



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

Distr.  
GENERAL

CMW/C/PHL/1  
11 March 2008

Original: ENGLISH

---

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

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

**Initial reports of States parties due in 2004**

**PHILIPPINES\***

[25 January 2008]

---

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

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
List of Acronyms .....		7
Introduction .....	1 - 3	8
PART I: GENERAL INFORMATION .....	4 - 63	8
A. Constitutional, legislative, judicial and administrative framework governing the implementation of the Convention .....	4 - 35	8
B. Quantitative and qualitative information on the characteristics and nature of the migration flows .....	36 - 48	14
C. Actual situation regarding the practical implementation of the Convention as well as circumstances affecting the fulfilment of obligations under the Convention .....	49 - 59	16
D. Measures undertaken for the dissemination and promotion of the Convention .....	60 - 63	17
PART II: GENERAL PRINCIPLES .....	64 - 93	18
A. Articles 1 and 7: Principle of non-discrimination .....	64 - 76	18
B. Article 83: Right to an effective remedy .....	77 - 86	22
C. Article 84: Duty to implement the Convention .....	87 - 93	24
PART III: HUMAN RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES .....	94 - 298	25
A. Article 8: Right to leave any country including own and to return .....	94 - 107	25
B. Article 10: Right to life; prohibition of torture; prohibition of inhuman or degrading treatment .....	108 - 158	27
C. Article 11: Prohibition of slavery and forced labor .....	159 - 164	38

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
D. Articles 12, 13 & 26: Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union .....	165 - 181	41
E. Articles 14 & 15: Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property .....	182 - 189	45
F. Articles 16 (1-4), 17 & 24: Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law .....	190 - 204	47
G. Articles 16 (5 to 9), 18 & 19: Right to procedural guarantees .....	205 - 231	49
H. Article 20: Prohibition of imprisonment, deprivation of authorization of residence or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation .....	232 - 233	55
I. Articles 21, 22 & 23: Protection from confiscation and/or destruction of ID and other documents; protection against arbitrary expulsion; right to recourse to consular or diplomatic protection .....	234 - 249	55
J. Articles 25, 27 & 28: Principles of equality of treatment in respect of remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical attention .....	250 - 264	59
K. Articles 29, 30 & 31: Right of a child of a migrant worker to a name; registration of birth and nationality; access to education on the basis of equality of treatment; respect for cultural identity of migrant workers and members of their family .....	265 - 295	61
L. Article 32: Rights to transfer to the State of origin their earnings, savings and personal belongings .....	296 - 298	66

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
PART IV: RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION .....	299 - 346	67
A. Article 37: Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activities .....	299 - 312	67
B. Articles 38 & 39: Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose the residence in the territory of the State of employment .....	313 - 319	68
C. Article 40: Right to form associations and trade unions; right to participate in public affairs of their State of origin, to vote and be elected at election of that State; procedure and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment .....	320 - 331	69
D. Articles 43, 54 and 55: Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity .....	332	71
E. Articles 44 and 50: Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage .....	333	72
F. Articles 45 and 53: Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects; measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family .....	334 - 336	72

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
G. Articles 46, 47 and 48: Exemption from import and export duties and taxes in respect of particular belongings; right to transfer earnings and savings from the State of employment to the State of origin of any other State; imposition of taxes and avoidance of double taxation principle .....	337 - 340	72
H. Articles 51 & 52: Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity .....	341 - 345	73
I. Articles 49 & 56: Authorization of residence and authorization to engage in remunerated activity; general prohibition and conditions of expulsion .....	346	73
PART V: PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES .....	347 - 348	74
PART VI: PROMOTION OF SOUND, EQUITABLE HUMANE AND LAWFUL CONDITIONS IN CONNECTION WITH INTERNATIONAL MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES .....	349 - 375	74
A. Article 65: Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families .....	349 - 351	74
B. Article 67: Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration .....	352 - 362	75
C. Article 68: Measures aimed at the prevention and elimination of illegal clandestine movements and employment of migrant workers in an irregular situation .....	363 - 367	77

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
D. Article 69: Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party, and circumstances to take into account in case of regularization procedure .....	368 - 372	78
E. Article 70: Measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with standards of fitness, safety, health and principles of human dignity .....	373	78
F. Article 71: Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to their death .....	374 - 375	78

### List of acronyms

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

## **Introduction**

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

## **PART I: GENERAL INFORMATION**

### **A. Constitutional, legislative, judicial and administrative framework governing the implementation of the Convention**

4. The Republic of the Philippines is a democratic and republican State with a presidential form of government.
5. Executive power is exercised by the President of the Philippines with the assistance of his Cabinet. The President is both the head of State and of the Government. The Vice-President assists the President in the performance of his duties and responsibilities and may also be appointed as the head of one of the executive departments.
6. Legislative power is vested in the Congress of the Philippines consisting of the Senate and the House of Representatives. The Senate is composed of 24 senators elected at large for a term of six (6) years. The House of Representatives is composed of members elected from legislative districts and through a party-list system.
7. Judicial power is vested in the Supreme Court of the Philippines and lower courts. The decisions of the Supreme Court are binding on all lower tribunals. The other courts under the Supreme Court are: the Court of Appeals composed of 51 Justices with one Presiding Justice; Regional Trial Courts; the Municipal Circuit Trial Courts, which have jurisdiction over one or more municipalities grouped together; and the Municipal Trial Courts established in every city not forming part of the metropolitan area.
8. The democratic structure and processes are further enhanced by the constitutional provisions on social justice and human rights, protection of labor, women and children and the strengthening of local autonomy of the local government units (LGUs). Republic Act (RA)



No. 6710, otherwise known as *The Local Government Code of 1991*, devolves the responsibility and budget for the delivery of basic services in agriculture, health, social welfare and development, public works, environment and natural resources to the LGUs.

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

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

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

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

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

*“It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.*

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

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

13. Republic Act 2468, passed in 1915, was the first law adopted by the Philippine Legislature relating to overseas employment. This law essentially provided rules on license issuance, license fee and welfare regulations. It includes provisions which prohibit minors to work abroad without

the parent's written consent, prohibit the recruitment of non-Christians for exhibition or display and provide for transportation for returning workers who are physically unfit or have finished serving the contract. The law became the basis of the Government's policy on overseas employment from 1915 up to the advent of the *Labor Code of the Philippines*.

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

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

- Labor relations must be made both responsive and responsible to national development
- Labor laws or labor relations during a period of national emergency must substitute rationality for confrontation; therefore, strikes, or lock-outs must give way to rational process which is arbitration
- Laggard justice in the labor field is injurious to the workers, the employers and the public; labor justice can be made expeditious without sacrificing due process
- Manpower development and employment must be regarded as a major dimension of labor policy, for there can be no real equality of bargaining power under conditions of severe mass unemployment
- There is a global labor market available to qualified Filipinos, especially those who are unemployed or whose employment is tantamount to unemployment because of their very little earnings
- Labor laws must command adequate resources and acquire capable machinery for effective and sustained implementation, otherwise, they may breed resentment not only of the workers but also of the employers. When labor laws cannot be enforced, both the employers and the workers are penalized, and only a corrupt few - those who are in charge of implementation - may get the reward they do not deserve; and
- There should be popular participation in national policy-making through what is now called tripartism

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

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

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

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

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

21. It also has the power to impose restrictions and regulations on recruitment and placement of workers. An example in point is the Supreme Court decision in *Philippine Association of Service Exporters vs. Drilon* (30 June 1988, 163 SCRA 386), where the Court upheld the validity of DOLE Order No. 1, series of 1988, temporarily suspending the deployment of female domestic workers abroad. DOLE Order No. 1, s. 1988, was assailed for discrimination against female workers.

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

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

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

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

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

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

Article 1701, on the other hand, states,

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

Lastly, Art. 1703 of the Civil Code states,

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

25. Article 289 of the RA 3815, also known as The Revised Penal Code (RPC), punishes the use of violence or threats by either employer or employee. It states,

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

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

- EO 180 series of 1987 governing the right of public sector employees to organize
- RA 6715 or the 1989 New Labor Relations Law
- RA 6727 or the 1989 Wage Rationalization Act
- RA 6971 or the 1990 Productivity Incentives Act
- RA 7641 or the 1992 New Retirement Law
- RA 7655 prescribing a minimum wage for house helpers
- RA 7699 which mandates the limited portability scheme in Social Security Insurance Systems
- RA 7877 or the 1995 Anti-Sexual Harassment Law
- RA 7875 or the 1995 National Health Insurance Act

- Department Order No. 26 series of 1995 providing for integrated guidelines in accessing the funds of the workers organization and development program
- RA 8187 or the 1996 Paternity Leave Act
- RA 8291 or the 1997 New Government Service Insurance System Act
- RA 8282 or the 1997 New Social Security Act
- RA 8972 or the Solo Parents Welfare Act of 2000
- RA 9231, entitled, “Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for the Purpose, RA 7610, otherwise known as "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination”
- RA 9208, otherwise known as the *Anti-Trafficking in Persons Act of 2003*

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

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

### **Structure of overseas employment**

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

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

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

32. Membership in OWWA may be obtained in either of two (2) ways. One is through registration via the contractor or employer; the second is by voluntary enrollment at job sites. For a US\$ 25.00 membership contribution, an OWWA member is entitled to benefits such as health care insurance, loan guarantee funds which financially aid the OFW and their families, training programs and social welfare for the OFWs and their families.
33. The TESDA provides technical education and skills development and training to Filipino workers.
34. The ILAS provides staff support and policy guidelines to the Secretary of Labor and Employment in the supervising, monitoring and reporting of the activities of the corps of Labor Attaches assigned to posts.
35. Labor attaches head and manage labor offices that provide employment and welfare services to Filipino workers on-site. These offices, which are also staffed with Welfare Officers, are part of the structure of the Philippine embassies/consulates.

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

36. Today, the Philippines is among the largest migrant-sending countries in the world. According to an inter-agency report of the Commission on Filipinos Overseas (CFO), DFA, and POEA, overseas Filipinos live in 194 countries and territories all over the globe, as of December 2004. The stock of overseas Filipinos include some 3.2 million permanent settlers, the majority of whom are in the United States; about 3.6 million temporary labor migrants, with Saudi Arabia hosting to a million; and an estimated 1.3 million emigrants in an unauthorized situation.
37. Over the years, the volume of Filipinos leaving the country for temporary contract work is greater than those who leave to reside permanently abroad. The number of documented OFWs exceeded the 1 million mark in 2005, registering a total of 1.205 million, a 2.25% increase over the previous year's figure. Out of this total, 898, 565 or 75% were land-based workers and 306,297 or 25% were sea-based workers.
38. While the number of documented new hires was noted to fluctuate and lag behind that of the rehires in the previous years, it was observed to significantly grow and stabilize at 50% of the total documented workers since 2003. The number of rehires who were documented in 2005 to work for the same employer almost equaled that of the number of workers who were employed for the first time by their employers.
39. By type of hiring, 93% or 415,903 newly hired land-based OFWs were documented through licensed land-based agencies. The rest of the new hires were name hired (4.5%) or were hired through the Government Placement Branch of the POEA (2.5%).
40. The deployment in 2005 of 988,615 OFWs worldwide marked a 5.89% increase over the 2004 figure of 933,588 and 12% hike over that of 2003 data. This is translated to a daily deployment average of 2,709 which is 6.18% higher than the 2004 figure. Land-based workers,

consisting of newly hired (new hires) and rehire workers (rehires) represent the bulk (74.89%) of the total deployment, where the rehires accounted for 61% (450,651) and new hires, 39% (289,709). The deployment of seafarers, on the hand, represented the remaining 25.08% of the total (247,983).

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

## PART II: GENERAL PRINCIPLES

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

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

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

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

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

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

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

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

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

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

- PD 633 which created the National Commission on the Role of Filipino Women
- RA 6275, entitled *An Act Strengthening the Prohibition of Discrimination Against Women with Respect to Terms and Conditions of Employment*

- RA 6738, otherwise known as the *Wage Rationalization Act of 1989*, which spelled out the manner of determining the minimum wage rates for workers in general, regardless of sex
- RA 7877, or the *Anti-Sexual Harassment Act of 1995*, makes unlawful all forms of sexual harassment in the employment, education or training environment on the basis of the principle that sexual harassment constitutes an act of discrimination. The law penalizes all acts of sexual harassment committed by an employer, his or her immediate family, manager, supervisory officers and other high ranking officers, against employees, union officers and members, applicants for employment, customers, clients, agents of the employers, or any other person transacting business within the employment environment in both public and private sectors
- RA 6725 which mandates the DOLE to raise awareness and advocacy prohibiting discrimination against women employees
- RA 7277, entitled *An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society*
- RA 8972, or *Solo Parents Welfare Act of 2000*, protects “solo” parents against discrimination with respect to terms and conditions of employment on account of their status
- RA 8371, or *Indigenous Peoples’ Rights Act of 1997*, defines, protects and promotes the rights of indigenous peoples and indigenous cultural communities within the framework of national unity and security
- RA 7875, or the *National Health Insurance Act of 1995*, establishes the Philippine Health Insurance Corporation and aims to improve the implementation and coverage of the old Medicare Program by including the self-employed and the poor who cannot otherwise avail of health insurance. This law sets the priority for the needs of the underprivileged, sick, elderly, women and children

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

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

- RA 8371 provides that indigenous cultural communities and indigenous women shall enjoy land rights and opportunities with men in all spheres of life. It provides for her participation in the decision-making process in all levels as well as full access to education, maternal and childcare, health, nutrition, housing services, and training facilities.
- RA 7941, or the *Party-List System Act*, is the enabling law for the constitutional provision (Art. VI, Sec 5(2)), which states that there shall be party-list representatives and the women sector shall be allocated a seat therein. Under this law, the election of party-list representatives includes the women sector, whereas before women sectoral representatives were appointed by the President.
- Presidential MC 8, (1999), or the *Policy on Equal Representation of Women and Men in Third Level Positions in Government*, was issued to increase the number of women in the career executive service.
- An Inter-Agency Committee on Intermarriages was created in 1998 to strengthen the mechanisms to address the problem of trafficking of Filipino women. The CFO *Foreign Sponsor Watchlist System* was put in place to facilitate access to information on foreign partners who have racist backgrounds or may have petitioned Filipino women more than once, especially those with a history of domestic violence. The CFO *Case Monitoring System* effectively documents and monitors cases involving Filipinos overseas referred to CFO for assistance. The CFO *Information System*, on the other hand, develops and maintains gender-sensitive system to generate sex-disaggregated data.
- *The Migrant Advisory and Information Network* (MAIN) was established in September 1995, where ten government agencies signed a Memorandum of Agreement with the view of harmonizing the approaches and system by which information on migration concerns can be effectively disseminated to the public. MAIN Desks at the regional, provincial, city, municipal and *barangay* levels provide access to services at the grassroots.
- To complement the MAIN, the *Migrant Advisory and Information System* (MAIS), a computer-based information tool designed to address the information needs of Filipinos who are considering migration as an option, seeks to make information on migration readily available to the public so as to help people appreciate the realities of migration and guide them toward an informed decision.
- The CFO provides the *Nationwide Guidance and Counseling Service* to the fiancées, fiancés and spouses of foreign nationals for the purpose of assisting Filipino Women involved in interracial marriages and migration. The service is intended to help them cope with difficulties inherent in interracial marriages and settlement overseas, by providing them with information about migration laws affecting them, marriage concerns, and ways of coping with difficult situations, available welfare and support services abroad, and of their individual and conjugal rights. From 1989 to 1998, a total of 162,286 fiancées, fiancés and spouses of foreign nationals were provided services. Of this figure, 91.2% were women.

- During the UN Special Session of the General Assembly for the Review of the Implementation of the Platform for Action, one of the concerns the RP delegation strongly pushed for in the Further Actions and Initiatives to Implement the Beijing Declaration and the Platform for Action (Outcome Document) was the reference to women migrant workers for all paragraphs that contain the word migrants:  
Paragraph 132 b. “*Promote and protect the human rights of all migrant women and implement policies to address the specific needs of documented migrant women and , where necessary, tackle the existing inequalities between women and men migrants to ensure gender equality ... .*”
- The RP delegation also worked hard towards strengthening international cooperation and measures to address trafficking in women and girls, as contained in paragraphs 104a, 104b, 104c, 104d, 131a, 131b, 131c of the Outcome Document.

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

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

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

73. *People vs. Echagaray* (G.R. No. 113692-93, April 4, 1997). In defining the right to life, the Supreme Court said: The evil of a crime may take various forms. There are crimes that are, by their very nature, despicable, either because of life was callously taken or the victim is treated like an animal and utterly dehumanized as to completely disrupt the normal course of his or her growth as a human being. The right of a person is not only to live but to live a quality life, and this means that the rest of society is obligated to respect his or her own physical body, and the value he or she puts in his or her own spiritual, psychological, material and social preferences and needs.

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

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

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

#### **B. Article 83: Right to an effective remedy**

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

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

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

80. Apart from filing his complaint with the civil government offices, an individual who claims that any of his rights have been violated can file a civil case before the proper civil court for moral and other damages. He can file a special civil action before the proper civil court for habeas corpus, prohibition, mandatory injunction, or restraining order. Other ancillary remedies available to him are: (a) move before the proper civil court for the fixing of his bail, if detained

without bail, or for the reduction of the amount of bail; and (b) move before the proper investigating prosecutor/civil court/military authority or court for the suppression of evidence claimed by him to have been illegally obtained. Of course, he can always file before the Supreme Court a petition for the review by *certiorari* of any order of any civil or military court. He can also appeal to a higher civil court any final decision of a lower civil court against him.

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

82. A position of Undersecretary for Migrant Workers Affairs (OUMWA) was created under RA 8042 to be primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers as well as overseas Filipinos in distress.

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

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

(b) To establish close linkages with the DOLE, the POEA, the OWWA and other government agencies concerned, as well as with non-governmental organizations assisting migrant workers, to ensure effective coordination and cooperation in the provision of legal assistance to migrant workers;

(c) To tap the assistance of reputable law firms and the Integrated Bar of the Philippines and other bar associations to complement the government's efforts to provide legal assistance to migrant workers;

(d) To administer the legal assistance fund for migrant workers established under Section 25 hereof and to authorize disbursements there from in accordance with the purposes for which the fund was set up.

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

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

86. The expenditures chargeable against LAF includes the fees for foreign lawyers hired to represent migrant workers facing charges abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses.

### **C. Article 84: Duty to implement the Convention**

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

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

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

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

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

91. Under the country-team approach, all officers, representatives and personnel of the Philippine government posted abroad regardless of their mother agencies, shall on a per country basis, act as one country team with a mission under the leadership of the ambassador. In this regard, the ambassador may recommend to the Secretary of Foreign Affairs the recall of officers,



representatives and personnel of the Philippine government posted abroad for acts inimical to the national interest such as, but not limited to, failure to provide necessary services to protect the rights of overseas Filipinos.

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

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

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

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

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

95. Article 127 of the RPC provides: "The penalty of *prision correccional* shall be imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippine Islands or shall compel such person to change his residence." Like all liberties, the liberty of abode may be impaired only upon lawful order of the court and "within the limits prescribed by law". Article 87 of the RPC provides for the penalty of *destierro* whereby any person so sentenced shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall not be more than 250 and not less than 25 kilometers from the place designated.

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

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

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

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

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

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

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

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

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

105. In HR Advisory CHR-A3-2000 (20 Jan 2000), the CHR expressed its concern about possible infringement on the right of liberty of movement. The mayor of the City of Marikina reportedly issued an order to "forcibly evict" the residents of particular streets "who will not change their ways" in accordance with Ordinance No. 245, series of 1997, which declared, among other things, "drug risk areas". The PCHR opined that the ordinance was a "tolerable exercise of police power and if properly enforced, may not adversely affect the rights of individuals to travel", as guaranteed by the ICCPR, Philippine Constitution and the landmark case of *Villavicencio vs. Lucban* (39 Phil. 776, 1919).

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

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

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

**(i) Right to Life**

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

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

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

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

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

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

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

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

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

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

- To maintain a high level of discipline and to strictly adhere to the AFP/PNP code of honor, ethics, loyalty, honor, valor and solidarity or otherwise face dismissal from the military or police service
- To exercise utmost restraint and caution in the use of armed force; in the event its use is inevitable, to exercise strict controls in a way that only reasonable force necessary to accomplish the mission shall be taken and directed only against hostile elements, not against civilians or non-combatants

- To treat out-of-combat suspects and enemies, e.g., wounded, surrendered or captured, humanely and with respect and, at the earliest time feasible, to turn them over to higher echelons of command or office for proper disposition
- To avoid unnecessary military or police actions that could cause destruction to private and public property; as a matter of AFP/PNP Civic Action, to undertake whenever practicable measures utilizing available unit manpower and equipment to repair the damage caused on private properties in the course of the operation
- To respect all persons and objects bearing the emblem of the Red Cross/Crescent, White Flag or Truce or emblems designating cultural property

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

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

- Held responsible for the conduct and behavior of personnel under their control and supervision; and, accountable under pertinent provisions of the Articles of War in the case of military personnel and the PNP Rules and Regulations and the Revised Penal Code in case of PNP personnel, or as accessory after the fact, subject of a valid complaint or warrant of arrest, in cases where they refuse to act or otherwise aid or abet the wrongdoing of their subordinates
- To brief and debrief all participants in every security and police operation to ensure their proper behavior and an understanding of their mission in order to assess the overall impact of the operation to AFP/PNP goals and objectives; and, to immediately undertake corrective legal measures or any misconduct committed
- Subject to the requirements of public safety and security, to closely coordinate with local government officials and/or concerned government agencies prior to the conduct of security/police operations to provide for urgent and convenient delivery of services, relief and rehabilitation where civilians are temporarily evacuated for safety
- To ensure that the provisions of this joint circular and other relevant AFP/PNP policies, the pertinent provisions of the Constitution, the Geneva Conventions and the UN declarations on HR and IHL are understood by all their members; and, thus to integrate these provisions into the regular program of instructions for AFP and PNP troop or police information and education sessions in all levels of command and office

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

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

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

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

124. The PNP POP stresses that in all police matters, respect for human rights is of paramount importance. All PNP personnel are regularly reminded to strictly observe prescribed procedures in the performance of their daily tasks and in the conduct of police operations so as to avoid unnecessary or excessive use of force.

125. The PNP POP ensures the protection of the people’s right to life at all times. The underlying principle of maximum tolerance provides that the use of force, especially firearms, shall be applied only as a last resort, that is, when all other peaceful and non-violent means have been exhausted. The force employed must be necessary, reasonable and sufficient to subdue and overcome a clear and imminent danger or resistance being put up by a malefactor or group, and/or to neutralize the vehicles of the suspects.

126. The police siren and megaphone shall be used to influence or warn the offenders or suspects to stop and peacefully give up. In case of an actual shoot-out with the suspect, *panic firing* shall be avoided. Panic firing occurs when one member of the apprehending team opens fire and others follow suit. The police officer shall ensure that no innocent bystanders are hit.

Hence, extreme caution shall be observed when firing a weapon in congested areas. After a shoot-out, the police officer shall check whether or not the suspect still poses danger or has been wounded and disabled. The suspect shall then be immediately brought to the nearest hospital for medical treatment. The team leader of the police operation exercises control over his men.

127. The PNP POP ensures that the rules shall be thoroughly disseminated in all police stations that these rules are thoroughly internalized by all members. For this purpose, reputable government prosecutors, CHR lawyers, and other qualified resource persons are invited as resource persons to discuss the POP.

128. As a standard operating procedure, all police officers are given pre-operation briefings on the general rules as well as the special rules applicable to the type of operations to be conducted or functions to be performed before any unit or element is dispatched. A post operation debriefing is also conducted to enable participants assess lessons learned and check compliance with the rules. Superior officers are imposed with command responsibility.

129. Some military and police authorities have been accused of committing violations on the right to life. These violations allegedly occurred in the course of armed conflict. The government also received criticisms for allegedly using paramilitary forces in the anti-insurgency campaign and for allegedly encouraging self-help community groups and vigilantes for their protection against the incursion of DTs.

130. Military and police actions are governed by standard procedures that uphold, and are consistent with the basic principles of human rights and international humanitarian law. Allegations of human rights violations are therefore investigated by appropriate mechanisms established within and outside the military and police establishments. Appropriate punishment and/or corrective measures are instituted following investigations and due process.

**(ii) Prohibition of torture and other inhuman or degrading treatment or punishment**

131. The Constitution of the Philippines contains provisions that, on the whole, provide the legal climate that would permit the enactment of legislative, administrative, and judicial measures that would prevent the act of torture.

132. It is an avowed State policy that *“The State values the dignity of every human person and guarantees full respect for human rights” (Sec. 11, Art. II).*

133. Article III of the Constitution contains the Bill of Rights with provisions that will ensure the prevention of acts of torture. These are:

*“Sec. 1. No person shall be deprived of life, liberty or property without due process of law.*

*‘Sec. 12. (1) Any person under investigation of the commission for an offense shall have the right to be informed of his right to remain silent and have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.*

(2) *No torture, force, violence, threat, intimidation, or any other means which vitiate the free will, shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.*

(3) *Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.*

(4) *The law shall provide for penal and civil sanctions for violation of this section as well as compensation to and rehabilitation of victims or torture or similar practices, and their families.*

*‘Sec. 18. No person shall be detained solely by reason of his political beliefs and aspirations.*

*‘Sec. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to seclusion perpetua.*

(2) *The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions, shall be dealt with by law.*

*‘Sec. 22. No ex post facto law or bill attainder shall be enacted.’*

134. The Constitution also created the PCHR tasked with the implementation and monitoring of all legal measures for the protection of human rights of all persons within the Philippines. Its specific powers and duties are laid out in Secs. 17 to 19 of Art. XIII, viz.,

*“Sec. 17. (1) There is hereby created an independent office called the Commission on Human Rights.*

(2) *The Commission shall be composed of a Chairman and our Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the abr. The term of the office and other qualifications and disabilities of the members of the Commission shall be provided by law.*

*‘Sec. 18. The Commission on Human Rights shall have the following powers and functions:*

(1) *Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;*

(2) *Adopt its operational guidelines and rules of procedure and cite for contempt for violations thereof in accordance with the Rule of Court;*



(3) *Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;*

(4) *Exercise visitatorial powers over jails, prisons, or detention facilities;*

(5) *Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;*

(6) *Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;*

(7) *Monitor the Philippine Government's compliance with international treaty obligations on human rights;*

(8) *Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it under its authority;*

(9) *Request the assistance of any department bureau, office or agency in the performance of its functions;*

(10) *Appoints its officers and employees in accordance with law; and*

(11) *Perform such other duties and functions as may be provided by law.*

*'Sec. 19. The Congress may provide for other cases of violations of human rights that should fall within the authority of the commission, taking into accounts its recommendations.'*

135. Article 235 of the RPC defines acts of torture as criminal. Thus attempted, frustrated and consummated acts of torture are punishable by law and principals, accomplices and accessories to the torture are criminally liable.

136. The RPC which has been in force since 1932 list many acts of torture as criminal offenses. They are:

- Article 235 - Maltreatment of prisoners
- Article 248 - Murder
- Article 254 - Discharge of firearms
- Article 262 - Mutilation
- Article 263 - Serious physical injuries

- Article 264 - Administering injurious substances or beverages
- Article 265 - Less serious physical injuries and maltreatment
- Article 266 - Slight physical injuries and maltreatment
- Article 282 - Grave threats
- Article 285 - Other light threats
- Article 286 - Grave coercion
- Article 287 - Light coercion
- Article 124 - Arbitrary detention
- Article 125 - Delay in the delivery of detained persons
- Article 126 - Delaying releases

137. In 1992, Congress enacted RA 7438, otherwise known as *An Act Defining Certain Rights of Persons Arrested, Detained, or under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Provides Penalties Thereof.* Section 1 of the Act declares it the policy of the State to value the dignity of every human being and to guarantee full respect for human rights.

138. As used in the Act, custodial investigation (that is, an investigation conducted while a suspect in detention following his arrest without warrant) includes the practice of issuing an “invitation” to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the “inviting” officer for any violation of law. As many acts of torture were reportedly committed during custodial investigation, RA 7438 reiterates the constitutional rights of a person under investigation of an offense, or the so-called *custodial rights*, namely, the rights to remain silent and to have a competent and independent counsel preferably of his own choice, and to be informed of these rights (Art. III, Sec 12(1), 1987 Constitution).

139. Section 2 prescribes procedural safeguards to ensure protection of the constitutional rights of persons arrested, detained or under custodial investigation, thus:

- He shall at all times be assisted by counsel.
- The concerned public officer or employee, or anyone acting under his order or in his place, shall inform such person, in a language known and understood by him, of his custodial rights.

- The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumb-marked if such person does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.
- Any extra-judicial confession made by such person shall be in writing and signed by him in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extra-judicial confession shall be inadmissible as evidence in any proceedings.
- Any waiver by such person shall be in writing and signed by him in the presence of his counsel; otherwise, such waiver shall be null and void and of no effect.
- Such person shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or any member of his immediate family or by his counsel, or by any international NGO accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, guardian or ward.
- The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.

140. Section 3 provides that an assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or with the prosecution of crimes. In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be legally detained by the investigating officer for the allowable period provided for in Article 125 of the RPC, or the so-called "12-18-36 hours".

141. Art 125 provides that a public officer or employee who shall detain any person for some legal ground should deliver such person to the proper judicial authorities (i.e., Supreme Court and such inferior courts as may be established by law) within the period of: 12 hours for crimes or offenses punishable by light penalties or their equivalent, like *arresto menor*, public censure; 18 hours for crimes or offenses punishable by correctional penalties or their equivalent, like *prision correctional*, *arresto mayor*, *destierro*; and, 36 hours for crimes or offenses punishable by afflictive or capital penalties or their equivalent, like death penalty, *reclusion perpetua*, *reclusion temporal*, *prision mayor*.

142. Section 4 provides that any person who obstructs, prevents or prohibits the person arrested, detained or under custodial investigation of his visitorial rights mentioned in Section 2 at any hour of the day or, in urgent cases, of the night, shall suffer the penalty of imprisonment of not less than four years nor more than six years, and a fine of PhP4,000.00.

143. Further, it provides that any arresting or investigating officer or employee who fails to inform such person shall be fined PhP6,000.00 or face a penalty of imprisonment of not less than eight years but not more than ten years or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

144. Significantly, the visitorial rights given to a person detained, arrested or under custodial investigation makes easier the detection of signs of torture like fresh marks on the body, or, the visitorial rights of the detained person may prevent the possibility of the commission of torture. The strict requirements for the execution of extra-judicial confessions help avoid the influence of threat or torture.

145. But RA 7438 also provides safeguards for law enforcement authorities against false accusation of torture. An arrested person who signed extra-judicial confession in the presence of his lawyer may not successfully later recant his confession by alleging that he was tortured into admitting his guilt.

146. In the case of *People vs. Barlis* (231 SCRA) the SC ruled that the right to counsel during custodial investigation is guaranteed merely to preclude the slightest coercion as would lead the accused admit something false, not prevent him from voluntarily telling the truth. In *People vs. Ramon Bolanos* (3 July 1992, 211 SCRA 262), the SC held that extra-judicial confession given by the accused during custodial investigation and without assistance of counsel is inadmissible in evidence. Being already under custodial investigation while on board the police patrol jeep on the way to the police station where formal investigation may have been conducted, the appellant should have been informed of his constitutional right to remain silent.

147. In *People vs. Jovito Tujon, et. al.* (19 Nov 1992, 215 SCRA 559), the petitioners allegedly confessed to the commission of the crime during a custodial investigation. In the said extra-judicial confessions that were conducted separately, both accused were reportedly apprised of their constitutional rights. The prosecutor in charge of the case testified that, when the two accused were brought to his office for investigation, he asked the accused if the statements given to the police were freely given and they answered in the affirmative. He then let them affix anew the respective signatures on the said statement in his presence.

148. The Court noted that the interrogation was made in the absence of *counsel de parte* or *de officio* and the waiver of counsel, if made at all, was not made with the assistance of counsel as required. While the right to counsel may be waived, such waiver must be done voluntarily, knowingly, intelligently, and made (in writing) in the presence of the lawyer of the accused. If the record does not show that the accused was assisted by counsel in making his waiver, this defect nullifies and renders his confession inadmissible in evidence. Extra-judicial confessions taken without the assistance of counsel is inadmissible in evidence.

149. To ensure the urgent reporting of any incidence of torture, a MOA (10 Dec 1990) was forged by the DFA, DILG, DOH, DND, AFP, PNP, PHRA and MAG to facilitate access by medical personnel to detained persons. Requirements for the visit are as follows: physicians and other health personnel must submit two photocopies of their Ids on or before the visit for counter-checking; the written consent or confirmation of the detainee that he/she desires treatment by a private physician since all expenses incurred as consequence thereof shall be

borne by the requesting detainee. The MOA also allows the conduct of exhumations and autopsies by independent forensic experts from government and NGOs. The representatives of signatory agencies may participate therein as observers.

150. Furthermore, under the Joint DND-DILG Circular No. 2-91 (2 Dec 1991) family members, relatives, friends, legal counsels, private physicians or detainees or accused persons are granted free access to the detention center or jail where the detainees are held, but subject to existing laws and corresponding AFP-PNP policy.

151. The AFP ROE for Internal Security Operations Campaign Plan (10 Aug 1998) provides that: military personnel shall respect the HR of both victims and perpetrators at all times and under any circumstance; arrest during the conduct of operations must be effected pursuant existing laws; and, no violence or unnecessary force shall be used in making an arrest, and the person arrested not subjected to any greater restraint that is necessary for his detention.

152. AFP CS MC dated 17 Nov 1998 specifies the rules for the conduct of operations, attack, defense, movements, small unit operations, and indirect fire support guidelines. It strictly prohibits any action or decision that would result in unnecessary destruction of life and property of civilians in areas where military operations are underway. Subsection (d) "Respect for Human Rights", under Section D (Crisis Situation), of the Rules also provides "in all these actions in any situation, all AFP personnel shall respect the HR of the victims and the perpetrators". Command responsibility is stressed and there is no exception in, or justification for, committing torture even if there is an order by a superior officer.

153. The PNP POP (26 June 1997) enjoins strict observance of HR at all times by all PNP members, especially in the conduct of police operations, so as to preclude unnecessary or excessive use of force, which on occasion had resulted in fatalities. It provides that: (1) under any circumstance, the use of force, including firearms, is justifiable only in self-defense and defense of stranger and only as a last resort when all other peaceful non-violent means have been exhausted; (2) whenever resorted to, only necessary and reasonable force sufficient to employ self-defense and defense of stranger or overcome the clear and imminent danger posed or resistance being put up by a malefactor or group shall be applied; (3) reasonable force to neutralize the vehicle and resistance of the suspects is sufficient; and, (4) non violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention.

154. Section 12 (4), Art. III of the Constitution provides that the law shall provide for penal and civil sanctions for violations of human rights, as well as compensation to and rehabilitation of victims of torture or similar practices and their families. The enactment in 1991 of RA 7309, or *An Act Creating the Board of Claims under the DOJ for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes* (see also Articles 9 and 14), assures the grant of financial assistance to victims of unjust imprisonment or detention and victims of violent crimes. The Act states that violent crimes include rape and likewise refer to offenses made or committed with malice resulting in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity.

155. For victims of violent crimes, the maximum amount of claim the Board may approve shall not exceed Ten Thousand Pesos (PhP10,000) or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to the injury, whichever is lower. This is without prejudice to the right of the claimant to seek other remedies under existing laws. Victims of torture may also claim financial assistance from the CHR, through its financial assistance program.

156. RA 8049, or *An Act Regulating Hazing and other Forms of Initiation Rites in Fraternities, Sororities and Organizations of 1995*, regulates and penalizes this method of torture often employed by leaders of college or university organizations to gauge the physical, mental and emotional determination of neophytes to join such organizations.

157. Hazing is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury. The term organization shall include any club of the AFP, PNP, Philippine Military Academy (PMA), or officer and cadet corps of the Citizen's Military Training (CMT) or Citizen's Army Training (CAT).

158. The person or persons who participated in hazing shall suffer the penalty of (a) *reclusion perpetua* if death, rape, sodomy or mutilation results therefrom; (b) *reclusion temporal* in the maximum period if, as a consequence of the hazing, the victim shall become insane, imbecile, impotent or blind; (c) *reclusion temporal* in its medium period if in consequence of the hazing, the victim lost the use of speech or the power to hear or smell, or lost an eye, hand, foot, arm or leg or became incapacitated for the activity or work in which he was habitually engaged; (d) *reclusion temporal* in its minimum period if in consequence of the hazing, the victim becomes deformed, disabled or incapacitated for the activity or work in which he was habitually engaged for more than 90 days; (e) *prision mayor* in its maximum period if the victim becomes ill or incapacitated for more than 30 days; (f) *prision mayor* in its medium period if the victim becomes ill or incapacitated for 10 days or more or if the injury sustained shall require medical attendance for the period; (g) *prision mayor* in its minimum period if the victim becomes ill or incapacitated for 1-9 days or if his injury requires medical attendance for the same period; and (h) *prision correccional* in its maximum period for less serious physical injuries.

### **C. Article 11: Prohibition of slavery and forced labor**

159. Section 18, Article III of the Philippine Constitution provides the following for the prohibition of slavery and forced labor:

*“(1) No person shall be detained solely by reason of his political beliefs and aspirations.*

*(2) Involuntary servitude in any form shall exist except as punishment for a crime whereof the party shall have been duly convicted.”*

160. Articles 267 to 274 of the RPC define and punish crimes against liberty, including slavery and service rendered under compulsion in payment of debts.

161. Moreover, the Philippines is a State party to the following relevant conventions:

- (a) Slavery Convention;
- (b) Protocol amending the Slavery Convention;
- (c) ILO Convention (No. 105) concerning the Abolition of Forced Labor.

162. RA 8042 defines the crime of illegal recruitment and provides for stiff penalties therefor. The crime of illegal recruitment constitutes a crime of economic sabotage when committed by a syndicate (if carried out by a group of three or more persons conspiring or confederating with one another) or in a large scale (if committed against three or more persons individually or as a group) and as such, carries with it the penalty of life imprisonment.

163. The Inter-Agency Council Against Trafficking (IACAT), tasked to coordinate, monitor and oversee the implementation of laws regarding forced labor and slavery, was created in Republic Act No. 9208, otherwise known as the *Anti-Trafficking in Persons Act of 2003*. The Council shall have the following powers and functions according to Section 9:

- (a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) Promulgate rules and regulations as may be necessary for the effective implementation of the Act;
- (c) Monitor and oversee the strict implementation of the Act;
- (d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;
- (e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the Local Government Units (LGUs), concerned agencies, and Non-Government Organizations (NGOs);
- (f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;
- (g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate provisions of the Act;
- (h) Formulate a program for the reintegration of the trafficked persons in cooperation with the Department of Labor and Employment (DOLE), Department of Social Welfare and Development (DSWD), Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;

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

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

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

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

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

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

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

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

164. Section 26 thereof, introduces the *Country Team Approach* in the recovery and repatriation of the trafficked overseas Filipinos. The Country Team Approach under EO 74, s. of 1993 and further enunciated in RA 8042 shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons regardless of their immigration status. Provisions for trafficked foreign nationals are stated in Section 44 of RA 9208. Trafficked persons in the Philippines who are nationals of a foreign country shall be entitled to appropriate protection, assistance and services available to the trafficked persons and shall be allowed to continued presence in the Philippines for a period of fifty-nine (59) days to enable them to effect the prosecution of offenders. Such period may be renewed upon showing of proof by the trial prosecutor that their further testimony is essential to the prosecution of the case. The trial prosecutor shall course his request for extension to the Council which shall accordingly act upon the same. If such request is granted, the registration and immigration fees of such foreign nationals shall be waived.



**D. Articles 12, 13 & 26: Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union**

**(i) Freedom of opinion and expression**

165. Article III of the Constitution provides:

*Section 4. No law shall be passed abridging the freedom of speech, of expression or of the press, or the right of the people to peaceably assemble and petition the Government for redress of grievances;*

*Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official acts, transactions, or decisions, as well as to government research data used as a basis for policy development, shall be afforded to citizen, subject to such limitations as may be provided by law;*

*Section 18 (1). No person shall be detained solely by reason of his political beliefs and aspirations.*

166. The Constitution prohibits two types of restrictions on the freedom of speech and press, namely: (a) prior restraint consisting of official government restrictions on the press and other forms of expression in advance of actual publications or dissemination; and (b) subsequent punishments.

167. The SC has ruled that the freedom of expression ranks in the hierarchy of constitutional rights higher than poverty and, hence, the norms for the regulations of expression place more stringent limits on State action (*Salonga vs. Pano*, 134 SCRA 438, 18 February 1985). Jurisprudence has evolved three tests: (a) the dangerous tendency test; (b) the clear and present danger test; and (c) the balancing of interests test.

168. Philippine laws do not protect libelous, slanderous and obscene speech, hence, the RPC contains the following:

*Article 353 of the Revised Penal Code defines libel as “a public and malicious imputation of a crime, or of a vice or a defect, real or imaginary, or any act or mission, condition, status or circumstance tending to cause the dishonour or contempt of a natural or judicial person, or to blacken the memory of one who is dead”. Article 355 provides the penalty for libel;*

*Article 354 provides that every defamatory imputation is presumed to be malicious, even if it is true, if no good intention and justifiable motive for making it shown, except in the following cases:*

- (i) A private communication made by any person to another in the performance of any legal, moral or social duty;*

- (ii) *Fair and true report made in good faith, without any comment or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, as of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.*

*Article 356 punishes the crime of “threatening to publish and offer to prevent such publications for compensation”;*

*Article 357 punishes the prohibited publication of acts referred to in the course of official proceedings;*

*Article 358 and 359 punish the crimes of slander and slander by deed, respectively;*

*Article 362 punishes libelous remarks;*

*Article 363 and 364 punish the crimes of incriminating innocent person and intriguing against honour, respectively.*

169. Articles 200 and 201 punish the crimes of grave scandal, immoral doctrines, obscene publication and exhibitions of indecent shows.

**(ii) Freedom of conscience and religion**

170. Section 5, article II (Bill of Rights), of the Constitution of the Republic of the Philippines provides the following:

*“No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.”*

171. The foregoing provision consists of two parts: (a) the non-establishment clause, which prohibits the establishment of any religion; and (b) the free exercise clause, which guarantees the free exercise of religion.

172. Three other constitutional provisions express the non-establishment principles namely:

*Section 6, article II, which states that “The separation of the church and the State are inviolable.”*

*Section 2 (5), article IX, section C, which prohibits religious denominations and sects from being registered as political parties or organizations;*

*Section 29 (2), article VI, which states:*

*“No public money or property shall be appropriated, applied, paid or employed, directly or indirectly, for the use, benefit or support of any sect, church or denomination, sectarian institution or system of religion, or of any priest, preacher, minister or other religious teacher or dignitary assigned to the Armed Forces, or to any penal institution or government orphanage or leprosarium.”*

173. There are constitutionally created exceptions to the non-establishment clause, namely:

*Section 28 (3), article VI:*

*“Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries and all lands, buildings and improvements, actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation.”*

*Section 29 (2), article VI:*

*“No public money or property shall be appropriated, applied, paid or employed, directly or indirectly, for the use, benefit or support of any sect, church or denomination, sectarian institution or system of religion, or of any priest, preacher, minister or other religious teacher or dignitary assigned to the Armed Forces, or to any penal institution or government orphanage or leprosarium.”*

*Section 3 (3), article XIV:*

*“At the option expressed in writing by parent or guardian, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religion to which the children or wards belong, without additional cost to the Government.”*

174. The RPC defines the following crimes against religious worship:

*“Article 132. Interruption of religious worship. The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestation of any religion. If the crime shall have been committed with violence or threats, the penalty shall be prision correccional in its medium and maximum periods.”*

*“Article 133. Offending the religious feelings. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony shall perform acts notoriously offensive to the feelings of the faithful.”*

175. PD 442 provides in Art. 91 that the employer shall determine and schedule the weekly rest day of his employees subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labor may provide. However, the employer shall respect the preference of employees as to their weekly rest day when such preference is based on religious grounds.

176. With regard to act incidental to the exercise of freedom of religion, the Corporation Code of the Philippines regulates the establishment of religious corporations and societies; likewise, the Family Code of the Philippines provide that:

*“Marriage may be solemnized by any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar-general acting within the limits of those written authority granted by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officials church or religious sect.”*

177. The Philippine jurisprudence relating to the non-establishment clause and the free exercise clause includes:

(a) The constitutional guaranty of free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of such right can be justified like other restraints of freedom of expression on the ground that there is clear and present danger of any substantive evil which the State has the right to prevent. (*American Bible vs. City of Manila*, 101 PHIL 398 (1957)).

(b) The Supreme Court sustained a provision in the Old Industrial Peace Act allowing laborers to dissociate from or not join a labor union despite its closed-shop agreement with management if they were “members of any religious sect which prohibits affiliation of their members in any such labor organization”. It was held here that the right to association included the right not to associate and that this particular exemption was intended for the benefit of laborers who were inhibited from joining labor unions because of their religious beliefs. The Court further pointed out that the free exercise of religious profession or belief is superior to contract rights. In case of conflict, the latter must, thereto, yield to the former. (*Victoriano vs. Elizalde Rope Workers Union*, 59 SCRA 54, 72 [1974]).

178. In *Ebralinag vs. The Division Superintendent of Schools of Cebu* (1 March 1993, 219 SCRA 256), the Supreme Court said that the expulsion of students for refusing to salute the Philippine national flag and take part in the flag ceremony on the ground that it is contrary to their belief and religion as members of the *Jehovah’s Witnesses*, is violative of the students’ constitutional right to religious freedom. The sole justification for a prior restraint or limitation on the exercise of religious freedom is the existence of a clear and present danger of a character both grave and imminent, of a serious evil to public safety, morals, health or any other legitimate public interest, that the State has a right to prevent.

**(iii) Right to join a trade union**

179. Article 269 of PD 442 generally prohibits foreign nationals from engaging in trade union activities. However, foreign workers with valid working permits may exercise the right of self-organization, subject to reciprocity. The aforementioned provision states,

*“All aliens, natural or juridical as well as foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, that aliens working in the country with valid permits issued by the Department of Labor and Employment, may exercise the right to self-organization and join or assist labor organizations of their choosing for purposes of collective bargaining; Provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers.”*

180. Article 270 regulates the grant of foreign assistance to Philippine labor organization or group of workers in support of trade union activities by requiring that permission of the Secretary of Labor and Employment be secured prior to acceptance of the grant.

181. Article 272 provides that foreign nationals who violate the aforementioned provisions shall be subject to immediate and summary deportation and shall be permanently barred from re-entering the country without the special permission of the President of the Philippines.

**E. Articles 14 & 15: Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property**

182. The constitution of the Philippines provides the following:

*Under section 2, article III (Bill of Rights):*

*“The right of the people to be secured in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall be issued except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and persons or things to be seized.”*

*Under section 3, article III:*

*“The privacy of communication and correspondence shall be inviolable except upon lawful order or when public safety or order requires otherwise as prescribed by law.”*

*Section 3, paragraph 2 of article III further provides that any evidence obtained in violation of sections 2 and 3 shall be inadmissible for any purpose in any proceeding.*

183. The New Civil Code (Republic Act No. 386) provides in article 26 that “Every person shall respect the dignity, personality, privacy and peace of mind of his neighbours and other persons.” The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention or other relief:

- (a) Prying into the privacy of another residence;
- (b) Meddling with or disturbing the private life or family relations of another;
- (c) Intriguing to cause another to be alienated from his friends;
- (d) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect or other personal condition.

184. The RPC (Act No. 3815) defines in articles 267-289 the crimes against liberty (illegal detention and kidnapping) and crimes against security (trespass to dwelling, threats and coercion).

185. Further, the RPC defines and punishes in article 128 the crime of violation of domicile:

*“The penalty of prision correccional in its minimum period shall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects therein without the previous consent of the owner or having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.”*

*“If the offense be committed in the night time, or any papers or effects not constituting evidence of a crime are not returned immediately after the search made by the offender, the penalty shall be prision correccional.”*

186. Article 32 of RA 386 also provides that any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs, among others the right of liberty of abode and of changing the same and the right to privacy of communication and correspondence, of another person shall be liable to the latter for damages.

187. The RPC also defines “crime against honour” such as libel (article 353), libel by means of writing or similar means (article 355), threatening to publish or offer to prevent such publication for a compensation (article 356), slander (article 358), slander by deed (article 359), incriminatory machinations or incriminating innocent persons (article 363) and intriguing against honor (article 364).

188. Section 21 (privileged communication) of rule 130 of the Rules of Court provides that the following persons can testify as to matters learned in confidence in the following cases:

- (a) The husband or the wife during the marriage or afterwards, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage;

(b) Any attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of the professional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;

(c) A person authorized to practice medicine, surgery or obstetrics cannot, in a civil case, without the consent of the patient, be examined as to any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the character of the patient;

(d) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs;

(e) A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure.

189. The Philippines also has an Anti-Wire Tapping Act (RA 4200) which prohibits and penalizes wire tapping and other related violations of the privacy of communication.

**F. Articles 16 (1-4), 17 & 24: Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law**

**(i) Right to liberty and security of persons**

190. Article III of the Constitution provides, in part,

*“Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”*

*“Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order to the court, or when public safety or order requires otherwise as prescribed by law.”*

*“(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.”*

191. Section 2, Art. III of the Constitution underscores the exclusive and personal responsibility of the judge issuing the warrant of arrest to make a determination on the existence of probable cause to order the arrest of the person. The Court has always stressed that the occasion for the determination of probable cause is not for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

192. There are, however, instances where an arrest may lawfully be made without a warrant and/or by a private person, in which case it is known as a "citizen's arrest".

193. These instances are as follows:

(a) When in the presence of the arresting person, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped.

194. The arresting officer is required, at the time of arrest, to inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest, if such was the fact, except when he flees or forcibly resists before the arresting officer has opportunity so to inform him, or when the giving of such information will imperil the arrest.

195. The issuance of a search warrant requires the issuing judge to personally examine the complainant and his witnesses.

196. A search may validly be conducted without a search warrant with the consent of the person searched, when the search is incidental to a lawful arrest, if the search is demanded by the urgency and exigency of the moment, if the object to be seized is in the plain view of the officer who has the right to be in the position to have that view and the object is *per se* subject to seizure.

197. The Tariff and Customs Code does not require a search warrant for purposes of enforcing customs and tariff laws. As such, except in the search of a dwelling house, persons exercising police authority under the customs laws may effect search and seizure without search warrant in the enforcement of customs laws.

198. A public officer or employee who procures a search warrant without just cause will be criminally liable under Art. 129 of the RPC.

199. Titles 9 and 10 of the RPC define crimes against personal liberty and property, respectively, and prescribe penalties therefore. Further, Articles 124 and 126 penalize arbitrary detention and delaying of release of a prisoner or detention prisoner.



200. Also relevant are Secs. 13 and 14 of Art. III, viz.,

*“Sec. 13. All persons except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.”*

*“Sec. 14 (1). No person shall be held to answer for a criminal offense without due process of law.”*

**(ii) Right to recognition as a person before the law**

201. Section 11, Art. II of the Philippine Constitution provides, *“The State values the dignity of every human person and guarantees full respect for human rights.”*

202. Section 1, Art. III of the Bill of Rights further provides, *“No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.”*

203. The Civil Code provides:

*“Art. 40. Birth determines personality, but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions prescribed in article 41.*

*“Art. 41. For civil purposes, the foetus is considered born if it is alive at the time it is completely delivered from the mother’s womb. However, if the foetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four after its complete delivery from the maternal womb.”*

204. Section 37 of the Commonwealth Act No. 613, also known as The Philippine Immigration Act of 1940, provides procedural guarantees for non-resident migrants. It states that no alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration.

**G. Articles 16 (5 to 9), 18 & 19: Right to procedural guarantees**

**(i) Rights of persons arrested, detained or under custodial investigation**

205. The relevant provisions on arrest are found in Rule 113 of the Revised Rules on Criminal Procedure, viz.,

*“Sec. 7. Method of arrest by officer by virtue of warrant. - When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest x x x”*

*“Sec. 8. Method of arrest by officer without warrant. - When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the person to be arrested is then engaged in the commission of an offense or is pursued immediately after its commission or after the escape, or flees or forcibly resists x x x x”*

*“Sec. 9. Method of arrest by private person. - A private person when making an arrest shall inform the person to be arrested of the intention to arrest him and the cause of the arrest x x x x”*

206. RA 7348 prescribes procedural safeguards to ensure protection of the constitutional rights of persons arrested, detained or under custodial investigation.

207. These rights are as follows:

- He shall at all times be assisted by counsel.
- The concerned public officer or employee, or anyone acting under his order or in his place, shall inform such person, in a language known and understood by him, of his custodial rights.
- The custodial investigation report shall be reduced in writing by the investigating officer, provided that before such report is signed, or thumbmarked if such person does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.
- Any extra-judicial confession made by such person shall be in writing and signed by him in the presence of his counsel or in the latter’s absence, upon a valid waiver, and in the presence of any of the parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise such extra-judicial confession shall be inadmissible as evidence in any proceeding.
- Any waiver by such person shall be in writing and signed by him in the presence of his counsel; otherwise, such waiver shall be null and void and of no effect.
- Such person shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-government organization duly accredited by the PCHR or by any international non-government organization accredited by the Office of the President. The person’s “immediate family” shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, guardian or ward.

208. By way of summary of the above-cited rules: At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, or relative, or anyone he chooses to be the most expedient means. No custodial investigation shall be conducted unless it is in the presence of counsel engaged by the person arrested or by any person on his behalf. The right to counsel may be waived but the waiver shall be valid only when expressly made in writing in the presence of counsel. Any statement made in violation of the foregoing procedure shall be inadmissible in evidence.

209. Article 125 of the RPC provides that a public officer or employee who shall detain any person for some legal ground should deliver such person to the proper judicial authorities (i.e., Supreme Court and such inferior courts as may be established by law) within the period of: 12 hours for crimes or offenses punishable by light penalties or their equivalent; 18 hours for crimes or offenses punishable by correctional penalties or their equivalent; and 36 hours for crimes or offenses punishable by afflictive or capital penalties or their equivalent.

210. When a migrant worker or member of his family is arrested or committed to prison or custody, the consular or diplomatic authorities of his State of origin are informed of the fact of arrest or detention.

**(ii) Rights of the accused**

211. Section 14 of Art. III of the Constitution states,

*“Sec. 14 (1) No person shall be held to answer for a criminal offense without due process of law.*

*(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.”*

212. The right to be informed of the nature and cause of the accusation is safeguarded by the provisions in *The Rules of Court* on preliminary investigation, arraignment, requirements for sufficient allegations in the information, bill of particulars and the rules against duplicity.

213. Philippine jurisprudence abounds in cases upholding the right of the accused to be informed of the nature and cause of the accusation against him. In *People v. Crisologo* (G.R. No. 74145) the Supreme Court declared that, *“the absence of a qualified interpreter in sign language and in any other means, whether in writing or otherwise, to inform the accused, a deaf-mute, of charges against him denied him this fundamental right to due process of law”*.

214. The right to speedy trial means that the trial is conducted according to the laws of criminal procedure and the rules and regulations without capricious, vexatious or oppressive delays.

215. SC Administrative Circular No. 4, dated 22 September 1988, was issued to establish a mandatory continuous trial system, which was envisioned as a mode of adjudication conducted with speed and dispatch so that trials are held on the scheduled dates without needless postponements. The factual issues are well-defined at pre-trial and the whole proceedings terminated and ready for judgment within 90 days from the date of initial hearing, unless for meritorious reasons, an extension is permitted. The system requires that the judge (a) adhere faithfully to the session hours prescribed by law; (b) maintain full control of the proceedings; and (c) efficiently allocate and use time and court resources to avoid court delays.

216. In 1998, RA 8493, or *An Act to Ensure a Speedy Trial of All Criminal Cases before the Sandiganbayan, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts*, was enacted into law. Section 6 of the law provides that, “*in no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court x x x*”

217. To complement the continuous trial system, DOJ Circular No. 38, s. 1994, directed the National Prosecution Service, thus, “*no postponement of the trial or other proceedings of a criminal case shall be initiated or caused by the trial prosecutor except in instances where the subject postponement is occasioned by the absence of material witnesses or other causes beyond his control or not attributable to him*”.

218. A convicted person has the right to appeal his sentence to a higher tribunal. The right to appeal, however, is for the benefit of the accused and he may waive it expressly or by implication (*People v. Ang Gioc*, 73 Phil. 336).

219. A convicted person shall not also be tried or convicted again for the same offense. The issue of double jeopardy arises when: (a) the accused is charged with the same offense in two (2) separate pending cases; (b) the accused is prosecuted anew for the same offense after he had been convicted or acquitted thereof, or (c) the prosecution appeals from a judgment in the same case.

220. Section 1, Rule 137 of *The Rules of Court* states,

“*No judge or judicial officer shall sit in any case in which he or his wife or child is pecuniarily interested as heir, legatee, creditor or otherwise or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed in accordance to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.*”

**(iii) Right to be provisionally released from custody**

221. A person under legal custody may be provisionally released upon the giving of security for his release. Section 13, Art. III of the Constitution states,

*“All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law x x x”*

222. The rules for deportation proceedings (BID Office Memorandum No. AAA-01-004) provide,

*“Rule XVII. Release on Bail or Recognizance. Petitions for bail shall be filed at the Office of the Commissioner. No alien shall be released on bail or recognizance, except upon meritorious grounds to be determined by the Commissioner on Immigration.”*

**(iv) Prohibition against *ex post facto* law**

223. The Constitution provides in Sec. 22, Art. III that, *“no ex post facto law or bill of attainder shall be enacted”*.

224. The relevant provisions of the RPC are as follows,

*“Art. 21. No felony shall be punishable by any penalty not prescribed by law prior to its commission.”*

*“Art. 5 Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive through the Department of Justice, the reasons which induce the court to believe that said act be made the subject of legislation.”*

225. An *ex post facto* law has been defined in Philippine jurisprudence as one: (a) which makes an action done before the passing of the law and which was innocent when done, criminal, and punishes such action; (b) which aggravates a crime or makes it greater than when it was committed; (c) which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; (d) which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant; (e) which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful; or (f) which deprives a person accused of a crime of some lawful protection to which he has become entitled, such as protection of a former conviction or acquittal or a proclamation of amnesty.

226. The *ex post facto* clause prohibits only retrospective penal laws and not laws which concern civil matters or proceedings generally, or which affect or regulates civil or private rights. However, Art. 22 of the RPC provides that penal laws shall have a retroactive effect so far as they favor the persons guilty of a felony who is not a habitual delinquent, although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same.

**(v) Compensation for wrongful imprisonment**

227. The payment of compensation for unjust imprisonment is governed by RA 7309, otherwise known as *An Act Creating the Board of Claims under the DOJ for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes*.

228. Under Sec. 3 of RA 7309, the following may file claims of compensation before the Board of Claims:

*“(a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal;*

*(b) any person who was unjustly detained and released without being charged;*

*(c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the court x x x”*

**(vi) Juvenile justice law**

229. Republic Act 9344, otherwise known as *Juvenile Justice and Welfare Act of 2006*, exempts a child under 15 years of age from criminal responsibility. Under the law, a child over 15 years of age but under 18 is exempt from criminal responsibility, provided he acted without discernment. Discernment means the mental capacity of the child to fully appreciate the consequences of his unlawful act.

230. The law also provides for the immediate turn over of children in conflict with the law to social workers upon apprehension instead of jailing them. It also provides for the referral of children’s cases to community-based rehabilitation programs (diversion programs) instead of going to trial, and for juvenile delinquency prevention programs as well as rehabilitation and reintegration.

231. Under the law, the diversion program shall include adequate socio-cultural and psychological responses and services for the child. At the different stage where diversion may be resorted to, *viz.*, at the level of the village chief, at the law enforcement officer and the prosecutor or at the level of the court, several programs are made available for the child in conflict with the law.<sup>1</sup>

**H. Article 20: Prohibition of imprisonment, deprivation of authorization of residence or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation**

232. Section 20, Art. III of the Constitution states, “*No person shall be imprisoned for debt or non-payment of a poll tax.*”

233. Pursuant to DOLE Department Order No. 75-06, series of 2006, or the Revised Rules for Issuance of Employment Permits to Foreign Nationals, the Regional Director may cancel or revoke the Alien Employment Permit (AEP) based on the following grounds only:

- (a) Non-compliance with any of the requirements or conditions for which the AEP was issued;
- (b) Misinterpretation of facts in the application;
- (c) Submission of falsified or tampered documents;
- (d) Meritorious objection or information against the employment of foreign national as determined by the Regional Director;
- (e) Foreign national has a derogatory record; or
- (f) Employer terminated the employment of the foreign national.

**I. Articles 21, 22 & 23: Protection from confiscation and/or destruction of ID and other documents; protection against arbitrary expulsion; right to recourse to consular or diplomatic protection**

**(i) Protection from confiscation and/or destruction of documents**

234. Article 327 of the RPC punishes the act of willfully damaging another’s property for the sake of causing damage due to hate, revenge or other evil motive.

**(ii) Protection against arbitrary expulsion**

235. Under the Constitution, an alien is entitled to the protection of the Bill of Rights. Article 127 of the RPC imposes the penalty of *prison correccional* upon any public officer or employee who, not being authorized by law, shall expel any person from the Philippines or shall compel such person to change his residence.

236. The Philippines, in the exercise of its sovereign right to admit, exclude and deport aliens, has laws on immigration contained in Commonwealth Act (CA) 613, entitled *An Act to Control and Regulate the Immigration of Aliens into the Philippines*, otherwise known as the Philippine

Immigration Act of 1940. This law governs the entry of aliens into the Philippines and their expulsion, deportation and repatriation therefrom. It applies to and is to be enforced in all the territory and waters subject to the jurisdiction of the Republic of the Philippines.

237. Section 27 of the CA Philippine Immigration Act provides that boards of special inquiry shall have the authority to decide whether an alien seeking to enter or land in the Philippines shall be excluded.

238. Proceedings for the deportation of aliens are not criminal proceedings; hence, all proceedings prescribed in criminal cases for the protection of the accused are not present or followed. Likewise, the constitutional guarantee to bail is not applicable to aliens subject to deportation. The expulsion is deemed a protective measure to rid the Philippines of aliens deemed undesirable and the deportee is merely being sent back to his country of origin and allegiance.

239. An alien within the Philippines, unlike one who is applying for entry or is at the threshold of initial entry, is entitled to the full benefits of procedural due process under the Constitution. Consequently, deportation can be ordered only in accordance with laws and after a fair hearing.

240. There are two procedures for deportation of aliens, *viz.*,

*Executive power to deport*

241. The power to deport is lodged in the President of the Philippines. There is no provision in the Constitution nor act of legislature defining the power. However, the act of deporting is subject to regulations prescribed in Section 69 of the Administrative Code, *viz.*,

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

*“The prior investigation is conducted by the President or his authorized agent, which is the Deportation Board.”*

242. Section 69 of the Administrative Code was specifically exempted from the general provisions of the Philippine Immigration Act of 1940.



*Deportation power of the Commissioner of Immigration*

243. The Philippine Immigration Act of 1940 empowers the Commissioner of Immigration to effect the arrest and expulsion of an alien after a previous determination by the Board of Commissioners of the existence of ground or grounds specified in Sec. 37 of the law, viz,

*“Sec. 37. The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:*

*‘(1) Any alien who enters the Philippines after the effective date of this act, by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry;*

*‘(2) Any alien who enters the Philippines after the effective date of this act, who was not lawfully admissible at the time of entry;*

*‘(3) Any alien, who, after the effective date of this act is convicted in the Philippines and sentenced to a term of one year or more for a crime involving moral turpitude committed within five years after his entry into the Philippines, or who, at any time after such entry, is so convicted and sentenced more than once;*

*‘(4) Any alien who is convicted and sentenced for a violation of the law governing prohibited drugs;*

*‘(5) Any alien who practices prostitution or is an inmate of a house of prostitution or is connected with the management of a house of prostitution or is a procurer;*

*‘(6) Any alien who becomes a public charge within five years after entry from cause not affirmatively shown to have arisen subsequently to entry;*

*‘(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant;*

*‘(8) Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority, or who disbelieves in or is opposed to organized government, or who advises, advocates, or teaches the assault or assassination of public officials because of their office, or who advises, advocates or teaches the unlawful destruction of property, or who is a members of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines;*

*‘(9) Any alien who commits any of the acts described in Sections 46 and 47 of this Act, independent of the criminal action which may be brought against him, provided that, in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported; provided, however, that the imprisonment may be waived by the Commissioner of Immigration with the consent of the department head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the department head;*

*‘(10) Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of the Philippine Commonwealth Act No. 653, otherwise known as the Philippine Registration Act of 1941, or who at any time after entry shall have been convicted more than once of violating the provisions of the same act;*

*‘(11) Any alien who engages in profiteering, hoarding or blackmailing, independent of any action which may be brought against him;*

*‘(12) Any alien who is convicted of any offense penalized under Commonwealth Act No. 473, otherwise known as the Revised Naturalization Law of the Philippines or any law relating to acquisition of Philippine citizenship;*

*‘(13) Any alien who defrauds his creditor by absconding or alienating properties to prevent them from being attached or executed.*

X X X X

*(c) No alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration.”*

244. Deportation proceedings are administrative in character and summary in nature. The proceedings commence with the filing of a verified complaint with the Special Prosecutor, who shall determine if probable cause exists to allow deportation of the alien.

245. If the Special Prosecutor finds probable cause, he prepares the written charge which will be served upon the alien, his counsel and his embassy.

246. The charges are referred to the Board of Commissioner, which thereafter deliberates on the charge and informs the alien, his counsel and the embassy of its decision.

247. However, if a foreign embassy cancels the passport of an alien, or does not re-issue a valid passport or travel document, the alien loses the privilege to remain in the Philippines.

248. No warrant of arrest can be issued by the Immigration Commissioner before a final order of deportation is issued and such warrant is confined only to what is necessary to carry out said deportation order (*Neria v. Vivo, G.R. No. 26611-12, 30 September 1969; Contemprate v. Acting Commissioner of Immigration, G.R. No. 28604, 30 October 1970; Collector of Customs v. Villaluz, G.R. No. 34038, 18 June 1976*).

249. The courts have jurisdiction to enjoin the Commissioner of Immigration from deporting an alien on other grounds, just as they have jurisdiction to review his decisions for abuse of discretion. On the other hand, Sec. 69 does not define the cases in which the Chief Executive may execute his power to deport; neither does it limit or curtail said power. Section 29 prescribes the procedure.

**J. Articles 25, 27 & 28: Principle of equality of treatment in respect of remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical attention**

**(i) Equality of treatment in respect of remuneration and other conditions of work and terms of employment**

250. Article 3 of *The Labor Code* states,

*“The State shall afford protection to labor, promote full employment, **ensure equal work opportunities regardless of sex, race or creed**, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.”*  
(emphasis supplied)

251. Article 6, on applicability of the Labor Code, states, *“All **rights and benefits granted to workers under this Code shall x x x apply alike to all workers**, whether agricultural or non-agricultural.”*

**(ii) Right to social security**

252. Section 2 of the *Social Security Law* (RA 1161), as amended by RA 8282, states:

*“It is the policy of the State to establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the **people throughout the Philippines** which shall promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death and other contingencies resulting in loss of income or financial burden. Towards this end, **the State shall endeavor to extend social security protection to workers and their beneficiaries.**”* (emphasis supplied)

253. The Social Security System (SSS) affords protection to all residents of the Philippines, citizens and non-citizens alike, regardless of age, creed, gender, age, geographic location and socio-economic status.

254. It is observed that companies provide private insurance package to foreign nationals under their employment.

*Social security schemes for OFWs*

255. The SSS offers voluntary social security coverage for OFWs under two programs: the Regular Program and the Flexi-Fund Program or the National Provident Fund for OFWs.

256. As of end-2005, OFW registration stands at around 600,000, representing 25% of the total number of workers in countries where the SSS has established its representative offices. To cater to the needs of OFWs prior to their deployment, SSS established an office inside the One-Stop Center of the POEA. The SSS has also established 15 offices worldwide mostly housed at Philippine embassies or consulates. OFW collections have also grown immensely from PhP95 million in 1999 to PhP893 million in 2005. Members' net equity in the Flexi-fund has already reached PhP80 million.

257. The Regular Program provides for retirement, death, disability, sickness, maternity and funeral benefits as well as salary, housing and business loans.

258. The Flexi-Fund Program, on the other hand, is a tax-exempt savings and pension plan designed to encourage overseas Filipinos to augment their savings from their hard-earned income, so they would have generated enough funds when they eventually decide to go home. Any amount contributed on top of the maximum contribution to the Regular Program goes to a worker's individual account. The cumulated balance can be used to supplement member's retirement or disability benefits under the Regular Program - in lump sum, pension or a combination of both. A member also has the option to withdraw any amount to finance needs such as housing, education, or seed capital for business.

*OWWA Program for OFWs*

259. The OWWA has a program providing Filipino working migrants insurance and health-care program benefits.

260. A member is covered with life insurance for the duration of his employment contract. The coverage includes Php100,000.00 for natural death and Php200,000.00 for accidental death.

261. A member is also entitled to disability or dismemberment benefits ranging from Php2,000.000 to Php50,000.00. In case of total permanent disability, a member shall be entitled to Php100,000.00. A burial benefit of Php20,000.00 shall be provided in case of the member's death.

262. This program also provides out-patient services and hospitalization benefits to OFWs and their dependents. Established under EO 195, series of 1994, it was implemented by OWWA in coordination with the POEA, the DFA, and the Philippine Health Insurance Corporation (PHIC). The administration of the said program is now handled by the PHIC since March 2005.

*Bilateral social security agreements*

263. The Philippines has bilateral agreements on social security with the following countries:

- Austria (April 1982)
- United Kingdom/Northern Ireland (September 1989)
- Spain (October 1989)
- France (November 1989)
- Quebec (November 1989)
- Canada (March 1997)
- Switzerland (March 2004)
- Belgium (August 2005)

264. The salient features of these agreements are as follows:

(a) *Equality of treatment* - a covered national of either country, including his dependents and survivors, are eligible for social security benefits under the same conditions as the national of the other country;

(b) *Export of benefits* - a person shall continue to receive his benefits wherever he decides to reside;

(c) *Totalization* - Contribution/creditable periods in both countries shall be added to determine qualification for benefits;

(d) *Payment of benefits* - Each country shall pay a fraction of the benefit due from their respective systems, in proportion to the actual contributions/creditable periods;

(e) *Mutual administrative assistance* - Covered members or beneficiaries may file their claims with the designated liaison agencies of either country, which shall accordingly extend assistance to facilitate processing of claims.

**K. Articles 29, 30 & 31: Right of a child of a migrant worker to a name; registration of birth and nationality; access to education on the basis of equality of treatment; respect for cultural identity of migrant workers and members of their family**

**(i) Right to name**

265. A child's right to a name and nationality is well-recognized in the Philippines. This right is protected by the Law on Registry of Civil Status and the Civil Code. These laws

require that all births shall be entered in the Civil Register Books, wherein all acts, events, and judicial decrees concerning the civil status of persons are to be recorded.

266. The law on civil registry requires that the registration of birth shall be based on the declaration of the physician or midwife in attendance at birth or, in default thereof, on the declaration of either parent of the newborn child. It shall state the date and hour of birth, sex and nationality of the child; names, citizenship and religion of parents, or if the father is not known, of the mother; the civil status of the parents; and the place where the child was born. In case of an illegitimate child, an acknowledgment of paternity will have to be made if the child will bear the surname of the father.

267. In case of failure to register birth, the parents or the responsible member of the family, and the attendant at birth or the hospital or clinic administrator, shall be jointly liable. If there was no attendant at birth, or if the child was not born in a hospital or maternity clinic, the parents or the responsible member of the family shall be liable.

268. In case of a foundling, the person who found the foundling shall report to the Local Civil Registrar the place where found, the date when found, and other attending circumstances.

269. Article 15 of the Civil Code of the Philippines provides that laws relating to “family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad”. As such, under Philippine jurisdiction, the personal laws of a person would govern him wherever he may be.

270. The legal name of a Filipino child consists of a given name and a surname. The former is a matter of choice by the parents; the latter is governed by the Civil Code. A legitimate or legitimated child uses the surname of the father; an adopted child, the surname of the adopting parent; and illegitimate child, the surname of either the father or the mother.

**(ii) Right to nationality**

271. The 1987 Constitution defines the following as citizens of the Philippines:

- (a) Those who were citizens at the time the Constitution was adopted;
- (b) Those whose father or mothers are citizens of the Philippines;
- (c) Those born before 17 January 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
- (d) Those who are naturalized in accordance with law.

272. The Revised Naturalization Law provides that citizenship may be conferred upon an alien through the process of naturalization. An individual desiring to acquire Philippine citizenship should have resided in the Philippines for a continuous period of not less than 10 years. Naturalization of a parent affects the citizenship of his or her minor children. A minor child who is foreign-born, dwelling in the Philippines at the time of the parent’s naturalization, shall be deemed a Filipino citizen only during his or her minority unless he begins to reside permanently in the Philippines while still a minor, in which case, he will continue to be a Filipino citizen even

after attaining majority. A child who is foreign-born after naturalization of his parent shall be considered a Filipino citizen, unless one year after reaching the age of majority he or she fails to register as a Filipino citizen at the Philippine consulate where he resides and to take the necessary oath of allegiance.

273. The Philippines subscribes to the doctrine of *jus sanguinis*, as such the child, wherever born, follows the citizenship of his parents.

**(iii) Access to education**

*Overseas Filipinos*

274. The *Filipino Education and Heritage Program* of the CFO assists in efforts to provide necessary schooling for children of overseas Filipinos.

275. Philippine Schools Overseas (PSOs) are duly-registered educational institutions operating outside the Philippines and implementing the educational curriculum approved by the DepEd, to address educational needs of children of Filipinos overseas, and ultimately facilitate their reintegration in the Philippine educational system upon their return to the country. The schools also serve as a venue for the teaching and propagation of the Filipino culture and heritage among Filipino youth overseas and a locus of community activity.

276. PSOs are either accredited, or have pending applications for accreditation by DepEd. They must also possess a valid permit to operate issued by their host country. By their very nature, PSOs need to comply with requirements and regulations of the Philippine Government and pertinent regulations of the countries where they are located.

277. As of January 2006, 39 Philippine schools overseas have been established and made operational in nine countries - Bahrain, China, Greece, Kuwait, Libya, Oman, Qatar, Kingdom of Saudi Arabia, and United Arab Emirates. Of these schools, 29 have been accredited by the DepEd, while the rest are in various stages of application for accreditation. More than 20,000 students are currently enrolled in Philippine schools overseas at various levels, from pre-elementary, elementary, and high school.

*Foreign students*

278. Foreign nationals who are seeking transfer to a school in the Philippines during the school year must take the Philippine Validating Tests (PVT) according to Department of Education Culture and Sports (DECS) Order No. 22.

279. The PVT validates learnings acquired in various situations under certain circumstances. These tests cover five (5) basic subjects in the school curriculum in the elementary and secondary levels, namely: English, Mathematics, Science, *Araling Panlipunan* and Filipino. The tests are based on the learning competencies prescribed in the elementary and the secondary curricula.

280. The National Educational Testing and Research Center (NETRC) administers the PVT to students upon submission of an appropriate request of the concerned party to the Division Office, duly endorsed by the Regional Office in the area where the school is located.

281. Placement of transferees from foreign countries seeking admission to Philippine Elementary and Secondary School is further elaborated in DECS Order No. 26. It is DECS policy that as much as possible, individual schools, especially private schools, shall be responsible for pupil applicants transferring from foreign countries for grade placement purposes by the DepEd. Each accepting school shall have the discretion to determine the appropriate grade level in which to place the transferee. In general, except as otherwise indicated, the appropriate grade level should be the next curriculum year following that completed abroad by the applicant. The following guidelines from DECS Order No. 67, s. 1993 are given below for the sake of completeness:

- (a) Those who have completed the Sixth or Seventh Grade abroad are eligible for admission to the First Year of High School; however, graduates of a five-year elementary curriculum are eligible only for admission to Grade VI;
- (b) Those who have completed the Eighth Grade abroad are eligible for admission to the Second Year of High School, but shall take Filipino I and Social Studies I (Philippine History and Government);
- (c) Those who have completed the Ninth Grade abroad are eligible for the Third Year of High School, but shall take Filipino I and Social Studies I and then take Filipino II in the Fourth Year of High School;
- (d) Those who have completed the Tenth Grade abroad are eligible for the Fourth Year of High School, but shall take Filipino I and Social Studies I. They need not take Filipino II, III or IV in order to graduate;
- (e) Those who have completed the Eleventh or Twelfth Grade abroad may be eligible for admission to tertiary level, depending on the course they will pursue.

282. The foreign educational system concerned should have a first or elementary level of at least six years, a secondary or high school level system of at least four years, and a total basic education (elementary plus secondary) of at least ten (10) years.

283. The accepting school shall have the discretion to accelerate their pupil to a higher Grade/Year, depending upon the subsequent performance of the pupil in the accepting school. The accepting school shall also be responsible for the appropriate supplementary programs as may be necessary in order that facility in Filipino may be hastened, should it appear inadequate.

#### *Other programs*

284. The Non-Formal Education Accreditation and Equivalency (NFE A&E), under DepEd Order No. 47, developed by the Bureau of Non-Formal Education under the ADB-assisted Philippines Non-Formal Education Project (PNFEP), provides an alternative means of certification of learning to Filipinos and foreigners aged fifteen (15) years and above, who are basically literate, who are unable to avail of the formal school system, or who have dropped out of formal elementary or secondary school.



285. The program aims:

(a) To provide a system for assessing levels of literacy and non-formal learning achievement based on a National NFE A&E Curriculum covering basic and functional education skills and competencies comparable to the formal school system;

(b) To offer an alternative pathway by which out-of-school youth and adults earn an educational qualification comparable to the formal elementary and secondary school system; and

(c) To enable out-of-school youth and adults to gain reading, writing and numeracy skills to meet their learning goals as they define them, and to gain the skills they need to improve their economic status and function more effectively in society.

286. The NFE A&E System is a pioneering effort to offer a uniquely non-formal alternative learning system to formal schooling. It is built around a truly non-formal education curriculum and utilizes a range of innovative non-formal learning strategies designed to break down traditional learning barriers of time, accessibility and resource. It allows flexible entry and exit points and aims to maximize learners' control of the learning process.

**(iv) Respect for cultural identity**

287. The Philippines is a signatory to the *Convention on the Elimination of Racial Discrimination*, having signed and ratified the instrument on 7 March 1966 and 15 September 1967, respectively.

288. The Filipino Education and Heritage Program of the CFO does not only provide schools but promotes projects and activities which will bring younger generations of overseas Filipinos to the Philippines, to encourage them to know the country and its institutions better, and to inculcate in them the ideal that their identity and interests will best be served in the context of preserving their cultural moorings with that of all-Filipino community. This program also includes efforts to promote and advance in an appropriate manner the teaching and study of the Filipino language at various levels of learning within and outside the schools system overseas, particularly in countries or territories which have a high density of permanent overseas Filipino residents.

289. Two programs for overseas Filipinos to maintain their cultural links are *Lakbay-Aral* and *Lakbayan sa Pilipinas*.

290. *Lakbay-Aral*, literally translated as "travel-study", is a program started by the CFO in 1983 to provide young Filipinos overseas with an opportunity to learn more about their roots and heritage by experiencing life in the Philippines.

291. The program seeks to provide young Filipino overseas the opportunity to trace their roots and discover their identities as Filipinos. Through experiencing life in the Philippines, the participants are expected to gain better understanding of the country and its people, and greater awareness and appreciation of their rich Filipino heritage. The experience will hopefully instill and preserve a sense of national pride among the participants, bridge the gap between their native and acquired culture, and serve as catalyst in the participants' search and realization of their Filipino identity.

292. *Lakbayan sa Pilipinas* is a special 12-day journey for overseas Filipinos, their families and friends who would like to visit and recall their pleasant memories about the Philippines, and together experience a special kind of hospitality. Participants are given the opportunity to gain new insights and perspectives about the country as they journey to various historical landmarks and places of interest, and interact with the people of the land.

293. An important mandate of the CFO is to preserve and enhance the social, economic and cultural ties of Filipinos overseas with the Philippines. Toward this end, CFO is actively involved in developing and implementing programs and activities to encourage Filipinos overseas, specially the younger generations, to learn about their country of origin and appreciate their Filipino heritage and culture.

294. The CFO also aims to help children of Filipino descent overseas to learn to speak the Filipino language. The CFO published and made available the *Guide to Learning Filipino* in 2002, a teaching material with accompanying musical tape. It was developed for organizations and groups overseas interested to teach the Filipino language to children of overseas Filipinos and other individuals who would like to learn the basic Filipino. The lessons are culture-based and aims to pave the way toward better understanding of the Philippines and its people.

295. The book seeks to teach the Filipino language by situating the lessons within recognizable Philippine conditions and by using vignettes of Philippine life. Philippine songs, legends, stories or folklore, games, cuisine have also been interspersed with the lessons as exercises, examples, and practical learning to reinforce the learning of the Filipino language. Throughout the book, questions, exercises, and activities are provided to motivate learners to think for themselves and to practice or widen their vocabulary.

**L. Article 32: Right to transfer to the State of origin  
their earnings, savings and personal belongings**

296. Remittances can be sent by migrant workers through many channels with varying levels of regulation and opacity: banks, money-transfer organizations, hand delivery/courier or transfers that occur as part of other commercial or charitable activities. Some of these latter channels have been labeled as “informal”.

297. The formal banking channels account for a larger share of Filipino remittances largely due to the long-standing involvement of the Philippine National Bank and more recent market entry by other commercial banks. There is also the convergence of services offered by Philippine banks, licensed non-bank money transfer agencies, courier and cargo companies, and others which offer a wide range and growing range of services available at financial institutions to transfer money overseas, such as electronic transfers, money orders, drafts, “door-to-door service”, dual debit cards and others.

298. For a period of five (5) years, Western Union has captured a market share estimated as high as 20 percent of wire transfers using nearly 7,000 outlets as of year 2002, as indicated in a 2004 report rendered by the Asian Development Bank.

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

**A. Article 37: Right to be informed before departure of the  
conditions of admission to the State of employment and  
of their remunerated activities**

299. All OFWs are required to undergo a Pre-Departure Orientation Seminar (PDOS), a mandatory one-day briefing given to workers by entities duly accredited by the OWWA. The PDOS provides workers briefing on travel procedures, the documents they must carry, how to remit their earnings, what to do upon arrival, what to do and where to go in times of need, the risks and rewards of working abroad, reminders of their basic family obligations, their health and safety and other last minute reminders in overseas employment.

300. Accredited institutions and trainers administer the PDOS. At present, a number of recruitment agencies have an in-house PDOS facility while NGOs run PDOS for domestic workers. A few associations of recruitment agencies are also accredited to conduct PDOS.

301. To complement PDOS, the POEA introduced the Pre-Employment Orientation Seminar (PEOS), which is conducted in the regions and provinces, to enable prospective worker-applicants make informed decisions before they desire to pursue an application for overseas employment. The PEOS, usually conducted by local government units, guides applicants in making intelligent decisions before they desire to pursue overseas employment.

302. Apart from PEOS, the POEA undertakes a Pre-Employment Orientation Program (PEOP) for those who wish to work abroad. The program assesses the prospective applicants' preparedness and qualifications embarking on overseas job hunting. It also informs the applicants on illegal recruitment, the realities of working abroad and the correct application and recruitment procedures. The Anti-Illegal Recruitment Program, consisting of preventive and remedial components, is also being conducted nationwide. The program is conducted in partnership with multi-media organizations, church groups, NGOs, LGUs, schools and private entities.

303. The Community Education Program (CEP) is an annual information campaign conducted by the CFO. In coordination with various government agencies, NGOs, LGUs and academic institutions, this program of the CFO seeks to assist prospective migrants in making informed decisions regarding working or migrating abroad, as well as generate community involvement on migration concerns. It also aims to raise public awareness on various issues concerning migration, intermarriages and existing government policies and programs directed against illegal recruitment, documentation fraud and trafficking in persons, among others.

304. The CFO has also launched a program entitled: Migrant Social and Economic Integration. The overall objective of this program is to ensure that all Filipinos migrating to other countries are adequately prepared to meet the practical and psychological problems attendant to international migration.

305. The Migrant Social and Economic Integration Program undertakes activities designed to provide Filipino emigrants with adequate structured information and advice about all aspects of migration to their countries of destination, as well as assistance in achieving early social and economic adjustment within their new environment.

306. This program also provides for a continuing linkage with registered Filipino migrants, and a means by which migrants can be assisted by cooperating organizations in the process of adjustment and settlement in their host countries.

307. Filipino emigrants or those leaving the country to settle permanently abroad are required to register with the CFO. Part of its registration requirements is attendance in the PDOS to prepare them for settlement overseas.

308. Country-specific PDOS are conducted for departing Filipino emigrants to address their adjustment concerns in their destination countries. In these seminars, various topics are discussed such as travel regulations, immigration procedures, cultural differences, settlement concerns, employment and social security concerns and rights and obligations of Filipino migrants.

309. Guidance and Counseling services are offered to Filipinos proceeding abroad as fiancé(e) and spouses of foreign nationals. This is a pre-requisite to the issuance of passports under RA 8239 or the Passport Act and DFA Order 28-94.

310. Peer Counseling services are conducted for departing children of Filipino emigrants aged thirteen to nineteen (13-19) years old. This service responds to the needs of young Filipino emigrants by helping them cope with change in their social environment. The sessions provide them with information that will help facilitate their adjustment.

311. To complement the pre-departure services provided in the Philippines, the CFO encourages overseas-based Filipino associations, welfare groups and other private organizations to provide post arrival services to newly arrived Filipino immigrants. The program aims to provide Filipino migrants with relevant information that will enable them to adjust and cope with the demands of settlement in a new country.

312. Post arrival services include language courses, orientation programs, and networking or referral services to employment agencies, migrant resource groups, and other Filipino associations within the area of settlement.

**B. Articles 38 & 39: Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose the residence in the territory of the State of employment**

**(i) Right to be temporarily absent without effect upon authorization to stay or work**

313. The holder of a valid alien employment permit is authorized to stay in the country for a period of two (2) years extendible for another two (2) years at any given time. During the period, the holder has the right to travel outside of the country and return thereto for as many times as he would wish.

**(ii) Right to liberty of movement and of abode**

314. The freedom to choose and change one's place of abode is guaranteed in Sec. 6, Art. III of the Constitution, which provides, in part, "The liberty of abode and changing the same within the limits prescribed by the law shall not be impaired except upon lawful order of the court x x x"

315. Article 12 of the RPC provides, "*The penalty of prison correccional shall be imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippine Islands or shall compel such person to change his residence.*"

316. Like all liberties, the liberty of abode may be impaired only upon lawful order of the court and within the limits prescribed by law. Article 87 of the RPC provides for the penalty of *destierro* whereby any person so sentenced shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall not be more than 250 and not less than 25 kilometers from the place designated.

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

318. In another case, *Villavicencio v. Lucban* (39 Phil 778), the Supreme Court overruled the "deportation" by the Mayor of Manila of some 177 women of ill-repute to Davao City.

319. As to the limitations of the right to travel by reasons of national security, public safety and public health, the Supreme Court held, for example, that health offices might restrict access to contaminated areas and also to quarantine those already exposed to the disease sought to be contained (*Lorenzo v. Director of Health*, 50 Phil 195). The Court upheld in the case of *Rubi v. Provincial Board of Mindoro* (39 Phil 660), the action of respondents requiring the members of certain tribes to reside in a reservation for their better education, advancement and protection. The measure was held to be a legitimate exercise of the police power of the State.

**C. Article 40: Right to form associations and trade unions; right to participate in public affairs of their State of origin, to vote and be elected at elections of that State; procedure and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment**

**(i) Right to form associations and trade unions**

320. Section 8, Art. III, of the Constitution provides that "The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall be abridged."

321. This provision specifies that the right to form associations belongs to the people. The right may not be impaired without due process of law. It is thus deemed an aspect of the general right of liberty. The degree of protection an association enjoys depends on the position which the association's objective or activity occupies in the constitutional hierarchy of values. The standards of allowable restrictions are similar to those applied to the freedom of speech and expression.

322. The 1987 Constitution recognizes the role and rights of people's organization. Thus, article XIII provides:

*Section 15. The State shall respect the role of independent people's organizations to enable the people to protect and pursue, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means, People's organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure;*

*Section 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.*

323. Furthermore, workers' right to self organization are guaranteed in Section 3 of article XIII, which provides:

*"The State shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all."*

*"It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane condition of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law."*

324. The Philippines is a State party to ILO Conventions No. 87 (Freedom of Association and the Right to Organize) and No. 98 (Right to Organize and Collective Bargaining). The Constitution, in article IX, encourages the growth of a multi-party system.

**(ii) Right to participate in public affairs of their State of origin, to vote and be elected at elections of that State**

325. Article V of the Constitution guarantees the right of suffrage of Filipino citizens, viz.:

*"Section 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property or other substantive requirement shall be imposed on the exercise of suffrage."*

326. The framers of the 1987 Philippine Constitution made a specific provision granting OFWs the right to vote. Section 2, Article V of the 1987 Constitution states, “*The Congress shall provide a system of securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.*”

327. On 13 February 2003, RA 9189, otherwise known as the *Overseas Absentee Voting (OAV) Act of 2003*, was signed into law.

328. RA 9189 provides a mechanism that will provide a system for absentee voting by qualified Filipinos abroad.

329. Section 4 thereof states that any Filipino abroad who has not renounced his Filipino citizenship and not otherwise disqualified by law, shall have the right to register and vote in any national, regional or local elections.

330. Registration is open to Filipinos who are at least eighteen (18) years of age regardless of their location, work category and residency status abroad according to Section 7.

331. Disqualification of an overseas Filipino, is detailed in Section 6:

(a) Any Filipino who has been sentenced by final judgment of a Philippine court or tribunal to suffer imprisonment of not less than one (1) year, including those found guilty of disloyalty as defined under Article 137 of the Revised Penal Code, such disability not having been removed by plenary pardon or amnesty: Provided, however, that any person disqualified to vote under this subsection shall automatically reacquire the right to vote upon expiration of five (5) years after service of sentence;

(b) Any Filipino previously declared insane or incompetent by competent authority unless subsequently declared by proper authority that such person is no longer insane or incompetent;

(c) Any person who has lost his Filipino citizenship;

(d) Any person who has renounced his Filipino citizenship and has pledged allegiance to a foreign country;

(e) Any person whose registration has been cancelled or annulled.

**D. Articles 43, 54 & 55: Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity**

332. The information provided in pars. 64 and 65 is hereby reiterated.

**E. Articles 44 & 50: Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage**

333. The wife and unmarried children below 21 years of age of the holder of a valid employment permit are likewise authorized to stay within the country for a period of two (2) years extendible for another two (2) years.

**F. Articles 45 & 53: Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects; measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family**

**(i) Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects**

334. The information provided in par. 278-291 is hereby reiterated.

**(ii) Measures taken to guarantee integration of children of migrant workers in the local school system**

335. The information provided in pars. 279-284 is hereby reiterated.

**(iii) Right to freely choose a remunerated activity for members of a migrant worker's family**

336. Dependents of non-resident foreign nationals may engage in gainful employment and shall apply for an AEP. Legitimate spouses of the officers and staff of international organizations are exempted from securing an AEP.

**G. Articles 46, 47 & 48: Exemption from import and export duties and taxes in respect of particular belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation principle**

**(i) Right to transfer earnings and savings from the State of employment to the State of origin or any other State**

337. The information provided in pars. 297 to 299 is hereby reiterated.

**(ii) Imposition of taxes and avoidance of double taxation principle**

338. The Philippines has entered into treaties with various countries for the avoidance of double taxation and prevention of fiscal evasion. Tax treaties with the following countries have been ratified and are currently in force: Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Indonesia, India, Israel, Italy, Japan, Korea, Malaysia, the Netherlands, New Zealand, Norway, Pakistan, Romania, Russia, Singapore, Spain, Sweden, Switzerland, Thailand, United Kingdom, United States of America, and Vietnam.



339. Section 105 (h) of the Tariff and Customs Code entitles an alien, who is coming to settle in the Philippines for the first time, to import all his used household goods and personal effects tax and duty-free.

340. Section 35 of RA 8042 exempts Filipino migrant workers from the payment of travel tax and airport fee upon proper showing of proof of entitlement by the POEA.

**H. Articles 51 & 52: Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity**

341. The foreign national is not restricted from seeking other employment after termination of his previous employment. However, the DOLE must be notified of the said transfer or termination of employment and the AEP card under the previous employer must be surrendered for cancellation. A new AEP must be secured prior to commencement of employment.

342. It must be mentioned that the AEP shall be valid for one (1) year or co-terminus with the duration of employment, consultancy services or other modes of employment or term of office. Said AEP is valid for the position/s and company for which it was issued. In case of assignment in the company's subsidiaries, branch offices and joint ventures and those assigned in the headquarters with oversight function in any of the branch offices, operation or projects in the country, one (1) AEP shall be required and valid for all the said assignments irrespective of their place(s).

343. The AEP may be revoked or cancelled only on any of the following grounds:

- Misrepresentation of facts or falsification of documents submitted
- The foreign national has been declared undesirable alien by competent authorities
- Non-compliance with the condition for which the AEP was issued
- Failure to renew AEP within one (1) year after its expiration

344. A refugee in the Philippines, who satisfies the requirements set by DOLE and DOJ, may also apply and be granted with an AEP.

345. Multiple or simultaneous employment of foreign nationals is prohibited by the law.

**I. Articles 49 & 56: Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion**

346. The information provided in pars. 343 to 345 is hereby reiterated.

**PART V: PARTICULAR CATEGORIES OF MIGRANT WORKERS  
AND MEMBERS OF THEIR FAMILIES**

347. Under local laws, owners and representatives of foreign principals whose companies are accredited by the POEA, can come to the Philippines for a limited period solely for the purpose of interviewing Filipino applicants for employment abroad.

348. Also, holders of the Special Investors Visa have the privilege to work for the company where they made the investment for as long as the investment subsists.

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

**A. Article 65: Establishment of appropriate services to deal with  
questions concerning international migration of workers and  
members of their families**

349. Section 19 of RA 8042 provides for the establishment of a Migrant Workers and Other Overseas Filipinos Resource Center within the premises and under the administrative jurisdiction of the Philippine Embassy in countries where there are large concentrations of Filipino migrant workers. The Center provides the following services:

- (a) Counseling and legal services;
- (b) Welfare assistance including the procurement of medical and hospitalization services;
- (c) Information, advisory and programs to promote social integration such as post-arrival orientation, settlement and community networking services for social integration;
- (d) Institute a scheme of registration of undocumented workers to bring them within the purview of the law;
- (e) Human resource development, such as training and skills upgrading;
- (f) Gender sensitive programs and activities to assist particular needs of women migrant workers;
- (g) Orientation program for returning workers and other migrants; and
- (h) Monitoring of daily situations, circumstances and activities affecting migrant workers and other overseas Filipinos.

350. The establishment and operations of the Center is a joint undertaking of various government agencies. The Center is open for twenty-four (24) hours daily, including Saturdays, Sundays and holidays, and is staffed by Foreign Service personnel, service attaches or officers who represent other organizations from the host countries. In countries categorized as highly

problematic by the DFA and the DOLE and where there is a concentration of Filipino migrant workers, the Government provides for a lawyer and a social worker for the Center. The Labor Attaché coordinate the operation of the Center and shall keep the Chief of Mission informed and updated on all matters affecting it.

351. On-Site Services which are offered by OWWA include the following:

- (a) Providing post-arrival orientation among OFWs (for some host countries like South Korea & Taiwan);
- (b) Locating OFWs on-site as per request of families left-behind;
- (c) Community Reach-out Program;
- (d) Socio-cultural activities like sports festivals, medical missions;
- (e) Legal assistance, mediation and conciliation;
- (f) Psycho-social counseling;
- (g) Skills/Techno and Entrepreneurship Trainings as preparatory phase for eventual reintegration of OFWs i.e., Business Plan preparation, Computer Literacy, Crafts, Cooking, Health Care, Survival Training, etc.;
- (h) Airport assistance.

**B. Article 67: Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration**

352. The Labor Attaché and/or the POEA, in verifying the employment contract, sees to it that OFWs are provided for their return to the country. As such, employers are obliged to provide OFWs with free airfare from and to the Philippines.

353. RA 8042 provides for the system of repatriation of workers and the mandatory repatriation of underage migrant workers.

354. Section 15 of RA 8042 states that the repatriation of the worker and the transport of his personal belongings is the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation is borne by or charged to the agency concerned and/or its principal. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.

355. The OWWA, in coordination with appropriate international agencies, undertakes the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency. However, in cases where the principal or recruitment agency cannot be identified, all costs attendant to repatriation is borne by the OWWA.

356. Section 16 discusses the mandatory repatriation of underage migrant workers. Upon discovery or being informed of the presence of migrant workers whose actual ages fall below the minimum age requirement for overseas deployment, the responsible officers in the foreign service shall without delay repatriate the said workers and advise the DFA, through the fastest means of communication available, of such discovery and other relevant information.

357. Section 17 provides for the establishment of replacement and monitoring center. A replacement and monitoring center was created in the DOLE for returning Filipino migrant workers which shall provide a mechanism for their reintegration into the Philippine society, serve as a promotion house for their local employment, and tap their skills and potentials for national development.

358. The DOLE, the OWWA, and the POEA formulated a program that motivates migrant workers to plan for productive options such as entry into highly technical jobs or undertakings, livelihood and entrepreneurial development, better wage employment, and investment of savings.

359. TESDA, the Technology Livelihood Resource Center (TLRC), and other government agencies involved in training and livelihood development give priority to those who had been employed as domestic helpers and entertainers.

360. DOLE, OWAA, and POEA undertake the following activities:

(a) Develop livelihood programs and projects for returning Filipino migrant workers in coordination with the private sector;

(b) Coordinate with appropriate private and government agencies the promotion, development, re-placement and the full utilization of their potentials;

(c) Institute in cooperation with other government agencies concerned, a computer-based information system on skilled Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private;

(d) Provide a periodic study and assessment of job opportunities for returning Filipino migrant workers.

361. In June 2006, a total of 561,256 Filipinos took the Skills Training Programs offered by TESDA. A total of 155,906 enrolled in the Institution-Based Programs administered in schools, while 23,577 enrolled in the Enterprise-Based Programs being implemented within companies and firms. 167,633 enrolled in the Community-Based Programs designed to catalyze the creation of livelihood enterprises that shall be implemented by the trainees, immediately after training. The remaining 214,140 enrolled in other programs conducted by TESDA.

362. The OWWA formulated a Reintegration Program which facilitates reintegration of OFW returnees into the mainstream of society by addressing the psycho-social and economic needs of both the OFW returnees and their families through organizing of families of OFWs; providing

business counseling, skills-techno and entrepreneurship development training for OFW while on-site and among interested families left-behind and OFW returnees including other training like basic social counseling; and provision of economic packages for interested OFW groups who would like to venture in any business or economic activities as follows:

- OFW Groceria Project - a non-collateral, interest-free loan window of fifty thousands (P50,000.00) pesos worth of merchandise goods for every qualified OFW organization and
- NLSF-OWWA LDPO (Livelihood Development Program for OFWs) - a collateralized loan window with 9% nominal interest rate per annum offering a loan ceiling amount of two hundred thousand (P200,000.00) pesos maximum for individual OFW borrower and maximum of one million pesos for a group of five members

**C. Article 68: Measures aimed at the prevention and elimination of illegal clandestine movements and employment of migrant workers in an irregular situation**

363. The information provided in pars. 162 to 164 is hereby reiterated.

364. Section 14 of RA 8042 gives priority to the establishment of programs and services to prevent illegal recruitment, fraud, and exploitation or abuse of Filipino migrant workers. All embassies and consular offices, through the POEA, issue travel advisories or disseminate information on labor and employment conditions, migration realities and other facts; and adherence of particular countries to international standards on human and workers' rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment.

365. The POEA has a 24-hour Information Center which replies to public inquiries regarding overseas employment, more particularly on issues relating to availability of jobs overseas and the legitimacy of persons offering jobs overseas.

366. RA 8042 further prevents unscrupulous illegal recruiters from taking advantage of workers seeking employment abroad by instituting financing schemes that will expand the grant of pre-departure loan and family assistance loan. The law provided for the creation of a Migrant Workers Loan Guarantee Fund administered by OWWA.

367. The Public Information and Education Program of the CFO conducts an annual information campaign entitled: *The Community Education Program (CEP)*. CEP, which is conducted by the CFO in coordination with various government agencies, NGOs, LGUs and academic institutions, seeks to assist prospective migrants in making informed decisions regarding working or migrating abroad. The program also aims to raise public awareness on various issues concerning migration, intermarriages and existing government policies and programs directed against illegal recruitment, documentation fraud and trafficking in persons, among others.

**D. Article 69: Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party, and circumstances to take into account in case of regularization procedure**

368. The information provided in pars. 162 to 164 is hereby reiterated.

369. For OFWs, Sec. 28 of RA 9208 provides for the rescue of illegal Filipinos migrants at the country of destination. Under this provision, the embassy or consulate which has jurisdiction over the place where the victim is residing has the duty of verifying the veracity of the report of incidence of trafficking and inquire about the status of the victim.

370. Consistent with the country team approach, the Post concerned shall send a team composed of a consular officer and personnel from the POLO or the Overseas Filipinos Resource Center (OFRC), as the case may be, to conduct a visit to the jail, establishment, work site or residence of the victim.

371. Rescue operations are then immediately conducted in cooperation and close coordination with the police authorities and other relevant law enforcement agencies in the host country, especially if the victim is under detention or being kept against his/her will.

372. Thereafter, the victim is encouraged to execute a sworn statement, recounting among others, the people/establishment involved in the recruitment/transfer and deployment, the modus operandi employed to recruit, transport and deploy the victim, and other pertinent information which could provide a lead in the investigation and eventual prosecution of the perpetrators.

**E. Article 70: Measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with standards of fitness, safety, health and principles of human dignity**

373. There is no existing mechanism to monitor the living conditions of non-resident foreign nationals in the Philippines and Filipino migrant workers. Such are usually stipulated in the contract of employment and non-compliance with its provisions can lead to filing of a complaint for breach of contract.

**F. Article 71: Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to death**

374. Under Sec. 15 of RA 8042, the shipment of remains and transport of the personal belongings of a deceased Filipino migrant worker and all costs attendant thereto shall be borne by the principal and/or local agency.

375. The OWWA and DFA both offer repatriation programs to facilitate the immediate repatriation of distressed OFWs and medically-ill OFWs. These agencies offer airport assistance, domestic transport and temporary shelter.

-----