

LABOR MIGRATION  
BETWEEN  
SECURITY AND  
VULNERABILITY

A VOYAGE  
INTO GREY ZONES

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## The Roman Catholic Archbishop of Manila

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A fruit of the collaboration between the International Catholic Migration Commission (ICMC), the Episcopal Commission for the Pastoral Care of Migrants and Itinerant People (ECMI), other Church groups and international law scholars, the present work – Labor Migration Between Security and Vulnerability: A Voyage into Grey Zones – seeks to contribute to the efforts being made for the greater protection of migrant workers. It identifies “those elements in legal provisions and labour contracts that may lead to the increased vulnerability and abusive situations” for migrant workers. Using the Philippine experience with labor migration, the study points to the urgent need for “more comprehensive regional and international agreements and practical reference frameworks”.

Indeed, labor migration is a complex, global phenomenon, calling for international cooperation and a sense of deep solidarity and compassion (cf. *Caritas in veritate*, 62). However, as this study indicates, there has been a low level of institutionalized international cooperation precisely on this matter, thus raising “fundamental questions on the understanding of global solidarity and humanity.”

Pope Francis has pointed out that the presence of migrants and refugees challenges us as a Church community. He has reminded us, too, that confronted with this issue, “the answer of the Gospel is mercy”. It is mercy which “nourishes and strengthens solidarity towards others” (cf. Message for the World Day of Migrants and Refugees, 17 January 2016)

Our prayer is that the present work, particularly in its recommendations, would be seriously considered by all concerned. May this laudable effort lead to greater protection of migrant workers and better planned labor migration policies.

+ Luis Antonio G. Cardinal Tagle

+ Luis Antonio G. Cardinal Tagle  
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*...they are the travelling messengers of Christ, and should conduct themselves as such*  
(AA, 14)

Our Church is a mother. As a mother, she has first and foremost an obligation to educate and accompany all people. She speaks up especially in matters of faith and moral issues.

The International Catholic Migration Commission contributes to this goal in its advocacy work and in its operational action. The present volume shows the concerns and affection of ICMC towards migrants. CBCP – ECMI is grateful for the words and works of ICMC, and for the collaborative efforts in mutual dedication and responsibility towards migration.

Men and women are migrants by nature. They are human persons, moving in search of greener and safer pastures. They leave their own home in order to find work and help their loved ones. They migrate for their own and for their loved ones' welfare. They have a face; they have names; they have a personal history. Migrants are not a number, not a statistical element. They are not an object of production or a tool for profit.

This is what *Laborem Exercens* tells us, "A migrant in search for work must in no way become an opportunity for financial or social exploitation" (23). The Universal Catholic Catechism amplifies this by stating "Immigrants are to be received as persons and helped, together with their families, to become a part of societal life" (2241).

The Church teaches to treat and welcome migrants as human persons. They are not a commodity. They are not a means for production. They are not to be considered as products for export, nor are they solely sources of remittances. As the Book of Genesis states, "God created the human beings in His image; in the divine image did God create the human beings, male and female did God create them" (Gen. 1,27).

A migrant is a human person with dignity. He is the image of God and therefore to be loved, respected and cared for. This is what the Church does to all migrants, to protect and serve them.

As a human person, migrants are entitled to respect for his or her dignity and rights. Our Church works hard to make sure their dignity and rights are protected, preserved and promoted.

As a mother, the Church is impelled by her maternal care and love to protect and to pastor them with spiritual assistance. She works to keep them safe and helps providing security, especially if lives are threatened. The pastoral care of migrants is therefore an ecclesial concern which explains

why the Church strongly exhorts her children to be more hospitable to migrants. She is concerned with the wellbeing and welfare of migrants and opens her doors worldwide enabling them to integrate Catholic communities and parishes of the countries of labor. The Church shows her universality and Catholic identity in welcoming, accepting and treating all equally. In the Church, no one is treated like a stranger since all are her children. There is no hostility, no contempt. She is a Church without borders, a Church without favorites. When a Church welcomes a migrant she recognizes Jesus in him or in her, as Jesus says: "I was a stranger and you welcomed me into your house". (Matthew 25,36).

The Church is journeying with her children. She knows about the dangers and the many risks taken. She assigns competent priest-chaplains and pastoral workers, and develops regular contacts between Churches of origin and of arrival. The words of Saint Pope John Paul II "Nella Chiesa nessuno è straniero" (in the Church no one is a stranger) rings strong and true in the hearts of all men. We feel confident this research will contribute to the better understanding of the risks migrants incur and of the need for all to be protective.

United and bound by our compassion and service towards migrants, CBCP – ECMI and ICMC commit ourselves to the said vision.



+ Ruperto Cruz Santos, DD

Bishop of Balanga and Catholic Bishops' Conference of the Philippines  
Episcopal Chairman for the Pastoral Care of Migrants and Itinerant People

# ABBREVIATIONS

AMRSP	Association of Major Religious Superiors in the Philippines
ATN	Assistance to Nationals
BI	Bureau of Immigration
CEP	Community Education Program
CFO	Commission on Filipinos Overseas
CMA	Center for Migrant Advocacy
COW	Center for Overseas Workers
CPDEP	Comprehensive Pre-Departure Education Program
CSOs	Civil Society Organizations
CSSJB	Congregation of the Sisters of St. John the Baptist
DAWN	Development Action for Women Network
DFA	The Department of Foreign Affairs
DILG	Department of the Interior and Local Government
DOJ	The Department of Justice
DOLE	Department of Labor and Employment
DSWD	Department of Social Welfare and Development
ECMI	Episcopal Commission for Pastoral Care of Migrants and Itinerant People
FMM	Franciscan Missionaries of Mary
GLAAD	Global Legal Assistance and Advocacy
GO	Governmental Organization
HSWs	Household Service Workers
IACAT	Inter-Agency Council against Trafficking
ICMC	International Catholic Migration Commission
ILO	International Labour Organisation
ISWSFN	International Social Welfare Service for Filipino Nationals
JFC	Japanese-Filipino Children
LET	Licensure Examination for Teachers
LGU	Local Government Unit
MAIS	Migrant Advisory Information System
MFMW	Mission for Migrant Workers
MWOFRC	Migrant Workers and other Overseas Filipino Resource Centers
NASSA	National Secretariat for Social Action
NCCP	National Council of Churches of the Philippines



NGO	Non-Governmental Organization
NLRC	National Labor Relations Commission
NRCO	National Reintegration Center for Overseas Filipino Workers
OFW	Overseas Filipino Worker
OPAs	Overseas Performing Artists
OUMWA	Office of the Undersecretary for Migrant Workers Affairs
OWWA	Overseas Workers Welfare Administration
PCEC	Philippine Council of Evangelical Churches
PCW	Philippine Commission on Women
PDOS	Pre-Departure Orientation Seminars
PEOS	Pre-employment Orientation Seminars
PIMAHT	Philippine Interfaith Movement against Human Trafficking
PNP	Philippine National Police
POEA	Philippine Overseas Employments Administration
POLO	Philippine Overseas Labor Office
R&R	Returning and Reintegration
RGS	Religious of the Good Shepherds
RTC	Regional Trial Courts
SCPM	Scalabrini Center for People on the Move
SDGs	New Sustainable Development Goals
SEC	Security Exchange Commission
SIG	Savings and Investment Groups
SIM	Savings and Investment Mobilization
SPCC	Salvatorian Pastoral Care for Children
TWG	Technical Working Group
UISG	Unione Internazionale delle Superiore Generali
USA	United States of America
VF	Visayan Forum

# INTRODUCTION

## *The scourge of human trafficking*

Human trafficking is a business which generates around 150 billion US dollars a year. With an assessed 30 million victims (children, women and men alike), trafficking is an inhumane practice which reduces individuals to commodities: men and women become no more than bodies that can be bought against money, organs that can be sold, or labor that can be done at the lowest possible cost. Trafficking entails for its victims a complete deprivation of human dignity, the responsibility of which falls not only on the exploiting party, but also on the community which accepts it with indifference: this way, trafficking becomes a true scourge for humanity, comparable to slavery in modern times.

Several drivers and causes lead to human trafficking, many of which are to be found in social inequality and in the logic of economic profit. Minimal salaries, undeclared economic activities, and chronic unemployment often pave the way to criminal behaviors and to the exploitation of the most vulnerable. At the same time, ignorance, extreme poverty and family values force many workers to accept appalling labor conditions. Very frequently, vulnerable migrant laborers are obliged to agree to exploitative labor contracts in order to provide for their families' basic needs, for the education of a brother or a sister, or for the health care needed by parents and children. In spite of being constantly abused, they will not denounce their employers and traffickers for fear of losing their income. Determined to ensure a better life for their relatives, a strong sense of responsibility keeps them silent on the loss of the job or on any hardship encountered. This resilience is often exploited by employers as a tool to make the migrant employee accept working conditions that are way below standard, or even unlawful.

Many other factors contribute to exploitation and abuse. Unemployment, illiteracy, isolation, and the lack of access to justice are just a few of the factors which account for an increasing vulnerability of workers. Furthered by a diffuse lack of awareness about labor rights or judicial protection avenues, these may contribute to a vicious circle which ultimately leads to trafficking.

The societal trends and values of a community undoubtedly play a major role in the perpetuation of abusive practices. It happens that societies with a strong culture of protection towards human dignity and labor rights do tolerate such situations when the victims are foreigners. Migrant workers, who no longer benefit from the rights awarded by their national jurisdiction, are more easily sanctioned in a host country and domestic workers, often deprived of their travel documents, remain then confined in the work place. At the same time, the host populations – while showing some reservations for the many newcomers – take advantage of the growing number of those recruitment agencies, who provide them with personnel at attractive prices and with very little obligations.

Such a context raises fundamental questions on the understanding of global solidarity and humanity. It calls for a radical change in mentality and morality. A change which is not easy to make in a world marked by materialism and ever growing inequities. Economic development is a key element of this process, yet it has also proven to be a double edged sword: development reduces the impact of those conditions that lead to dependency and abuse, and yet at the same time it increases individual differences and vulnerabilities. The biblical saying “the poor will always be with you” was never meant as a way to condemn a good number of people to poverty, but rather as an invitation for the many others to act in responsible and fraternal ways.

### **Combating trafficking**

Many actors – governments, civil society, and religious groups – condemn trafficking with a loud voice, and especially when the abuse appears to be most shocking or visible: prostitution, child labor, organized begging, or forced marriages. Unfortunately, many other forms of trafficking are given different levels of attention in various cultures and societies. It is unacceptable and worrisome that some of these forms have been so integrated in our thinking to appear acceptable. On the contrary, human trafficking – whatever its appearance – is always destructive for human dignity.

The combat against trafficking has taken many shapes, and has very often been moving upriver – starting with the victim and then looking for the causes. The Church, in particular, has been an active protagonist in this field, constantly reminding about the necessity to respect the life and dignity of every person and providing multiple and organized responses to the victims in their disarray. However, such a commitment needs to be supported by adequate legal frameworks, at both international and national levels: well elaborated and properly enforced legal systems play a crucial role in reducing the potential for crime. While it is understood that legal systems are often late in the combat because they are introduced on a more deductive basis, they are of fundamental importance and need to be shaped with the highest possible insight and the highest possible level of moral and social responsibility. This is where Church, civil society, and politics meet in shared and complementary responsibilities within every society and every nation.

It is regrettable that it has taken until 2000 to obtain an internationally accepted definition of trafficking: the lack of an international consensus, which has lasted for several decades, has largely contributed to the development of many internationally organized criminal networks operational in the many aspects of human trafficking. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also known as the Palermo Protocol against Trafficking in Persons), includes for the first time the necessary basis for international action:

*Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum,*

*the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (...).*

While this definition leaves an important loophole by mentioning “the purpose of exploitation” (it is not clear what the term means, nor to which fields it can be applied), it nevertheless represents a useful international compromise and a sufficiently strong invitation for national governments to integrate the provision in their legislative systems. Yet, the road ahead remains very long. It takes time to fully integrate international agreements into national legal systems: these systems need to be applied and enforced, while judges, police and social services need to be trained, and populations to be made aware of the new policies.

### **A voyage into grey zones**

This volume aims to contribute to the fight against human trafficking and exploitation. It is the result of a collaboration between the International Catholic Migration Commission (ICMC), the Episcopal Commission for Pastoral Care of Migrant and Itinerant People (ECMI), the many operational Church structures with which they work, and international law graduates. The combination of a theoretical approach and the daily experiences provided by social actors makes this report a tool serving all those involved in the combat against trafficking: from those assisting the victims to those advocating on the next steps to be made.

The research intends to identify those elements in legal provisions and employment contracts that may lead to increase the vulnerability of the migrant worker, also highlighting the crucial need to better regulate the contractual terms that govern the relationship between the worker and the employer. These contractual definitions are indeed preconditions to ensure fair employment and are essential for preventing and redressing abuse. Starting from a close reading of existing standardized contracts and contractual terms, the research concludes with a number of recommendations aimed at reinforcing existing policies, procedures and institutions.

With more than 38 million Asians working abroad<sup>1</sup>, the Asian region has witnessed the highest number of labor migrations worldwide: it seemed therefore relevant to focus the research on migrant workers in this part of the world. It was also decided to pay particular attention to the labor migration flows of the Philippines, a country which has by far the most developed legal protective system in the field, as well as more than 4.3 million nationals working in foreign Asian countries<sup>2</sup>. Much can be learned from these efforts in terms of national, regional and international protection.

Two major Philippines Republic Acts and their respective amendments serve as a useful basis in building regional protection tools and policies for migrant workers. Their texts already integrate many of

<sup>1</sup> In 2013, Asians represented the largest group living outside of their home region, accounting for about 19 million migrants living in Europe, some 16 million in Northern America and about 3 million in Oceania. Cfr. United Nations Information Service, “232 Million International Migrants Living Abroad Worldwide - New UN Global Migration Statistics Reveal”, 11 September 2013. Available at <http://www.unis.unvienna.org/unis/en/pressrels/2013/unisinf488.html>

<sup>2</sup> Commission on Filipinos Overseas, Stock Estimate of Overseas Filipinos as of December 2013. Available at: [http://www.cfo.gov.ph/images/Statistics/STOCK\\_ESTIMATE/2013-Stock-Estimate.xlsx](http://www.cfo.gov.ph/images/Statistics/STOCK_ESTIMATE/2013-Stock-Estimate.xlsx)

the existing international legal provisions concerning the combat against trafficking; they even go beyond the Palermo definition to include a broader range of actions that are considered criminal, such as the violation of the workers' rights or the provision of false information.

Starting from both the international and the national legal frameworks, the research team paid particular attention to the contractual terms and provisions binding domestic workers employed in different Asian countries. A significant challenge lies in the lack of homogeneity in legally defining the terms "domestic work" and "domestic worker": not only there are differences in the use of the terminology in the various employment contracts, but also in the contractual provisions as compared to those developed by the International Labour Organization<sup>3</sup>. In order to make the present research possible, it was decided to define domestic workers on the basis of their work activities, rather than of the status or denomination given to them by the national laws. Contractual terms of the model Philippine Labor Contract for Domestic Workers were compared with contracts established for domestic workers accepting positions in three other Asian countries: Malaysia, Hong Kong and Singapore. The choice of these three countries is mainly motivated by the important number of Filipinos working there.

Other crucial disparities identified in various legislations concern the different legal regimes applied to domestic workers with respect to any other national employee. As a matter of fact, domestic work is often considered as a service rather than a kind of labor activity: this implies, for instance, that a domestic worker can be expected to work up to sixteen hours a day whereas any employee contract defines only eight hours daily. The dissimilarity in status between "service workers" (who amounted to 2 million Filipinos in 2011)<sup>4</sup> and "domestic workers" (1.4 million) thus implies unequal working conditions and rights. The way to trafficking is paved by such legal wording, often interpreted by employers and employment agencies at their own advantage.

Two other core factors may affect the legal protection of overseas workers. One concerns the quality of the enforcement of the contracts, and the other the impossibility to apply the Filipino legislation to nationals when working abroad. Whatever rights the domestic protection system offers, once abroad the migrant worker is subject to the jurisdiction of the country of employment. Bilateral agreements may be useful to set some framework and references, but more comprehensive regional and international treaties and guidelines are needed.

Another major threat to the protection of migrant workers is related to irregular migration. It is obvious that protection mechanisms have little impact, if any, on undocumented migrants; this remarkably increases their levels of vulnerability. The important number of Filipinos in irregular situation may be explained by the fact that procedures are often considered too lengthy, cumbersome, insufficiently responsive or simply too costly. In other words, migrants often prefer a "fast track" approach due to an insufficient understanding of the risks that come with it. The assessed number of Filipinos in irregular or insufficiently declared situation in Malaysia (4.4 million) is even higher than the number of registered Filipino migrant workers in that country (2.1 million). It is therefore essential to increase general awareness on the risks of undocumented migration.

<sup>3</sup> "Domestic worker means any person engaged in domestic work within an employment relationship". Cfr. International Labour Organization, Convention Concerning Decent Work for Domestic workers, 16 June 2011, PRNo.15A, art. 1 (b).

<sup>4</sup> POEA, "2007-2011 Overseas Employment Statistics". Available at <http://www.poea.gov.ph/stats/2011Stats.pdf>.

## Global efforts beyond national labor laws

The Migrant Forum in Asia, a regional network of civil society organizations advocating for the rights and welfare of labor migrants, has been working on a standardized contract for migrant domestic workers. The instrument is based on the provisions of a number of existing international conventions as well as on the expertise of local civil society organizations. Such a contract will certainly serve as a capacity-building effort for the social actors to help protect migrant domestic workers; however, what seems even more important and essential in this effort is the aim to protect migrant domestic workers over what will be regionally shared terms of reference. The present document fully subscribes to this need; it strongly recommends this regional approach to create the necessary guidelines, to be understood and respected by all national labor legislations and justice departments in Asia.

An employment contract remains the first reference to be looked at in case of a dispute or abuse. It is of relevant importance to ensure equality and equity between workers, as much as a correct understanding and healthy attitude between employer and worker. In order to increase transparency and protection for labor migrants, it is therefore crucial to promote the harmonization of labor laws and procedures across countries. The present study aims at contributing to this goal, highlighting the minimum standards and rights which all employment contracts should include to guarantee a basic protection.

This study also reflects ongoing global efforts. The new Sustainable Development Goals (SDGs) and their slogan, “leaving no one behind”, start from the assumption that action should be taken “to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment”<sup>5</sup>. Goal 8 of the SDGs – which identifies the targets on Employment and Decent Work – reads: “Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment”<sup>6</sup>. This research aims to participate in very practical ways to this objective.

The document also builds on the civil society efforts made during the 2014 Global Hearings on Migration and Development, during which a 5-year 8-point plan<sup>7</sup> was submitted to governments. The plan was well received and the need to work on mechanisms to guarantee labor rights for migrant workers to become equal to those of nationals was discussed. The issue was again emphasized during the 2015 Global Forum on Migration and Development, which took place in October in Istanbul: ICMC and other civil society organizations emphasized the importance of fair recruitment practices and the need to better control the activities of employment agencies. Governments, civil society and private business are indeed gradually coming to the understanding that broader policies need to be built in collaboration with an ever growing number of actors. We therefore not only hope for further efforts in the ratification process of the Domestic Worker Convention and of the UN Convention on the Protection of the Migrant Workers and Members of their Families; we also aim at joining forces and sharing efforts to create transparency in the contractual terms and equity in the judgement of labor cases.

<sup>5</sup> UN General Assembly, “Transforming our world: the 2030 Agenda for Sustainable Development”, A/RES/70/1, 21 October 2015, Preamble.

<sup>6</sup> *Ibidem*, Goal 8.8.

<sup>7</sup> The 5-year Action Plan for Collaboration, Civil Society’s proposal for an outcome and follow up to the UN High Level Dialogue on International Migration and Development, 2013. Available at <http://madenetwork.org>.

This research concludes with a number of recommendations. These recommendations, which stem from various exchanges with Church and other civil society actors in the Philippines, are addressed to social workers as well as to all those who advocate for a better, rights-based protection of labor migrants: they particularly touch upon the establishment of a regional regulatory framework in Asia, the contractual equality between workers, the better monitoring of recruitment agencies, and furthered efforts of national authorities.

In combating trafficking and exploitation one cannot only look at the situation of victims. Victims demonstrate how much and how often even official and legal avenues lead from regular contracts into grey zones and misery. The efforts of many actors, including Church and civil society partners, deserve to be heard and supported with comprehensive legal systems based on the highest possible insight and the highest possible level of moral and social responsibility.

Johan Ketelers  
Secretary General, ICMC

# 1.

## PHILIPPINE LEGISLATION PROTECTING MIGRANT WORKERS

With over 11 million Filipino nationals abroad and a country largely depending on remittance income, it is clear why various Filipino governments have given migration issues a significant priority in law-making over the past decades. Several measures were taken to both encourage migration as an economic resource and to ensure a better protection of migrants; as a result, the Philippines' legal system includes a number of laws and regulations which aim to reduce the vulnerability of overseas workers and to increase their protection.

While there is certainly room for improvement, the existing apparatus of legal provisions is highly relevant and could support the establishment of a regional framework as well as more comprehensive bilateral agreements in Asia. Three Republic Acts introduced by Filipino legislators stand out for the particular attention paid to the protection of migrant workers, especially from labor exploitation and human trafficking:

- A. **Republic Act 8042**, otherwise known as the Migrant Workers and Overseas Filipinos Act, was approved in 1995 and establishes a comprehensive protection system for Filipino migrant workers.
- B. The aforementioned Act was amended in 2010 by **Republic Act 10022**, which further improves the protection and promotion of the Filipinos' welfare overseas.
- C. **Republic Act 10364**, approved in 2012, concerns human trafficking and provides additional protection and support to its victims. The severe penalties foreseen in case of abuses indicate how grave the legal apparatus considers such practice, which has become a global and financially rewarding business.

The three Acts will be analyzed in detail below.



## A. Republic Act 8042: the Migrant Workers and Overseas Filipinos Act

Republic Act 8042 is particularly effective in establishing means to reduce the vulnerability of migrant workers and the risk of becoming a victim of trafficking.

Section 6 of this Act offers a broad definition of “illegal recruitment”, listing actions which may lead to labor exploitation and/or trafficking. First-level illegal recruitment is defined as “any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers” and includes “referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-authorized person or entity”. In other words, this first prohibition establishes that only authorized entities can engage in recruitment activities, thus providing a framework to properly regulate and monitor recruitment.

In total, fourteen illegal actions have been regrouped in four major fields of risk.

### 1) *Violation of the worker’s rights*

The actions amounting to violations are listed as follows:

- i. **Excessive deductions from the salary:** “To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance”;
- ii. **Oppressive forms of employment:** “To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment”;
- iii. **Abusive enrolment:** “To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers’ organization”;
- iv. **Withholding documents:** “To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations”;
- v. **Non respect of employment contracted commitments:** including the “[f]ailure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment”;

- vi. **Non reimbursement of processing costs:** “Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker’s fault”.

## 2) *Supply of false information*

The supply of false information by the employer or employment agency severely increases the vulnerability of the employees. The Act aims to protect them against false information and to encourage the compliance with contractual terms. The law lists the following actions as violations:

- i. “To furnish or publish any false notice or information or document in relation to recruitment or employment”;
- ii. “To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license authority under the Labor Code, or for the purpose of documenting hired workers with POEA<sup>8</sup>, which include the act of re-processing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with POEA”;
- iii. “To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by parties up to including the period of the expiration of the same without the approval of the Department of Labor and Employment”.

## 3) *Obstruction of the proper monitoring of the recruitment agency’s activities*

The monitoring of recruitment agencies is essential in the implementation process. The law forbids those actions that hinder such monitoring:

- i. “To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative”;
- ii. “To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment”.

<sup>8</sup> The Philippine Overseas Employment Administration.

#### 4) *Conflicts of interests*

A final group of provisions aims to avoid conflicts of interest. It is prohibited:

- i. “For an officer or agent of recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency”;
- ii. “To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency”.

## B. Republic Act 10022

Approved in 2010, Republic Act 10022 amended the previous Republic Act 8042. Contrary to the earlier law, it features the penalization of a broader range of actions – the “prohibited acts”, enumerated in the Act’s Section 6 and analyzed below – which are considered as potentially leading to the abuse of the overseas workers’ rights. It also includes a list of sanctions to apply in case of violations.

### 1) *Monitoring financial activities*

Three provisions in Section 6 focus on the protection of the worker’s financial resources:

- i. **No loan may exceed 8%:** it is forbidden to “grant a loan to an Overseas Filipino Worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, post-dated checks in relation to the said loan”;
- ii. **Loans can be renegotiated in case of termination of employment:** it is forbidden to “refuse to condone or renegotiate a loan incurred by an Overseas Filipino Worker after the latter’s employment contract has been prematurely terminated through no fault of his or her own”;
- iii. **Compulsory insurance fees cannot be withheld by the employer or recruitment agency:** “for a recruitment/manning agency or a foreign principal/employer to pass on to the Overseas Filipino Worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker’s insurance coverage”.

## 2) *Protecting the worker's freedom of choice*

The legal protection of the migrant workers is broadened by other provisions which defend their freedom of choice. The following three provisions prohibit to force overseas workers into arrangements with designated institutions or entities for the provision of loans, health examinations, training or seminars. The dispositions aim to avoid corruption and privileges, thus protecting the worker's best interest:

- i. **Choice of institutions to obtain a loan:** it is forbidden to “impose a compulsory and exclusive arrangement whereby an Overseas Filipino Worker is required to avail of a loan only from specifically designated institutions, entities or persons”;
- ii. **Choice of health centers for medical examinations:** it is forbidden to “impose a compulsory and exclusive arrangement whereby an Overseas Filipino Worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/ ship-owner”;
- iii. **Choice of training centers for required training:** it is forbidden to “impose a compulsory and exclusive arrangement whereby an Overseas Filipino Worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/ship-owners where the latter shoulder the cost of such trainings”.

## 3) *Suspended recruitment agencies are obliged to terminate all recruitment activity*

It is prohibited “[f]or a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications”.

## 4) *Sanctions envisaged by Republic Acts 8042 and 10022 against violations of the above provisions*

Whatever the quality of the legislative texts, their impact largely depends on the rigor given to the implementation of the law both in terms of monitoring and sanctions. The table below shows the penalties attached to the perpetration of illegal recruitment or prohibited acts.

VIOLATION	MINIMUM SANCTION	MAXIMUM SANCTION	
Prohibited acts	6 years and 1 day	12 years	Minor violation ↓
	500,000 pesos	1 million pesos	
	Revocation of the license or registration		
Illegal recruitment	12 years and 1 day	20 years imprisonment	Major violation
	1 million pesos	2 million pesos	
	Revocation of the license or registration		
Economic Sabotage	Life imprisonment		Major violation
	2 million pesos	5 million pesos	
	Revocation of the license or registration		

The sanctions related to the prohibited acts increase in severity when the offense becomes a major violation which includes trafficking. More severe punishments are foreseen when children are involved and in cases of illegal recruitment. Republic Act 8042 establishes that the maximum penalty (20 years of imprisonment for illegal recruitment and 12 years for prohibited acts) is applied if:

- the victim is under 18 years old; or
- the offender is a non-licensee or non-holder of authority.

Penalties for economic sabotage – defined as “illegal recruitment when committed by a syndicate or in large scale” – are even more severe. According to the law, illegal recruitment is committed by a “syndicate” when it is carried out by three or more persons; it is perpetrated “at large scale” when committed against three or more victims. Penalties in this event consist in life imprisonment and in the payment of a fine of no less than 2 million pesos.

Illegal recruitment, prohibited acts and economic sabotage may be sanctioned with additional penalties such as the automatic revocation of the license or registration of the recruitment agency, lending institution, training school or medical clinic perpetrating the offense.

## C. Republic Act 10364

Republic Act 10364 is probably the most important among the anti-trafficking laws in the Philippines. The definition of trafficking in persons used by the Act is clearly inspired by an international instrument, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also known as Palermo Protocol against Trafficking in persons)<sup>9</sup>. The Philippines’ legal definition goes beyond the instrument’s and expands on it, in an attempt to provide even better protection.

<sup>9</sup> See Article 3, paragraph (a) of the UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

## Palermo Protocol

a. "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used (...).

## Philippine legislation

Trafficking in persons "refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs<sup>1</sup>."

While both the Philippines' law and the Palermo Protocol mention different types of abuse (sexual exploitation, forced labor and services, slavery, servitude, removal or sale of organs), the Philippines' definition additionally specifies that the actions of "obtaining, hiring, providing, offering and maintaining" persons are unlawful, thus penalizing a broader and more comprehensive set of acts. This contributes to the prevention of labor exploitation, especially during the worker's recruitment process.

Furthermore, Act 10364 distinguishes between trafficking and promotion of trafficking as prohibited acts. With regard to the offense of trafficking, it is forbidden to engage in the following:

- Threat or use of force;
- Other forms of coercion;
- Abduction;
- Fraud;
- Deception;
- Abuse of power or of position;
- Taking advantage of the vulnerability of the person;
- Giving or receiving money or benefits to achieve the consent of a person having control over another person<sup>10</sup>.

Among the second group of provisions, which relate to the production of deceitful information and limitations to the freedom of movement, five provisions specifically concern overseas workers:

- i. **Deceitful promotion material:** it is prohibited "to produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers, overseas employment certificates or other certificates of any government agency which issues these certificates, decals and such other markers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons";

<sup>10</sup> Republic Act 10364, Section 3.

- ii. **Falsified documents:** it is prohibited “to assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons”;
- iii. **Illegal assistance:** it is prohibited “to facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons”;
- iv. **Illegal withholding of documents:** it is prohibited “to confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies”;
- v. **No restriction to move imposed without lawful authority:** it is prohibited “to destroy, conceal, remove, confiscate or possess, or attempt to destroy, conceal, remove, confiscate or possess, any actual or purported passport or other travel, immigration or working permit or document, or any other actual or purported government identification, of any person in order to prevent or restrict, or attempt to prevent or restrict, without lawful authority, the person’s liberty to move or travel in order to maintain the labor or services of that person”.

Specific provisions describe the circumstances which amount to “aggravated trafficking”, and which may be easily applied to the activities of recruitment agencies:

- i. “When the crime is committed by a syndicate, or in large scale”;
- ii. “When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee”;
- iii. “When (...) the offended party dies, becomes insane, suffers mutilation or is afflicted with HIV or the AIDS”;
- iv. “When the offender commits one or more violations of Section 4 over a period of 60 or more days, whether those days are continuous or not”;
- v. “When the offender directly, or through another, manages the trafficking victim in carrying out the exploitative purpose of trafficking”.

## Sanctions envisaged by Republic Act 10364 against violations of the above provisions

CRIME	RANGE OF PENALTIES
Acts of trafficking in persons	20 years imprisonment
	Fine: 1 million – 2 million pesos
	Revocation of the license or registration for recruitment agencies
Attempted trafficking in persons	15 years imprisonment
	Fine: 500,000 – 1 million pesos
	Revocation of the license or registration for recruitment agencies
Complicity	15 years imprisonment
	Fine: 500,000 – 1 million pesos
	Revocation of the license or registration for recruitment agencies
Acts that promote trafficking in persons	15 years imprisonment
	Fine: 500,000 – 1 million pesos
	Revocation of the license or registration for recruitment agencies
Qualified (aggravated) trafficking in persons	Life imprisonment
	Fine: 2 million – 5 million pesos
	Revocation of the license or registration for recruitment agencies
Infractions against confidentiality	6 years imprisonment
	Fine: 500,000 – 1 million pesos
	Revocation of the license or registration for recruitment agencies
Use of trafficked person for prostitution	6 years to 12 years imprisonment
	Fine: 50,000 - 100,000 pesos
Special cases involving children	17 years to 40 years imprisonment
	Fine: 500,000 – 1 million pesos
Special cases involving the use of force or intimidation, to a victim deprived of reason or to an unconscious victim, or a victim under 12 years of age	40 years imprisonment with no possibility of parole
	Fine: 1 million – 5 million pesos



# 2.

## PHILIPPINE GOVERNMENT AGENCIES AND DEPARTMENTS MONITORING THE IMPLEMENTATION

Republic Acts 8042 and 10364 establish specific obligations for governmental agencies and departments<sup>11</sup> in order to ensure a proper implementation of their legal provisions, to reduce abuse and exploitation, and to protect the workers throughout the migration process. The following paragraphs provide a comparison between the official mandate of these agencies or departments and the activities actually carried out, as publicly described in their respective publications, reports and websites.

### A. The Department of Labor and Employment (DOLE)

The Department of Labor and Employment (DOLE) is the primary national governmental agency mandated to formulate and implement policies and programs in the field of labor and employment, also serving as the policy advisory arm of the executive branch.

<sup>11</sup> The concerned institutions are the following: DSWD (Department of Social Welfare and Development); DOJ (Department of Justice); PCW (Philippine Commission on Women); BI (Bureau of Immigration); PNP (Philippine National Police); DILG (Department of the Interior and Local Government); CFO (Commission on Filipinos Overseas); IACAT (Inter-Agency Council against Trafficking); Congressional Oversight Committee; DOH (Department of Health); MWOFR (Migrant Workers and Other Overseas Filipino Resource Center); POEA (Philippines Overseas Employment Administration); OWWA (Overseas Workers Welfare Administration); DOLE (Department of Labor and Employment); DFA (Department of Foreign Affairs); LGUs (Local Government Units)

## 1) The Overseas Workers Welfare Administration (OWWA)

The Overseas Workers Welfare Administration (OWWA), an agency attached to the DOLE, is the lead governmental institution tasked with the protection and promotion of the welfare and well-being of regularly documented Overseas Filipino Workers. According to Republic Act 10022, the OWWA is required to provide Filipino migrant workers and their families with assistance in the enforcement of contractual obligations by recruitment agencies or employers, as well as welfare programs both while abroad and upon their return.

The OWWA is involved in all the phases of the migration process (departure, permanence abroad, and return). As to the prevention of human trafficking, the OWWA is active through the organization of Pre-Departure Orientation Seminars, which familiarize the workers with the country of destination, but also educate them about their legal rights and about the governmental programs and services available abroad. In terms of assistance and reintegration of victims of trafficking, the OWWA is responsible for on-site welfare management and support during repatriation and reintegration in the Philippines.

Pre-Departure Seminars play a crucial role in the fight against human trafficking. Their potential lies in their mandatory character for all overseas workers prior to departure, thus constituting a strong informative system. The Seminars are a useful tool for migrant workers to become aware of their rights and be warned from potential risks.

### OWWA (Overseas Workers Welfare Administration)

MIGRATION PHASE	Activities envisaged by law	Activities/programs actually traced
Upon departure	<ul style="list-style-type: none"> <li>Pre-Departure Orientation Seminars</li> </ul>	<ul style="list-style-type: none"> <li>Pre-Departure Education Program: country-specific Pre-Departure Orientation Seminars (PDOS) educate the worker about the country of destination (health and safety, airport procedures, government programs and services); the Comprehensive Pre-Departure Education Program (CPDEP) features language trainings, familiarization with the culture and stress management advice</li> </ul>
While abroad	<ul style="list-style-type: none"> <li>Provide assistance in the enforcement of contractual obligations</li> <li>Implement welfare programs for Overseas Filipino Workers and their families and monitor the benefits' insurance</li> </ul>	<ul style="list-style-type: none"> <li>Workers Welfare Assistance Program: on-site welfare case management (psycho-social counselling, conciliation, airport assistance, legal assistance, insurances)</li> </ul>
Upon return	<ul style="list-style-type: none"> <li>Facilitate repatriation and reintegration</li> </ul>	<ul style="list-style-type: none"> <li>Repatriation Program: assists distressed Overseas Filipino Workers coming back home. Repatriated workers are accorded with airport assistance, temporary shelter, psycho-social counselling, stress debriefing</li> <li>Reintegration Program: technical skills and capacity building trainings, business counselling, financial literacy, networking with support institutions and social preparation programs</li> </ul>

## 2) The Philippine Overseas Employment Administration (POEA)

The Philippine Overseas Employment Administration (POEA) is an agency attached to the DOLE which regulates the recruitment industry, facilitates international employment, and ensures the protection of workers. According to Republic Act 10022, the POEA is responsible to regulate the participation of the private sector in the recruitment of workers, to manage a licensing and registration system for private-sector actors, aside from being in charge of overseas employment as a whole from the pre-employment stage.

The POEA's goal is that of securing the best possible employment terms and conditions for the workers. As part of its mandate, it must inform the workers of their human and labor rights as well as provide mechanisms to redress violations of such rights. In addition, the POEA organizes Pre-Employment Orientation Seminars (PEOS) aimed at the prevention of illegal recruitment. The Administration is bound to deploy trained workers only to countries with which the Philippines has concluded bilateral agreements on labor; these countries have indeed an obligation to protect the rights of the Filipino workers as well as to comply with international labor norms and standards.

According to Republic Act 10364, the POEA must organize Pre-Employment Orientation Seminars and provide free legal assistance to victims of trafficking. Importantly, the POEA is required to create a "blacklist" of recruitment agencies, illegal recruiters and persons filing administrative, civil and criminal complaints for trafficking – submitted in the receiving country or in the Philippines. It must also accredit NGOs and other service providers to conduct Pre-Employment Orientation Seminars, including the discussion and distribution of such blacklist.

The POEA has proven to be one of the most active governmental agencies in the combat of trafficking, especially thanks to its focus on prevention activities. Its mandate of supervision of recruitment agencies is crucial, especially in regard to their registration, monitoring and possible blacklisting.

### POEA (Philippine Overseas Employment Administration) - Report of activities 2011

MIGRATION PHASE	Activities envisaged by law	Activities/programs actually traced
Upon departure	<ul style="list-style-type: none"> <li>Regulation of private sector participation in recruitment: setting up a licensing and registration system; securing the best employment terms and conditions; informing the workers of their rights; providing PEOS; deploying only to countries with which the Philippines has concluded bilateral labor agreements</li> <li>"Black list" of recruitment agencies; accreditation of NGOs to conduct PEOS</li> </ul>	<ul style="list-style-type: none"> <li>May ban deployment to some countries (Governing Board Resolutions)</li> <li>Provides technical inputs and recommendations in the pursuance of bilateral or multilateral agreements on labor cooperation to promote the welfare of Overseas Filipino Workers</li> <li>Carries out manpower registration</li> <li>Provides information on overseas employment opportunities</li> <li>Conducts evaluations of agencies asking for license ("hard to enter/easy to go" policy)</li> <li>Monitors recruitment agencies</li> <li>Conducts PEOS</li> <li>Concluded 75 Memoranda of Understanding with local government units, aimed to combat illegal recruitment</li> <li>Runs regional campaigns against illegal recruitment, trafficking in persons and irregular migration in the provinces considered the poorest in the country and lacking government services</li> </ul>
While abroad	<ul style="list-style-type: none"> <li>Provide trafficked persons with free legal assistance</li> </ul>	<ul style="list-style-type: none"> <li>Provides legal assistance to victims of illegal recruitment and pre-employment violation of licensed agencies</li> </ul>

According to the POEA 2011 activity report, which details the impact of each activity the institution carries out, a total of 1,444 recruitment agencies were inspected during the year. Only 41% of the applications for a new license were approved, while 23 requests for renewal were denied. The POEA also demonstrates to be active in the dissemination of information both through its website and information campaigns. The data showed an increase in the number of Filipinos attending Pre-Departure Orientation Seminars (PDOS): participants were 106,923 in 2011, a considerable growth with respect to the 77,706 attendees of 2010. In the same year, the POEA assisted a total of 5,786 victims of illegal recruitment, providing them with legal assistance.

### 3) *The National Reintegration Center for Overseas Filipino Workers (NRCO)*

The National Reintegration Center for Overseas Filipino Workers (NRCO), an additional agency attached to the DOLE, was institutionalized pursuant to Republic Act 10022 and its Implementing Rules and Regulations. It aims at reintegrating former Overseas Filipino Workers productively into the Philippine society, also promoting their local employment.

Its mission is to foster an entrepreneurial mindset among Filipino workers and their families, primarily through the creation of awareness on the value of saving and empowering them to plan for investment, business, or local employment upon their return. It also responds to the reintegration needs of workers who are displaced or in distressful situations.<sup>12</sup>

#### NRCO (National Reintegration Center for Overseas Filipino Workers)

MIGRATION PHASE	Activities envisaged by law	Activities/programs actually traced
While abroad	<ul style="list-style-type: none"> <li>The “Assist WELL” program (Welfare, Employment, Livelihood and Legal Assistance) was originally established for OFWs repatriated from crisis/ emergency situations pursuant to alert systems. It was then expanded to reintegrate former OFWs and reverse migration flows by enhancing their skills and providing them with better-paying jobs or the possibility to set up a lucrative business domestically. The program aims to ensure the successful reintegration of OFWs into their family, community, and local economic markets</li> </ul>	<ul style="list-style-type: none"> <li>Household service workers in Hong Kong passed the Licensure Examination for Teachers (LET) under Assist WELL “Sa Pinas, Ikaw and Ma’am/Sir” project. The project is open to domestic workers and other OFWs in many parts of the globe (i.e., Qatar, Riyadh, Al Khobar, Abu Dhabi, Israel, Thailand).</li> </ul>

<sup>12</sup> Philippines’ Department of Labour and Employment, National Reintegration Center for OFWs, “NRCO Program Fact Sheet”. Available at: [http://nrco.dole.gov.ph/images/transparency\\_seal/nrcoprogramfactsheet.pdf](http://nrco.dole.gov.ph/images/transparency_seal/nrcoprogramfactsheet.pdf)

<p><b>Upon return</b></p>	<ul style="list-style-type: none"> <li>• Financial Awareness Seminar</li> <li>• Small Business Management Training</li> <li>• Enterprise Development Assistance Program</li> <li>• Skills Training with starter kit</li> </ul>	<ul style="list-style-type: none"> <li>• The seminars served as an avenue for OFWs to gain knowledge and skills on financial planning and management of their earnings from overseas employment. 6,018 OFWs benefitted from this program in 2014</li> <li>• Training on fundamental requirements in availing livelihood assistance aims at helping OFW returnees and/or their families in understanding the different aspects of a business, particularly business establishment and management</li> <li>• The program provides a 10,000 PHP-worth starter kit to undocumented Filipino returnees for the creation of micro-businesses. 3,104 beneficiaries of the program benefitted from 30,732,566 PHP disbursed</li> <li>• A package of livelihood skills training with starter kits enables Filipino returnees to support themselves through self or wage employment. 1,304 distressed women benefitted from it in 2014</li> </ul>
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#### 4) *The National Labor Relations Commission (NLRC)*

The National Labor Relations Commission (NLRC) is vested by law with quasi-judicial powers<sup>13</sup> to resolve disputes arising from employer/employee relations. The NLRC has a very similar standing to that of the regular court (the Regional Trial Court) and is tasked to resolve labor and management disputes, involving both local and overseas workers through compulsory arbitration and alternative modes of dispute resolution.<sup>14</sup>

The National Labor Relations Commission has been granted very special powers and is a “stand-alone” court. Quasi-judicial bodies like the NLRC have been created to address and resolve issues in a specialized field, with more technical knowledge, expertise and dispatch than the regular courts of justice. NLRC is therefore defined as a “court of expertise in labor law”.

According to the Supreme Court, the NLRC is recognized as the Philippine Labor Court and is endowed with compulsory arbitration. It has two levels: the Labor Arbiter of the NLRC, similar in status to a Judge of the Regional Trial Courts, and the appellate body, composed of Commissioners who have the same authority as Justices of the Court of Appeals.

#### 5) *Philippine Overseas Labor Office (POLO)*

The Philippine Overseas Labor Office (POLO) acts as the operating arm of the DOLE for the administration and enforcement of policies and programs applicable to Overseas Filipino Workers. It carries out the following activities:

<sup>13</sup> A quasi-judicial body is an individual or organization which has powers resembling those of a court of law or judge and is able to remedy a situation or impose legal penalties on a person or organization.

<sup>14</sup> See the website of the DOLE’s National Labor Relations Commission: <http://nlrc.dole.gov.ph/>

- Promoting and protecting the general welfare of Filipino workers abroad;
- Acting as representative abroad of the POEA; upon request, serving as marketing agents of the DOLE with the authority to enter into contracts with foreign employers as established in the negotiating rules of the POEA;
- Promoting understanding and support between the host government and the Philippines and between Filipino workers and management in the country of assignment through, among others, information dissemination concerning Philippine policies and programs on labor and employment;
- Assisting Filipino workers in the preparation of contracts and all documents relating to employment, to certify or attest the same, and whenever authorized, to collect fees therefor, design model contracts of employment suitable to their areas of assignment;
- Assisting in implementing the foreign exchange remittance program of the government from OFWs to their respective families/beneficiaries in the Philippines;
- Submitting regular as well as special reports, and keep the DOLE informed on significant development in the field of labor, including political, cultural, social, and economic aspects and policy innovations that may be relevant to Philippine labor needs;
- Assisting the diplomatic mission or consular mission abroad towards achieving and maintaining cordial relationship and goodwill between the Philippines and the host country.
- In the provision of its services, the Philippine Overseas Labor Offices work in partnership with relevant Philippine government agencies, host government, Filipino communities and non-governmental organizations that monitor and assist Overseas Filipino Workers.

To date, there are 34 POLO's around the world: 11 are in Asia, 13 in the Middle East, 7 in Europe, and 3 in the Americas.

In Malaysia, the relevant POLO maintains a primary role in assisting Filipino workers overseas, especially through the verification of their employment contracts and of the accreditation of Malaysian recruitment agencies and employers. On the other hand, it is not clear how POLOs are active in Singapore and Hong Kong, where support activities to Filipino workers are rather carried out directly by the Embassy (in Singapore) or by the General Consulate (in Hong Kong).

## B. The Department of Foreign Affairs (DFA)

According to Republic Acts 10364 and 8042, the Department of Foreign Affairs (DFA) must make its resources available overseas for victims of trafficking as well as explore means to improve its assistance in preventing human trafficking. In addition, it must provide the victims of trafficking with free legal assistance and counsel to pursue legal actions against their traffickers; in this event, the DFA represents the victim's interests in any criminal investigation or prosecution and supports them in their application for social benefits.

Another initiative concerns the implementation of the Electronic Passport System, a project aimed at protecting the integrity of national passports by reducing the diffusion of counterfeited docu-

ments. In coordination with the Department of Labor and Employment, and through the Migrant Workers and Other Filipinos Resource Centers, the DFA is also required to provide free temporary shelter and other services to Filipino victims of trafficking.

Given the international nature of human trafficking, the DFA's activities have a remarkable potential to be effective through a network of Embassies and Consulates abroad. Those in Malaysia, Singapore and Hong Kong initiated specific programs and services available for Filipino overseas workers.

**DFA (Department of Foreign Affairs)**

<b>MIGRATION PHASE</b>	<b>Activities envisaged by law</b>
<b>Upon departure</b>	<ul style="list-style-type: none"> <li>• Formulates policies and implements relevant programs</li> <li>• Ensures the efficient implementation of the Electronic Passport System</li> </ul>
<b>While abroad</b>	<ul style="list-style-type: none"> <li>• Takes priority action to protect the migrant workers' rights</li> <li>• Makes available resources for trafficked persons</li> <li>• Provides free legal assistance and counsel to pursue legal action against traffickers</li> <li>• Represents the victim's interests in any criminal investigation or prosecution</li> <li>• Assists in the application for social benefits</li> <li>• Provides free temporary shelter</li> <li>• Provides assistance, including the repatriation of distressed or beleaguered migrant workers</li> </ul>



**EMBASSIES AND CONSULATES**

<b>MALAYSIA</b>	<b>SINGAPORE</b>	<b>HONG KONG</b>
<ul style="list-style-type: none"> <li>• POLO: carries out the verification and authentication of employment contracts; the accreditation of Malaysian manpower agencies or employer; conciliation services; counselling services; skills training programs</li> </ul>	<ul style="list-style-type: none"> <li>• Assistance to Nationals (ATN) section: provides monitoring of cases in court; prison visitation; representations with Singapore authorities; facilitating repatriation</li> </ul>	<ul style="list-style-type: none"> <li>• Provides assistance for cases of illegal recruitment and human trafficking</li> <li>• POLO: active for specific matters related to employers and employment agencies</li> </ul>

## 1) *The Office of the Undersecretary for Migrant Workers Affairs (OUMWA)*

The Office of the Undersecretary for Migrant Workers Affairs (OUMWA) is primarily responsible for the provision and overall coordination of Assistance to Nationals (ATN) and for legal services. Such services are provided to overseas Filipinos in distress and their families through the Foreign Service Posts (Philippine Embassies or Consulates).

The OUMWA coordinates with other government agencies, in particular with the DOLE, the POEA, the OWWA, and Civil Society Organizations (CSOs) to facilitate and maximize the services provided to OFW in distress and to their families. The OUMWA transfers the requests for assistance received by those in need to a Foreign Service Post (a Philippine Embassy or Consulate), which will be responsible for support. Subsequently, the Foreign Service Post will report to the OUMWA on updates and developments of the case.

## 2) *Migrant Workers and Other Overseas Filipino Resource Centers (MWORC)*

According to Republic Act 8042, a Migrant Workers and Other Overseas Filipino Resource Centers (MWORC) must be established in countries with a large concentration of Filipino migrant workers, in the premises and under the administrative jurisdiction of the Philippine Embassy.

Resource Centers provide a wide range of services including counselling and legal services, welfare assistance, information and promotion of social integration, registration of undocumented workers, training and skills updating, gender-sensitive programs, orientation programs for returning workers and various monitoring activities. These Centers must be open 24 hours a day and 7 days a week, even during the holidays. In countries with a high concentration of Filipino workers, the government is also required to provide the Center with a sharia or human rights lawyer, a psychologist, and a social worker.

Resource Centers are currently present in 19 countries. They have great potential in reaching overseas workers due to their strategic location and their focus on the workers' wellbeing during their time abroad. Resource Centers address vulnerabilities in the field, facilitating the implementation of first assistance and rights protection programs.



### Migrant workers and other Overseas Filipino Resource Centers (in 19 countries)

MIGRATION PHASE	Activities envisaged by law	Activities/programs actually traced
While abroad	<ul style="list-style-type: none"> <li>• Counselling and legal services</li> <li>• Welfare assistance</li> <li>• Information, programs to promote social integration</li> <li>• Training and skills updating</li> <li>• Gender-sensitive programs</li> <li>• Monitoring of daily situation and circumstances</li> <li>• A Call Centre is active 24/7, including during holidays</li> <li>• In critical countries: sharia/human rights lawyer, psychologist, social worker</li> </ul>	<ul style="list-style-type: none"> <li>• Counselling and legal services</li> <li>• Welfare assistance</li> <li>• Information and programs to promote social integration</li> <li>• Registration of undocumented/irregular workers</li> <li>• Implementation of DOLE and OWWA programs</li> <li>• Training and skills upgrading</li> <li>• Gender-sensitive programs</li> <li>• Monitoring of daily situation and circumstances</li> <li>• Ensuring that labor and social welfare laws in the receiving country are applied to migrant workers and other overseas Filipinos</li> <li>• Conciliation of disputes arising from employer/employee relationship</li> </ul>
Upon return	<ul style="list-style-type: none"> <li>• Orientation programs for returning workers</li> </ul>	<ul style="list-style-type: none"> <li>• Orientation program for returning workers</li> </ul>

## C. The Department of Social Welfare and Development (DSWD)

The Department of Social Welfare and Development (DSWD) provides rehabilitation and assistance for victims of trafficking, also cooperating with NGOs to establish support centers and intervention programs. The DSWD was established to supply basic services such as temporary housing facilities, food, psychological support and counseling as well as a call center for crisis calls, active 24 hours a day. It also conducts information campaigns in communities and schools, with a focus on the prevention of trafficking in children.

The most important program foreseen by the DSWD in the three countries this study looked into (Singapore, Malaysia and Hong Kong) is the International Social Welfare Service for Filipino Nationals Project (ISWSFN). The project is operated in collaboration with the DFA, and is active in Malaysia, where it provides counselling services, assistance to individuals in crisis situations and repatriation assistance. Nevertheless, no evidence could be found that the ISWSFN is operational in Hong Kong and Singapore.

**DSWD (Department of Social Welfare and Development)**

<b>MIGRATION PHASE</b>	<b>Activities envisaged by law</b>	<b>Activities/programs that could be traced in Hong Kong Malaysia and Singapore</b>
<b>Before departure</b>	<ul style="list-style-type: none"> <li>• Information campaigns</li> </ul>	<ul style="list-style-type: none"> <li>• Conducts campaigns through local and regional structures</li> </ul>
<b>While abroad</b>	<ul style="list-style-type: none"> <li>• Housing and food facilities</li> <li>• Psychological support and counselling</li> <li>• 24h/24 call center for crisis calls</li> </ul>	<ul style="list-style-type: none"> <li>• Only in Malaysia: in coordination with the DFA, the International Social Welfare Service for Filipino Nationals Project (ISWSFN) provides counselling, critical incident stress debriefings, assistance to individuals in crisis situation, and repatriation assistance</li> </ul>
<b>Upon return</b>	<ul style="list-style-type: none"> <li>• Rehabilitation and assistance</li> </ul>	<ul style="list-style-type: none"> <li>• The Reintegration Program for Deportees and Returning Undocumented Overseas Filipino Workers provides transportation allowances, basic business management training, skills upgrading, house repair, and medical assistance. The pilot program will be extended to other regions whose Local Government Units are found ready to implement the project</li> </ul>

## D. The Commission on Filipinos Overseas (CFO)

The Commission on Filipinos Overseas (CFO), an agency of the Philippine Government under the direction of the Office of the President, is tasked to promote and uphold the interests, rights and welfare of Filipinos overseas, as well as to strengthen their ties with their homeland. According to Republic Act 10364, the CFO is required to provide pre-departure counselling, especially for Filipinos married to a foreign person. This is done in collaboration with NGOs, which are required to be accredited for this purpose. The Commission is also expected to conduct information campaigns against trafficking, cooperating with Local Government Units, the Philippine Information Agency and NGOs.

Although its mandate is quite limited (it only prescribes counselling and informative activities), the Commission participates in a wide range of programs, which have a strong impact on the migration process as a whole. As to the departure phase, the Commission completely fulfils the provisions of Republic Act 10364 by making available a great amount of information to the migrating workers. The Commission indeed created the Community Education Program (CEP), an annual information campaign, and the Migrant Advisory Information System (MAIS), a computer-based tool which provides migrant workers with important information needed before departure. Pre-Departure Orientation Seminars, organized in collaboration with the OWWA, also prepare the workers prior to their migration.

The CFO also organizes programs in support of the workers during their time abroad. The Action Line against Human Trafficking receives crisis calls 24 hours a day and 7 days a week, mainly dealing with trafficking cases, but also with illegal recruitment or other critical situations Filipinos may face abroad. Once the call center has received a report of abuse, it refers the case to the appropriate governmental agency or department. In addition, the Global Legal Assistance and Advocacy (GLAAD) program provides legal assistance and advice to overseas Filipinos in distress.

## CFO (Commission on Filipinos Overseas)

MIGRATION PHASE	Activities envisaged by law	Activities/programs that could be traced
Upon departure	<ul style="list-style-type: none"> <li>• Counselling for intermarried Filipinos</li> <li>• Information campaigns</li> </ul>	<ul style="list-style-type: none"> <li>• Community Education Program (CEP): runs annual information campaign</li> <li>• Migrant Advisory Information System (MAIS): computer-based information tool providing information to Filipinos considering emigration</li> <li>• Publication of information materials</li> <li>• Pre-Departure Orientation Seminars and Registration of Filipinos workers who are emigrating</li> </ul>
While abroad		<ul style="list-style-type: none"> <li>• 1343 “Action Line against Human Trafficking” (24/7): the hotline also takes on cases which are not directly related to trafficking (e.g. illegal recruitment). Crisis calls are immediately referred to the competent agency. An online reporting procedure is also available</li> <li>• Global Legal Assistance and Advocacy (GLAAD): engages overseas and local Filipino lawyers and legal experts to provide legal assistance and advice to overseas Filipinos in distress</li> </ul>
Upon return		<ul style="list-style-type: none"> <li>• Returning and Reintegration (R&amp;R): focuses on providing returning overseas Filipino and retirees with information and facilitating services for a successful reintegration</li> </ul>

## E. The Department of Justice (DOJ)

The Department of Justice (DOJ) is the government’s principal law agency. As such, the DOJ serves as the government’s prosecution arm and administers the national criminal justice system by investigating crimes, prosecuting offenders and overseeing the correctional system.

Through its offices and constituent or attached agencies, the DOJ also intervenes as the government’s legal counsel and representative in all litigations and proceedings requiring the services of a lawyer. It implements the Philippine laws on the admission and stay of aliens within its territory, and provides free legal services to indigent and other qualified citizens.

In addition to performing its mandate under Executive Order 292<sup>15</sup>, the Department is significantly involved in the implementation of various penal, national security, and social welfare legislations, including the Anti-Trafficking in Persons Act of 2003, for which the Inter-Agency Council on Trafficking (IACAT) was created.

<sup>15</sup> For a detailed and comprehensive overview of the DOJ mandate, see its website: <https://www.doj.gov.ph/vision-mission-and-mandate.html>

## *The Inter-Agency Council against Trafficking (IACAT)*

The IACAT was established by Republic Act 9208. It is composed of representatives of governmental Departments<sup>16</sup> (among these, the Secretary of the DOJ and the Secretary of the DSWD act as Chairpersons), as well as of the Commission on Filipinos Overseas and of the Philippine Center for Transnational Crime. The Council also partners with three civil society organizations aiming at the protection of women, children and OFWs, upon the condition that these organizations prove their involvement in the prevention and suppression of trafficking.

The IACAT plays a significant role in the prevention and repression of trafficking and bears great responsibility in the implementation of Act 9208. The Council complies with its mandate mainly through its advocacy activities and the coordination of those undertaken by other governmental agencies. Its programs focus on pre-departure assistance as well as on the support to migrants abroad; however, its action is aimed at the prevention of human trafficking rather than on the rescue and assistance of victims.

The IACAT is responsible for the following:

- Formulating a comprehensive and integrated program to prevent and suppress trafficking in persons;
- Promulgating rules and regulations for the effective implementation of Act 9208;
- Monitoring and overseeing the implementation of Act 9208;
- Coordinating the program and projects of the various member agencies;
- Coordinating the conduct of massive information campaigns;
- Directing other agencies to immediately respond to the problems brought to their attention;
- Assisting in filing of cases against individuals, agencies, institutions or establishments that violate Act 9208;
- Formulating a program for the reintegration of trafficked persons;
- Securing from any department, agency, office, NGOs such assistance as may be needed to effectively implement Act 9208;
- Complementing the shared government information system for migration established under RA 8042 with data on cases of trafficking;
- Developing the mechanism to ensure the timely, coordinated and effective response to cases of trafficking;
- Recommending measures to improve cooperative efforts among foreign countries through bilateral or multilateral arrangements;
- Monitoring the promotion of advertisement of trafficking in the internet, in coordination with the Department of Transportation and Communications, Department of Trade and Industry and NGOs;
- Adopting measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;

<sup>16</sup> Other members of the Council are the DFA, the DOLE, the Department of the Interior and Local Government (DILG), the POEA, the Bureau of Immigration, the Philippines National Police, and the Philippine Commission on Women.

- Initiating training programs in identifying and providing the necessary intervention or assistance to trafficked persons.

According to the 2011 IACAT report, more than 3,000 social workers and police officers received training in 2001 to better identify the victims of trafficking. The report also mentions that the Action Line against Human Trafficking received 7,177 calls from March to December 2011: out of these, 68 reported actual cases of human trafficking and helped to identify and repatriate 111 victims.

#### IACAT (Inter-Agency Council against Trafficking)

MIGRATION PHASE	Activities envisaged by law	Activities/programs actually traced
Upon departure	<ul style="list-style-type: none"> <li>• Formulates an integrated program to prevent trafficking</li> <li>• Promulgates rules and regulations for the implementation of Act 9208</li> <li>• Coordinates information campaigns</li> <li>• Recommends measures to improve bilateral or multilateral agreements</li> <li>• Monitors the promotion of advertisement of trafficking in the internet</li> <li>• Exercises all powers necessary to reach the objectives of Act 9208</li> </ul>	<ul style="list-style-type: none"> <li>• Runs advocacy activities, coordination of the other governmental agencies</li> <li>• Created an additional taskforce in the most critical provinces</li> <li>• Runs the Community Education Program (CEP), active in 28 provinces</li> <li>• Established a Technical Working Group (TWG)</li> </ul>
While abroad	<ul style="list-style-type: none"> <li>• Coordinates other agencies' programs</li> <li>• Assists in filing of cases</li> <li>• Complements the government information system for migration with data on trafficking cases</li> <li>• Develops the mechanism to ensure effective response to cases of trafficking</li> <li>• Provides training programs in identifying and providing the necessary intervention to trafficked persons</li> </ul>	<ul style="list-style-type: none"> <li>• Provides a "Public Assistance Corner" on the website</li> <li>• Collaborates with the Action Line against Human Trafficking, which is active 24/7</li> </ul>
Upon return	Formulates programs for reintegration	

## Conclusions: a “plethora of structures” and grey zones

The above picture indicates to what extent the Filipino government has proactively attempted to fight human trafficking and the illegal recruitment of migrant workers. On the other hand, the result of this effort also displays a remarkable number of structures, actors and institutions, often with overlapping functions and mandates, and sometimes with unclear competencies and activities. For instance, it is understood that each structure belonging to the IACAT platform is entitled to initiate any activity included in the mandate of the inter-agency, and which may positively contribute to the further strengthening of the collaborative action; yet, this also ends up blurring the agency’s mandate and raises several questions on the allocation of tasks.

Understanding how the support is organized through the various governmental bodies is also confusing: some of the activities envisaged by law do not seem to result in concrete action in the three countries whose employment contracts have been analyzed (Hong Kong, Malaysia and Singapore; see chapter V), while some of the actions taken by the institutional bodies do not necessarily correspond to the activities which the law foresees.

Ms. Joy Ngozi Ezeilo – the former Special Rapporteur on trafficking in persons, especially women and children – underlined the complexity of this institutional framework in her 2013 report, stating the following:

*With such a plethora of structures, the Special Rapporteur found it difficult to assess how they function in practice and to what extent each of them is useful and effective. Given the intricacy of cases involving trafficking, she underscores the need for harmonizing the actions undertaken by each entity. A framework with specific tools for monitoring and evaluating results and performance of the various agencies, especially at regional and provincial levels, is yet to be formulated.<sup>17</sup>*

In addition to the intricate institutional framework, the actual impact of the programs is also quite difficult to assess, from either a qualitative or a quantitative point of view. For this type of evaluation, it is only possible to make reference to the agencies’ own activity reports, which include data on the beneficiaries assisted and on the type of services provided. Bringing these data together in one report and based on comparable definitions would provide a more accurate picture of the extent of the impact on human trafficking and provide a better picture of the gaps to be addressed.

<sup>17</sup> Ngozi Ezeilo, Joy, “Report of the Special Rapporteur on trafficking in persons, especially women and children, Addendum: Mission to the Philippines”, A/HRC/23/48/Add.3, 19 April 2013.

## 3.

## BILATERAL AGREEMENTS

In addition to the domestic legal frameworks and the institutional bodies monitoring the proper implementation of the legal provisions, in order to ensure the protection of its nationals abroad the Philippines also concluded bilateral agreements on the labor conditions of migrant workers with 22 States<sup>18</sup>.

Bilateral agreements have the advantage of offering more flexibility in building adequate tools for the protection of migrant workers: such commitments are closer to national labor laws and tailor-made to serve specific social and economic purposes. This makes it easier, in principle, to integrate most of the additional components in the labor laws of both parties. Yet, questions on how bilateral agreement provisions are monitored in joint interaction between both countries and on the tools and means given to this end remain insufficiently answered.

It would not be relevant to compare all these bilateral agreements, since they were concluded in different periods of time and are not homogenous in terms of the content agreed by the parties. The most recent treaty, however, deserves special attention: titled “Principles and Controls for Regulating Deployment and Employment of Filipino Domestic Workers between Government of the Hashemite Kingdom of Jordan/Ministry of Labour and Government of the Republic of the Philippines/Department of Labour and Employment”, the covenant was signed by the Philippines and Jordan in 2012. This instrument, well ahead in terms of protection standards of the 20 other bilateral agreements to which the Philippines is party, constitutes an interesting reference for the review of existing agreements and for the establishment of regional ones. It similarly shows how protection measures find only very slowly their place within international conventions.

Even though the treaty appears at times to be a juxtaposition of two different legal frameworks, it represents an important step in defining the responsibilities of both countries to protect and monitor the presence of migrant workers. The following provisions, in particular, are clearly built on the situations which migrants frequently experience in the Middle East and aim to be pragmatic in defining protective measures.

<sup>18</sup> The 22 countries are the following: Bahrain (2007); Canada (Alberta 2008; British Columbia 2008/2010; Manitoba 2008/2010; Saskatchewan 2006); Commonwealth of the Northern Mariana Islands (1994/2000); Indonesia (2003); Iraq (1982); Japan (2009); Jordan (1981/1988/2010/2012); Republic of Korea (2004/2005/2006/2009); Kuwait (1997); Lao PDR (2005); Libya (1979/2006); New Zealand (2008); Norway (2001); Papua New Guinea (1979); Qatar (1997/2008); Spain (2006); Switzerland (2002); Taiwan (1999/2001/2003); United Arab Emirates (2007); United Kingdom (2002/2003); United States of America (1968); Saudi Arabia (2013).

Art. 2:

Licensed Filipino employment agencies and Jordanian recruitment agencies shall be bound to follow legislation and arrangements in force in both Parties. The first party shall ensure that the Domestic Worker is issued the appropriate visa to work in Jordan before leaving the Philippines.

Art. 5:

Offices and agencies of both Parties shall only employ Filipino Domestic Workers who are 23 years or older. The Philippine agency responsible for deploying an under aged worker shall be held responsible according to Philippine laws, and the Jordanian agency shall be held responsible according to Jordanian laws.

Art. 6:

Working contracts should be verified by the POLO and authenticated by the Embassy of the Republic of the Philippines in Amman.

Art. 7:

The employer shall obtain a life insurance policy in favor of the Filipino Domestic Worker. The policy shall be obtained from an accredited insurance company and should be valid for two years and shall be renewed whenever the employer and the Filipino Domestic Worker agree to its renewal, in addition to the Mandatory Insurance as required by the Philippine Government.

Art. 8:

Accredited offices and agencies of both Parties shall provide employers and Domestic Workers with guiding leaflets on their rights and obligations in order to reduce cases of misunderstanding that may happen because of differences in cultural habits and traditions.

Art. 11:

1. The Employer should open a bank account in the name of the Filipino Domestic Worker and deposit his monthly salary from the first month of his employment, and within no more than seven days from the salary due date. Both the employer and the Domestic Worker shall keep a copy of the depositing coupon as proof of payment.

2. The Employer is committed not to employ the Filipino Domestic Worker in any work other than what is stated in the work contract, and the employer should provide decent accommodation, food, clothing and medical care. The Filipino Domestic Worker shall have one day off each week, and there should be no restrictions on his correspondence or religious practices to the extent that they do not affect the feelings of the family or its customs and traditions. Working hours should not exceed the number of hours stated in the relevant Jordanian legislation which is ten hours.

Art. 18:

Both Parties shall take legal actions, including penalties and fines, against offices and agencies in both Parties who violate laws and regulations of either Party, or who violate any provisions of these Principles and Controls.



# 4.

## INTERNATIONAL INSTRUMENTS AND GUIDELINES

This section presents some particularly relevant articles of international legal instruments<sup>19</sup> to most of which the Philippines is a party or a signatory, and which may prove extremely useful in preventing the exploitation of domestic workers. While the migrant worker's country of employment may not always be party to the one or the other treaty, the incorporation of these provisions in international law may serve as an important reference in creating internationally recognized protection standards. This could, in turn, lead to a better enforcement of basic rights, an increasingly ethical behavior and strengthened labor migration governance.

It is firstly important to know that, as stated in the International Labour Organization (ILO)'s Domestic Workers Convention<sup>20</sup> (art. 7), all ILO member States are required to “take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements”.

The following elements, the Convention specifies, must be included in the employment contract:

- **Duration of the contract:** the starting date and duration of the contract (if limited in time).
- **Working time and vacations:** the normal hours of work per day or week.
- **Description of duties:** the type of work to be performed.
- **Place of work:** the address of the usual workplace or workplaces.

<sup>19</sup> International legal instruments may take either the form of treaties (also named conventions, covenants or agreements), which create binding, legal obligations on the country, or that of declarations and recommendations, which are rather statements of principles or guidelines and do not entail a binding commitment for the State.

<sup>20</sup> International Labour Organization (ILO), Convention Concerning Decent Work for Domestic Workers, 16 June 2011, PRNo.15A.

- **Probationary period:** the period of probation or trial period, if applicable.
- **Remuneration:** the remuneration, method of calculation and periodicity of payments.
- **Life and accident insurance:** the terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.
- **Paid annual leave, daily/weekly rest periods**
- **The provisions of food and accommodation, if applicable**
- **Terms of repatriation, if applicable**

Additional provisions contained in the ILO Domestic Workers Convention or in other international instruments provide useful guidelines and indications of the migrant worker's rights:

- **Equity and non-discrimination**

*Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest (...) in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.*

ILO Domestic Workers Convention, Article 10, par. 1

*Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.*

ILO Domestic Workers Convention, Article 11

*Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favorable than those applicable to workers generally in respect of social security protection, including with respect to maternity<sup>21</sup>.*

ILO Domestic Workers Convention, Article 14, par. 1

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

*(a) Other conditions of work, that is to say, overtime, hours of work (...) and any other conditions of work which, according to national law and practice, are covered by these terms.*

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

<sup>21</sup> It remains, however, unclear what these specific "characteristics of domestic work" are. The Convention uses, here, an ambiguous language that may lead to abuse.

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

International Convention on the Protection of All the Rights of Migrant Workers and Members of Their Families<sup>22</sup>, art. 25, par. 1, letter a and b and art. 25, par. 2

*States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

...

*e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.*

Convention on the Elimination of All Forms of Discrimination against Women<sup>23</sup>, art. 11, par. 1, letter e

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:*

*(a) Remuneration which provides all workers, as a minimum, with:*

*(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work (...).*

International Covenant on Economic, Social and Cultural Rights<sup>24</sup>, art. 7

*In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

*(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*

*(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.*

Convention on the Elimination of All Forms of Discrimination against Women, art. 11, par.2, letters A - B

<sup>22</sup> UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158.

<sup>23</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

<sup>24</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

- Family and marriage

*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

*The right of men and women of marriageable age to marry and to found a family shall be recognized.*

International Covenant on civil and political rights<sup>25</sup>, art. 23, par. 1 and 2

*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:*

*(d - iv) The right to marriage and choice of spouse.*

International Convention on the Elimination of all forms of racial Discrimination<sup>26</sup>, art. 5, letter d-iv

*States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*

*(a) The same right to enter into marriage.*

Convention on the Elimination of all forms of Discrimination against Women, art. 16, letter a

Ms. E. applied for a job in Malaysia through an agent. Her contract, signed in the Philippines, mentioned she was hired as a singer; yet, when she arrived in Sibul (Malaysia) in March 2014, she was asked to sign another contract as a therapist and masseuse. E. received training for two months, although without pay; during this period, her family in the Philippines provided for her needs. In June 2014, she was transferred to Kuching to work in a so-called wellness center as a masseuse. Eventually, the center's managers started obliging her to carry out any other service requested by the male customers, including body to body massage and even sexual services. As E. protested against this treatment, the managers refused to pay her monthly allowance – 450 Malaysian ringgit, around 100 US dollars. In spite of this, E. continued her work as masseuse, supporting herself only through the client's tipping. In August 2015, E. and other two Filipina women were able to run away from the employer, and seek assistance from religious groups in Malaysia.

**Source: Blessed Mary of the Passion Migrant Center (BMPMC), case files 2015**

<sup>25</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

<sup>26</sup> UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195.

- **Freedom of religion**

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

Universal Declaration of Human Rights<sup>27</sup>, art. 18

*Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

International Covenant on Civil and Political Rights, art. 18

- **Holidays**

*The holiday shall in no case be less than three working weeks for one year of service;*

Holidays with Pay Convention<sup>28</sup>, art. 3, par. 3

*Every person taking the holiday envisaged in this Convention shall receive in respect of the full period of that holiday at least his normal or average remuneration (including the cash equivalent of any part of that remuneration which is paid in kind and which is not a permanent benefit continuing whether or not the person concerned is on holiday), calculated in a manner to be determined by the competent authority or through the appropriate machinery in each country.*

Holidays with Pay Convention, art. 7

- **Social security**

*The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.*

International Covenant on Economic, Social and Cultural Rights, Article 9

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

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 27, par. 1

<sup>27</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

<sup>28</sup> International Labour Organization, Holidays with Pay Convention (Revised), 1970 (No. 132). The Philippines is not a party to this Convention.

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

International Covenant on Economic, Social and Cultural Rights, art. 9

- **Wages paid**

*Domestic workers shall be paid directly in cash at regular intervals at least once a month.*

Domestic Workers Convention, article 12, par.1

*Wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award.*

Protection of Wage Convention<sup>29</sup>, article 12

*Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.*

*Workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made."*

Protection of Wage Convention, art. 8

Mrs. C., a resident of Manila, left the Philippines in October 2014 to take up a job as a domestic worker in West Penang (Malaysia). As she recounts: "One day, I accidentally bumped against one of the steel tables while cleaning the kitchen. I felt my whole body going numb, but decided to ignore it. In December, my pain worsened. I asked my employer for some rest, but he refused; instead, I was told to buy some medicines. My situation, however, did not improve. Instead of giving me consideration, my employer got angry at me, because I could not work well. I didn't have any other choice but to work anyways, even though I was not feeling okay. In addition, when the time came for me to go back to the Philippines, she deducted a lot of money from my salary for arbitrary and unjust reasons".

**Source: Catholic Bishops' Conference of the Philippines - Episcopal Commission of the Pastoral Care of Migrants and Itinerant People, case files 2015**

<sup>29</sup> International Labour Organization, Convention concerning the Protection of Wages, 1949 (No. 95).

- **Withholding ID documents**

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

International Convention on the Protection of All the Rights of Migrant Workers and Members of Their Families, art. 21

*Each Member shall take measures to ensure that domestic workers (...) are entitled to keep in their possession their travel and identity documents.*

Domestic Workers Convention, article 9, letter C

- **Working hours**

*Where the duration of the normal working week exceeds forty-eight hours, immediate steps should be taken to bring it down to this level without any reduction in the wages of the workers as at the time hours of work are reduced.*

Reduction of Hours of Work Recommendation<sup>30</sup>, General Principles, par. 5

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: (...) (d ) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

International Covenant on Economic, Social and Cultural Rights, art. 7

Mrs. L. is a Filipina woman working in Malaysia since October 1, 2014. Soon after starting her new job, L. realized that the contract she had signed was not being respected: while she had agreed on a salary amounting to 400 US dollars, the employer was paying her 260 US dollars only. During four months, L. did not receive any salary at all, since the employer claimed to have deducted the expenses paid to process L.'s documents. Currently, L. is having issues with her thyroid, but is not allowed to see a doctor for a check-up. Her employer offered her some medicine, which she's afraid to take.

**Source: Catholic Bishops' Conference of the Philippines - Episcopal Commission of the Pastoral Care of Migrants and Itinerant People, case files 2015**

<sup>30</sup> International Labour Organization, Reduction of Hours of Work Recommendation, 1962 (No. 116). This is an instrument of soft law – in other words, it is not legally binding on the State party.

# 5.

## EMPLOYMENT CONTRACTS: BETWEEN SECURITY AND VULNERABILITY

The following chapter will examine various employment contracts in their distinguishing features. Through a comparison between the contracts, international instruments (especially ILO's) and the existing regulations within the Philippine legal system, the analysis will identify those provisions which can guarantee a better protection for migrant workers.

Given the high presence of Filipino workers in Hong Kong, Singapore and Malaysia, it was decided to consider the employment contracts used in these three host countries to focus on the differences and similarities between the Philippines' and those utilized abroad. The findings highlight the existing inequalities between national and migrant workers, as well as the need for a regional agreement regulating the matter. They will also, hopefully, constitute a basis for further exchanges aimed to improve the employment conditions of overseas workers.

Particular attention was paid to the provisions concerning the protection of domestic workers, as these constitute the largest group of Filipino emigrants<sup>31</sup>. As a preamble, it needs to be understood that the definition of "domestic worker" is *per se* not well defined or homogenous across different legal instruments, making any comparison extremely complex.

The considerable differences between the various conventions and acts regulating domestic work leave a broad margin for interpretation and application of the instrument, therefore reducing the effectiveness of national and international protection systems. The table below illustrates the important differences in the application of the instrument, which are due to these disparities in definitions.

<sup>31</sup> POEA, "2010-2014 Overseas Employment Statistics". Available at <http://www.poea.gov.ph/stats/2014%20POEA%20Stats.pdf>



**Domestic Workers Convention (ILO), art. 1**

- a) The term domestic work means work performed in or for a household or households;
- b) The term domestic worker means any person engaged in domestic work within an employment relationship;
- c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

**Philippines Labor Code, Book III, Chapter III, “Employment of Househelpers”, art. 141**

This Chapter shall apply to all persons rendering services in households for compensation. Domestic or household service shall mean service in the employer’s home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer’s household, including services of family drivers.

**Hong Kong Employment Ordinance, Chapter 57, 1968, Part I, Section 2**

Domestic servant includes a garden servant, chauffeur and boat-boy and any other personal servant of a like class.

**Singapore Employment Act, Chapter 91, 1968 (Act 17), Part I, art. 2, par. 1**

Domestic worker means any house, stable or garden servant or motor car driver, employed in or in connection with the domestic services of any private premises.

**Malaysian Employment Act, 1955, Part I, art. 2**

Domestic servant means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child’s nurse, valet, footman, gardener, washer-man or washer-woman, watchman, groom and driver or cleaner of any vehicle licensed for private use.

Proper comparisons between the statuses of domestic workers are therefore challenging because of the following:

- i. The ILO Domestic Worker Convention and the Philippines Domestic Workers Act consider domestic work as a job defined by a contractual relationship between the employer and the employee. Differently, the Filipino Labor Code defines this work as a *service*, for which financial compensation can be lower than a regular wage.
- ii. In the Filipino Labor code, the definition of the role of an employee does not apply to domestic workers. A domestic worker’s role and rights remain therefore uncertain.
- iii. The Hong Kong Employment Ordinance refers to “domestic servants” instead of “domestic workers”. The term “servant” suggests a lower status than that attributed to a worker.
- iv. The Malaysian Employment Act uses contrasting terms such as “employed”, “work” or “employer” but also “servant”: the status given by the Malaysian legislation to domestic workers remains ambiguous.
- v. The Singapore Employment Act, on the other hand, recognizes domestic work as a profession.

This grey zone even extends over other definitions, such as that of “caretaker”. The number of migrant domestic workers registered in Taiwan in 2014 was 2,118; yet, there were also some 213,023 caretakers in the country. Proper comparisons are therefore hazardous. For the present research, it was decided to pay attention to the concrete activity (the domestic work) carried out, rather than the worker’s legal status. As a consequence, the terms “domestic worker”, “domestic helper” and “house helpers” were considered as synonyms. The terms “domestic service/work” and “household service/work” are also considered as synonyms.

It must, however, be understood that the above identified differences in wording remain of significant importance in the contractual agreement. As a matter of fact, it is crucial for a migrant worker to well understand the exact value and conditions that come along with the status he or she will receive in the country of employment.

## A. Philippine Employment Contracts

In 1994, the POEA established a new standard employment contract for Filipino workers employed abroad as domestic helpers, named Model Employment Contract for Filipino Household Service Workers. This new model undoubtedly constitutes a step forward in the protection of migrant domestic workers, setting minimum standards and rights, while not preventing host countries to grant them better conditions of work and package benefits. The Household Service Workers (HSW) Policy Reform Package implemented since 2007 also sets a minimum salary and indicates that workers cannot be younger than 25 years of age. Nevertheless, the model contract presents some significant differences with regard to the Employment Contract for Various Skills, a more general contract aimed at all Overseas Filipino Workers. Troublingly, such inconsistencies may easily generate higher levels of vulnerability for the domestic worker.

The table below compares the Employment Contract for Various Skills with the Model Employment Contract for Filipino Household Service Workers<sup>32</sup>, identifying important features and differences between the two instruments. The table highlights in color the elements which may cause vulnerability and potential for abuse of respectively the employee or the worker.

TERMS OF CONTRACT	EMPLOYMENT CONTRACT FOR VARIOUS SKILLS	MODEL EMPLOYMENT CONTRACT FOR FILIPINO HOUSEHOLD SERVICE WORKERS
	(General contract aimed at all overseas Filipino employees)	(Contract for Overseas Filipino Domestic Workers)
Duration of the contract	No limitation. Starting from the employee’s departure from the point of origin	No limitation. Any extension is subject to the mutual consent of the parties

32 The Model Employment Contract for Filipino Household Service Workers under POEA Memorandum Circular No.63-A, Series of 1994, is not applicable to employment in countries where the POEA has adopted a country-specific standard employment contract for Filipino household service workers like Kingdom Saudi Arabia and Jordan.

Description of duties	Missing reference	Missing reference, except for the provision that the worker shall work solely for the employer and his immediate household: the worker shall in no case work in another residence or be assigned in any commercial, industrial or agricultural enterprise
Normal working hours and days	Max 8 hours per day / 6 days per week	Missing reference
Rest days	One rest day per week	At least one rest day per week, preferably Sunday
Salary amount and benefits	The amount is mentioned (no restrictions) + Provision of free suitable housing + Provision of free food or compensatory allowance	The amount is mentioned. The Household Service Workers Policy Reform Package foresees a wage not less than 400 USD per month  + Provision of sanitary living quarters free of charge  + Provision of free food or food allowance
Vacation leave: number of days	The number of days is to be indicated in accordance with the host country regulations	Min. 15 calendar days for every year of service, to be availed of upon completion of the contract
Medical treatment	The employer must provide free emergency medical and dental services and facilities including medicine	The employer must provide free medical and dental services including facilities and medicine
Personal life, medical, accident and repatriation insurance	Provided, in accordance with host government and/or Philippine government laws without cost for the worker	Provided only for work-connected illness or injuries, in accordance with the pertinent laws of the host country, separate and distinct from and in addition to whatever benefits the worker is entitled to under Philippine laws and regulations
Paid sick leave	To be indicated, in accordance with labor laws	Missing reference for non-work related illness or injuries
Free transport to the site of employment and return transportation to the point of origin	Free transport is provided upon expiration of the contract, termination of the contract by the employer without just cause, work inability of the employee due to work connected or work aggravated injury of illness, force majeure and in cases of contract termination through no fault of the employee	Free transport is provided to the site of employment, upon expiration of the contract, all the cases of contract termination through no fault of the worker
Termination by the employer with just causes (without notice)	Serious misconduct or willful disobedience by the worker of the employer's or immediate household members' lawful orders in connection with his/her work; gross habitual neglect of duties by the worker; violation of the laws of the host country (repatriation is at the expense of the employee)	Serious misconduct or willful disobedience by the worker of the employer's or immediate household members' lawful orders in connection with his/her work; gross habitual neglect of duties by the worker; violation of the laws of the host country (in these cases, repatriation is at the expense of the worker)
Termination by the employee/worker without just cause (with notice)	With written notice to the employer at least one month in advance (repatriation is at the expense of the employee)	With written notice to the employer at least one month in advance (without such notice, repatriation is at the expense of the worker)

Termination by employee/worker with just cause (without notice)	Serious insult by the employer or his representative, inhuman and unbearable treatment, commission of a crime/offense by the employer or his representative (in these cases, repatriation is at the expense of the employer)	Mistreatment by the employer or any member of his household; violation of contractual terms and conditions; non-payment of salary, physical molestation and/or assault, unsanitary living conditions, inadequate food and food provisions, deliberate and habitual denial by the employer of the one day a week vacation leave, multiple employers other than stated in the contract (in these cases, repatriation is at the expense of the employer)
Termination due to illness	Either party may terminate the contract on the ground of illness or injury by the employee (repatriation is at the expense of the employer)	Contract may be terminated due to illness, disease or injury if continued employment is prohibited by law or prejudicial to the health of the employer and his/her household (repatriation is at the expense of the employer)
Grievance procedure (competent authority)	Amicable settlement with a labor attaché or any authorized representative of the Philippine Embassy/Consulate or government body in the host country or in the Philippines, if permitted by the host country laws	The Philippine Embassy (amicable solution) or labor authorities of the host country
Prohibition of withholding the employee/worker's passport/travel documents	Missing reference	Missing reference
Prohibition of unlawful deductions	Missing reference	Prohibited

PROVISIONS REQUIRING ATTENTION TO REDUCE VULNERABILITY AND POTENTIAL FOR ABUSE

## Important variations in the provisions

While it is of great value that the labor attaché of the Philippine embassy is indicated by the contract models as the first interlocutor to find amicable solutions, a proper monitoring of the correct implementation of regulations in the country of employment remains the essential challenge to avoid crime and abuse. Unfortunately, this remains a weaker point.

The contractual differences between generic employees and domestic workers prove that a high level of inequality persists: this is especially clear with regard to the number of hours a domestic worker may be asked to perform, which may amount to up to 16 hours per day. This and other elements – mentioned below – contribute to create significant risks for the domestic worker; it is no wonder these risks have been internationally recognized and are the object of various provisions within international agreements and covenants.

### Working hours and overtime provisions vary between 8 and 16 hours a day

According to the Employment Contract for Various Skills, working hours should be no more than 8 per day, 6 days per week. On the other hand, the Employment Contract for Filipino Household Service Workers Overseas may require an employee to work for up to 16 hours per day, with one rest day per week. The latter is reflected in the Filipino national legislation: the Domestic Workers Act (Republic Act 10361), which applies to all domestic workers, establishes that “the domestic worker shall be entitled to an aggregate daily rest period of eight (8) hours per day” (Art. IV, sec. 20). As it follows, a domestic worker in the Philippines may be bound to work twice as long as any employee. Conversely, the new Standard Employment Contract for Filipino Household Service Workers Bound for Jordan, established under POEA Memorandum Circular No. 07, provides for a 10-hour workday for Household Service Work-

ers (HSWs), counting out breaks for eating or resting. This provision, which only concerns Filipino domestic workers in Jordan, is of great significance but not yet reflected in any other model contract or bilateral agreement.

A short section regarding overtime (in other words, working beyond regular hours as well as during rest days or holidays) is present in the Standard Employment Contract for Various Skills, but not in the one concerning domestic workers. In addition, neither the Philippines Labor Code nor the Domestic Workers Act contain provisions in this regard. This obviously paves the way to potential abuse.

An important provision on overtime is, instead, provided by the ILO Domestic Workers Convention, art. 10, par. 1, which requires each Member State to guarantee “equal treatment between domestic workers and workers generally in relation to (...) overtime compensation (...)” (cfr. International legal framework, section no. 8).

Ms. R. was recruited by the Sea Home Boutique Homestay in Penang (Malaysia) in November 2012. While she was hired as a domestic worker, upon arriving in Malaysia she was required to work in the construction of a hotel, where she was mixing cement, carrying stone, marble, and other heavy materials. Her job also included hotel maintenance, computer and paper work, cleaning the rooms, washing linens, and cooking. During her employment, she received a salary of 100 Malaysian ringgits per month instead of the 200 which had been promised in the standard contract she had signed in the Philippines. Her passport was withheld by her employer. R. was working 16,5 hours per day, without being allowed to take any day off. Instead of giving her an extra compensation, the employer deduced 3,300 ringgits from her salary.

**Source: Tenaganita (Women's force), Kuala Lumpur (Malaysia), case files 2013.**

### Missing description of duties

The contract for household service workers does not include a list of activities which the worker is expected to undertake. The relevant provision only mentions that the worker shall work solely for the employer and his immediate household, and that she or he should in no case work in another residence, industrial or agricultural enterprise.

It is therefore frequent for migrants to only discover upon arrival that their work duties are not the ones expected. An additional challenge is posed by the insufficient monitoring of the correct application of the provision: while the Model Employment Contract for Household Services foresees the possibility for embassy staff to visit the worker regularly at the employer's residence, such provision serves mainly or more frequently in case of reported incidents. No indication could be found on its preventive value.

The Domestic Workers Convention calls for its parties to ensure "that domestic workers are informed of their terms and conditions of employment (...) preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular: (...) (d) the type of work to be performed;" (art. 7, letter d). Contracts should, therefore, include as an attached document – or better, as part of the contract itself – a job description detailing the worker's work activities or enumerating the tasks to be fulfilled. Such a solution not only allows a better understanding of the worker of his or her duties, but also makes any kind of claim easier to address.

"Aside from working for my employer's family, Madam would always send me and the Filipina helper of her sister to her mother's house for us to do the household chores there. That was not part of the contract that I signed. But every time we complained or refused to do the chores, they would tell us, 'We feed you, we paid US\$2,000 to your agency, and we bought you clothes. Why do you refuse to work as well on my mother's house?' They even threatened to send us back to the agency without paying our salary. I was naïve and I easily got scared of all the threats they made."

**Source: Lachica, Nova M., "Enticed to Work Abroad", Migrants' Stories, Migrants' Voices vol. 3, Philippine Migrants Rights Watch, 2011, p. 18-21.**

### Leave: number of vacation days and leave provisions

While both types of contracts envisage a right to vacation leave with full pay, this provision may be differently applied in the country of destination, thus reducing the validity of the contractual right.

The Employment Contract for Filipino Household Service Workers defines the duration of the employee's vacation leave (min. 15 days for every year of service). It also establishes that the period of leave may only be enjoyed upon completion of the contract, and not during the period of employment.

As a consequence, overseas Filipino domestic workers may be forced to work for months or even years without any vacation leave, until their contract expires. While this may vary depending on the legislation of the country of employment, the provision poses a serious protection threat to the worker, who may be confined at home seven days a week. The system also means that the 15 days of leave - if the contract is not prolonged - result in the payment of 15 days upon departure, which is to say that it excludes any day of rest during the period of employment.

"I worked for that household for a year and five months, and during all that time I was only permitted one day off every three months. They forbade me to own a mobile phone, and if it was not my day off, I was only permitted to leave the property to clean outside the gate. As a result, I had no social contact outside the house."

**Source:** Lopez, Sally, "Maid in Singapore," *Migrants stories, Migrants voices vol. 3, Philippine Migrants Rights Watch, 2011, p 53-55.*

### Sick leave provisions

Explicit provisions on sick leave (with full pay) are only included in the Employment Contract for Various Skills. The contract for domestic workers merely stipulates that work-related illness or injuries and even death have to be dealt with in accordance with the pertinent laws of the host country; the text also adds that such conditions are separate and distinct from, but in addition to, whatever benefits the worker is entitled to under Philippine laws and regulations. This may well result in a conflict of laws whenever the rights awarded to the worker by the host country are less favorable than those of the Philippines.

The New Standard Employment Contract for Filipino Household Service Workers bound for Jordan proves that cooperation between the countries of origin and of destination can result in better protection for the worker. The Filipino-Jordanian contract provides, indeed, for a fully-waged sick leave of up to fourteen days annually. Such a provision should certainly become applicable to all contracts.

On 11 September 2013, during her daily work activities, G. had an accident. She lost balance and fell down the stairs. G. was injured, and suffered the fracture of her clavicle. Instead of receiving much needed assistance from her employer, her contract was terminated on 23 November."

**Source:** Golden, Miss, Interview by Edmundo Ruga, 9 August 2014. *Mission for Migrant Workers (MFMW), Hong Kong.*

### Missing provisions for maternity leave

Neither of the contracts analyzed includes provisions on maternity leave. This happens in spite of the fact that women constitute by far the majority of domestic workers, and that certain physical activities may be prejudicial to their health or that of the child. Additionally, a lack of regulation could also favor discrimination on the basis of a woman's pregnancy.

While the Philippines Labor Code is detailed in its norms on maternity leave, the status of female overseas workers is instead regulated by the host country. In some cases, female workers are required to undergo compulsory medical examinations every six months to exclude the possibility of a pregnancy; if found to be expecting a child, workers are frequently sent home. Such abuses highlight, once more, the importance of guaranteeing the workers' rights through clear regional or internationally monitored procedures.

The International Covenant on Economic, Social and Cultural Rights guarantees "special protection (...) to mothers during a reasonable period before and after childbirth" (art. 10, par. 2). The right to care and assistance during motherhood is also included in the Universal Declaration on Human Rights (art. 25 par. 2) and in the Convention on the Elimination of All Forms of Discrimination Against Women, which prohibits the "dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status". The same instrument requires State parties "to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances" (art. 11, par. 2, letters (a) and (b)).

Mr. R. worked at a chain restaurant in Western Australia as assistant manager. During her employment, R. became pregnant; her employer made clear she would lose her job if she did not agree to have an abortion. “He told me that he would have to be blunt and tell me that if I go on with the pregnancy, he’d give me a letter of redundancy and I’d go back to the Philippines right away, pregnant, jobless, and without my husband”. R. refused to have an abortion; she was fired three days later.

**Source:** “Filipina worker in Perth sues Mc Donald’s over ‘forced’ abortion”, 2010, available at <http://www.pinoy-ofw.com/>.

### Insufficient monitoring of the prohibition to withhold the employee’s passport or travel documents

In many cases, this provision is missing in the contract and is disregarded by abusive employment agencies or employers who seek to segregate the worker and prevent him or her from denouncing exploitation.

Art. 21 of the International Convention on the Protection of All the Rights of Migrant Workers and Members of Their Families prohibits the unauthorized confiscation, destruction or attempt of destruction of identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. Similarly, the ILO Domestic Workers Convention (art. 9, letter c), states that “each Member shall take measures to ensure that domestic workers: (...) (c) are entitled to keep in their possession their travel and identity documents”.

Such a prohibition should be incorporated in all labor laws, while also developing the necessary means and control mechanisms – at least at the level of employment agencies – to avoid abusive practices. A regional agreement would, however, constitute a more important step forward.

Ms. T., a 29-year-old woman from the Philippines, was required by her supervisor to give him her travel documents – including her passport – promising that the documents would be returned to her. Later on, she was told instead that the documents would be kept in the administration office for safekeeping and security concern. Due to this reason, she could not leave her workplace”.

**Source:** Diocesan Pastoral Center for Filipinos, Hong Kong, case files



## B. From weaker provisions to grey zones

Model contracts serve as a framework or guideline in ensuring minimal labor rights, while not preventing foreign legislations from granting additional rights or benefits to locally employed Filipinos. Following the above analysis, however, it is relevant to verify to what extent those rights are translated in the actual contracts issued by employment agencies.

The research was therefore progressed by looking at a number of confirmed contracts. What resulted from the analysis is a variety of different provisions, which in some cases entail improvements in protection standards and in others create additional risk and vulnerabilities for the domestic worker. The three sections below focus on such differences embedded in recent and currently utilized employment contracts in Hong Kong, Malaysia and Singapore, as properly reviewed by the labor attachés of the respective Philippine Embassies. While the study definitely needs to be extended over more countries, more employment agencies and more contracts, the research shows to what extent certain provisions contained in the model employment contract are easily ignored, inadequately integrated or simply not found applicable in the country of destination.

The tables presented aim to compare the provisions of the Model Employment Contract for Filipino Household Service Workers with employment contracts for domestic workers in the three other countries of reference. The tables indicate in brown those contractual elements which are considered a risk of abuse and in green those that are an improvement compared to the model contract.

### 1) *A Filipino contract established in November 2014 for a Domestic worker position in Hong Kong*

TERMS OF CONTRACT	MODEL EMPLOYMENT CONTRACT FOR FILIPINO HOUSEHOLD SERVICE WORKERS (Contract for Overseas Filipino Domestic Workers)	A DOMESTIC WORKER EMPLOYMENT CONTRACT ESTABLISHED FOR A FILIPINO IN HONG-KONG
Duration of the contract	No limitation. Any extension is subject to the mutual consent of the parties	2 years maximum (renewable)
Description of duties	Missing reference, except for the provision that the worker shall work solely for the employer and his immediate household: the worker shall in no case work in another residence or be assigned in any commercial, industrial or agricultural enterprise	As per the Schedule of Accommodation and Domestic Duties for the Employer, attached to the contract. Domestic work is allowed only in the employer's residence. The contract explicitly excludes driving a motor vehicle of any kind for whatever purposes, whether or not the vehicle belongs to the employer. However, the description of duties remains missing
Normal working hours and days	Missing reference	Missing reference

Rest days	At least one rest day per week, preferably Sunday	All rest days, statutory holidays and paid annual leave are to be guaranteed as foreseen in Employment Ordinance - chapter 57
Salary amount and benefits	The amount is mentioned. The Household Service Workers Policy Reform Package foresees a wage not less than 400 USD per month  + Provision of sanitary living quarters free of charge  + Provision of free food or food allowance	The amount is mentioned, although it can be no less than the minimum wage determined by the Government of the Hong Kong Special administrative region  + Provision of suitable and furnished accommodation  + Provision of food free of charge or a food allowance
Vacation leave: number of days	Min. 15 calendar days for every year of service, to be availed of upon completion of the contract	According to the provisions of Employment Ordinance - chapter 57 (7 to 14 days per year, depending on length of service)
Medical treatment	The employer must provide free medical and dental services including facilities and medicine	The employer must provide free medical treatment including medical / hospital consultations and emergency dental treatment
Personal life, medical, accident and repatriation insurance	Provided only for work-connected illness or injuries, in accordance with the pertinent laws of the host country, separate and distinct from and in addition to whatever benefits the worker is entitled to under Philippine laws and regulations	The employer is responsible for covering medical examination and insurance fees. No further qualification of the insurance coverage is provided
Free transport to the site of employment and return transportation to the point of origin	Free transport is provided to the site of employment, upon expiration of the contract, all the cases of contract termination through no fault of the worker	Free transport to the site of employment and upon expiration of the contract
Termination by the employer with just cause (without notice)	Serious misconduct or willful disobedience by the worker of the employer's or immediate household members' lawful orders in connection with his/her work; gross habitual neglect of duties by the worker; violation of the laws of the host country (in these cases, repatriation is at the expense of the worker)	Termination with one month's notice, in writing (or deduction of one month's worth of wages in lieu of notice). Termination without notice is possible in circumstances foreseen by law (Employment Ordinance – chapter 57) (No mention of repatriation expense)
Termination by the worker without just cause (with notice)	With written notice to the employer at least one month in advance (without such notice, repatriation is at the expense of the worker)	Written notice at least one month in advance (or one month's worth of wages in lieu of notice) (No mention of repatriation expense)
Termination by the worker with just cause (without notice)	Mistreatment by the employer or any member of his household; violation of contractual terms and conditions; non-payment of salary, physical molestation and/or assault, unsanitary living conditions, inadequate food and food provisions, deliberate and habitual denial by the employer of the one day a week vacation leave, multiple employers other than stated in the contract (in these cases, repatriation is at the expense of the employer)	In case of those circumstances permitted by Employment Ordinance - chapter 57: fear of physical danger by violence or disease, ill-treatment by the employer (No mention of repatriation expense)

Termination due to illness	Contract may be terminated due to illness, disease or injury if continued employment is prohibited by law or prejudicial to the health of the employer and his/her household (repatriation is at the expense of the employer)	If the helper is no longer fit for work, the contract may be terminated and the helper repatriated. A certification by a registered medical or Chinese medicine practitioner is required  (No mention of repatriation expense)
Grievance procedure (competent authority)	The Philippine Embassy (amicable solution) or labor authorities of the host country	Missing reference
Prohibition of withholding the worker's passport/ travel documents	Missing reference	Missing reference
Prohibition of deductions	Prohibited	Missing reference

PROVISIONS IMPLYING A COMPARABLE OR HIGHER RISK OF ABUSE

### Important variations in the provisions

The contract is lacking reference to a proper regulation of matters such as working hours, description of duties, vacation leave, medical treatment, grievance, prohibition to withhold travel documents and passport, and prohibition of direct deductions from the salary.

To add a further worrisome element, it is uncertain whether and to what extent the country's labor laws apply to foreign workers, since the limits of Hong Kong's jurisdiction are not clearly defined. The many claims raised by domestic workers in Hong Kong confirm the potential risks emerging from such uncertainty.

#### Salary

The Hong Kong Compensation Ordinance defines a minimum hourly rate of 30 HK\$<sup>33</sup>; it is not clear, however, whether the Ordinance provisions apply to all categories of workers, and especially to domestic workers. Since a ref-

erence to the Employment Ordinance is made explicit in the provisions concerning rest days and vacation leave, one may deduce that the absence of such reference in the provision on salary makes it inapplicable. The present contract also lacks a prohibition to deduce amounts from the salary: it is likely, therefore, that a domestic worker may receive less than a minimum wage.

#### Working hours and days

The Hong Kong contract is silent on this matter, thus leaving a broad margin of discretion to the employer and a potential for abuse. With no reference to the limits and provisions contained in the Hong Kong Employment Ordinance.

#### Overtime and work on rest days or holidays

No provisions on overtime are present in the contract. Hong Kong labor laws allow an employee to work on national holidays, provided that he or she is notified in advance<sup>34</sup> and that the missed holiday is recuperated on another occasion. The law also allows to disregard rest days "in the case of unforeseen emergencies of any nature", although the notion of "emergency" is not clarified. In addition, it is uncertain if

<sup>33</sup> The Minimum Wage is defined as "the amount derived by multiplying the total number of hours (including any part of an hour) worked by the employee in the wage period by the minimum hourly wage rate". Cfr. Minimum Wage Ordinance (cap. 608), Part 2, Section 8, par. 2.

<sup>34</sup> Cfr. Employment Ordinance; see above.

the holidays that are observed by Hong Kong nationals are applicable to migrant domestic workers.

### **Prohibition of withholding the worker's passport or travel documents**

For migrant workers, identity and travel documents represent a fundamental means to enjoy freedom of movement as well as a number of other rights. Without documents, the worker also loses the capacity to demonstrate the legality of his or her stay in the host country: a worker found without documents may incur a number of penalties.

### **Prohibition of unlawful deductions**

The present contract makes no reference to the possibility of deducing amounts of money from the worker's wage, whereas the Philippines' contract explicitly forbids this act (unless deductions are allowed by law). Since the Philippines' contract does not possess any binding effect in Hong Kong, this paves the way to unjust reductions of the worker's salary.

### **Maternity and sick leave**

The Hong Kong labor laws recognize a right to paid annual and maternity leave as well as sickness allowances, but the employer remains free to decide whether to conform to the Employment Ordinance or to apply specific company rules. Anyways – it is recalled – it is unclear whether and in which cases the Hong Kong Employment Ordinance applies to migrant workers at all.

## 2) A Filipino contract established in January 2015 for a Domestic Worker position in Singapore

This section analyses a contract established in January 2015 and entitled Standard Employment Contract for Filipino Household Service Workers. The contract, which engages a domestic worker for a position in Singapore, was established by a regular recruitment agency in the Philippines and verified by the Philippine embassy. The differences between the country's model contract for household service workers and the established agreement for a job in Singapore highlight various levels of risk.

TERMS OF CONTRACT	MODEL EMPLOYMENT CONTRACT FOR FILIPINO HOUSEHOLD SERVICE WORKERS  (Contract for Overseas Filipino Domestic Workers)	DOMESTIC WORKER EMPLOYMENT CONTRACT ESTABLISHED FOR A FILIPINO IN SINGAPORE  (Including information found in the accompanying In Principle Approval issued by the Work Pass division of the Ministry of manpower for the same person - Jan. 2015)
Duration of the contract	No limitation. Any extension is subject to the mutual consent of the parties	As specified in the work contract and permit
Description of duties	Missing reference, except for the provision that the worker shall work solely for the employer and his immediate household: the worker shall in no case work in another residence or be assigned in any commercial, industrial or agricultural enterprise	Missing reference
Normal working hours and days	Missing reference	Minimum 8 hours of continuous rest per day
Rest days	At least one rest day per week, preferably Sunday	At least one rest day a week
Salary amount and benefits	The amount is mentioned. The Household Service Workers Policy Reform Package foresees a wage not less than 400 USD per month  +  Provision of sanitary living quarters free of charge  +  Provision of free food or food allowance	The amount is mentioned  +  Provision of sanitary living quarters free of charge  +  Provision of free food or food allowance
Vacation leave: number of days	Min. 15 calendar days for every year of service, to be availed of upon completion of the contract	Min. 15 calendar days for every year of service, to be availed of upon completion of the contract
Medical treatment	The employer must provide free medical and dental services including facilities and medicine	The employer must provide free emergency medical and dental services and including facilities and medicines
Personal life, medical, accident and repatriation insurance	Provided only for work-connected illness or injuries, in accordance with the pertinent laws of the host country, separate and distinct from and in addition to whatever benefits the worker is entitled to under Philippine laws and regulations	The employer must provide the worker with personal life accident, medical, and repatriation insurance with a reputable insurance company in the host country. The personal accident insurance must be valid for at least 26 months and should amount to no less than 40,000\$; Medical insurance coverage must amount to at least 15,000\$ per year

Free transport to the site of employment and free return transportation to the point of origin	Free transport is provided to the site of employment, upon expiration of the contract, all the cases of contract termination through no fault of the worker	Provided in case of expiration, or termination of the contract through no fault of the service worker and or due to force majeure. In case of renewal of the contract, a free round trip economy air class ticket is to be provided by the employer
Termination by the employer with just cause (without notice)	Serious misconduct or willful disobedience by the worker of the employer's or immediate household members' lawful orders in connection with his/her work; gross habitual neglect of duties by the worker; violation of the laws of the host country (in these cases, repatriation is at the expense of the worker)	Missing reference
Termination by the worker without just cause (with notice)	With written notice to the employer at least one month in advance (without such notice, repatriation is at the expense of the worker)	Missing reference
Termination by the worker with just cause (without notice)	Mistreatment by the employer or any member of his household; violation of contractual terms and conditions; non-payment of salary, physical molestation and/or assault, unsanitary living conditions, inadequate food and food provisions, deliberate and habitual denial by the employer of the one day a week vacation leave, multiple employers other than stated in the contract (in these cases, repatriation is at the expense of the employer)	Missing reference
Termination due to illness	Contract may be terminated due to illness, disease or injury if continued employment is prohibited by law or prejudicial to the health of the employer and his/her household (repatriation is at the expense of the employer)	Missing reference
Grievance procedure (competent authority)	The Philippine Embassy (amicable solution) or labor authorities of the host country	Missing reference
Prohibition of withholding the worker's passport/travel documents	Missing reference	Missing reference
Prohibition of deductions	Prohibited	Missing reference

 PROVISIONS IMPLYING BETTER PROTECTION

 PROVISIONS IMPLYING A COMPARABLE OR HIGHER RISK OF ABUSE

## *Important variations in the provisions*

This comparison shows that those differences between the Filipino model contract and the contract established in Singapore can be of importance. A number of provisions is missing, as explained in detail in the paragraphs below.

### **Work time**

The Singapore Employment of Foreign Manpower Act is not precise as to the definition of an employee's working hours. The only indication provided allows for one unpaid rest day per seven-day period. In the case of national workers, however, the Singaporean legislation regulates the matter in detail: the employed citizens may work for no more than eight hours per day (or 44 hours per week). It remains unclear whether this also applies to national domestic workers, as their inclusion depends upon the decision of the Minister<sup>35</sup>. Only a precise indication in the contract could help create the necessary clarity.

### **Description of duties**

The Singapore contract remains silent on the matter, while the procedures provide for the drafting of detailed terms of reference upon the conclusion of the agreement through an attachment titled "Job Scope Sheet for Foreign Domestic Worker", which the employer needs to submit when formally declaring the employment of workers in his or her household.

### **Termination of the contract**

According to the Filipino model contract, all forms of abuse or violence committed by the worker on the employer or any other members of the household are considered just causes for contract termination.

The Singaporean legislation – as made clear in the Employment of Foreign Manpower Act – does not list any just causes for contract termination by the foreign worker.

Preventing domestic workers from rightfully terminating their own contract when suffering abuse or violence in the workplace puts them in an extremely vulnerable position: this way, they lose their right to termination without notice as well as the possibility to be repatriated at the expense of the employer. In addition, the signed contract does not mention illness, disability, disease or injury by the employee as just causes: the lack of such provisions can easily turn into an opportunity for the employer to dismiss a worker without warranties of any kind.

### **Prohibition of withholding the worker's passport or travel documents**

This prohibition, clearly expressed by the Filipino model contract, is not included in the present one. Singapore's laws prohibit to withhold the employee's work permit and visit pass, but do not mention passports or other identity documents.

<sup>35</sup> As specified by art. 67 of the Act: "The Minister may, from time to time by notification in the Gazette, apply all or any of the provisions of this Act with such modification as may be set out in the notification to all domestic workers or to any group, class or number of domestic workers and may make regulations to provide generally for the engagement and working conditions of domestic workers."

### Prohibition of unlawful deductions

While the present contract is silent on the matter, the Employment of Foreign Manpower Act prohibits the “increase of the amount of fixed monthly deductions to more than that declared as such in the work pass application, unless otherwise provided in a prior written agreement”. This provision may protect the migrant worker in spite of the lack of precision in the contract, yet only as far as the worker is aware of it.

### Overtime and work during rest days or holidays

Indications on overtime are missing in both contracts, as well as in the Singapore Employment of Foreign Manpower Act. While the matter is well regulated by the Employment Act for Singapore National Workers, the instrument does not seem to apply to foreign domestic workers.

Neither of the two contracts – nor Singaporean laws<sup>36</sup> – regulate the event in which a worker is required to work during a public holiday.

### Sick and maternity leave

Provisions on maternity and sick leave are also absent in the instruments under examination. The Singapore Employment Act’s sick leave regulations only apply to national workers, while those on maternity leave<sup>37</sup> also apply to foreigners. Unfortunately, however, domestic workers are not included in the notion of “foreigners” and can therefore not enjoy such right.

<sup>36</sup> As mentioned, such provisions do exist in the Singapore Employment Act, although the instrument does not apply to migrants and domestic workers.

<sup>37</sup> Paid maternity leave amounts to sixteen weeks if “the child is a Singaporean citizen; the child’s parents are lawfully married; the employee has served her employer for at least 3 months before the child’s birth”. Otherwise, maternity leave amounts to only twelve weeks of which only the first eight are compulsorily paid, upon the condition that the employee has fewer than two living children (excluding the newborn), she has served her employer for at least 3 months before the birth of the child, she has given her employer at least one week’s notice before going on maternity leave, and informed her employer as soon as practicable of her delivery.



## The Foreign Manpower Act (Singapore)

Some provisions contained in the Employment of Foreign Manpower Act deserve particular attention:

- Art. 6 *The foreign employee shall not go through any form of marriage or apply to marry under any law, religion, custom or usage with a Singapore citizen or permanent resident in or outside Singapore, without the prior approval of the Controller, while the foreign employee holds a work permit, and also after the foreign employee's work permit has expired or has been cancelled or revoked.*
- Art. 7 *If the foreign employee is a female foreign employee, the foreign employee shall not become pregnant or deliver any child in Singapore during and after the validity period of her work permit, unless she is a work permit holder who is already married to a Singapore citizen or permanent resident with the approval of the Controller.*
- Art. 8 *The foreign employee shall not be involved in any illegal, immoral or undesirable activities, including breaking up families in Singapore.*

As made evident by the provisions, migrant employees are only entitled to marry a Singaporean citizen if authorization is granted by the Controller of the work permits. If a female migrant is not married to a Singaporean national or permanent resident with the approval of the Controller, maternity leave may also not be allowed.

In addition, the possibility for the worker to remain in the country in the long term is made difficult and only allowed on the basis of a strictly financial evaluation. Migrant employees are mainly conceived as a means to “fill in the gaps” in the host country’s labor market and only for the time strictly necessary for this purpose.

It is recalled, once more, that it is uncertain whether and to what extent the provisions aimed at national employees are applicable to domestic workers.

### 3) A Filipino contract established in December 2014 for a Domestic Worker position in Malaysia

This section analyzes a contract established in December 2014 and entitled “Employment contract for Filipino Household Service Worker”. The agreement, which binds a domestic worker for a position in Malaysia, was made by a regular recruitment agency in the Philippines and verified by the labor attaché of the Philippines’ embassy. While not numerous, the dissimilarities with the model contract for household service workers highlight elements of concern for the worker’s protection.

TERMS OF CONTRACT	MODEL EMPLOYMENT CONTRACT FOR FILIPINO HOUSEHOLD SERVICE WORKERS (Contract for Overseas Filipino Domestic Workers)	DOMESTIC WORKER EMPLOYMENT CONTRACT ESTABLISHED FOR A FILIPINO IN MALAYSIA
Duration of the contract	No limitation. Any extension is subject to the mutual consent of the parties	Maximum of two years
Description of duties	Missing reference, except for the provision that the worker shall work solely for the employer and his immediate household: the worker shall in no case work in another residence or be assigned in any commercial, industrial or agricultural enterprise	Missing reference, except for the provision that the employee shall work solely for the employer and his immediate household: the worker shall in no case work in another residence, or be assigned in any commercial, industrial or agricultural enterprise
Normal working hours and days	Missing reference	A domestic worker must be allowed a continuous rest of at least 8 hours per day
Rest days	At least one rest day per week, preferably Sunday	At least one day a week
Salary amount and benefits	The amount is mentioned. The Household Service Workers Policy Reform Package foresees a wage not less than 400 USD per month  +  Provision of sanitary living quarters free of charge  +  Provision of free food or food allowance	The amount is mentioned  +  Provision of sanitary living quarters free of charge  +  Provision of free food or food allowance
Vacation leave: number of days	Min. 15 calendar days for every year of service, to be availed of upon completion of the contract	Vacation leave with full pay of at least 15 calendar days for every year of service, to be availed of upon completion of the contract
Medical treatment	The employer must provide free medical and dental services including facilities and medicine	The employer must provide free medical and dental services, including facilities and medicines
Personal life, medical, accident and repatriation insurance	Provided only for work-connected illness or injuries, in accordance with the pertinent laws of the host country, separate and distinct from and in addition to whatever benefits the worker is entitled to under Philippine laws and regulations	The employer shall provide the helper with personal life, accident, medical, and repatriation insurance with a reputable insurance company in the host country

Free transport to the site of employment and free return transportation to the point of origin	Free transport is provided to the site of employment, upon expiration of the contract, all the cases of contract termination through no fault of the worker	Free transport is provided to the site of employment upon expiration of the contract, force majeure, and all the cases of contract termination through no fault of the worker. In case of contract renewal, a free round-trip, economy class air ticket is provided by the employer
Termination by the employer with just cause (without notice)	Serious misconduct or willful disobedience by the worker of the employer's or immediate household members' lawful orders in connection with his/her work; gross habitual neglect of duties by the worker; violation of the laws of the host country (in these cases, repatriation is at the expense of the worker)	Serious misconduct or willful disobedience by the worker of the employer's or immediate household members' lawful orders in connection with his/her work; gross habitual neglect of duties by the worker; violation of the laws of the host country (in these cases, repatriation is at the expense of the worker)
Termination by the worker without just cause (with notice)	With written notice to the employer at least one month in advance (without such notice, repatriation is at the expense of the worker)	With written notice to the employer at least one month in advance (without such notice, repatriation is at the expense of the worker)
Termination by the worker with just cause (without notice)	Mistreatment by the employer or any member of his household; violation of contractual terms and conditions; non-payment of salary, physical molestation and/or assault, unsanitary living conditions, inadequate food and food provisions, deliberate and habitual denial by the employer of the one day a week vacation leave, multiple employers other than stated in the contract (in these cases, repatriation is at the expense of the employer)	Mistreatment by the employer or any member of his household; violation of contractual terms and conditions; non-payment of salary, physical molestation and/or assault (in these cases, repatriation is at the expense of the employer)
Termination due to illness	Contract may be terminated due to illness, disease or injury if continued employment is prohibited by law or prejudicial to the health of the employer and his/her household (repatriation is at the expense of the employer)	The contract may be terminated due to illness, disease or injury if continued employment is prohibited by law or prejudicial to the health of the employer and his/her household (at the expense of the employer).
Grievance procedure (competent authority)	The Philippine Embassy (amicable solution) or labor authorities of the host country	The Philippine Embassy (amicable solution) or labor authorities of Malaysia
Prohibition of withholding the employee's passport/ travel documents	Missing reference	Prohibited
Prohibition of deductions	Prohibited	Prohibited

 PROVISIONS IMPLYING BETTER PROTECTION

 PROVISION IMPLYING A COMPARABLE OR HIGHER RISKS OF ABUSE

## *Important variations in the provisions*

The present contract is quite close to the model agreement, and provides a better provision as to insurance. Yet, it confirms some of the weaknesses already present in the model contract:

### **Normal working hours and days**

While conforming to the model contract, the agreement does not lay down rules as to the employee's working hours and days. The Malaysian Employment Act<sup>38</sup>, which provides for an eight-hour workday, does not apply to domestic workers. Such framework implies disparity of treatment between workers and paves the way to potential abuse.

### **Overtime and work on rest days or holidays**

The Malaysian Employment Act defines limits on overtime and appropriate compensation, while also regulating the matters of work on rest days and holidays. However, as mentioned just above, the law does not apply to domestic helpers. As a consequence, national and foreign domestic workers do not benefit from any right or entitlement when they are required to work beyond any foreseen schedule.

### **Vacation leave**

The Malaysian national legislation establishes that, as long as the worker has been continuously employed for less than two years by the same employer, he or she has the right to eight days of vacation per year (which may even become twelve or sixteen days per year according to seniority in the job). Once more, national provisions do not apply to foreign domestic workers.

### **Prohibition of withholding the employee's passport or travel documents**

The prohibition of taking important documents from the employee is mentioned in the established contract. Even if it is illegal to withhold passports under Malaysian law, it is frequent for employers to have workers sign waivers so to make them hand in their passports.

### **Sick and maternity leave**

The Malaysian Employment Act regulates these issues, which do not apply to migrant domestic workers.

### **Right to marry**

The present employment contract stipulates that if a domestic worker gets married in the host country during the period of employment, the Government may reserve "the right to revoke [his or her] Work Permit"<sup>39</sup>. Such a provision is concerning for two reasons: on the one hand, the threat to lose employment and revenues constitutes a strong limitation to the worker's freedom to marry; on the other, the disposition seems to conceal the willingness to prevent the migrant from obtaining permanent residency in the country.

A migrant worker willing to get married would, therefore, undertake a complex bureaucratic procedure to ask for such permission from the Malaysian authorities. The foreigner is first required to apply for a social visit pass in his or her home country in order to enter Malaysia. If the person is authorized to get married, he or she then needs to apply for a long-term visitor visa, since marriage to a Malaysian national does not allow to gain Malaysian citizenship and the application to permanent residence is only permitted after five years of marriage. Moreover, even gaining permanent residence does not entitle the person to all rights and benefits offered to Malaysians.

<sup>38</sup> Malaysia Employment Act, part XI, "Domestic Servants", 1955.

<sup>39</sup> "Duties and Responsibilities of the Domestic Worker", letter g.

#### 4) *Conclusions*

- The domestic worker is often submitted to a contract lacking clear contractual provisions, and is therefore prevented from making strong claims with regard to his or her rights.
- Further vulnerability is caused by the inequality existing between national and migrant workers' terms of reference: nationals are usually offered better status and conditions.
- In many cases, it is uncertain whether all provisions contained in the agreement are applicable in the country of employment; the worker is therefore exposed to a legislative void.

# 6.

## RECOMMENDATIONS

Following the assessments made in the previous pages, the contacts established with local civil society partners through the Episcopal Commission of Pastoral Care for Migrant and Itinerant People in the Philippines, and the study of several individual cases, a number of recommendations are provided in order to improve the protection of migrant workers, avoid abuses, and counter the risk of trafficking.

### A. Recommendations supporting regional developments to protect labor workers

1. Build a comprehensive regional regulatory framework for migrant workers in Asia based on comparable definitions, existing international conventions, and national labor practices, also ensuring respect of local cultural values;
2. Establish the necessary bodies and policies to enforce and monitor the correct implementation of all legal provisions and procedures, both at the national and regional levels;
3. Eliminate discriminatory language from legal provisions and provide for the equal status and treatment of national and foreign workers (especially for domestic workers);
4. Establish a vade-mecum of all obligations and rights for the migrant workers in the region and make sure migrants are thoroughly informed prior to their departure of all matters and regulations, especially of those where important differences persist;
5. Establish a reward system for well-meaning and law-abiding recruitment agencies, on the basis of ethical standards and quality employment rather than recruitment volume;
6. Establish platforms of structural collaboration with Church and civil society organizations;
7. Establish an inter-connected, international call center hotline dedicated to migrants in distress in every State;

8. Define more stringent license acquisition terms for employment agencies and include a staff member of the migration labor office in the licensing panel.

## B. Recommendations supporting contractual equality between workers

9. All the provisions embedded in the employment contracts should be precise, transparent and understandable for both signing parties. Vague or unclear terms in the contract provisions should be avoided;
10. Where not already provided for in the national legislation, employment contracts for foreign workers should include provisions fairly regulating the following matters, conforming to international standards:
  - a. Tasks and duties to be carried out;
  - b. Normal working hours and days;
  - c. Overtime and vacation leave;
  - d. Sick leave and maternity leave;
  - e. Time of payment;
  - f. Prohibition of withholding the employee's passport or travel documents;
  - g. Prohibition of unlawful deductions;
  - h. Termination terms;
  - i. Religious practice conditions;
11. Upon the signature of the contract, the migrant worker should be thoroughly informed about all national laws, regulations and social provisions applying to his or her status;
12. The withholding of worker's identity and travel documents by the employer or the recruitment agency should be prohibited by national regulations in all circumstances;
13. National labor laws should apply equally to both migrant and national workers in order to prevent abuses;
14. Legal provisions for domestic workers need to be developed on a comparable basis with the status of employees. Legislations need to take into account the legal vulnerability of the migrant domestic worker and reduce the potential for abuse in the private environment with appropriate protective and monitoring measures;
15. All employment contracts should envisage a clause allowing for immediate termination in case of confirmed episodes of abuse or violence by the employer on the employee. In such event, all expenses emerging from the termination (including those for repatriation) should be borne by the employer;

16. All employment contracts should envisage a clause allowing for termination in case of illness, disability, disease or injury of the employee caused by his or her employment. In this event, all health and repatriation expenses should be borne either by the insurance or by the employer;
17. In conformity with the major international human rights instruments, national laws and bilateral agreements should not unreasonably limit the worker's freedom to marry or compel foreigners married to nationals to leave the country;
18. The employer should respect and accommodate the worker's religious beliefs and practices. National regulations and/or employment contracts should entail the prohibitions:
  - a. to discriminate on the basis of religious beliefs when hiring, dismissing or during the employment of a worker;
  - b. to refuse the reasonable accommodation of the worker's religious practices.

## C. Recommendations for recruitment agencies

19. While it is clear that recruitment agencies work for profit, these should establish and abide by the terms of an ethical code of conduct which should, among others, include terms on the liability and responsibility of both the agency and the employer;
20. Recruitment agencies are meant to facilitate the link between employer and employee, but should not commit or act on behalf of the one or the other;
21. Inform candidate migrant workers of all regulations and obligations that come along with the contract prior to their signature. This procedure should be properly documented;
22. Passports and ID documents should not be withheld. Instead, migrant workers should only be asked for copies of these documents and should never be invited to hand the original documents;
23. Ascertain the existence of a bank account in the name and in the sole control of the worker to serve regular payments and deductions. Contractually invite the employer to use this account for all salary payments;
24. Except when allowed by law, no amounts should be deduced from the worker's salary. Any deduction should be the object of an invoice based on written and contractual agreements;
25. Inform the migrant worker of all legal obligations related to his or her return in the country of origin;
26. Establish useful links in the country of labor to help monitor the application of the contractual terms and to make sure contacts with the migrant worker can be established at all times;



27. Contribute financially to the establishment of an international call center hotline;
28. Establish a code of conduct (ethical code) to be signed by the employer.

## D. Recommendations for legal authorities

29. Improve the quality of pre-departure information provided to migrant workers, creating compulsory Pre-Departure Orientation Seminars for the worker and one family member, as well as post-arrival orientation seminars;
30. Establish one entity to gather all the information obtained over the various governmental bodies to facilitate analysis and the development of corrective policies;
31. Evaluate the employment agencies upon clear and transparent quality requirements, including all elements related to pre-departure and on-the-spot monitoring of the application of contractual terms;
32. Equally apply national labor legislation to migrant and national workers, also including foreign domestic workers;
33. Apply Minimum Wage Ordinances to all migrant workers, including domestic workers;
34. Establish a dedicated call center or help desk for migrant workers, also to be used as an emergency communication tool for and with families;
35. Grant visas to the migrant for the period of his/her employment. Visas should not be connected to a specific employer or contract;
36. Enforce the prohibition of withholding of the worker's identity, travel and work documents in all cases, with the only exception of public officials duly authorized by law;
37. Avoid any discrimination between national and migrant workers, as well as between domestic and other workers;
38. Provide for family unity to be maintained;
39. Create a reward system for deserving recruitment agencies, especially those deploying household service workers respecting legal and ethical obligations.

# 7.

## CHURCH AND CIVIL SOCIETY: ESSENTIAL STRUCTURES OF RESPONSE AND SUPPORT

The Church and civil society play important roles in providing assistance to victims and in advocating for better protection of migrant workers. These actors are often at the forefront of identifying the root causes leading to abuse and trafficking; they respond to the immediate needs of the victims, make sure information is available to candidate workers, and connect with the relevant authorities to advance the combat against trafficking.

While it is challenging to enumerate all the functions undertaken by non-governmental actors within this context, the list below portrays an impressive number of activities and initiatives led by religious, faith-based, and other organizations concerned with the wellbeing of migrant workers.

### Association of Major Religious Superiors in the Philippines (AMRSP)

The Association of Major Religious Superiors in the Philippines is the joint forum of the Association of Major Religious Superiors of Men in the Philippines (AMRSMP) and the Association of Major Religious Superiors of Women in the Philippines (AMRSWP).

The Center for Migrants Concerns is one of their many activities. The Center focuses particularly on the issues and concerns of migrants and their families, including trafficked persons. The Center runs the following programs:

Programs and Services	AMRSP - Center for Migrants Concerns
Education programs	<ul style="list-style-type: none"><li>• Provides education seminars and platforms for the migrants and their families left behind;</li><li>• Assists migrants (for instance, with repatriation).</li></ul>
Advocacy and networking	<ul style="list-style-type: none"><li>• Mobilizes religious superiors;</li><li>• Coordinates with 3 religious congregations: FFM, RGS, and DC sisters for shelter;</li><li>• Coordinates with POEA and OWWA partners, as well as with the International Justice Mission, Talitha Kum, for trafficking in persons.</li></ul>

## Overseas Workers and Communities Initiative (ATIKHA)

Programs and Services	ATHIKA
Services to OFWs	<ul style="list-style-type: none"> <li>• Financial literacy and savings mobilization campaign;</li> <li>• School-based program addressing the social cost of migration.</li> </ul>
Networking and partnership	<ul style="list-style-type: none"> <li>• Assists LGUs and other stakeholders in areas with high concentration of OFWs to set-up OFW / migration centers;</li> <li>• Supports the migration and development initiatives of hometown associations, LGUs and other development agencies.</li> </ul>

## BATIS Center for Women

BATIS Center for Women is a non-stock, non-profit, non-governmental organization working to address the needs and concerns of returned distressed Filipino women migrant workers (including victims of trafficking, illegal recruitment, unjust working conditions, domestic violence and family abandonment, and other forms of violence against women migrant workers) and their families. BATIS does so through direct and other welfare services, education and training, social enterprise development, scholarship and educational assistance, legal and medical assistance, counseling, networking and advocacy at the national and local levels.

Programs and Services	BATIS
Social cases management program	<ul style="list-style-type: none"> <li>• Facilitates the return and reintegration process of migrant women and children in distress, assisting them in amending documents, identities, addressing legal and immigration concerns, etc.;</li> <li>• Provides support services such as airport assistance, temporary shelter, family mediation and counseling, support for healing and recovery, educational assistance and economic assistance (subject to available resources).</li> </ul>
Women empowerment program	<ul style="list-style-type: none"> <li>• Provides venues for women to raise their level of awareness on the issues of migration, human rights, gender and development through seminars, workshops, and exposure activities;</li> <li>• Strengthens the organization and supports groups of female migrants and families through coaching, networking, partnership in projects and leadership training;</li> <li>• Conducts capacity-building activities such as peer counseling, business assessment, computer lessons, interpretation, entrepreneurship, etc., and involves women in BATIS programs as volunteers and peer supporters.</li> </ul>
Children and youth development program	<ul style="list-style-type: none"> <li>• Assists and refers cases of Japanese-Filipino children (JFC) eligible for Japanese nationality with partner organizations in the Philippines and Japan;</li> <li>• Gathers the children of women migrant returnees through sub-organization BATIS – YOGHI, and builds their leadership capacity as a support community for JFC;</li> <li>• Promotes the children and the youth's self-development and upholds their human rights, strengthen their self-awareness, self-confidence and sense of responsibility through workshops on JFCs in migration and other socio-economic-cultural issues both in the Philippines and Japan.</li> </ul>
Migration Development	<ul style="list-style-type: none"> <li>• Helps establishing individual and group enterprises and livelihood support to address the needs of returned women migrants for economic empowerment;</li> <li>• Provides skills training, financial literacy, and business management training and coaching to identified groups, ensuring that these activities will have a positive impact on community life;</li> <li>• Partners with Local Government Units (LGU) for migration and development initiatives.</li> </ul>

Community Outreach Program	<ul style="list-style-type: none"> <li>• Extends the reach of its direct support and reintegration services to returned distressed female migrants and their families in communities and develops self-propelling support groups among them;</li> <li>• Conducts preventive education activities in communities of origin of many female migrants and provides proper information and support to vulnerable groups;</li> <li>• Works with various stakeholders in establishing a social and economic support and reintegration network for female migrants and their families at the grassroots level.</li> </ul>
Advocacy	<ul style="list-style-type: none"> <li>• Analyzes trends in the cycle of migration and disseminates information among visitors, researchers, partners and networks;</li> <li>• Establishes links and participates in the broad network for women and migration and joins in relevant campaigns;</li> <li>• Engages with State Actors to promote the rights and welfare of female migrants and their families, and especially transnational children and youth.</li> </ul>

### The Blas F. Ople Policy Center and Training Institute

The Blas F. Ople Policy Center and Training Institute is a non-profit organization that addresses labor and migration concerns and develops programs to empower Overseas Filipino Workers and their families. Named after the late Filipino Labor and Foreign Affairs Secretary Blas F. Ople, the Center is geared towards continuing his legacy of public service.

Programs and Services	Blas F. Ople Policy Center & Training Institute
Services to OFWs	<ul style="list-style-type: none"> <li>• Assists victims of human trafficking and illegal recruitment;</li> <li>• Provides case facilitation, referrals and other useful assistance.</li> </ul>
Policy and advocacy	<ul style="list-style-type: none"> <li>• Conducts advocacy on labor and migration policy, e.g. reviews of migration policies and laws; ILO convention 189, anti-age discrimination, campaign against integration of terminal fees to the OFWs etc.;</li> <li>• Prevents trafficking;</li> <li>• Runs the Now campaign and hotline;</li> <li>• Hosts a radio program (Bantay OFW);</li> <li>• Disseminates OFW announcements, information on the availability of repatriation services, handling of cases.</li> </ul>
Skills training	<ul style="list-style-type: none"> <li>• Manages the TULAY program, a two-week learning course on written and oral English communication, computer literacy, daily affirmations, and financial literacy, specifically for victims of human trafficking and illegal recruitment. The program aims to provide a safe haven for learning new skills and building self-confidence aided by modern technology.</li> </ul>

### Center for Migrant Advocacy – Philippines (CMA-Phils.)

The Center for Migrant Advocacy – Philippines is an advocacy group that promotes the rights of overseas Filipinos and their families. The Center works to help improve the economic, social and political conditions of migrant Filipino families everywhere through advocacy, information dissemination, networking, capability-building, and direct assistance. Also providing a resource center, the CMA gathers information, conducts studies, and analyzes urgent issues on overseas migration and related concerns and disseminates these to its partners, networks, and constituents.

Programs and Services	Center for Migrant Advocacy – Philippines
Services to OFWs	<ul style="list-style-type: none"> <li>• Runs a help line via SMS;</li> <li>• Provides case facilitation, legal representation, referral to the government agencies for medical and livelihood concerns;</li> <li>• Assists the distressed, most vulnerable and in need of immediate help.</li> </ul>
Research and Information	<ul style="list-style-type: none"> <li>• Raises awareness and generates social support for issues related to overseas migration by organizing public fora and providing resource speakers to tackle issues related to overseas migration.</li> </ul>
Advocacy and other programs	<ul style="list-style-type: none"> <li>• Pursues lobby initiatives, networks with relevant agencies and international bodies, cooperates with other organizations in pushing its reform agenda and launches/participates in mobilization and campaigns;</li> <li>• Actively promotes rights-based discourses on migration issues among policy makers at the national, regional, international, local and grassroots levels;</li> <li>• Participates in forums on DOLE's Decent Work Agenda;</li> <li>• Participated in the Asia-Pacific Consultation of the Global Commission on International Migration 2005;</li> <li>• Participates in the 2006 UN Informal Interactive Dialogue on Migration and Development;</li> <li>• Initiates and pursues key policy reforms to guarantee the rights of overseas Filipinos by strengthening protection measures, uplifting general welfare, delivering prompt assistance and facilitating effective reintegration.</li> </ul>
Networking and Partnership	<ul style="list-style-type: none"> <li>• Raises awareness on migration issues and concerns through social media and regular interaction.</li> </ul>

### Center for Overseas Workers (COW) - Religious of Good Shepherd (RGS)

The Center for Overseas Workers is a non-stock, non-profit organization catering to the needs of Overseas Filipino Workers and their families or partners.

Founded in 1982 in response to the ever-increasing number of Filipinos seeking employment abroad and marrying foreign nationals, the Center was established under the administration of the Good Shepherd Sisters. It is a Security Exchange Commission registered with the DSWD, as well as a licensed NGO.

<b>Programs and Services</b>	<b>Center for Overseas Workers - Religious of Good Shepherd</b>
<b>Services to OFWs</b>	<ul style="list-style-type: none"> <li>• Provides temporary shelter for distressed female migrants (Shelter Tuluyang Maria) ;</li> <li>• Provides legal advice and para-legal assistance to female OFWs, families, and Filipino spouses of foreign nationals;</li> <li>• Provides counseling to distressed female returnees and Filipino spouses/fiancées and other partners of foreign nationals;</li> <li>• Refers clients to network organizations and agencies (NGOs and GOs) for health, legal, and status verification of recruitment agencies;</li> <li>• Provides assistance to nationals, including repatriation and on legal cases abroad;</li> <li>• Provides assistance to trafficked women and reintegration of OFWs;</li> <li>• Provides educational assistance.</li> </ul>
<b>Preventive education</b>	<ul style="list-style-type: none"> <li>• Disseminates information on migration in communities and schools;</li> <li>• Conducts Pre-Departure Orientation Seminars for departing domestic workers, caretakers, performing artists, and factory workers;</li> <li>• Conducts Pre-Departure Orientation Seminar for Overseas Performing Artists (OPAs) bound for Japan.</li> </ul>
<b>Livelihoods activities</b>	<ul style="list-style-type: none"> <li>• Runs microfinance and handcrafting projects;</li> <li>• Runs re-integration projects-</li> </ul>
<b>Advocacy</b>	<ul style="list-style-type: none"> <li>• Issues publications and communications.</li> </ul>

## Daughters of Charity Sisters

The Daughters of Charity Sisters focus on migration concerns, and particularly the issues of HIV and AIDS, poverty, and the increasing migrant problems confronting OFWs. They respond especially to the needs of distressed OFWs and to the challenges faced by the families left behind. The presence of Daughters of Charity plays an important role in educating, counseling, providing referrals, shelters and networking for OFWs.

<b>Programs and Services</b>	<b>Daughters of Charity Sisters</b>
<b>Education and information</b>	<ul style="list-style-type: none"> <li>• Conducts pre-departure orientation seminar in partnership with OWWA and with POEA on human trafficking issue;</li> <li>• Conducts seminars on human trafficking and migration in all Daughters of Charity schools;</li> <li>• Coordinates with guidance counselors;</li> <li>• Conducts values/religious training for OFWs and their families, including children.</li> </ul>
<b>Advocacy and networking</b>	<ul style="list-style-type: none"> <li>• Partners with NGOs and civil society groups advocating for change in migrant policies;</li> <li>• Regularly exchanges with OFA, OFM;</li> <li>• Provides referrals for emotionally and psychologically distressed families.</li> </ul>
<b>Assistance to OFWs</b>	<ul style="list-style-type: none"> <li>• Provides administrative services to OFWs in need and case facilitation;</li> <li>• Conducts debriefing for repatriated and distressed OFWs;</li> <li>• Provides temporary shelter at ASILO, Hospicio de San Jose, DC-Provincial House;</li> <li>• Provides assistance to asylum seekers and refugees.</li> </ul>

## Development Action for Women Network (DAWN)

The Development Action for Women Network is a non-governmental development organization created in 1996 to assist Filipino female migrants in Japan and their Japanese-Filipino children in the promotion and protection of their human rights and welfare.

Programs and Services	DAWN
Services to OFWs	<ul style="list-style-type: none"> <li>• Provides temporary shelter to female migrants (returning and returned) in the Manila-based Center, when circumstances pose immediate threats to their lives or aggravate their already distressed situation;</li> <li>• Provides legal and paralegal assistance: DAWN provides its clients recognition and financial support/ documentation, divorce, violation of contracts, non-payment of salaries and benefits, work-related problems;</li> <li>• Supports the case management: the circumstances of each member are properly documented for appropriate support interventions. Developments are closely monitored to ensure effectiveness of empowerment processes;</li> <li>• Provides counseling: competent and appropriate counseling interventions are undertaken with the women clients, and members of their immediate families if necessary, at various stages of the empowerment process;</li> <li>• Provides airport/travel assistance: DAWN provides assistance to female members in facilitating necessary travels to and/or from Japan under very compelling circumstances (i.e. lives are endangered if they remained in Japan longer, claims for support from Japanese fathers are jeopardized if they cannot be physically present in Japan);</li> <li>• Provides educational assistance: DAWN assists female members of failed cross-cultural relations/marriages who may not yet be fully financially independent or adequate, in supporting the educational requirements of their JFCs;</li> <li>• Health Assistance: DAWN assists such members in their needed health care services.</li> </ul>
Livelihood SikapBuhay (SIKHAY)	<ul style="list-style-type: none"> <li>• Runs a livelihood program for women striving for a better life or self-empowerment consisting of three project activities: sewing, handloom weaving, and tie-dye;</li> <li>• DAWN Multipurpose Cooperative Inc.;</li> <li>• DAWN Wellness Center.</li> </ul>
Research and advocacy	<ul style="list-style-type: none"> <li>• Conducts research;</li> <li>• Issues newsletters and publications;</li> <li>• Comprises of a resource center and library;</li> <li>• Provides support in website development;</li> <li>• Is active in network and lobbying groups;</li> <li>• Organizes conference and workshops;</li> <li>• Teatro Akebono;</li> <li>• Study tour;</li> <li>• Media issue projection.</li> </ul>

## Franciscan Missionaries of Mary (FMM)

The Franciscan Missionaries of Mary (FMM) is an international congregation of religious women providing assistance in more than 70 countries and 800 communities around the world.

Programs and Services	Franciscan Missionaries of Mary
Services to OFWs	<ul style="list-style-type: none"><li>• Provides temporary shelter for distressed OFWs, and especially for victims of trafficking in persons;</li><li>• Shelters OFWs;</li><li>• Provides administrative services for the promotion and defense of victims;</li><li>• Provides debriefing services, psychosocial and spiritual training including for those who are housed in the shelter.</li></ul>

## Congregation of the Immaculate Heart of Mary

The Congregation of the Immaculate Heart of Mary is a Catholic religious congregation. In Asia, it is based in Japan, Singapore, and in the Philippines.

Programs and Services	Congregation of the Immaculate Heart of Mary
Services to OFWs	<ul style="list-style-type: none"><li>• Provides shelter to refugees in Japan;</li><li>• Provides referrals and counseling to OFWs;</li><li>• Provides spiritual accompaniment and Filipino liturgies;</li><li>• Provides psychosocial and spiritual support.</li></ul>
Advocacy and networking	<ul style="list-style-type: none"><li>• Advocates against human trafficking;</li><li>• Promotes the wellbeing of migrant workers;</li><li>• Establishes partnerships with NGOs.</li></ul>

## KAMPI (Kabalikat ng Migranteng Pilipino, Inc.)

Mandated by Republic Act 8042, Kabalikat ng Migranteng Pilipino is a non-profit organization committed to raise awareness among departing Filipino migrant workers. Duly registered under the Securities Exchange Commission (SEC) and licensed by the DSWD as a “Social Welfare Agency for Overseas Filipino Workers and their families”, the organization especially conducts pre-departure orientation seminars and briefings concerning fees and salary declarations for Taiwan-bound workers.



## Kalibakat ng OFW, Inc.

Programs and services	Kalibat ng OFW, Inc.
Kamalayan (awareness building)	<ul style="list-style-type: none"> <li>• Promotes social awareness through advocacy, research, publication and documentation on the realities of international migration and the plight of Filipino migrant workers;</li> <li>• Prepares advocacy and training materials;</li> <li>• Increases the Filipino migrant workers' awareness of their rights and provide them with profiles discussing culture, traditions, customs and laws of countries of destination;</li> <li>• Establishes networks and links with other people's organizations, government and non-government, religious groups and communities locally and abroad;</li> <li>• Runs an OFW Migrant Desk in Tala, Caloocan City.</li> </ul>
Kalinga (well-being)	<ul style="list-style-type: none"> <li>• Runs a 24/7 helpdesk hotline: provides immediate consultation and crisis intervention services for Overseas Filipino Workers in distress;</li> <li>• Provides para-legal assistance;</li> <li>• Supports with case management and intervention;</li> <li>• Provides emergency shelter (San Pedro Calungsod OFW Emergency Shelter).</li> </ul>
Kalusugan (health)	<ul style="list-style-type: none"> <li>• Disseminates information on occupational safety and specific, health-related vulnerabilities in migration;</li> <li>• Assists OFWs and their families in need of medical assistance;</li> <li>• Assist OFWs in locating missing family members due to natural calamities.</li> </ul>
Kabuhayan (livelihood)	<ul style="list-style-type: none"> <li>• Encourages and supports the Filipino migrant worker and his/her family in engaging in alternative livelihood opportunities or sustainable business ventures through seminars and trainings on livelihood; skills training; small and medium enterprise; savings and investments; and financial literacy.</li> </ul>
Kaalaman (education)	<ul style="list-style-type: none"> <li>• Provides educational assistance to children of OFWs in distress through scholarship grants, financial literacy workshops, learning centers and pre-school facilities.</li> </ul>
Kabyiak ng puso program (family)	<ul style="list-style-type: none"> <li>• Provides family counseling for the OFW and his/her family, including for Filipino spouses of foreign nationals, to address cultural differences and strengthen family relations through family reunification services, marriage counseling, values formation, paralegal assistance (on parental authority, violence against women and children, solo parenting, etc.)</li> </ul>

## Kanlungan Centre Foundation, Inc.

Created in 1989, the Kanlungan Centre Foundation is a non-governmental, non-profit organization working with Overseas Filipino Workers and their families in addressing problems related to migration and with a particular focus on female labor migrants.

The Centre advocates for the respect of the rights of labor migrants and works towards the attainment of redress, justice, and empowerment for OFWs who have suffered abuses. It provides support to communities with a high concentration of families of current or former overseas workers for participation and representation in local governance, value transformation, building structures of care, and the development of the local economy as an alternative to overseas employment.

Programs and Services	Kanlungan Centre Foundation
Services to OFWs	<ul style="list-style-type: none"><li>• Provides basic migrant orientation seminars;</li><li>• Assists prospective and returned overseas Filipinos in attaining justice for violations and abuses committed against them;</li><li>• Assists the female victims of international trafficking, commodification, and sexual exploitation;</li><li>• Strengthens the ability of overseas Filipinos to secure/assert their rights, individually and collectively;</li><li>• Strengthens the Filipino identity and love for the country;</li><li>• Enhances participation in national development;</li><li>• Gathers communities with a concentration of families of overseas workers and ex-overseas workers in associations for the participation and representation in local governance, value transformation, building structures of care, and the development of the local economy as an alternative to overseas employment.</li></ul>
Research and advocacy	<ul style="list-style-type: none"><li>• Exposes and strives to reduce the systematic exploitation of Filipino migrant labor;</li><li>• Fights against the commodification and international trafficking of women;</li><li>• Develops and coordinates the implementation of programs and services with migrant support groups and institutions, locally and abroad, aimed at providing an efficient response to the needs of the overseas Filipinos;</li><li>• Develops alternative frameworks and formulates policies that uphold and protect the dignity and rights of overseas Filipinos;</li><li>• Develops capabilities among migrant Filipinos (returning and departing) and their families;</li><li>• Manages a comprehensive information system for popular education and policy advocacy;</li><li>• Favors the creation of local support networks of advocates for the promotion of the rights and welfare of overseas Filipinos.</li></ul>

### Kapisanan ng mga Kamaganak ng Migranteng Manggagawang Pilipino, Inc. (KAKAMMPI)

KAKAMMPI is a community-based organization gathering the families of Overseas Filipino Workers and migrant returnees. Its aim is to protect the rights and welfare of overseas Filipinos and to effectively respond to the problems generated by overseas migration.

Formed in 1983, KAKAMMPI currently runs local chapters within and outside the Manila area and primarily engages in advocacy, case documentation, and institutional networking. It responds to the problems and needs of migrant families by implementing an integrated program to strengthen family support systems and facilitate their empowerment.

#### Programs and Services | KAKAMMPI

<b>Services to OFWs</b>	<ul style="list-style-type: none"> <li>• Provides psycho-social counselling for distressed Filipino migrants and their families;</li> <li>• Provides welfare assistance, especially supporting returning OFWs in financial claims and repatriation as well as providing airport assistance upon arrival of returning or deceased OFWs;</li> <li>• Provides case management support to victims of physical and sexual abuse, labor violations, racial and gender discrimination, and HIV/AIDS victims; refers OFWs to organizations and groups that provide medical, legal and welfare services;</li> <li>• Provides temporary shelter to distressed OFWs and caters to their psychological, physical and psycho-social needs;</li> <li>• Runs the Family Wellness Program, which features family development activities to reinforce and strengthen family relationships; provides assistance to families facing domestic concerns and separation;</li> <li>• Disseminates information to migrant families on labor migration;</li> <li>• Conducts Community Outreach activities, organizing training and capacity building projects;</li> <li>• Runs Child Learning and Development Centers, which provide holistic child development and psychological assistance to single mothers and abandoned wives of OFWs;</li> <li>• Runs the Gender Responsiveness Program.</li> </ul>
<b>Advocacy and networking</b>	<ul style="list-style-type: none"> <li>• Conducts advocacy and social mobilization activities to draw public attention to the plight of migrant workers and to press government for prompt action;</li> <li>• Lobbies for legislative measures to improve the protection and welfare of migrant workers;</li> <li>• Strengthens linkages and maintains the partnerships with local partners;</li> <li>• Runs joint campaigns and other cooperative projects;</li> <li>• Disseminates information on issues of concerns for OFWs and their families on labor-related cases through TV and the Web;</li> <li>• Hosts a weekly Radio Program, "Babaeng Migrante may kakampi ka".</li> </ul>

## Missionaries of Jesus

Programs and Services	Missionaries of Jesus
Services to OFWs	<ul style="list-style-type: none"><li>• Celebrates Filipino masses and other spiritual nurturing activity among Filipino migrants both in Los Angeles and Texas;</li><li>• Provides administrative services through medical missions and house building donation for Yolanda victims led by MJs and other Filipino migrants in Los Angeles.</li></ul>
Advocacy and networking	<ul style="list-style-type: none"><li>• Networks with governmental and non-governmental organizations;</li><li>• Partners with the ECMI-CBCP in the migrants ministry in the diocese of Antipolo.</li></ul>

## Missionaries of the Sacred Heart

The Missionaries of the Sacred Heart provide counselling for OFWs, referrals, Tagalog masses, and spiritual activities within the communities.

Programs and Services	Missionaries of the Sacred Heart
Services to OFWs	<ul style="list-style-type: none"><li>• Provides counseling to families left behind and OFW parishioners;</li><li>• Educates the youth (particularly ANAK OFW);</li><li>• Provides psychosocial and spiritual support;</li><li>• Refers the cases of emotionally distressed OFWs.</li></ul>
Advocacy and networking	<ul style="list-style-type: none"><li>• Advocates against human trafficking;</li><li>• Joins the campaign against the opening of the “balikbayan boxes”.</li></ul>

## Missionary Sisters of Saint Charles Borromeo

Present in 25 countries worldwide, the Congregation carries out its mission through Catechesis, Christian Education, Pastoral Care of the Sick, Social Work and the Pastoral Care of Migrants. They work in schools, hospitals, parishes, orphanages, prisons, nursing homes, and migration centers.

## Missionaries of Saint Charles

Present in 33 countries worldwide, the Congregation focuses on the protection of the human dignity of migrants, for whom they provide spiritual and pastoral support.

Programs and Services	Missionaries of Saint Charles “Scalabrinians”
Centers of hospitality	<ul style="list-style-type: none"> <li>• Runs the Scalabrini Center for People on the Move (SCPM);</li> <li>• Runs the Stella Maris Center, which provides temporary shelter to overseas workers, seamen and refugees regardless of gender, race, ethnic background, religion and belief;</li> <li>• Provides legal assistance, referrals, and counseling to migrant workers having concerns with their recruitment agencies or employment;</li> <li>• Assists refugees and asylum seekers to secure their legal documents in the Philippines.</li> </ul>
Center of studies	<ul style="list-style-type: none"> <li>• Runs the Scalabrini Migration Center, aimed at studying and examining the phenomenon of migration and related issues;</li> <li>• Conducts research and analysis on the sociological aspects of migration.</li> </ul>

## Congregation of the Mission (Vincentian Priests and Brothers)

Programs and Services	Congregation of the Mission (Vincentian)
Services to OFWs	<ul style="list-style-type: none"> <li>• Provides support to foreign students;</li> <li>• Assists refugees;</li> <li>• Provides counselling and para-legal support;</li> <li>• Facilitates cooperatives in Japan;</li> <li>• Runs a savings program;</li> <li>• Celebrates sacraments and liturgies (Lebanon).</li> </ul>

## Mission Society of the Philippines

The Mission Society of the Philippines caters to the needs of migrants, and particularly Overseas Filipino Workers. The congregation also runs a migrant desk office in the Philippines.

Programs and Services	Mission Society of the Philippines
Services to OFWs	<ul style="list-style-type: none"> <li>• Provides counseling to OFWs and families left behind;</li> <li>• Provides repatriation assistance;</li> <li>• Provide psychosocial and spiritual support;</li> <li>• Refers psychologically distressed OFWs;</li> <li>• Provides debriefing to distressed OFWs;</li> <li>• Assists legal cases of OFWs (particularly seafarers);</li> <li>• Provides shelters ;</li> <li>• Manages migrants’ offices in the chaplaincy.</li> </ul>
Advocacy	<ul style="list-style-type: none"> <li>• Advocates against human trafficking.</li> </ul>

## Congregation of the Most Holy Redeemer (Redemptorist)

Programs and Services	Congregation of Most Holy Redeemer
Services to OFWs	<ul style="list-style-type: none"><li>• Supports the legal cases filed by OFWs;</li><li>• Provides skills training;</li><li>• Provides counseling and para-legal referrals.</li></ul>
Advocacy and networking	<ul style="list-style-type: none"><li>• Coordinates with POE to conduct pre-employment orientation seminars;</li><li>• Partners with Migrante International, POEA, and OWWA.</li></ul>

## Philippine Interfaith Movement against Human Trafficking (PIMAHT)

PIMAHT is an Ecumenical movement established in 2013, which gathers communities of faith championing the eradication of human trafficking in the Philippines. PIMAHT addresses gaps and lacunae in anti-human trafficking initiatives and programs through advocacy activities, assistance for victims and survivors, monitoring, training, network strengthening (local and international), law enforcement, and social services.

Among its Executive Committee members are representatives of the Catholic Bishops Conference of the Philippines (CBCP), the National Council of Churches of the Philippines (NCCP), and the Philippine Council of Evangelical Churches (PCEC).

## Rogationist Congregation of Jesus

The Rogationist Congregation of Jesus is particularly active in Italy, Vietnam and Indonesia, where they provide counselling for OFWs as well as psychosocial and spiritual support.

Programs and Services	Rogationist Congregation
Services to OFWs	<ul style="list-style-type: none"><li>• Provides counseling to OFWs;</li><li>• Provides psychosocial and spiritual support;</li></ul>
Advocacy and networking	<ul style="list-style-type: none"><li>• Advocates against human trafficking;</li><li>• Partners with NGOs.</li></ul>

## The Salvatorian Pastoral Care for Children (SPCC)

Founded in 2011, the Salvatorian Pastoral Care for Children is the main apostolate of the Salvatorian Sisters in the Philippines aimed at protecting the welfare of women and children.

Programs and Services	Salvatorian Pastoral Care for Children
Services to OFWs	<ul style="list-style-type: none"> <li>• Provides counseling in crisis situations of family members with specific focus on children of OFW;</li> <li>• Provides education and values for OFWs.</li> </ul>
Advocacy and networking	<ul style="list-style-type: none"> <li>• Advocates against human trafficking (USA);</li> <li>• Active in AMRSP, Talitha Kum;</li> <li>• Interfaith (PHIMAT).</li> </ul>

## Sisters of Saint Paul de Chartres

Programs and Services	Sisters of St Paul de Chartres
Services to OFWs	<ul style="list-style-type: none"> <li>• Provides education on migration (pre-employment seminars in schools, hospitals and pastoral centers).</li> </ul>
Networking	<ul style="list-style-type: none"> <li>• Partners with ANAK and UGAT foundation.</li> </ul>

## The Society of Jesus (Philippine Province)

Programs and Services	Society of Jesus
Services to OFWs	<ul style="list-style-type: none"> <li>• Provides psychosocial and spiritual support to OFW;</li> <li>• Refers emotionally and psychologically distressed families left behind;</li> <li>• Provides counseling services (UGAT foundation);</li> <li>• Offers shelter to OFW;</li> <li>• Provides debriefings with distressed OFWs.</li> </ul>
Advocacy and networking	<ul style="list-style-type: none"> <li>• Runs campaigns against human trafficking;</li> <li>• Theology of migration;</li> <li>• Partners with NGOs;</li> <li>• Partners with the Government (OWWA and DFA).</li> </ul>

## Congregation of the Sisters of Saint John the Baptist (CSSJB)

The Congregation of the Sisters of St. John the Baptist offers assistance to the Filipino Christian communities in the USA and in Rome through home visits and moral and spiritual support.

Programs and Services	Congregation of the Sisters of St John the Baptist (CSSJB)
Services to OFWs	<ul style="list-style-type: none"><li>• Caters to medical needs establishing connections with hospitals or doctors;</li><li>• Assists former workers in finding new employment;</li><li>• Provides interpreters or translators to reduce language barriers;</li><li>• Provides repatriation assistance;</li><li>• Provides debriefing and psychological support;</li><li>• Facilitates retreats and recollections;</li><li>• Celebrates liturgies and Sunday Masses.</li></ul>

## Talitha Kum Southeast Asia

(Formerly APWRATH – Asia Pacific Women Religious against Trafficking in Humans)

Talitha Kum Southeast Asia was created in 2007, following a counter-trafficking course for religious persons sponsored by the Unione Internazionale delle Superiori Generali (UISG) and the International Organization for Migration (IOM), in coordination with the Association of Major Religious Superiors in the Philippines. Today, Talitha Kum Southeast Asia has national representatives in eight countries through the Asia Pacific region. A central Coordinator works to organize these national branches in an international effort to combat human trafficking.

Programs and Services	Talitha Kum Southeast Asia
Services to OFWs	<ul style="list-style-type: none"><li>• Provides prevention and protection services;</li><li>• Disseminates information and provides referrals;</li><li>• Develops and disseminates educational modules for schools, communities and congregations.</li></ul>
Advocacy and networking	<ul style="list-style-type: none"><li>• Conducts networking, advocacy, lobbying and mobilization activities.</li></ul>



## Unlad Kabayan Migrant Services Foundation

### Programs and Services | Unlad Kabayan Migrant Services Foundation

<p><b>Services to OFWs and social entrepreneurship</b></p>	<ul style="list-style-type: none"> <li>• Runs the Savings and Investment Mobilization (SIM) program, which promotes the benefits of saving and investing in destination countries in Asia and Europe;</li> <li>• Organizes migrant workers into Savings and Investment Groups (SIG), usually by the region in the Philippines they lived in, or by factory groups. Migrants pool a proportion of their savings, and then choose to save their money through a bank, invest in successful enterprises or to start their own enterprise. SIGs harness migrant workers' resources to bear on local economy development.</li> <li>• Provides training in destination countries using the Migrant Savings and Alternative Investment for Community Development Reintegration (MSAI-CDR) methodology. Migrants attend free seminars on topics including business skills and the advantages of saving and investment.</li> </ul>
<p><b>Advocacy and networking</b></p>	<ul style="list-style-type: none"> <li>• Brings the concerns of migrants to the attention of the government, the private sector and the general public.</li> </ul>

## Visayan Forum Foundation, Inc. (VF)

The Visayan Forum Foundation is a non-profit, non-stock, and tax-exempt non-governmental organization known for innovations in addressing human trafficking and the exploitation of domestic workers. VF is licensed and accredited by the DSWD to provide residential care and community-based services to women and children in especially difficult circumstances. The Foundation currently serves as the representative of the Women's Sector to the Inter-Agency Council against Trafficking.

Programs and Services	The visayan forum
Sustaining community-based child protection mechanisms	<ul style="list-style-type: none"> <li>• Provides community-based intervention and child watch networks which aim to enhance the accountability of duty-bearers, the participation of rights holders, and equity/non-discrimination.</li> </ul>
Centers of Hope	<ul style="list-style-type: none"> <li>• Provides protection and empowerment to vulnerable persons, victims, and survivors of trafficking;</li> <li>• Builds the capacity of partners towards institutionalization of protective services;</li> <li>• Provides knowledge- and information-sharing.</li> </ul>
Resource Center	<ul style="list-style-type: none"> <li>• Conducts evidence- and solutions-based research and studies;</li> <li>• Leads policy advocacy and campaigns;</li> <li>• Strengthens institutional capacity.</li> </ul>
iFight Movement	<ul style="list-style-type: none"> <li>• Replicates the iFIGHT Program in various institutions;</li> <li>• Raises awareness;</li> <li>• Builds a sustainable movement.</li> </ul>
Ventures for freedom	<ul style="list-style-type: none"> <li>• Strengthens and implements a community-watch mechanism;</li> <li>• Builds the capacity of community leaders to engage in participatory governance;</li> <li>• Develops economic opportunities within communities.</li> </ul>
Anti-trafficking program	<ul style="list-style-type: none"> <li>• Provides protection, justice and healing services for victims of trafficking;</li> <li>• Aborts trafficking activities in transit by intercepting the potential trafficking victims.</li> </ul>
Kasambahay program	<ul style="list-style-type: none"> <li>• Catalyzes effort and demonstrates effective action through social mobilization to raise the profile of migrant workers and to institutionalize services for them;</li> <li>• Provides specialized services for crisis intervention; builds capacities of partners and stakeholders; offers educational opportunities and prevents trafficking, violence and abuses of child domestic workers.</li> </ul>

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