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Review of Philippine Migration Laws and Regulations: Gains, Gaps, Prospects

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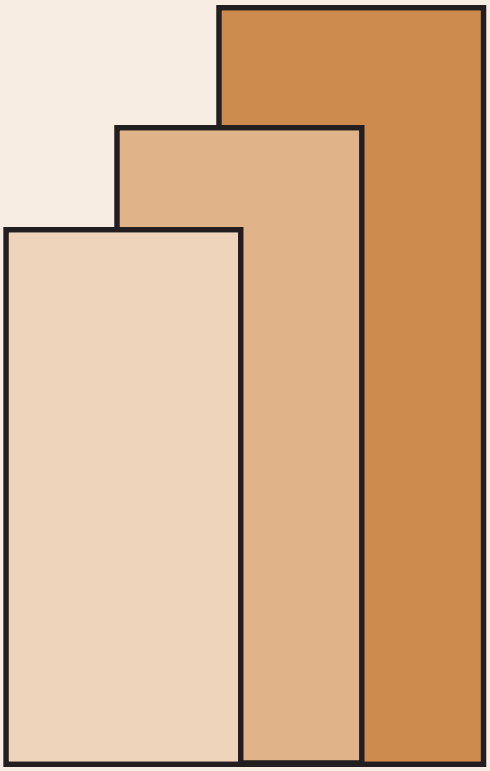

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Abstract

The Philippines has often been cited as the global model in managing international labor migration. Despite the complexity of our management infrastructure, however, some gaps still remain. This paper reviews the Philippine legal and administrative framework governing the recruitment, documentation and deployment of Filipino workers abroad. The study finds that although the provisions of the landmark legislation RA 8042, as amended by RA 9422 and 10022, are laudable, some of the key provisions are not absolute. Furthermore, the study finds the need to further strengthen policy implementation, as well as the implementing capacity of government agencies.

Keywords: International labor migration, government policy and regulation

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RECRUITMENT AND PLACEMENT OF OVERSEAS WORKERS

The Philippines has an employment-driven emigration policy that emphasizes temporary labour migration, worker protection and maximizing the development impact of remittances. The Government identifies labour market niches abroad and arranges an orderly supply of labour through supervised recruitment by foreign employers, recruitment agencies and foreign governments based on bilateral agreements.[3]

Rule II of the POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers (POEA Rules) defines *recruitment and placement* as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services, promising or advertising for employment abroad, whether for profit or not; provided that any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement." Furthermore, the recruitment

[1] Background paper to the "Managing International Labor Migration: The Philippine Experience". This paper has benefitted from funding support from the International Development Research Centre and Philippine Institute for Development Studies project "Different Streams, Different Needs and Impacts: Managing International Labor Migration in ASEAN".

[2] Unit Coordinator and Associate Lawyer, respectively, Migrants' Defense Program, Initiatives for Dialogue and Empowerment through Alternative Legal Service (IDEALS, Inc.),

[3] http://www.ilo.org/dyn/migpractice/migmain.showPractice?plang=en&p_practice_id=55

of Filipino workers is done through a systematic recruitment network where foreign principals must course their manpower requirements through POEA-licensed private employment and manning agencies.[4] As part of their regulatory functions, the POEA Rules provide that only those who possess qualifications enumerated under Rule I, Part II shall be permitted to engage in the recruitment and placement of Filipino workers.

Private recruitment agencies are either land-based or manning agencies. Land-based recruitment agencies can be natural or juridical persons licensed by the POEA to recruit workers for all land-based jobs for and in behalf of its foreign principal. Manning agencies are either natural or juridical persons licensed by the POEA to recruit seafarers to man or board vessels plying international sea lanes and other related maritime activities.[5] It is the POEA that regulates these recruitment agencies through a licensing system as provided for under Part II, Rule I of the POEA Rules.

A. Modes of Recruitment

The recruitment process may be done through different modes.

(1) Agency-hire. - Licensed recruitment agencies may advertise vacancies in any media form, conduct preliminary screening and interviews of applicants, or create a manpower pool.

A prospective employer interested to hire Filipino workers may choose from the official list of licensed private employment agencies available at the nearest Philippine embassy or consulate in their country, or from the POEA website. Once the employer has identified a Philippine agent that will source his/her manpower requirement, he/she must submit the recruitment documents to the nearest Philippine Overseas

[4] http://www.poea.gov.ph/about/hiring.htm
[5] http://www.poea.gov.ph/about/hiring.htm

Labor Office (POLO) at the Philippine embassy or consulate for verification. This is to ascertain the existence of the company or project and the need for Filipino manpower.

Foreign principals intending to hire land-based workers must submit a Special Power of Attorney, a Service/Recruitment Agreement and a Master Employment Contract with the minimum contract provisions and a Manpower Request. In the absence of POLO at the workplace, the foreign employer shall engage a local agent who then facilitates the POEA accreditation process of the foreign principal and subsequently submits the documents hereinafter enumerated or equivalent documents. For manning principals, they must submit a Manning Agreement containing, among others, the responsibilities of both principal and manning agency with respect to the employment of seafarers; Special Power of Attorney; list of ships and their particulars including IMO number; crew complement and valid business license registration certificate, or equivalent document, or proof of existence of business validated or certified by the issuing authority in the host country.[6]

(2) Government Placement Branch (GPB) - A foreign government entity or a government- owned or controlled company may opt to course its hiring through the POEA's Government Placement Branch (GPB). The GPB scheme is a government-to-government type of overseas recruitment where government agencies of other countries hire foreign workers and deployment is handled by the POEA.[7] Saudi Arabia, for one, has a Saudi Recruitment Office located in Makati City that handles the deployment of foreign medical workers to their government hospitals and other institutions.[8]

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[6] http://www.poea.gov.ph/about/hiring.htm

[7] http://www.ofwguide.com/article_item-1392/Healthcare-Workers-In-Demand-in-Saudi-Arabia--Application-Proceduresof-Saudi-Recruitment-Office.html

[8] *Ibid.*

(3) Name Hires. - Some workers are regarded as name hires or those who are able to secure an overseas employment opportunity with an employer without the assistance or participation of any agency.

B. Employment Standards set by the POEA

The State's policy of extending protection and support to our overseas workers becomes even more manifest with the State's authorization for POEA to formulate employment standards in accordance with the welfare objectives of the overseas employment program.[9] The law requires that the POEA should approve and verify an overseas employment contract to insure that the employee shall not thereby be placed in a disadvantageous position and that the same are within the minimum standards of the terms and conditions of such employment contract set by the POEA.[10]

A standard overseas employment contract[11] must reflect the names and details of the contracting parties (foreign employer, local agent and the OFW) who voluntarily bind themselves to terms and conditions of employment, which shall include, among others, the site/workplace, contract duration, employee's position, monthly salary, regular working hours and overtime pay, leave credits, insurance, repatriation and termination procedures, settlement of disputes and applicable law on the contract.

Parties to overseas employment contracts are allowed to stipulate other terms and conditions and other benefits not provided under these minimum requirements; provided the whole employment package should be more beneficial to the worker than

[9] Amelia J. Delos Santos vs. Jebsen Maritime Inc., G.R. No. 154185, November 22, 2005.

[10] Seagull Maritime Corp., et al. v. Balatongan, et al., 170 SCRA 813 (1987).
[11] http://www.poea.gov.ph/ofw/sec_various_new.pdf

the minimum; provided that the same shall not be contrary to law, public policy and morals, and provided further, the Philippine agencies shall make foreign employers aware of the standards of employment adopted by the POEA.[12]

Although the standard employment contract provisions look good on paper, the reality is that they are not implemented to the letter. Many employers require OFWs to sign another contract with less benefits or a lower salary when they reach the host country. Many OFWs are forced to sign these contracts because they are already in the host country and they have invested so much in placement and other fees just to get employment abroad. Many OFWs will rather work for less pay compared to the rate stated in the contract than be forced to return to the Philippines without earning at least the amount paid for placement and other fees.

The most commonly violated provision in the standard employment contract is the provision on payment of wages. Many employers not only refuse to pay the wage agreed upon but worse, refuse to pay wages for several months. John Leonard Monterona, Migrante-Middle East regional coordinator, says that five (5) out of eight (8) cases reported daily by his group are about contract substitution, specifically non-payment of the stipulated wage in the POEA-approved contract.[13] Many employers also do not provide benefits such as paid days-off and medical insurance to OFWs although these benefits are stated in the contract.

Officials at the Philippine consulates in the host countries admit that it is difficult to monitor the implementation of the standard employment contract due to

[12] §3, *Id.*

[13] Carcamo, Dennis, "Group Urges DOLE to Probe Rampant Contract Substitution," The Philippine Star. Available online: http://www.philstar.com/Article.aspx?articleId=615820&publicationSubCategoryId=200, accessed on November 23, 2010.

lack of resources and manpower. Many OFWs report that when they seek the help of the POLO in the host country regarding the implementation of their contracts, officials usually tell them to just go back to the Philippines and file money claims before the NLRC. Many OFWs claim that POLO officers in the host country are not much of assistance in helping them file cases for contractual violations in the host country.

One case of contract substitution is that of nineteen (19) OFWs who were deployed as construction workers in Tripoli, Libya. Two recruitment agencies, namely Aqua-Gem International Manpower, Incorporated and Sharikat Al-Saedi International Manpower, Incorporated, both located in Ermita, Manila, recruited the distressed OFWs. They departed from Manila on December 2008 to work for Cifex World Construction Firm at Dhat El Imad, Tripoli until January 2008.[14]

The victims signed a contract with their respective agencies during application. A few hours before their departure, however, they were told to sign another contract. The wages contained in the second contract, verified by the POEA and signed by Labor Attache Nasser Mustafa, was US$100 lower than the first contract. The poor OFWs, left with no other choice, were forced to sign the contract since they were already at the airport.[15]

The provisions in both contracts, however, were violated in Libya. Payment of the OFWs' salaries was delayed and they were made to work for more than eight (8)

[14] Melencio, Gloria, E., "Labor Officer in Libya Accused of OFW Contract Substitution," The Saudi Gazette. Available online: http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentID=2009090148553, accessed on November 23, 2010.

[15] *Ibid.*

hours a day and seven (7) days a week without overtime pay, contrary to the provisions in their contracts.[16]

Unfortunately, when the OFWs complained to the POLO in Tripoli, Mustafa himself told the OFWs that they had to sign another contract to suit the practices of the company. Most of the OFWs refused to do so, thus they were left with no recourse but to file appropriate cases against their recruiter and employer when they were repatriated back to the Philippines.[17]

Another case of contract substitution is that of twenty (20) OFWs recruited to work in Qatar. Larry Canlas of Candaba, Pampanga (recruited by H.M.O. International Human Resources in December 2008) and Nelson Ebreo from Mauban, Quezon (recruited by SML Human Resources Inc. in November 2008) reported that they were promised by their recruiters a monthly salary of 1,500 Qatar Riyals (QR) and US$430, respectively, for work as tile setters at the Jassim Decoration and Services Company in Qatar. Upon reaching Qatar, however, they were paid for their work not as employees, but on a per-production basis, through which they received only 9 QR per square meter of finished jobs, averaging, based on human work capacity, at only about 800 QR a month. Their employer even deducted their food and other living expenses from the said downgraded salary. In effect, they were not able to earn anything to send to their families back in the Philippines.[18]

The OFWs decided to stop working and went to the Philippine Embassy and the POLO in Qatar to seek assistance. They were then threatened by Jassim with

[16] *Id.*

[17] *Id.*

[18] "Jinggoy Probes Case of OFWs Victimized under Contract Substitution in Qatar, Libya." Available online: http://www.senate.gov.ph/press_release/2009/0505_estradaj1.asp, accessed on November 23, 2010.

incarceration for refusing to work. They were also forced to execute waivers stipulating that they would not file a case against Jassim, in order for them to be allowed to return to the Philippines, but at their own expense. They were told that if they refused to execute the waiver, their passports would not be returned to them, and exit clearance and other documentary requisites would not be issued. The OFWs executed the waivers, which were sealed by the POLO. The waivers led to their exclusion from the OWWA and POEA's list of workers requesting assistance for repatriation. The OFWs were able to go home only through financial solicitation from and generosity extended by the Filipino community in Qatar.[19]

POLO officers, being on the front line in the host countries, should be more effective in informing OFWs of the legal mechanisms through which they can recover unpaid wages and other benefits and assist OFWs in availing of these mechanisms in the host country. POLO officers should not confine OFWs to the option of returning to the Philippines and filing money claims before the NLRC when legal mechanisms for claiming unpaid wages and other benefits are available to them in the host country. In Hongkong, for example, their Labour Tribunal has jurisdiction to hear cases involving breach of employment contract which includes claim for unpaid wages.[20] The website[21] of the Judiciary of Hongkong provides the procedure on how to file money claims against employers. It provides for a booking system in making an appointment for filing of claim.

This information in host countries like Hongkong should be made handy to OFWs so as to ensure effective recovery of claims against principal employers.

[19] *Ibid.*
[20] Section 7, Labour Tribunal Ordinance and the Schedule to the Ordinance
[21] Judiciary of the Hong Kong Special Administrative Region of the People's Republic of China., http://www.judiciary.gov.hk/en/crt_services/pphlt/html/labour.htm

C. The Joint and Several Liability (JSL) Rule

For claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages, R.A. 10022 states that the liability of the principal/employer and the recruitment or placement agency for any and all claims shall be joint and several. This liability shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. Any stipulation contrary to this shall be considered void.[22]

The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages. Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.[23]

In a case decided by the Supreme Court[24], it was held that both the recruitment agency and the foreign employers are liable jointly and solidarily for the illegal dismissal of their employee. In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, Republic 8042 precisely affords the OFWs with recourse and assures them of immediate and sufficient payment of what is due them.

[22] Section 7, R.A. 10022
[23] *Ibid.*
[24] ATCI Corporation vs. Echin, G.R. No. 178551, October 11, 2010

The imposition of joint and solidary liability is in line with the policy of the state to protect and alleviate the plight of the working class.[25] Verily, to allow the recruitment agency to simply wait for the judicial determination of the foreign principal's liability before petitioner can be held liable renders the law on joint and solidary liability inutile.

D. Did R.A. 10022 re-enact an unconstitutional provision?

Confusion arises in cases of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary. R.A. 10022 provides that the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.[26] R.A. 8042 also mandates the same.[27]

The Supreme Court, in the case of *Antonio M. Serrano v. Gallant Maritime Services, Inc., et al*., March 24, 2008, declared unconstitutional the subject clause "or for three (3) months for every year of the unexpired term, whichever is less" in the fifth paragraph of Section 10 of R.A. 8042. The court concluded that the subject clause contained a suspect classification in that, in the computation of the monetary benefits of employees who are illegally discharged, it imposes a three (3)-month cap on the claim of OFWs with an unexpired portion of one (1) year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage. It

[25] Datuman v. First Cosmopolitan Manpower And Promotion Services, Inc., G.R. No. 156029, November 14, 2008, 571 SCRA 41, 42.

[26] *Id.*

[27] Section 10, Republic Act 8042.

does not state or imply any definitive governmental purpose and it is for this precise reason that the clause violates not just the workers' right to equal protection but also their right to substantial due process.

Congress, however, re-enacted the clause "or for three (3) months for every year of the unexpired term, whichever is less" in Section 7 of R.A. 10022. Congress' re-enactment notwithstanding, the Supreme Court's ruling striking down the subject clause must prevail, for it is the final arbiter on the constitutionality of the law to which Congress must yield.

E. Illegal Recruitment

One of the reprehensible felonies existent in the Philippines today is illegal recruitment. R.A.10022 amending R.A.8042 defines illegal recruitment 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 a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged." The law includes the commission of prohibited acts by any person, whether a non-licensee, non-holder, licensee or holder of authority.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group. The persons criminally liable for illegal recruitment are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership,

control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

General Observation

The Philippines has an elaborate system of licensing of private recruitment agencies to ensure that OFWs are deployed only to jobs that do not subject them to abuse and exploitation. Agencies that deploy OFWs without a license issued by the POEA or those that have a license but commit prohibited acts commit the crime of illegal recruitment and are imposed harsh penalties such as imprisonment and/or a fine.

Despite these regulations, there are still many cases of illegal recruitment and trafficking reported by OFWs. This can be attributed to the fact that although the law is in place to protect OFWs, implementation of the law leaves much to be desired. For instance, many illegal recruiters, despite being issued multiple warrants of arrest, manage to evade arrest and continue to recruit unknowing OFWs desperate to work overseas. The Task Force Against Illegal Recruitment (TFAIR), an inter-agency body tasked to coordinate the efforts of different government agencies in the arrest and prosecution of illegal recruiters, currently has 20,000 unserved warrants for over two hundred large-scale illegal recruiters in the country. While the TFAIR is unable to arrest these large-scale illegal recruiters, they continue to swindle many OFWs of excessive placement fees and deploy OFWs to hazardous jobs overseas.

The Anti-Trafficking in Persons Act (R.A. 9208), which was enacted in 2003, is also poorly implemented. Despite the thousands of OFWs, mainly women, who are trafficked each year, there have only been thirteen (13) convictions under the law. A

legal system riddled with corruption and influence-peddling enables many traffickers to evade arrest and prosecution through extrajudicial means.

If the government is to be serious in its efforts to protect OFWs, it should ensure strict implementation of R.A. 10022 and 9208 to arrest all illegal recruiters and traffickers and bring all victims to justice. Illegal recruitment and trafficking cases pending in court should move at a speedy pace and integrity must be restored in government proceedings to make sure that those who violate the law are penalized regardless of their status in society.

CONCLUSION AND RECOMMENDATION

In global migration, particularly labor migration, our OFWs are literally transported to the legal system of the receiving country. This renders the Philippines' protection and welfare policies not only inadequate but in most cases, inapplicable. As quoted in early part of this paper, Philippines is considered most advanced in Asia, in terms of managing migration. However, at the local level, the Philippines as a developing and labor-sending country remains trapped in confusion with regard to policy formulation and implementation. There is an imperative need to enhance our sense and assessment on policy. For instance, we have no concrete policies on OFWs' economic and development role. Our legal system finds application only within the Philippines' territorial boundaries, thus, its force and effect finds no application in foreign lands where 10% of our population is located.

The following are some recommendations to the Philippine Government, as regards. The proposed recommendations seek improvements on the existing laws and introduction of new policies that could help better the lot of our OFWs and their families.

I. RECRUITMENT AND PLACEMENT OF WORKERS

Snail-paced Prosecution of IR cases and Trafficking.

Improvement on the laws: Since we already have existing laws (RA 8042 as amended by RA 10022, RA 9208 Anti-Trafficking in Persons Act and EO on TFAIR), an improvement on the application/implementation of these laws in so far as implementation is concerned. As mentioned, there is dismal prosecution/conviction of Illegal Recruiters or Traffickers due to unserved warrants of arrests. To aid the speedy prosecution of Illegal Recruitment cases, TFAIR should post and publish the photographs with vital information of the top Illegal Recruiters. An Executive Order maybe passed to carry out this amendment.

New Policy: Illegal recruiters are not always of Philippine Citizenship. They could be foreign nationals. And we are yet to see foreigner-illegal recruiter convicted in our courts of justice. Hence, there is a proposal to amend Section 2 of the Revised Penal Code (RPC) penalizing foreigners on migration/recruitment-related acts committed within the Philippine territory[28].

And in order to aid the speedy resolution and disposition of overseas-related cases, particularly Illegal Recruitment and Trafficking, there is a need to designate Special Courts to try and prosecute these types of cases.

Also, since the Philippines is still at Tier 2 (US State Department Watch list re: Situation Report on cases of Trafficking in the Country) , the Government should

[28] Introduced by (Former) Dean Merlin Magallona (UP College of Laws) . Lecture, Revisiting Constitutional Guarantees. February 5, 2010)

endeavor to forge and enforce bilateral and or multi-lateral agreements among countries to come up with mechanisms to prevent trafficking and fully fully respond to the problems of international trafficking.

Inaction of key Government Agencies/ Officials on Complaints lodged by OFWs/their Families (Local and Overseas).

There is a need to conduct regular performance audit of government agencies catering on overseas employment. This could be done by the Department of Foreign Affairs, in consultation with Non-Government Organizations and migrant groups.

II. DOCUMENTATION OF WORKERS

Collection of Excessive Placement fee by unscrupulous recruiters/recruitment agencies.

New Policy: Since one of the most common problems encountered by OFWs is debt bondage brought about by loans at usurious interest rates to pay for excessive placement fees, it will certainly benefit many OFWs if the government implements a "no placement fee" policy. Many labor-receiving countries, such as the United States, United Kingdom, Ireland, Israel and the Netherlands impose a "no placement fee" policy on migrant workers. This is to prevent a situation where migrant workers find themselves unable to earn anything to send to their families back home during their first few months of work, due to substantial deductions from their wages to pay for expenses incurred in placement and other fees.

Many OFWs are also illegally dismissed from employment long before they have finished their contracts. They are therefore unable to save enough money to

pay for loans incurred for placement and other fees upon repatriation to the Philippines. After selling their properties and using their savings to pay for placement fees, many OFWs find themselves with no money or property when they are illegally dismissed shortly after deployment. A "no placement fee" policy will prevent this situation where OFWs lose all their properties just to pay for placement fees and find themselves with no savings upon termination from employment.

Abolition of placement fee will also unclog the dockets of both administrative and judicial bodies of complaints arising from collection of excessive fees. Courts and quasi-judicial bodies can then focus on other offenses such as human trafficking and decide cases with dispatch.

Conduct of PDOS

Improvement on Existing Law/Policy: The PDOS is a good way to orient OFWs on the culture of the host country and give them tips on how to contact the Philippine consulate and protect themselves from abuse. The problem, however, is that the PDOS is used by many companies as a venue to market their products and services catering to OFWs and too much time is taken up by these advertisements. The POEA should regulate the PDOS to ensure that it is focused mainly on giving OFWs helpful advice on how to adapt to the host country. Product advertisements should not be incorporated into the PDOS but should be confined to the distribution of flyers informing OFWs about the products and services.

Another problem is that the PDOS is conducted right before the OFWs' scheduled date of departure. This is a time when OFWs are too preoccupied with last minute arrangements for their travel and other concerns. OFWs are therefore unable to focus on matters taken up during the PDOS and remember the useful tips

given to them. Government/accredited institutions should conduct the PDOS at least three (3) days before the OFWs' scheduled date of departure to give them ample time to digest the material and prepare themselves psychologically for the trip.

III. DEPLOYMENT OF WORKERS

Rationale on the Implementation of Selective Deployment. Imposing deployment ban is not an end in itself.

Improvement on Law/Policy: As stated Deployment Ban is not an effective tool to curtail the travel of person desirous to work abroad. The Philippine Government has to come up with a more logical and sustainable mechanisms in imposing deployment ban to different host countries. It has to find way to strike the balance between the workers' protection and the right to travel of its citizens. Mere imposition of ban to travel to certain states is not enough. The people should be well-informed of the reasons why it is unsafe to go to the said destinations and they should be given set of options. Hence, the POEA in consultation with DFA, could come up and provide the public with the Positive and Negative List (countries where migration is safe or unsafe).

Implementability and Efficacy of binding agreements with the receiving country.

Improvement on Law/Policy: The existing migration legal system provides for several guarantees (as discussed in C. C.1-C.3, Part III) prior to deployment. It is recommended that Forging of Bilateral Labor Agreements with the receiving country be made a pre-requisite. The BLA should specify the rights and obligations

of the States including grievance procedure, rules on settling claims and venue of action.

It can be observed that the Philippine Government has been utilizing an informal agreement alternative to bilateral arrangements in the form of Memoranda of Understanding (MOU) as evident by the number of MOUs cited in Table 1. MOUs are not legally binding on countries. While this is so, the effectiveness of these bilateral mechanisms depends not so much on how legally binding they are as on how well they are implemented and enforced by the contracting countries[29].

New Policy: As an innovation to this system, the Philippines, aside from BLAs could also negotiate other form of Bilateral Agreement (BAs) such as *Bilateral Social Security Agreements (SSAs)* [30] which will ensure that Filipino migrants and their families are accorded social security and equal entitlements to benefits granted to national of the host country and vice versa.; or *Anti-Trafficking Agreements (ATAs).* Malaysia for example, has formulated their version of Trafficking in Persons Act in 2007. Given that Malaysia is one of the destination countries of trafficked persons, the Philippine Government may negotiate a bilateral agreement as regards the enforcement/application of both laws, specifically on prosecution of perpetrators in trafficking cases and safeguarding the rights and security of the victims-survivors of trafficking.

Also, in accordance with the context of State's liability arising from breach of duty to protect, it is high time that international conventions be converted to binding regional or bilateral treaties. The Philippine Government has to move away from

[29] Asian Labor Migration:The Role of Bilateral Labor and Similar Agreements. Stella P. Go. De La Salle University

[30] *Ibid.*

negotiating general agreements towards more focused and implementable instruments. One example is the negotiation of JPEPA (Japan-Philippines Economic Partnership Agreement). While it is a bilateral agreement, it is more of an economic agreement, not primarily labor agreement, whilst it include migration component setting conditions for the entry of Filipino nurses and caregivers to Japan. There is now a mixed up of priorities and interests, while economically, the Philippines might push its interest in the agreement but it somehow put the welfare and interest of the Filipino nurse and caregivers at stake. They (nurses) are being discriminated with regard to education, experience and wage requirement. Chapter 9 of the JPEPA provides terms of reference that are lopsided and not to the interest of the Filipino people and migrant workers (Table 2).

Lastly, to better protect the rights and welfare of the migrant workers and the members of their families, it is worth considering entering into Bilateral or Regional Agreements with other Labor-sending Countries like Indonesia, Sri-Lanka or Nepal. The more state parties advocating for the rights of workers, the more chances to be heard.

Competence of the front-liners (government officials onsite).There is an imperative need to increase the number and possession of knowledge and skills of the government personnel onsite.

Improvement on Law/Policy: At present, there is a "mismatch" or "ratio-distortion" between the Government personnel (onsite) on one hand, and the number of and needs of OFWs upon the other hand. The Philippine Government should invest on key officers' competence to provide assistance to the OFWs in distress or those facing charges at the receiving country. A significant number of lawyers (or the Assistance to National Officers) should study the laws of the receiving country and respectively take the required examination to allow them to

represent OFW clients or prosecute cases before the judicial and quasi-judicial bodies of the receiving countries.

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Table 1. Bilateral Labor Agreements and International Instruments signed and ratified by the Philippine Government

COUNTRY	TITLE / SUBJECT	DATE
JORDAN	Memorandum of Understanding on Labor Cooperation Between the Government of Hashemite Kingdom of Jordan and the Government of the Republic of the Philippines	May 27, 2010
BAHRAIN	Memorandum of Agreement Between the Republic of the Philippines and the Kingdom of Bahrain on Health Services Cooperation	April 24, 2007
CANADA		
Alberta	Memorandum of Agreement Between the Republic of the Philippines (DOLE) and The Ministry of Employment and Immigration of Alberta (E&I) Concerning Cooperation in Human Resource Deployment and Development	October 1, 2008
British Colombia	Memorandum of Understanding Between the Department of Labour and Employment of the Government of the Republic of the Philippines (DOLE) and The Ministry of Economic Development of the Government of British Columbia, Canada (ECDV) Concerning Co-Operation in Human Resource Deployment and Development	January 29, 2008
Manitoba	Memorandum of Understanding Between The Department of Labour and Employment of the Government of the Republic of the Philippines (DOLE) and The Department of Labour and Immigration of the Government of Manitoba, Canada(LIM) Concerning: Co-Operation in Human Resource and Deployment	February 8, 2008
Saskatchewan	Memorandum of Understanding Between the Republic of the Philippines (DOLE) and Her Majesty The Queen in the Right of the Province of Saskatchewan as represented by the Minister Responsible for Immigration and the Minister of Advanced Education and Employment (AEE) Concerning Cooperation in the Fields of Labour, Employment and Human Resource Development	December 18, 2006
CNMI	Memorandum of Understanding Between the Republic of the Philippines (DOLE) and The Commonwealth of the Northern Mariana Islands (CNMI)	September 14, 1994
	Memorandum of Understanding Between the Republic of the Philippines (DOLE) and The Commonwealth of the Northern Mariana Islands (CNMI)	December 18, 2000
INDONESIA	Memorandum of Understanding Between the Republic of the Philippines (DOLE) and the Department of Manpower and Transmigration of the Republic of Indonesia Concerning Migrant Workers	January 18, 2003
IRAQ	Memorandum of Agreement Relating to Mobilization of Manpower Between the Republic of the Philippines and the Republic of Iraq	November 25, 1982
JAPAN	Memorandum of Understanding Between the Philippine Overseas	January 12,

	Employment Administration and the Japan International Cooperation of Welfare Services on the Deployment and Acceptance of Filipino Candidates (JPEPA)	2009
JORDAN	Memorandum of Understanding Between the Minister of Labor of the Republic of the Philippines and the Minister of Labor of the Hashemite Kingdom of Jordan	December 5, 1981
	Agreement on Manpower Between the Government of the Republic of the Philippines and the Government of the Hashemite Kingdom of Jordan	December 3, 1988
KOREA	Memorandum of Understanding Between the Department of Labor of the Philippines and the Ministry of Labor of the Republic of Korea on the Sending of Workers to the Republic of Korea	April 23, 2004
KOREA	Memorandum of Agreement Between the Republic of the Philippines and the Republic of Korea	December 15, 2005
KOREA	Memorandum of Understanding Between the Department of Labor and Employment of the Philippines and the Ministry of Labor of the Republic of Korea on the Sending and Receiving of Workers to the Republic of Korea under the Employment Permit System	October 20, 2006
	Memorandum of Understanding between the Ministry of Labor, Republic of Korea and the Department of Labor and Employment, Republic of the Philippines on Cooperation in the Field of Labor and Manpower Development	May 30, 2009
	Memorandum of Understanding between the Department of Labor and Employment, Republic of the Philippines and the Ministry of Labor, Republic of Korea on the Sending and Receiving of Workers under the Employment Permit System of Korea	May 30, 2009
KUWAIT	Memorandum of Understanding on Labor and Manpower Development Between the Government of the Republic of the Philippines and the Government of the State of Kuwait	September 14, 1997
	Memorandum of Understanding Between the Department of Foreign Affairs of the Republic of the Philippines and the Ministry of Foreign Affairs of the State of Kuwait on the Establishment of Bilateral Consultations	September 14, 1997
LAO PDR	Memorandum of Understanding on Technical Cooperation on Labor and Employment Between the Government of the Republic of the Philippines and the Government of the Lao People's Democratic Republic	July 27, 2005
LIBYA	Agenda for Cooperation in the Field of Labor, Employment and Manpower Development Between the Philippines and Libya	October 18, 1979
	Memorandum of Understanding Between the Philippines and Libya (with Arabic Version)	July 17, 2006
NEW ZEALAND	Memorandum of Agreement on Labour Cooperation Between the Government of the republic of the Philippines and the Government of New Zealand	November 4, 2008
NORWAY	Agreement Between POEA and the Directorate of Labour Norway	June 26, 2001

	on Transnational Co-Operation for Recruiting Professionals from the Health Sector to Positions in Norway	
PNG	Memorandum of Understanding Between the Philippines and Papua New Guinea	March 14, 1979
QATAR	Agreement Between the Government of the Republic of the Philippines and the Government of the State of Qatar Concerning Filipino Manpower Employment in the State of Qatar	May 10, 1997
	Additional Protocol to the Agreement between the Government of the Republic of the Philippines and the Government of the State of Qatar Concerning Filipino Manpower Employment in the State of Qatar signed on 10 March 1997	October 18, 2008
SPAIN	Memorandum of Understanding on Cooperation for the Management of the Migration Flows Between the Ministry of Labor and Social Affairs of the Kingdom of Spain and the Ministry of Labor and Employment of the Republic of the Philippines (English Version)	June 29, 2006
	Memorandum of Understanding on Cooperation for the Management of the Migration Flows Between the Ministry of Labor and Social Affairs of the Kingdom of Spain and the Ministry of Labor and Employment of the Republic of the Philippines (Spanish Version)	
SWITZERLAND	Agreement Between the Government of the Republic of the Philippines and the Swiss Federal Council on Exchange of Professional and Technical Trainees	July 2, 2002
TAIWAN	Memorandum of Understanding between the Manila Economic and Cultural Office (MECO) in Taipei and the Taipei Economic and Cultural Office (TECO) in the Philippines regarding the Special Hiring Workers	September 3, 1999
	Memorandum of Understanding on Special Hiring Program for Taiwan Between the Manila Economic and Cultural Office in Taipei (MECO) and the Taipei Economic and Cultural Office (TECO) in the Philippines	January 12, 2001
	Memorandum of Understanding on Special Hiring Program for Taiwan Between the Manila Economic and Cultural Office (MECO) in Taipei and the Taipei Economic and Cultural Office (TECO) in the Philippines	March 20, 2003
UAE	Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the United Arab Emirates in the Field of Manpower	April 9, 2007
	MoU between RP and UAE in the Field of Manpower (Arabic)	
UNITED KINGDOM	Memorandum of Understanding between the Government of the Philippines and the Government of the Kingdom of Great Britain and Northern Ireland on Healthcare Cooperation	July 30, 2003
	Recruitment Agreement Between the Government of the Republic of the Philippines and the Government of the United Kingdom of	January 8, 2002

	Great Britain and Northern Ireland	
UNITED STATES OF AMERICA	Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Relating to the Recruitment and Employment of Philippines Citizens by US Military Forces and Contractors of Military and Civilian Agencies of the US Government in Certain Areas of the Pacific and the Southeast Asia	December 28, 1968

Source: http://www.poea.gov.ph. Accessed on November 22, 2010.

Bilateral Labour Agreements (BLAs) concerning Filipino Overseas Sea-based workers entered by and between the Government of the Philippines
Country Cyprus –7 September 1984 Liberia – 10 August 1985 Denmark – 2000 Netherlands – 31 May 2001 Singapore – 25 August 2001 **Source:** WRITTEN REPLIES BY THE GOVERNMENT OF THE PHILIPPINES CONCERNING THE LIST OF ISSUES (CMW/C/phl/Q/1) RECEIVED BY THE COMMITTEEON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES RELATING TO THE CONSIDERATION OF THE INITIAL REPORT OF THE PHILIPPINES (CMW/C/phl/1) [In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services]

Table 2. Chapter 9 of JPEPA

Arguments	JPEPA
I. Filipino nurses will be sent to Japan as temporary workers; they will serve as trainees under the supervision of a registered Japanese nurse (Kangoshi).	Article 108, paragraph 2 *This Chapter shall not apply to measures regarding nationality or citizenship, or residence or* ***employment on a permanent basis.***
II. Contrary to the Executive Branch's claim of national treatment, Filipino nurses will not be treated as if they were regular Japanese nurses; they will only be accepted as trainees in Japan. Contrary to the Executive Branch's claim, Filipino nurses, upon entry and prior to passing Japan's Nursing Board Exam, will not be given the same salary as Japanese nurses.	Page 17 of the JPEPA Joint Coordinating Team Report (2003)[31] provides: c. The Japanese side responded that capability of communication in Japanese language as well as medical knowledge and skills is essential for health care professionals in Japan, and ***therefore obtaining national qualification of Japan is a minimum requirement for not only Japanese but also foreigners to work in Japan as health care professionals.*** The Japanese side also stressed that the influence on domestic labor market should be duly considered regarding health care professionals.
III. Contrary to the Executive Branch's claim, Filipino nurses will not only be pursuing language training in the first 6 months after entry to Japan; they will be	Annex 8, Section 6, paragraph 1 of the JPEPA clearly belies the claim of the Executive Branch that Filipino nurses will only be spending the first six months of their employment contract

pursuing both language training and nurse training for $400 a month.	for the purpose of learning Nihonggo. On the contrary, the provision is very clear: *1. Entry and temporary stay for a period set out in Appendix 1 shall be granted to a natural person of the Philippines set out in Appendix 2, who is designated and notified to the Government of Japan by the Government of the Philippines in accordance with the Implementing Agreement, who enters into Japan on the dates specified by the Government of Japan and who engages in one of the following activities during its temporary stay in Japan:* *(a) for the purposes of obtaining a qualification as a nurse under Japanese law (hereinafter referred to in this Section as "Kangoshi");* *(i) pursuing the course of training* ***<u>including</u>*** *Japanese language training, referred to in the Implementing Agreement, for six (6) months; and (**emphasis supplied**)* *(ii) after completion of the said training, acquiring necessary knowledge and skills at the hospital mentioned below through the training under the supervision of "Kangoshi",*

IV. The JPEPA grants Filipino nurses only a one-year contract; the 2-year extension period is discretionary on the part of Japan. The Executive Branch's claim of a 3-year contract is baseless.	Appendix 1, paragraph 3 (in part) of the JPEPA clearly states: *For the purposes of entry and temporary stay as set out in paragraph 1 of Section 6,* ***Japan shall grant a stay of one (1) year****, which* ***may*** *be extended:* *(a) in the case of subparagraph (a), not exceeding twice for each and equal period of time;*
V. A provision in the JPEPA provides the perfect set-up for the failure of Filipino nurses and for them to work as trainees for an entire year. The dates of entry for Filipino nurses will be decided by Japan.	Annex 8, Section 6, paragraph 1 of the JPEPA, provides in part: *1. Entry and temporary stay for a period set out in Appendix 1 shall be granted to a natural person of the Philippines set out in Appendix 2, who is designated and notified to the Government of Japan by the Government of the Philippines in accordance with the Implementing Agreement, who* ***enters into Japan on the dates specified by the Government of Japan*** *and who engages in one of the following activities during its temporary stay in Japan: (****emphasis supplied****).*
VI. The JPEPA gives Filipino nurses a	Annex 8, Section 6, par. 1, Note 3 clearly

maximum of three opportunities to pass the National Licensure Exam. They must pass the exam during their one-year contract or during the next 2 years after entry if Japan decides to extend their initial one-year contract. If they fail on their third take, they will be required to go back to the Philippines.	provides: *With reference to subparagraph 1(a) above, the natural person has, upon application and in accordance with the laws and regulations of Japan, a maximum of three (3) opportunities to take the national examination for "Kangoshi", under normal circumstances, during the maximum period of its stay set out in Appendix 1.*
VII. The Philippine negotiators failed to get the best deal for the Filipino nurses. Indonesia got a better deal for their nurses.	
VIII. Contrary to the Executive Branch's claim, it is not the first time that Japan will open up its market for foreign workers, other than nurses and caregivers.	

Source: Benjamin, Golda S.,*A Summary of Arguments against the Japan-Philippines Economic Partnership Agreement (JPEPA).* Magkaisa JUNK JPEPA Coalition, October 23, 2007.

Annex A. Summary of Philippine Laws on Overseas Employment

Number	Full Title	Salient Features/ Remarks
Presidential Decree (PD) No. 422 Year Signed: 1974	The 1974 Labor Code of the Philippines	This PD institutionalized the participation of the government in overseas employment. It created the Overseas Employment Development Board (OSDB) and the National Seamen Board (NSB).The two (2) Boards were mandated to undertake a systematic program for overseas employment - focusing on market development, recruitment and placement of Filipino workers.
Letter of Instruction No. 537 (1977)	The Welfare Fund for Overseas Workers (Welfare Fund).	The Welfare Fund was established to provide social and welfare services to Filipino overseas workers, to provide skills and career development services to Filipino overseas workers, to undertake studies and researches for enhancement of their social, economic and cultural well-being, and to develop, support and finance specific projects for the benefit of Filipino overseas workers.
PD 1412 (1978)	Further amending certain provisions of Book I, Presidential Decree No.442 otherwise known as the Labor Code of the Philippines.	Renewed the participation of the private sector in the recruitment activities.
Executive Order NO. 797 (1982)	Executive Order Creating the Philippine Overseas Employment Administration (POEA)	The POEA took over the functions of the OESDB and NSB. It was also given jurisdiction to take cognizance and resolve cases involving overseas contract workers.
EO 857 (1982)	Governing the Remittance to the Philippines of Foreign Exchange Earnings of Filipino Workers abroad and for other purposes.	EO 857B made mandatory the requirement for overseas workers to remit part of their earnings to their families in the Philippines and to ensure that these remittances passed through the official financial institutions.
1987 Philippine Constitution (replacing 1973 Constitution)	The 1987 Constitution of the Philippines	Philippine labor policy was clearly defined in the 1987 Constitution. Article XIII states that "The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all."
Republic Act 7111 (1991)	Overseas Investment Fund Act	This law created the Overseas Workers' Investment Fund Board to encourage remittance of earnings of Overseas Filipino Workers and to safeguard /oversee the participation of said workers' remittances and savings in the

		Government's debt reduction efforts and other productive undertakings. Incentives such as scholarship grants, housing program, credit assistance and other programs were also provided.
Republic Act 8042 (1995)	The Migrant Workers' Act of 1995	The act was considered the first concrete measure and public commitment of the Philippine Government to protect the rights and promote the welfare of the Overseas Filipino Workers (OFWs).
Republic Act 9189 (2003)	Overseas Absentee Voting Act of 2003	This law paved the way for overseas Filipinos to participate in Philippine national elections. Thus, in May 2004 some overseas Filipinos exercised their right of suffrage.
Republic Act 9208 (2003)	Anti-Trafficking in Persons Act of 2003	This law was regarded as one of the most comprehensive and progressive anti-trafficking laws passed. This act adopted the UN definition of trafficking in person.
RA 9422	Strengthening the Regulatory Functions of the POEA (amending RA 8042)	It amended Section 23 (par.b.1) of RA 8042. Under the amendatory law, the POEA shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. It also repealed Section 29, 30 of the same law (RA 8042)
RA 9225 (2003)	Citizenship Retention and Re-acquisition Act of 2003 (Dual Citizenship Law)	By virtue of this law, natural-born Filipinos who became naturalized citizens of other countries are deemed not to have lost their Philippine citizenship. They can re-acquire their Filipino citizenship, while at the same time not losing their other citizenship. To date, more than 6,000 former Filipinos have reacquired their citizenship after the implementation of the law.
RA 10022	An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995. As Amended, Further Improving the	This law has introduced the following significant reforms: (1) mandating the government to monitor international conventions and ratify those that ensure protection of Filipino workers abroad as well as forge bilateral agreements with receiving countries.

	Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes.	(2) members of the governing board of the POEA are now made accountable in the deployment of migrant workers. (3) state officials who facilitate the deployment of OFWs to countries that do not guarantee or follow international labor standards face dismissal from public service or disqualification from government appointments for five years

Annex B. List of Ratifications of International Labour Conventions: Philippines

Member since 1948		34 Conventions ratified (32 in force)
C. 17	Workmen's Compensation (Accidents) Convention, 1925 (No. 17)	17.11.1960
C. 19	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	26.04.1994
C. 23	Repatriation of Seamen Convention, 1926 (No. 23)	17.11.1960
C. 29	Forced Labour Convention, 1930 (No. 29)	15.07.2005
C. 53	Officers' Competency Certificates Convention, 1936 (No. 53)	17.11.1960
C. 77	Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)	17.11.1960
C. 87	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	29.12.1953
C. 88	Employment Service Convention, 1948 (No. 88)	29.12.1953
C. 89	Night Work (Women) Convention (Revised), 1948 (No. 89)	29.12.1953
C. 90	Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	29.12.1953
C. 93	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93) Convention not in force	29.12.1953
C. 94	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)	29.12.1953
C. 95	Protection of Wages Convention, 1949 (No. 95)	29.12.1953
C. 97	Migration for Employment Convention (Revised), 1949 (No. 97) *Has excluded the provisions of Annex II and III*	21.04.2009
C. 98	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	29.12.1953
C. 99	Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)	29.12.1953
C. 100	Equal Remuneration Convention, 1951 (No. 100)	29.12.1953
C. 105	Abolition of Forced Labour Convention, 1957 (No. 105)	17.11.1960
C. 110	Plantations Convention, 1958 (No. 110)	10.10.1968
C. 111	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	17.11.1960
C. 118	Equality of Treatment (Social Security) Convention, 1962 (No. 118) *Has accepted Branches (a) to (g)*	26.04.1994
C. 122	Employment Policy Convention, 1964 (No. 122)	13.01.1976

C. 138	Minimum Age Convention, 1973 (No. 138) *Minimum age specified: 15 years*	4.06.1998
C. 141	Rural Workers' Organisations Convention, 1975 (No. 141)	18.06.1979
C. 143	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	14.09.2006
C. 144	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	10.06.1991
C. 149	Nursing Personnel Convention, 1977 (No. 149)	18.06.1979
C. 157	Maintenance of Social Security Rights Convention, 1982 (No. 157)	26.04.1994
C. 159	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)	23.08.1991
C. 165	Social Security (Seafarers) Convention (Revised), 1987 (No. 165) *Has accepted the obligations of Article 9 of the Convention in respect of the branches mentioned in Article 3 (a), (b), (d), (e), (h) and (i).*	9.11.2004
C. 176	Safety and Health in Mines Convention, 1995 (No. 176)	27.02.1998
C. 179	Recruitment and Placement of Seafarers Convention, 1996 (No. 179)	13.03.1998
C. 182	Worst Forms of Child Labour Convention, 1999 (No. 182)	28.11.2000
Denunciation (as a result of the ratification of Convention No. 138)		
C. 59	Minimum Age (Industry) Convention (Revised), 1937 (No. 59) Denounced on 4.06.1998	17.11.1960

Source: http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byCtry.accessed on November 23, 2010.

United Nations Conventions ratified by the Philippines

International Convention on Civil and Political Rights (1966)
International Convention on Economic, Social and Cultural Rights (1966)
International Convention against Racial Discrimination (1965)
International Convention against the Elimination of All Forms of Discrimination against Women (1979)
International Convention on the Rights of Children (1989)
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)