Act of 2001. The same is true for all other Philippine embassies and consulates in countries that have enacted regularization laws.

191. The Philippine Embassy in Brussels also assisted undocumented migrants to file petitions under article 9.3 (bis) of the Belgian Immigration Act of 1980, as amended. Article 9.3 (bis) allows aliens, under exceptional circumstances, to apply for a temporary permit to sojourn in Belgium. An undocumented alien, who has a pending application for regularization under article 9.3 (bis) could not be summarily deported until he/she receives an Order of Denial, which is final and executory, and, subsequently, an Order to Leave the Territory. Note that after receiving an Order of Denial, the petitioner could appeal the case within 30 days from receipt of the Order. If the appeal is denied by the appellate body and attains finality, an Order to Leave the Territory will ensue.

192. In order to further enhance existing measures to curtail trafficking operations and improve assistance to victims, the Philippines participated in local and international fora on anti-human trafficking.

193. The Philippines also retained its Tier 2 ranking in the 2007 and 2008.TIP reports.

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