

Revisiting the Philippine Template on Bilateral Labor Agreements: An Assessment of its Adherence to International Human Rights Conventions and Domestic Laws Protecting the Rights of OFWs

*Armand Louis T. Dulay**

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* '15 J.D., *with honors*, Evelio B. Javier Award for Outstanding Leadership, Ateneo de Manila University School of Law. The Author was an associate at Angara Abello Concepcion Regala and Cruz Law Offices (ACCRALAW) until he was appointed as a Foreign Service Officer of the Department of Foreign Affairs (DFA) in 2019. He is currently assigned at the DFA's Office of the Undersecretary for Migrant Workers' Affairs under Undersecretary Sarah Lou Y. Arriola.

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I. INTRODUCTION

The Philippines is known as one of the most extensive labor-sending countries in the world.¹ Based on the most recent survey of the Philippine Statistics Authority (PSA), an estimated 2.3 million Overseas Filipino Workers (OFWs)² were working abroad during the period of April to September 2018 — under either a temporary or permanent contract of employment.³ Moreover, it was estimated by the Commission on Filipinos Overseas that more than 5,000 Filipinos leave the Philippines every day in

1. See Rebecca J. Calzado, *Labour Migration and Development Goals: The Philippine Experience (A Presentation During a Workshop Titled “Making Global Labour Mobility A Catalyst For Development” Held in Geneva on October 2007)* at 2, available at https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/global_labour_mobility_0809102007/presentations/paper_calzado.pdf (last accessed Aug. 15, 2020).

2. Philippine Statistics Authority, *Total Number of OFWs Estimated at 2.3 Million (Results from the 2018 Survey on Overseas Filipinos)*, available at <https://psa.gov.ph/content/total-number-ofws-estimated-23-million-results-2018-survey-overseas-filipinos> (last accessed Aug. 15, 2020). According to the PSA,

OFWs include overseas contract workers (OCWs) who were presently out of the country during the reference period to fulfill an overseas contract for a specific length of time or who were presently at home on vacation during the reference period but still had an existing contract to work abroad, and other Filipino workers abroad with valid working visa or work permits. Those who had no working visa or work permits (tourist, visitor, student, medical, and other types of non-immigrant visas) but were presently employed and working full time in other countries were also included.

Id.

3. *Id.*

search of better life and opportunities abroad.⁴ This constant wave of migration has been a boon and, at the same time, a bane to the Philippines. The total amount of remittances sent by OFWs during the period of April to September 2018 was estimated at ₱235.9 billion or around 9.8% of the country's gross domestic product (GDP).⁵ However, overseas work has exposed OFWs, the majority of whom are women,⁶ to inhumane working conditions, and to physical and sexual abuse, among other violations.⁷

One of the ways through which the Philippine government ensures the protection of the rights of OFWs is the conclusion of bilateral labor agreements (BLA) with labor-receiving countries.⁸ As of December 2018, there have been 40 BLAs signed by the Philippines, whether in the form of a Memorandum of Agreement (MOA) or a Memorandum of Understanding (MOU).⁹ To aid in the negotiation of these BLAs, the Department of Labor and Employment (DOLE) issued Administrative Order No. 246 (A.O. No. 246) in 2018, which provided guidelines and procedures to make the BLA process "relevant, effective, efficient, sustainable, and consistent with policy,

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4. Commission on Filipinos Overseas, Stock Estimate of Filipinos Overseas (A Presentation During the Experts Group Meeting "Strengthening the demographic evidence base for the post-2015 development agenda" Held in New York on October 2015) at *5, available at <https://www.un.org/en/development/desa/population/events/pdf/expert/23/Presentations/EGM-S4-Tingga%20presentation.pdf> (last accessed Aug. 15, 2020).
 5. See generally Philippine Statistics Authority, *supra* note 2.
 6. *Id.* According to the PSA survey, 55.8% of the 2.3 million OFWs working abroad during the period of April to September 2018 were women. *Id.*
 7. Macon Ramos-Araneta, *Most women domestics suffer abuse*, MANILA STAND., Mar. 7, 2018, available at <https://manilastandard.net/mobile/article/260389> (last accessed Aug. 15, 2020).
 8. Adam Chilton & Eric A. Posner, *Why Countries Sign Bilateral Labor Agreements* (A Paper Published as part of the Coase-Sandor Working Paper Series in Law and Economics) at 4, available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2497&context=law_and_economics (last accessed Aug. 15, 2020).
 9. This number is based on a compilation of the Department of Foreign Affairs Office of Treaties and Legal Affairs.

rules[,] and regulations.”¹⁰ A.O. No. 246 contains a template for MOAs and MOUs which is used as the Philippine government’s first draft in the negotiations of BLAs.¹¹

It is believed that the labor migration of Filipinos will continue in the coming decades. Considering that OFWs can be found in more than 192 countries around the world, the Philippine government is likely to negotiate more BLAs in the coming years. Thus, it is crucial to assess whether the current BLA template, as found in A.O. No. 246, sufficiently embodies international human rights conventions and domestic legal and policy frameworks on labor migration.

II. PRELIMINARIES

A. *Bilateral Labor Agreements*

Generally, BLAs are “agreements that control the conditions under which source countries send temporary migrant workers to host countries.”¹² More specifically, the International Labor Organization (ILO)¹³ defines BLAs as “agreements between two States which describe in detail the specific responsibilities of[] and actions to be taken by each of the parties[]with a view to accomplishing their goals.”¹⁴ Throughout the years, ILO instruments have acknowledged the potential of BLAs in managing migration flows among countries, and in protecting migrant workers.¹⁵

10. Department of Labor and Employment, *The Philippine Bilateral Labor Agreement Process: Guidelines and Procedures*, Administrative Order No. 246, Series of 2018 [DOLE A.O. No. 246, s. 2018], part I, para. 6 (May 17, 2018).

11. *Id.* annexes A & B.

12. Chilton & Posner, *supra* note 8, at 1.

13. The International Labour Organization (ILO) is an agency of the United Nations which “brings together governments, employers[,] and workers of 187 member States, to set labor standards, develop policies, and devise [programs] promoting decent work for all women and men.” International Labour Organization, *About the ILO*, available at <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (last accessed Aug. 15, 2020).

14. PIYASIRI WICKRAMASEKARA, *BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING ON MIGRATION OF LOW SKILLED WORKERS: A REVIEW 13* (2015) [hereinafter *BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING*].

15. *Id.* at 7.

According to the ILO, BLAs are “effective collaboration mechanism[s] between countries of origin and destination ... [which] ensure that migration takes place in accordance with agreed principles and procedures.”¹⁶

BLAs are ordinarily signed between two kinds of countries: *first*, the country of origin or the “sending country,” and *second*, the country of destination or the “receiving country.”¹⁷ For countries of origin, BLAs help “ensure continued access to overseas [labor] markets and opportunities to promote the protection and welfare of their workers.”¹⁸ For countries of destination, BLAs “help achieve a flow of [labor] that meets the needs of employers and industrial sectors”¹⁹

Issues covered by BLAs ordinarily include:

- (1) establish[ment] of health, criminal-record, and other criteria for workers seeking employment in the [country of destination];
- (2) obligat[ion] [of the country of origin] to screen [] workers;
- (3) ... legal protections [of the workers in the country of destination];
- (4) ... regulat[ion] of recruiters, employers, or both; and
- (5) establish[ment of] institutional mechanisms for administering the agreement.²⁰

In essence, the country of destination agrees to extend rights to the migrant workers while the country of origin agrees to screen, inform, prepare, and repatriate the workers.²¹

Problems arise when migrant workers are exploited or are not provided the working conditions and remunerations promised to them.²² Also,

16. International Labor Organization, MOUs, BLAs and declarations related to migration, *available at* https://www.ilo.org/asia/areas/labour-migration/WCMS_161105/lang--en/index.htm (last accessed Aug. 15, 2020).

17. *Id.*

18. *Id.*

19. *Id.*

20. Chilton & Posner, *supra* note 8, at 10.

21. *Id.*

22. PIYASIRI WICKRAMASEKARA, ASSESSMENT GUIDE FOR BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING ON LABOUR MIGRATION, WITH A SPECIAL FOCUS ON BANGLADESH III (2018) [hereinafter ASSESSMENT GUIDE FOR BILATERAL AGREEMENTS].

employers may find themselves at a loss when a migrant worker does not have the required skills.²³ According to the ILO, migrant workers “need to be supported by effective social protection measures [which enable] them to live and work with dignity and without discrimination.”²⁴ This is where BLAs play a very important role.²⁵ The ILO believes that several of these issues can be avoided if BLAs are “rigorously drawn, clearly understood, and effectively implemented.”²⁶ Moreover, the ILO posits that “when these instruments are not compliant with human rights protections standards, both the governance of [labor] migration and the protection of migrant workers suffer.”²⁷

B. Negotiating From a “Maximum Position”

Labor migration takes place for the purpose of “matching [labor] market demand for workers ... in destination countries with the supply of [labor] ... from origin countries. Migrant workers make a significant contribution to the growth and development of destination countries[.]”²⁸ Thus, the ILO urges origin countries to “undertake negotiations from a position of strength[] and attempt to get the best possible options for their workers.”²⁹

It is always important in international negotiations that the delegation is prepared to negotiate from a “maximum position.”³⁰ Starting any negotiation from the maximum position gives the Philippine government room to compromise and provide concessions as the negotiations move further.³¹ This is known as the “door in the face” technique in negotiations based on a 1975 study by Arizona State University professor Robert

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. PIYASIRI WICKRAMASEKARA, CORE ELEMENTS OF A BILATERAL AGREEMENT OR A MEMORANDUM OF UNDERSTANDING ON LABOUR MIGRATION 29 (2018) [hereinafter CORE ELEMENTS OF A BILATERAL AGREEMENT].

29. *Id.*

30. Negotiation, Conflict Resolution, and Management Lecture by E. Buensuceso, *in the* Foreign Service Officers’ Cadetship Course, Department of Foreign Affairs-Manila (Nov. 4, 2019).

31. *Id.*

Cialdini.³² According to Cialdini, when people replace an extreme request with a more moderate one, “the other party [sees] this as a concession and feels compelled to reciprocate it.”³³

Thus, in the context of Philippine BLA negotiations, arguing from a maximum position means knowing all the rights of Filipino migrant workers under international and domestic law and actually invoking these during the negotiations. Both the international and Philippine legal environment are replete with policies that afford protection to migrant workers. An ideal Philippine BLA template that affords maximum protection reflects a thorough and comprehensive listing of all the rights of Filipino migrant workers under international and domestic law. The template must also contain provisions that reflect and address the actual experiences of Filipino migrant workers.

It is reasonable to expect that the Philippines’ first draft of the BLA will not be accepted *in toto* by the other party. It will be filtered as the negotiations move forward. However, it is important that the Philippine delegation start the BLA negotiations from a maximum position so that they can get the best possible options for all Filipino migrant workers.

III. LABOR-RELATED PROBLEMS OF FILIPINO MIGRANT WORKERS

Part of being able to effectively negotiate from a maximum position entails knowing the issues OFWs face on a daily basis. According to DOLE’s 2017 Report to Congress, which was issued just before the 2018 A.O. No. 246, the following list represents the most common problems faced by OFWs:

In the Middle East:

- (1) Money claims arising from employer-employee relationship:
 - (a) Non-payment, underpayment, delayed payment of salaries and overtime pay under the contract and
 - (b) Reduction or diminution of salaries and other benefits.
- (2) Violations of the terms and conditions of the contract:
 - (a) Contract substitution;

32. Pon Staff, The “Door in the Face” Technique: Will It Backfire?, *available at* <https://www.pon.harvard.edu/daily/dispute-resolution/the-door-in-the-face-technique-will-it-backfire-nb> (last accessed Aug. 15, 2020).

33. *Id.*

- (b) Change of work category or nature of work;
 - (c) Change of job site;
 - (d) Serving multiple employers;
 - (e) Long hours of work without rest periods;
 - (f) No day-off;
 - (g) Lack of food, delayed meals, or no meals at all; and
 - (h) Other changes in the terms and conditions of the contract which are inferior to the POEA approved contract.
- (3) Abuses committed by employer:
- (a) Maltreatment;
 - (b) Physical, verbal, sexual abuse, rape;
 - (c) Poor working/living conditions;
 - (d) Lack of medical attention;
 - (e) Prohibition to possess mobile phones and passport; and
 - (f) Filing of false cases (e.g., theft, absconding) against the OFW.³⁴

In East/South East Asia:

- (1) Money claims arising from employer-employee relationship:
- (a) Deductions for recruitment and placement fees, payment of air tickets and other fees (i.e., OWWA, OEC, etc.);
 - (b) Non-payment, underpayment, delayed payment of salaries and overtime pay under the contract; and
 - (c) Reduction or diminution of salaries and other benefits.
- (2) Violations of the terms and conditions of the contract:
- (a) Serving multiple employers;
 - (b) Long hours of work;
 - (c) No day-off;
 - (d) Lack of food, delayed meals, or no meals at all;

34. See Department of Labor and Employment, 2017 Annual Report to Congress (2017) (on file with Author).

- (e) Premature termination of contract due to cultural, language, and other differences; and
 - (f) Other changes in the terms and conditions of the contract which are inferior to the POEA approved contract.
- (3) Abuses committed by employer:
- (a) Maltreatment;
 - (b) Physical, verbal, sexual abuse, rape;
 - (c) Poor working/living conditions; and
 - (d) Lack of medical attention and reluctance to immediately report industrial accidents.³⁵

In Europe:

- (1) Money claims arising from employer-employee relationship:
 - (a) Reduction of work and pay due to recession and
 - (b) Non-payment of annual leave credits under the contract.
- (2) Violations of the terms and conditions of the contract:
 - (a) Failure to remit social security contributions;
 - (b) Non-recognition/transferability of social security contributions;
 - (c) Restriction in the amount of outward remittance;
 - (d) Long hours of work;
 - (e) No day-off;
 - (f) Lack of food, delayed meals, or no meals at all; and
 - (g) Other changes in the terms and conditions of the contract which are inferior to the POEA approved contract.
- (3) Abuses committed by employer (mostly by Middle Eastern nationals who bring their Filipino domestic workers to Europe):
 - (a) Maltreatment;
 - (b) Physical and verbal;
 - (c) Withholding of documents such as passport and residence permit;

35. *Id.*

- (d) Prohibition on change of employer for the duration of the employment contract.³⁶

In the Americas:

- (1) Difficulty in recognition of credentials from the Philippines resulting in deskilling of OFWs;
- (2) Non-payment, underpayment, delayed payment of salaries and overtime pay under the contract; and
- (3) Long hours of work.³⁷

IV. LEGAL FRAMEWORKS THAT PROTECT THE RIGHTS OF OFWS

A. International Human Rights Conventions

International legal instruments provide a normative foundation for developing BLAs in order to ensure good governance of labor migration and protection of migrant workers.³⁸ These various principles adopted in international conventions are binding upon ratifying States.³⁹ While the parties to a BLA are free to determine its terms and conditions, they must keep in mind accepted international principles and undertake to provide a framework for a rights-based approach to labor migration.⁴⁰

1. International Convention on the Protection of the Rights of Migrant Workers

The International Convention on the Protection of the Rights of Migrant Workers (ICRMW) was adopted through General Assembly Resolution 45/158 on 18 December 1990, and it entered into force on 1 July 2003 after the threshold of 20 ratifying States was reached in March 2003.⁴¹ The

36. *Id.*

37. *Id.*

38. See ASSESSMENT GUIDE FOR BILATERAL AGREEMENTS, *supra* note 22, at 7.

39. *Id.*

40. *Id.*

41. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *adopted* Dec. 18, 1990, 2220 U.N.T.S. 3 [hereinafter ICRMW].

Philippines, on 5 July 1995, became one of the first 20 ratifying States of the ICRMW.⁴²

Like several international human rights conventions, the ICRMW begins with a Preamble, to wit —

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

...

Considering the situation of vulnerability in which the migrant workers and members of their families, frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protections,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

...

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favorable conditions of work than other workers and that certain employers find this an inducement to seek such labor in order to reap the benefits of unfair competition,

...

Convinced, therefore of the need to bring about the international protection of the rights of all migrants, workers, and members of their families, establishing basic norms in a comprehensive convention which could be applied universally[.]⁴³

In general, a Preamble sets out the reasons or motivations for the agreement.⁴⁴ Through it, the State parties acknowledge the context within

42. United Nations, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, available at <https://treaties.un.org/pages/showDetails.aspx?objid=080000028004boag> (last accessed Aug. 15, 2020) [hereinafter ICRMW UNTC].

43. ICRMW, *supra* note 41, pmbl. (emphases supplied).

44. See ICRMW, *supra* note 41, pmbl.

which the instrument was drawn. While a Preamble is not a source of enforceable rights, it is nevertheless important because under the Vienna Convention on the Law of Treaties (VCLT), treaty provisions must be interpreted in good faith in accordance with the context of the terms and in the light of the treaty's object and purpose.⁴⁵ Thus, the rights of Filipino migrant workers should always be read in light of the ICRMW and should recognize the fact that they are a vulnerable group in need of international protection.

The ICRMW covers “the entire migration process[:] preparation for migration, departure, transit[, employment,] as well as return to the State of origin[.]”⁴⁶ Thus, the rights of migrant workers under the ICRMW are as follows:

(1) Article 8

- (a) Right to leave any [S]tate.⁴⁷

(2) Article 9

- (a) Right to life.⁴⁸

(3) Article 10

- (a) Right not to be “subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁴⁹

(4) Article 11

- (a) Right against “slavery or servitude[:]”⁵⁰ and
(b) Right against “perform[ance of] forced or compulsory [labor].”⁵¹

45. Vienna Convention on the Law of Treaties art. 26, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

46. ICRMW, *supra* note 41, art. 1 (1).

47. *Id.* art. 8.

48. *Id.* art. 9.

49. *Id.* art. 10.

50. *Id.* art. 11 (1).

51. *Id.* art. 11 (2).

- (5) Article 12
 - (a) Right to freedom of “thought, conscience, and religion” and freedom to manifest the same;⁵² and
 - (b) Right to freedom from “coercion that would impair [one’s right] to adopt a religion or belief[.]”⁵³
- (6) Article 13
 - (a) “[R]ight to hold opinions without interference.”⁵⁴
 - (b) Right to freedom of expression.⁵⁵
- (7) Article 14
 - (a) Right against “arbitrary or unlawful interference with [one’s] privacy, family, home, correspondence ... or to unlawful attacks on his or her [honor] and reputation.”⁵⁶
- (8) Article 15
 - (a) Right against arbitrary deprivation of property.⁵⁷
- (9) Article 16
 - (a) Right to “liberty and security of [one’s] person[;]”⁵⁸
 - (b) Right to “effective protection by the State against violence, physical injury, threats[,] and intimidation[;]”⁵⁹ and
 - (c) Right to communicate with consular or diplomatic authorities of one’s State of Origin.⁶⁰

52. ICRMW, *supra* note 41, art. 12 (1).

53. *Id.* art. 12 (2).

54. *Id.* art. 13 (1).

55. *Id.*

56. *Id.* art. 14.

57. *Id.* art. 15.

58. ICRMW, *supra* note 41, art. 16 (1).

59. *Id.* art. 16 (2).

60. *Id.* art. 16 (7) (b).

(10) Article 17

- (a) Right to be “treated with humanity and with respect for inherent dignity of the human person and for [one’s] cultural identity.”⁶¹

(11) Article 18

- (a) “[R]ight to be presumed innocent until proven guilty according to law[;]”⁶² and
- (b) “[R]ight to equality with nationals of the State [of employment] before the court and tribunals.”⁶³

(12) Article 20

- (a) Right against “imprison[ment] [] on the ground of failure to fulfill a contractual obligation[;]”⁶⁴ and
- (b) Right against deprivation of authority to reside or to one’s work permit “merely on the ground of failure to fulfill an obligation [in] a work contract”⁶⁵

(13) Article 21

- (a) Right against confiscation or destruction of identity documents or visas/residency cards.⁶⁶

(14) Article 22

- (a) Right against “measures of collective expulsion.”⁶⁷

(15) Article 23

- (a) Right to “protection and assistance of [] consular [and] diplomatic authorities of [one’s own] State[.]”⁶⁸

61. *Id.* art. 17 (1).

62. *Id.* art. 18 (2).

63. *Id.* art. 18 (1).

64. ICRMW, *supra* note 41, art. 20 (1).

65. *Id.* art. 20 (2).

66. *Id.* art. 21.

67. *Id.* art. 22 (1).

68. *Id.* art. 23.

(16) Article 24

- (a) “[R]ight to recognition everywhere as a person before the law.”⁶⁹

(17) Article 25

- (a) Right to “enjoy treatment not less [favorable] than [to] nationals ... [in relation to] remuneration ... overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of [] employment[,] ... other [terms and] conditions of work[.]”⁷⁰

(18) Article 26

- (a) Right “[t]o join freely any trade union” and to take part in its activities.⁷¹

(19) Article 28

- (a) Right not to be refused medical care by reason of irregular stay or employment.⁷²

(20) Article 32

- (a) Right to transfer “earnings[,] savings[,] and ... personal effects and belongings.”⁷³

(21) Article 33

- (a) Right to be informed of the rights granted in the ICRMW and the conditions of their admission, their rights and obligations under the law of the State of employment.⁷⁴

(22) Article 37

- (a) Right to be fully informed by the State of Origin of all conditions applicable to their admission, remunerated

69. *Id.* art. 24.

70. ICRMW, *supra* note 41, art. 25 (1) & (1) (a).

71. *Id.* art. 26 (1) (a)-(b).

72. *Id.* art. 28.

73. *Id.* art. 32.

74. *Id.* art. 33 (1) (a)-(b).

activities one may engage in, and requirements one must satisfy in the State of employment.⁷⁵

(23) Article 39

- (a) “[R]ight to liberty of movement in the territory of the State of employment and freedom to choose [one’s] residence there[in].”⁷⁶

To date, the ICRMW only has 55 State parties, the majority of which are labor-sending countries.⁷⁷ No labor-receiving country has agreed to become a state party to the ICRMW.⁷⁸

Since treaties become legally binding only through the consent of a State, the ICRMW does not have the force of law as to non-state parties.⁷⁹ Thus, it is all the more important to incorporate the provisions of the ICRMW in the Philippine BLA template since this may be the way to bind labor-receiving countries to the obligations stated therein without making them a state party to the ICRMW. This Article will study if the ICRMW provisions are reflected in the Philippine BLA template.

2. International Covenant on Civil and Political Rights

“[R]ecognition of the inherent dignity and of the equal and inalienable rights of [human beings] is the foundation of freedom, justice, and peace in the world[.]”⁸⁰ “[T]he ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights[.]”⁸¹ Under the United Nations Charter, it is the obligation of States to “promote

75. *Id.* art. 37.

76. ICRMW, *supra* note 41, art. 39.

77. *See* ICRMW UNTC, *supra* note 42.

78. *Id.*

79. *See* VCLT, *supra* note 45, art. 11.

80. International Covenant on Civil and Political Rights pmbl., *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

81. *Id.*

universal respect [] and observance [] of human rights and freedoms”⁸² because these are derived from the inherent dignity of the human person.⁸³

The International Covenant on Civil and Political Rights (ICCPR) provisions applicable to migrant workers are:

- (1) Article 8
 - (a) Right against slavery or servitude;⁸⁴ and
 - (b) Right against “perform[ance of] forced or compulsory [labor.]”⁸⁵
- (2) Article 9
 - (a) “[R]ight to liberty and security of [one’s] person.”⁸⁶
- (3) Article 11
 - (a) Right against imprisonment on the ground of failure to fulfill a contractual obligation.⁸⁷
- (4) Article 12
 - (a) “[R]ight to liberty of movement and freedom to choose [one’s] residence.”⁸⁸
- (5) Article 16
 - (a) Right to recognition everywhere as a person before the law.⁸⁹
- (6) Article 17
 - (a) Right against “arbitrary or unlawful interference with [one’s] privacy, family, home ... , correspondence[or]

82. *Id.*

83. *Id.*

84. *Id.* art. 8 (1)-(2).

85. *Id.* art. 8 (3) (a).

86. ICCPR, *supra* note 80, art. 9 (1).

87. *Id.* art. 11.

88. *Id.* art. 12 (1).

89. *Id.* art. 16.

to unlawful attacks on his [or her honor] and reputation.”⁹⁰

(7) Article 18

(a) “[R]ight to freedom of thought, conscience[,] and religion[and] ... freedom ... to manifest [the same;]”⁹¹ and

(b) Right to freedom from “coercion [that] would impair [one’s right to adopt] ... a religion or belief[.]”⁹²

(8) Article 19

(a) “[R]ight to hold opinions without interference[;]”⁹³ and

(b) “[R]ight to freedom of expression[.]”⁹⁴

(9) Article 22

(a) “[R]ight to freedom of association with others[;]”⁹⁵ and

(b) “[R]ight to form and join trade unions for the protection of his interests.”⁹⁶

(10) Article 26

(a) Right to “equal protection [before] the law.”⁹⁷

(11) Article 27

(a) Right to enjoy, as an ethnic, religious, or linguistic minority, one’s own culture, to profess and practice one’s own religion, or to use one’s own language.⁹⁸

90. *Id.* art. 17 (1).

91. *Id.* art. 18 (1).

92. ICCPR, *supra* note 80, art. 18 (2).

93. *Id.* art. 19 (1).

94. *Id.* art. 19 (2).

95. *Id.* art. 22 (1).

96. *Id.*

97. *Id.* art. 26.

98. ICCPR, *supra* note 80, art. 27.

The ICCPR is the source of many of the rights found in the ICRMW.⁹⁹ Currently, the ICCPR has 173 state parties.¹⁰⁰

The ICCPR may be particularly useful during BLA negotiations when the destination country does not agree with incorporating ICRMW provisions in the BLA. The Philippines can raise ICCPR provisions especially if the destination country is a state party to the ICCPR. This is particularly useful when negotiating with countries such as Kuwait, Qatar, Oman, Bahrain, and Jordan which are all State parties to the ICCPR but not the ICRMW.¹⁰¹

3. International Covenant on Economic, Social, and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was adopted through General Assembly Resolution 2200A (XXI) on 16 December 1966, and it entered into force on 3 July 1976.¹⁰² The Philippines, as early as 7 June 1974, became a state party to the ICESCR.¹⁰³

According to the ICESCR's Preamble, the "foundation of freedom, justice, and peace in the world [is the] recognition of the inherent dignity and of the equal and inalienable rights [of all human beings.]"¹⁰⁴ Moreover, it declares that the "ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social, and cultural rights[.]"¹⁰⁵

99. See ICCPR, *supra* note 80 & ICRMW, *supra* note 41.

100. United Nations, International Covenant on Civil and Political Rights, *available at* https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND (last accessed Aug. 15, 2020) [hereinafter ICCPR UNTC].

101. See ICCPR, *supra* note 80 & ICRMW, *supra* note 41.

102. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

103. United Nations, International Covenant on Economic, Social and Cultural Rights, *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4 (last accessed Aug. 15, 2020) [hereinafter ICESCR UNTC].

104. ICESCR, *supra* note 102, pmb1.

105. *Id.*

The ICESCR provisions applicable to migrant workers are:

(1) Article 6

- (a) “[R]ight to work[.]”¹⁰⁶
- (b) Right to “gain [one’s] living by work which he freely chooses or accepts[.]”¹⁰⁷

(2) Article 7

- (a) “[R]ight ... to ... just and [favorable] conditions of work[;]”¹⁰⁸
- (b) Right to remuneration that is fair and of equal value for equal work “without distinction of any kind[;]”¹⁰⁹
- (c) Right of women to be “guaranteed conditions of work not inferior those enjoyed by men[;]”¹¹⁰
- (d) Right to a “safe and healthy working condition[;]”¹¹¹
- (e) Right to “[e]qual opportunity ... to be promoted in his employment[,] ... subject to no consideration[] other than ... seniority and competence[;]”¹¹² and
- (f) Right to “leisure and reasonable limitation of working hours and periodic holidays with pay, [including] remuneration for public holidays.”¹¹³

(3) Article 8

- (a) “[R]ight ... to form trade unions and join [] trade union[s] of [one’s] choice[.]”¹¹⁴

106. *Id.* art. 6 (1).

107. *Id.*

108. *Id.* art. 7.

109. *Id.* art. 7 (a) (i).

110. ICESCR, *supra* note 102, art. 7 (a) (i).

111. *Id.* art. 7 (b).

112. *Id.* art. 7 (c).

113. *Id.* art. 7 (d).

114. *Id.* art. 8 (1) (a).

(4) Article 9

- (a) “[R]ight ... to social security, including social insurance.”¹¹⁵

(5) Article 11

- (a) “[R]ight ... to an adequate standard of living[,] ... including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹¹⁶

The economic rights enumerated above are quite comprehensive. However, when compared to the ICRMW, the latter provides more protection by ensuring that migrant workers are not treated less favorably than the nationals of the country of destination in relation to “overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship, and other conditions of work[.]”¹¹⁷ Thus, incorporating the economic rights provisions of the ICRMW in the Philippine BLA template may afford more protection to Filipino migrant workers.

Currently, the ICESCR has 170 State parties, and this will be particularly useful when the Philippines negotiates with Jordan, Kuwait, Libya, Qatar, and Thailand, which are all State parties to the ICESCR.¹¹⁸

4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The CEDAW was adopted through General Assembly Resolution 34/180 on 18 December 1979, and it entered into force on 3 September 1981.¹¹⁹ The Philippines, together with Russia, wrote the first draft of the CEDAW and, as early as 5 August 1981, became a state party to the CEDAW.¹²⁰

115. *Id.* art. 9.

116. ICESCR, *supra* note 102, art. 11 (1).

117. ICRMW, *supra* note 41, art. 25 (1) (a).

118. ICESCR UNTC, *supra* note 103.

119. Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13. [hereinafter CEDAW].

120. Philippine Commission on Women, Philippine participation to CEDAW, *available at* <https://www.pcw.gov.ph/international-commitments/cedaw/philippine-participation> (last accessed Aug. 15, 2020).

Because of the greater risk of Filipina migrant workers to be exposed to recruitment malpractices, human trafficking, and physical and sexual abuse in the hands of their foreign employers, their vulnerability must be separately considered in the BLA process. As declared in the CEDAW's Preamble, "discrimination against women violates the principles of equality of rights and respect for human dignity" ¹²¹ In situations of poverty, "women have the least access to food, health, education, training, and opportunities for employment[,] and other needs[.]" ¹²²

State obligations under the CEDAW in relation to Filipino women migrant workers are —

Article 11.

- (1) *State Parties shall take 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, ... :*

...

- (d) *The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of quality of work;*
- (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;*
- (f) *The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.* ¹²³

Article 12.

- (1) *State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*
- (2) *State Parties shall ensure to women appropriate services in connection with pregnancy, confinement[,] and the post-natal period, granting free services where*

121. CEDAW, *supra* note 119, pmb1.

122. *Id.*

123. *Id.* art. 11 (d)-(f) (emphases supplied).

necessary, as well as adequate nutrition during pregnancy and lactation.¹²⁴

Article 15.

- (4) *States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.*¹²⁵

Article 24.

*State Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the Convention.*¹²⁶

If the destination country is not amenable to incorporating the provisions of the ICRMW in the BLA, the Philippines may invoke the CEDAW instead. Today, there are 189 State parties to the CEDAW including Saudi Arabia, Kuwait, the United Arab Emirates, and Singapore which are some of the countries having the highest numbers of Filipino women migrant workers.¹²⁷

5. Migration for Employment Convention (Revised), 1949 (No. 97)

The ILO, on 1 July 1949, adopted the Migration for Employment Convention No. 97 (ILO Convention No. 97), and it entered into force on 22 January 1952.¹²⁸ The Philippines became a state party to the convention on 21 April 2009.¹²⁹

124. *Id.* art. 12 (1)-(2) (emphases supplied).

125. *Id.* art. 15 (4) (emphases supplied).

126. *Id.* art. 24 (emphases supplied).

127. United Nations, Convention on the Elimination of All Forms of Discrimination against Women, *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4 (last accessed Aug. 15, 2020) [hereinafter CEDAW UNTC].

128. Convention (No. 97) concerning migration for employment (revised 1949), *adopted* July 1, 1949, 120 U.N.T.S. 70 [hereinafter Migration for Employment Convention].

129. International Labor Organization, Ratifications of CO97 — Migration for Employment Convention (Revised), 1949 (No. 97), *available at* https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_I NSTRUMENT_ID:312242 (last accessed Aug. 15, 2020).

The undertakings of the State parties to the ILO Convention No.97 are as follows:

(1) Article 1

- (a) “[T]o make available [upon] request[,] ... information on one’s national [] laws ... [on] emigration and immigration [and] information on [] provisions concerning ... conditions of work and livelihood of migrant[workers.]”¹³⁰

(2) Article 3

- (a) To “take all appropriate steps against misleading propaganda relating to emigration and immigration.”¹³¹

(3) Article 4

- (a) To take “[m]easures ... to facilitate the departure, journey[,] and reception of migrants for employment.”¹³²

(4) Article 5

- (a) “[T]o maintain[] ... medical services for: [(1)] ascertaining ... that migrant workers ... are in reasonable health [at the time of departure and on arrival and (2)] ensuring that migrant [workers] enjoy adequate medical attention and good hygienic conditions at the time of departure[,] ... and on arrival in the [country] of destination.”¹³³

(5) Article 6

- (a) To “apply, without discrimination in respect of nationality, race, religion or sex, ... treatment no less [favorable] than that which it applies to its own nationals in respect to ... remuneration[,] ... hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age for

130. Migration for Employment Convention, *supra* note 128, art. 1 (a)-(b).

131. *Id.* art. 3 (1).

132. *Id.* art. 4.

133. *Id.* art. 5.

employment, ... women's work and work of young persons[,] ... membership in trade unions[,] ... social security[, and] employment taxes[.]”¹³⁴

(6) Article 9

- (a) “[T]o permit ... the transfer of such part of the earnings and savings of the migrant [worker] as [he/she] desire[s].”¹³⁵

(7) Article 10

- (a) To “enter into agreements [with other ILO Members] for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.”¹³⁶

6. ILO Domestic Workers Convention of 2011 (No.189)

The Domestic Workers Convention of 2011 (ILO Convention No. 189) entered into force last 5 September 2013.¹³⁷ Currently, it has 29 State parties — majority of which are South American and European countries.¹³⁸ The Philippines became a state party to ILO Convention No. 189 on 5 September 2012.¹³⁹

Under the Convention, domestic workers have the following rights:

(1) Article 3

- (a) Right to “freedom of association[;]”¹⁴⁰

134. *Id.* art. 6 (1) (a) (i)-(ii) & (b)-(c).

135. *Id.* art. 9.

136. Migration for Employment Convention, *supra* note 128, art. 10.

137. Convention Concerning Decent Work for Domestic Workers, 2011 (No. 189), *adopted* June 16, 2011 [hereinafter Domestic Workers Convention].

138. International Labor Organization, Ratifications of C189 — Domestic Workers Convention, 2011 (No. 189), *available at* https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460 (last accessed Aug. 15, 2020).

139. *Id.*

140. Domestic Workers Convention, *supra* note 137, art. 3 (2) (a).

- (b) Right against “all forms of forced or compulsory [labor;]”¹⁴¹ and
- (c) Right against “discrimination in respect of employment and occupation.”¹⁴²
- (2) Article 5
 - (a) Right to “effective protection against all forms of abuse, harassment[,] and violence.”¹⁴³
- (3) Article 6
 - (a) Right to “enjoy fair terms of employment[,] ... decent working conditions, and if they reside in the household, decent living conditions that respect their privacy.”¹⁴⁴
- (4) Article 7
 - (a) Right to be “informed of the terms and conditions of their employment in an appropriate [] and easily understandable manner[.]”¹⁴⁵
- (5) Article 9
 - (a) Right to be “free to reach an agreement with [] employer ... on whether to reside in the household[;]”¹⁴⁶
 - (b) Right “not [] to remain in the household ... during periods of daily and weekly rest or annual leave[;]”¹⁴⁷ and
 - (c) Right “to keep in their possession their travel and identity documents.”¹⁴⁸

141. *Id.* art. 3 (2) (b).

142. *Id.* art. 3 (2) (d).

143. *Id.* art. 5.

144. *Id.* art. 6.

145. *Id.* art. 7.

146. Domestic Workers Convention, *supra* note 137, art. 9 (a).

147. *Id.* art. 9 (b).

148. *Id.* art. 9 (c).

- (6) Article 10
 - (a) Right to “[w]eekly rest [for] at least 24 consecutive hours.”¹⁴⁹
- (7) Article 11
 - (a) Right to enjoy “minimum wage coverage[.]”¹⁵⁰
- (8) Article 12
 - (a) Right to be “paid directly in cash at regular intervals at least once a month.”¹⁵¹
- (9) Article 13
 - (a) “[R]ight to a safe and healthy working environment.”¹⁵²
- (10) Article 14
 - (a) Right to “enjoy conditions ... not less [favorable] than those applicable to workers in general in respect of social security protection[.]”¹⁵³
- (11) Article 15
 - (a) Right to effective and accessible complaint mechanisms.¹⁵⁴

Following the Philippines’ ratification of the ILO Convention No. 189, it enacted in 2013 the Domestic Workers Act or the *Batas Kasambahay*.¹⁵⁵ This law fulfills the Philippine obligation under ILO Convention No. 189 to enact a national legislation which provides adequate protection to domestic workers.¹⁵⁶ This is also an example of how agreements at the international

149. *Id.* art. 10 (2).

150. *Id.* art. 11.

151. *Id.* art. 12 (1).

152. Domestic Workers Convention, *supra* note 137, art. 13 (1).

153. *Id.* art. 14 (1).

154. *Id.* art. 15 (1) (b).

155. An Act Instituting Policies for the Protection and Welfare of Domestic Workers [Batas Kasambahay], Republic Act No. 10361 (2012).

156. *See* Batas Kasambahay, § 2 (b).

level help shape domestic laws and policies for the good of the Filipino people.

6. ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers

Instruments protecting the rights of migrant workers are found not only in multilateral agreements but also in regional ones such as the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (Consensus).¹⁵⁷ The leaders of the ASEAN nations signed the Consensus during the 31st ASEAN Summit in Manila.¹⁵⁸ The Consensus recognizes both fundamental and specific rights of migrant workers as follows:

(1) Fundamental Rights

- (a) Right to be “visited by [] family members for purposes and length of time that the national [laws] ... of the [r]eceiving State may allow[;]”¹⁵⁹
- (b) “[R]ight to hold their own passports and original government-issued work and personal documents subject to laws ... of the [r]eceiving State;”¹⁶⁰
- (c) Right not to be treated less favorably than nationals of receiving states when migrant workers are “committed to prison or placed in custody pending trial[;]”¹⁶¹
- (d) “[R]ight to file [] grievances with [] relevant authorities of [the r]eceiving State and/or seek assistance from their respective embassies, consulates or missions[;]”¹⁶² and

157. ASEAN SECRETARIAT, ASEAN CONSENSUS ON THE PROTECTION AND PROMOTION OF THE RIGHTS OF MIGRANT WORKERS (2018) [hereinafter ASEAN CONSENSUS].

158. International Labor Organization, ASEAN leaders sign Consensus on the Protection and Promotion of the Rights of Migrant Workers, *available at* https://www.ilo.org/asia/media-centre/news/WCMS_600470/lang--en/index.htm (last accessed Aug. 15, 2020).

159. ASEAN CONSENSUS, *supra* note 157, ch. 3, ¶ 8.

160. *Id.* ch. 3, ¶ 9.

161. *Id.* ch. 3, ¶ 10.

162. *Id.* ch. 3, ¶ 11.

(e) “[R]ight to freedom of movement in the [r]eceiving State[.]”¹⁶³

(2) Specific Rights

(a) “[R]ight to access information on matters pertaining to their employment and employment-related conditions from relevant authorities [] and[] recruitment agencies[;]”¹⁶⁴

(b) “[R]ight to be issued an employment contract or proper documentation by relevant authorities[] and/or employers with clear and basic terms of employment[;]”¹⁶⁵

(c) “[R]ight to fair treatment in the workplace[;]”¹⁶⁶

(d) “[R]ight to adequate or reasonable accommodation[;]”¹⁶⁷

(e) “[R]ight to fair and appropriate remuneration and benefits [regardless of gender;]”¹⁶⁸

(f) “[R]ight to transfer [] earnings and savings in any modes of transfer in accordance with laws and regulations on currency transmission in the [r]eceiving and [s]ending [S]tate[;]”¹⁶⁹

(g) “[R]ight to file a complaint or make a representation under the law [in relation] to [labor] dispute in the [r]eceiving State against termination of employment and/or breach of an employment contract in the [r]eceiving State[;]”¹⁷⁰ and

163. *Id.* ch. 3, ¶ 12.

164. *Id.* ch. 4, ¶ 13.

165. ASEAN CONSENSUS, *supra* note 157, ch. 5, ¶ 14.

166. *Id.* ch. 4, ¶ 15.

167. *Id.* ch. 4, ¶ 16.

168. *Id.* ch. 4, ¶ 17 (a).

169. *Id.* ch. 4, ¶ 18.

170. *Id.* ch. 4, ¶ 19 (a).

(h) “[R]ight to join trade unions and associations[.]”¹⁷¹

7. Global Compact on Migration

Recognizing that migrants are entitled to the same universal human rights as all other humans, as well as their respective duties to respect, protect, and fulfill human rights, States entered into an agreement, albeit non-binding in its character, to improve cooperation on international migration.¹⁷² The Global Compact for Safe, Orderly, and Regular Migration (Global Compact) was entered into in 2018 with the acknowledgment that every country in the world faces issues related to migration, and that no country can address the challenges and take advantage of the opportunities brought by migration on its own.¹⁷³

Among the Global Compact’s Objectives was to “[f]acilitate fair and ethical recruitment and safeguard conditions that ensure decent work.”¹⁷⁴ Particularly, the States committed “to review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect [] migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination.”¹⁷⁵ Further, States undertook to “[b]uild upon the work of existing bilateral, subregional[,] and regional platforms that have overcome obstacles and identified best practices in [labor] mobility, by facilitating cross-regional dialogue to share this knowledge, and to promote full respect for the human and [labor] rights of migrant workers at all skills levels, including migrant domestic workers.”¹⁷⁶

Moreover, the States agreed to “[a]ddress and reduce vulnerabilities in migration.”¹⁷⁷ The States took upon themselves to “[r]eview relevant existing [labor] laws and work conditions to identify and effectively address workplace-related vulnerabilities and abuses of migrant workers at all skill[] levels, including domestic workers, and those working in the informal

171. ASEAN CONSENSUS, *supra* note 157, ch. 4, ¶ 20.

172. Global Compact for Safe, Orderly and Regular Migration, G.A. Res. 73/195, U.N. Doc. A/RES/73/195 (Dec. 19, 2018) [hereinafter Global Compact].

173. *Id.*

174. *Id.* Objective 6.

175. *Id.* ¶ 22.

176. *Id.* ¶ 22 (b).

177. *Id.* Objective 7.

economy, in cooperation with relevant stakeholders, particularly the private sector[.]”¹⁷⁸ In addition, the States came to an agreement to “save lives and prevent migrant deaths and injuries through individual or joint search and rescue operations [and to assume] collective responsibility to preserve the lives of all migrants, in accordance with international law.”¹⁷⁹

Understanding the role that embassies play in ensuring the achievement of these objectives, the States vowed to “[e]nhance consular protection, assistance[,] and cooperation throughout the migration cycle.”¹⁸⁰ In particular, States committed to “strengthen consular protection of and assistance to our nationals abroad, as well as consular cooperation between States, in order to better safeguard the rights and interests of all migrants at all times, and to build upon the functions of consular missions to enhance interactions between migrants and [S]tate authorities of countries of origin, transit and destination, in accordance with international law.”¹⁸¹

More importantly, the States committed to provide access to basic services for migrants.¹⁸² Specifically, States agreed to “ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services ... [and] to strengthen migrant-inclusive service delivery systems, notwithstanding that nationals and regular migrants may be entitled to more comprehensive service provision[s.]”¹⁸³ Relevantly, States pledged to “eliminate all forms of discrimination, condemn and counter expressions, acts and manifestations of racism, racial discrimination, violence, xenophobia[,] and related intolerance against all migrants in conformity with international human rights law.”¹⁸⁴

Notably, States obliged each other “to assist migrant workers at all skill[] levels to have access to social protection in countries of destination and profit from the portability of applicable social security entitlements and earned benefits in their countries of origin or when they decide to take up work in another country.”¹⁸⁵ Particularly, States undertook to “[c]onclude reciprocal

178. Global Compact, *supra* note 172, ¶ 23 (d).

179. *Id.* ¶ 24.

180. *Id.* Objective 14.

181. *Id.* ¶ 30.

182. *Id.* Objective 15.

183. *Id.* ¶ 31.

184. Global Compact, *supra* note 172, ¶ 33.

185. *Id.* ¶ 38.

bilateral, regional[,] or multilateral social security agreements on the portability of earned benefits for migrant workers at all skill[] levels, that refer to applicable social protection floors in the respective States and applicable social security entitlements and provisions, such as pensions, health care[,] or other earned benefits, or integrate such provisions into other relevant agreements.”¹⁸⁶

Finally, States agreed to “[s]trengthen international cooperation and global partnerships for safe, orderly[,] and regular migration.”¹⁸⁷ Specifically, States agreed to “[c]onclude bilateral, regional[,] or multilateral mutually beneficial, tailored and transparent partnerships, in line with international law, that develop targeted solutions to migration policy issues of common interest and address opportunities and challenges of migration in accordance with the Global Compact.”¹⁸⁸

8. Good Practices Identified by the ILO Studies on BLAs

“In recent years, the ILO has recognized the role of BLAs [in contributing to a] well-regulated and fair migration between member States[.]”¹⁸⁹ In fact, the ILO has reiterated the role of BLAs for a fair migration agenda, as follows —

The Committee wishes to emphasize the important role that bilateral agreements and other arrangements can play to ensure that migrant workers are able to benefit from the protections contained in the Conventions. In this context, it is important that the content of these agreements and arrangements be made available in understandable terms to those who benefit from them. It should also be ensured that these agreements include adequate monitoring of their implementation and access to enforcement mechanisms and provision of social dialogue.¹⁹⁰

186. *Id.* ¶ 38 (b).

187. *Id.* Objective 23.

188. *Id.* ¶ 39 (e).

189. PIYASIRI WICKRAMASEKARA, GOOD PRACTICES AND PROVISIONS IN MULTILATERAL AND BILATERAL LABOUR AGREEMENTS AND MEMORANDA OF UNDERSTANDING I (2018) [hereinafter GOOD PRACTICES].

190. ASSESSMENT GUIDE FOR BILATERAL AGREEMENTS, *supra* note 22, at 4 (citing International Labour Conference, 105th Session, Geneva, General Survey concerning the migrant workers instruments, ¶163, ILC.105/III/1B (2016)).

Because of this, the ILO has sponsored various studies on BLAs which were conducted by Piyasiri Wickramasekara.¹⁹¹ In the studies, Wickramasekara identified 18 good practices after mapping 144 BLAs concluded all over the world.¹⁹² These good practices enumerated below, were divided under the themes of governance, protection, and development.¹⁹³

a. Governance of Labor Migration

- (1) “Evidence of normative foundations and respect for migrant rights[,] based on international instruments[.]”¹⁹⁴
- (2) “Exchange of relevant information between country of origin and country of destination[.]”¹⁹⁵
- (3) “Transparency [(i.e.,) [c]lear objectives, sharing of information with relevant stakeholders, and dissemination[.].]”¹⁹⁶
- (4) “Social dialogue and consultative processes[.]”¹⁹⁷
- (5) “Concrete implementing, monitoring, evaluation procedures[.]”¹⁹⁸
- (6) “Defining clear responsibilities between parties[.]”¹⁹⁹
- (7) “Fair recruitment principles: [r]egulation of recruitment and reduction of recruitment and migration costs[.]”²⁰⁰

191. ASSESSMENT GUIDE FOR BILATERAL AGREEMENTS, *supra* note 22; BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING, *supra* note 14; CORE ELEMENTS OF A BILATERAL AGREEMENT, *supra* note 28; & GOOD PRACTICES, *supra* note 189.

192. GOOD PRACTICES, *supra* note 189.

193. *Id.* at 1.

194. *Id.* at 16.

195. *Id.* at 18.

196. *Id.* at 21.

197. *Id.* at 35.

198. GOOD PRACTICES, *supra* note 189, at 23.

199. *Id.* at 22.

200. *Id.* at 30.

The ILO studies considered reference to various international instruments as a good practice as this constitutes the normative foundation for drawing up any BLA. Exchange of information on the supply and demand for migrant workers, when made on a regular basis between the Parties, was also identified as important to regulate migration flows.²⁰¹ Meanwhile, public accessibility of the text of BLAs was considered as crucial in transparency.²⁰² The concept of transparency includes consultation with major stakeholders such as workers, recruitment agencies, and NGOs advocating for the rights of migrant workers, on the provisions of agreements and how it may affect them and their rights.²⁰³ Also considered a good practice in governing labor migration was the clarification of operational roles and specific division of responsibilities among various government agencies involved in the BLA process.²⁰⁴ Finally, a system of benchmarking information on migrant workers, their profiles, complaints statistics, systems of recruitment, and wage situation, distilled according to gender and aggregated from both the destination country and the Philippines, was recommended by the ILO.²⁰⁵

b. Protection and Empowerment of Migrant Workers

- (1) “Provision of relevant information and assistance to migrant workers, potential migrants[,] and their families[.]”²⁰⁶
- (2) “Specific reference to equal treatment and non-discrimination of migrant workers[.]”²⁰⁷
- (3) “Address gender issues and concerns of vulnerable migrant workers, particularly those not covered by [labor] laws in destination countries[.]”²⁰⁸
- (4) “Social protection and health-care benefits for migrant workers[.]”²⁰⁹

201. *Id.* at 18.

202. *Id.* at 21.

203. *Id.*

204. GOOD PRACTICES, *supra* note 189, at 23.

205. *Id.* at 24.

206. *Id.* at 36.

207. *Id.* at 39.

208. *Id.* at 42.

- (5) “Trade union rights and access to support mechanisms from civil society[.]”²¹⁰
- (6) “Concrete and enforceable provisions [in relation] to employment contracts, working conditions, and wage protection[.]”²¹¹
- (7) “Provision for supervision of working and living conditions[.]”²¹²
- (8) “Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice[.]”²¹³
- (9) “Prohibition of confiscation of travel and identity documents[.]”²¹⁴

Measures to inform migrant workers of their rights and the conditions of their employment, primarily through pre-departure orientation programs, were highlighted in the studies as a good practice.²¹⁵ In addition, the ILO recommends to provide gender-specific information especially to women migrant workers.²¹⁶ It was also considered a good practice to include a separate article on equality of treatment in the BLA since equality of treatment with national workers is rarely enjoyed by migrant workers according to the ILO.²¹⁷

Good practices regarding employment contracts such as having the contract be written in understandable language to the worker, explaining the contract to the worker before they take the employment, elaboration of the scope of the contract, reference to applicable laws, and specification of working and living conditions, were also recommended.²¹⁸ Finally,

209. *Id.* at 52.

210. GOOD PRACTICES, *supra* note 189, at 53.

211. *Id.* at 45.

212. *Id.* at 49.

213. *Id.* at 55.

214. *Id.* at 50.

215. *Id.* at 37.

216. GOOD PRACTICES, *supra* note 189, at 42-43.

217. *Id.* at 39.

218. *Id.* at 45.

providing workplace insurance and health-care coverage by the employers was also highlighted by the ILO.²¹⁹

c. Migration and Development Linkages

- (1) “Human resource development and skills improvement[.]”²²⁰
- (2) “Recognition of skills and qualifications and competencies in destination country, and on return in the origin country[.]”²²¹
- (3) “Facilitation of transfer of savings and remittances at low cost[.]”²²²
- (4) “Return, []integration[,] and circulation[.]”²²³

“Recognition of skills, qualifications[,] and competencies in the destination country”²²⁴ is particularly important to prevent deskilling of migrant workers.²²⁵ The ILO even cited the Philippines as an example wherein university graduates migrate to other countries as domestic workers.²²⁶ Thus, mutual recognition of degrees, diplomas, and skills are recommended to prevent brain waste.²²⁷ With regard to facilitation of the remittance of savings and salary, the ILO cited the Sri Lanka-Italy Agreement as proactive.²²⁸ The Agreement provides that the “Italian Party agrees to disseminate information on the national remittances system, with the aim of aiding migrant workers in the choice of the most advantageous way.”²²⁹ Finally, developmental support of returning migrant workers through skills training oriented to the needs of the country of origin, facilitation of the establishment of small and medium-sized enterprises, and

219. *Id.* at 52.

220. *Id.* at 57.

221. *Id.* at 60.

222. GOOD PRACTICES, *supra* note 189, at 61.

223. *Id.* at 62.

224. *Id.* at 60.

225. *Id.*

226. *Id.*

227. *Id.*

228. GOOD PRACTICES, *supra* note 189, at 61.

229. *Id.*

“promoting the training of human resources” help reintegrate migrant workers to the country of origin.²³⁰

B. Domestic Law

1. 1987 Constitution

Under the 1987 Constitution of the Philippines, specifically under Article XIII on Social Justice and Human Rights, the State has the duty to “afford full protection to labor, whether local or overseas[.]”²³¹ The State also has the duty to “protect working women by providing safe and healthful working conditions,”²³² and providing “facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”²³³

2. Migrant Workers and Overseas Filipinos Act

Republic Act No. 8042 (R.A. No. 8042) or the “Migrant Workers and Overseas Filipinos Act of 1995” was passed on 7 June 1995 for the protection and promotion of the welfare of Filipino migrant workers.²³⁴ In its declaration of policies, R.A. No. 8042 declared that the State shall at all times, “uphold the dignity of its citizens[,] whether in the country or overseas [including Filipino migrant workers.]”²³⁵ Likewise, the State committed itself to “provide adequate and timely social, economic, and legal services to Filipino migrant workers[.]”²³⁶ in fulfillment of its mandate to afford full protection to labor, whether local or overseas.

It was also acknowledged under R.A. No. 8042 that an effective mechanism is imperative “to ensure that the rights and interest of distressed

230. *Id.* at 64.

231. PHIL. CONST. art. XIII, § 3, para. 1.

232. PHIL. CONST. art. XIII, § 14.

233. PHIL. CONST. art. XIII, § 14.

234. An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 8042 (1995) (as amended).

235. *Id.* § 2 (a).

236. *Id.* § 2 (b).

overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.”²³⁷ The State also undertook to “apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers[,]”²³⁸ in recognition of the fact that women migrant workers have particular vulnerabilities.

R.A. No. 8042 committed that the State would only be deploying Filipino migrant workers to countries where their rights would be protected.²³⁹ According to R.A. No. 8042, the government recognizes any of the following as a guarantee on the part of the receiving country that the rights of the migrant workers would be protected:

- (a) It has existing labor and social laws protecting the rights of migrant workers;
- (b) It is a signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers;
- (c) It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and
- (d) It is taking positive, concrete measures to protect the rights of migrant workers [in furtherance of any of the guarantee under (a), (b), and (c) above].²⁴⁰

To further protect potential migrant workers, the law even defined and punished illegal recruitment.²⁴¹ Recruiters without license from the State, and doing specific acts constituting illegal recruitment — whether done by a licensee or not — would make a person guilty of the offense.²⁴² Moreover, R.A. No. 8042 requires the Philippine Overseas Employment Administration (POEA) to “issue travel advisories or disseminate information on labor and employment conditions, migration realities and other facts[, including] adherence of particular countries to international standards on

237. *Id.* § 2 (e).

238. *Id.* § 2 (d).

239. *Id.* § 4.

240. Migrant Workers and Overseas Filipinos Act of 1995, § 4.

241. *Id.* § 6.

242. *Id.*

human and workers' rights[,] ... [to] adequately prepare individuals into making informed and intelligent decisions about overseas employment."²⁴³

For workers who need repatriation, while the primary responsibility for the repatriation was imposed by the law on the recruitment agencies, the law — through the Overseas Workers Welfare Administration (OWWA) — undertook the “repatriation of workers in cases of war, epidemic, disasters[,] or calamities,”²⁴⁴ without prejudice to reimbursement from the responsible agency.²⁴⁵ In cases, however, where the agency cannot be identified, all costs for the repatriation should be borne by the OWWA.²⁴⁶

The law also mandated the DFA “to undertake the necessary initiative[s] such as promotions, acceptance or adherence of countries receiving Filipino workers to multilateral convention[s], declaration[s] or resolutions pertaining to the protection of migrant workers' rights.”²⁴⁷ Additionally, the DFA was “mandated to make an assessment of rights and avenues of redress under international and regional human rights systems that are available to Filipino migrant workers who are victims of abuse and violation”²⁴⁸ Should it find available complaints machineries under international or regional systems, the DFA should “fully apprise the Filipino migrant workers of the existence and effectiveness of such legal options.”²⁴⁹

On 10 April 2007, Republic Act No. 9422 (R.A. No. 9422) was passed, amending in the process Section 23, paragraph b (1) of R.A. No. 8042 on the powers of the POEA.²⁵⁰ Apart from its function of licensing private entities engaged in recruitment, which was already provided for by R.A. No. 8042, R.A. No. 9422 mandated the POEA to “inform migrant workers not only of their rights as workers but also of their rights as human

243. *Id.* § 14.

244. *Id.* § 15, paras. 1 & 2.

245. *Id.*

246. Migrant Workers and Overseas Filipinos Act of 1995, § 15, para. 2.

247. *Id.* § 22.

248. *Id.*

249. *Id.*

250. An Act to Strengthen the Regulatory Functions of the Philippine Overseas Employment Administration (POEA), Amending for this Purpose Republic Act No. 8042, Otherwise Known as the “Migrant Workers and Overseas Filipinos Act of 1995”, Republic Act No. 9422, § 1 (2007).

beings[.]”²⁵¹ R.A. No. 9422 requires the POEA to “instruct and guide the workers [on] how to assert their rights and provide the available mechanism to redress violation[s] of their rights.”²⁵² R.A. No. 9422 likewise added the following provision in Section 23 —

In the recruitment and placement of workers to service the requirements for trained and competent Filipino workers of foreign government[s] and their instrumentalities, and such other employers as public interests may require, the administration shall deploy only to countries where the Philippines has concluded bilateral labor agreements or arrangements. Provided, that such countries shall guarantee to protect the rights of Filipino migrant workers; and Provided further, [t]hat such countries shall observe and/or comply with the international laws and standards for migrant workers.²⁵³

More recently, in 8 March 2010, Congress passed Republic Act No. 10022 (R.A. No. 10022) which further amended R.A. No. 8042.²⁵⁴ Notably, one of the amendments introduced by R.A. No. 10022 was that in the Declaration of Policies, the State committed to “continuously monitor international conventions, adopt/be [a] signatory to and ratify those that guarantee protection to our migrant workers, and endeavor to enter into bilateral agreements with countries hosting overseas Filipino workers.”²⁵⁵

R.A. No. 10022 also imposed a stricter policy against the deployment of overseas Filipino workers to countries which do not guarantee the protection of the rights of these workers.²⁵⁶ The amendatory law, in no uncertain terms, said that “[i]n the absence of a clear showing that any of the aforementioned guarantees exist[] in the country of destination of the migrant workers, no permit for deployment shall be issued by the [POEA].”²⁵⁷ To further ensure compliance, R.A. No. 10022 provided for

251. *Id.*

252. *Id.*

253. *Id.* (emphases omitted).

254. An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes, Republic Act No. 10022 (2010).

255. *Id.* § 1.

256. *Id.* § 3.

257. *Id.*

possible penalties to the members of the POEA Governing Board who would actually vote in favor of an order allowing the deployment of migrant workers without any of the guarantees.²⁵⁸

Other pertinent amendments by R.A. No. 10022 include, among others, explicitly mentioning fees “in filing cases against erring or abusive employers abroad”²⁵⁹ as allowable expense from the Legal Assistance Fund, and the imposition of compulsory insurance coverage covering the worker for the duration of his or her contract which should be procured by the agency at no cost to the worker.²⁶⁰

3. 2016 POEA Rules Governing the Recruitment and Employment of Land-based OFWs

Under Executive Order No. 797, the POEA was created as the primary body assigned to formulate and undertake a systematic program for promoting and monitoring the overseas employment of Filipino workers, considering, among others, the protection of workers’ rights to fair and equitable employment practices.²⁶¹ Moreover, the POEA governs the issuance and renewal of licenses of private recruitment agencies, assesses their compliance with labor laws and POEA rules, regulates fees and costs chargeable to Filipino migrant workers, and defines the acts that constitute illegal recruitment.²⁶² The POEA’s quasi-judicial power includes original and exclusive jurisdiction to hear and decide all cases involving or arising out of violations of recruitment rules and regulations, including refund of fees collected from OFWs and any violation of the conditions for the issuance of the license to recruit OFWs²⁶³

In 2016, the POEA issued the Revised Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas

258. *Id.*

259. *Id.* § 19.

260. Republic Act No. 10022, § 23.

261. Office of the President, Reorganizing the Ministry of Labor and Employment, Creating the Philippine Overseas Employment Administration, and for Other Purposes, Executive Order No. 797 [E.O. No. 797], § 4 (a) (May 1, 1982).

262. Migrant Workers and Overseas Filipinos Act of 1995, § 23 (b.1).

263. E.O. No. 797, § 4 (a).

Filipino Workers.²⁶⁴ Under these rules, the “DFA[] through its foreign posts, shall issue a certification to the [POEA], specifying the[] pertinent provisions of the [destination] country’s labor[] law[s and] the convention[s,]declaration[s,] resolutions, or [] bilateral agreement[s] which protect the rights of [Filipino migrant w]orkers.”²⁶⁵ The POEA is allowed to deploy Filipino migrant workers “only to [those] countries certified by the DFA as compliant with the guarantees for the protection of rights of [OFWs].”²⁶⁶

The POEA Rules, in relation to Section 37-A of the Migrant Workers and Overseas Filipinos Act, require licensed recruitment agencies to obtain a compulsory insurance for its migrant workers and to pay the premiums thereon, which the recruitment agency cannot pass on or charge back to the migrant worker.²⁶⁷ With regard to recruitment policies, the POEA Rules imposed a ban on direct hires and provided only for limited exemptions (e.g., members of diplomatic corps, international organizations, heads of State and government officials with the rank of at least deputy minister, and those expressly allowed by the Secretary of Labor).²⁶⁸ Finally, the minimum provisions of an OFW’s employment contract are also provided in the 2016 POEA Rules.²⁶⁹

4. Magna Carta of Women

Recognizing that it has a role to play in the abolition of structures that perpetuate discrimination and inequality between men and women, Congress enacted Republic Act No. 9710 or the Magna Carta of Women (Magna Carta) on 14 August 2009.²⁷⁰ In enacting the Magna Carta, the Philippines

affirm[ed] women’s rights as human rights and [] intensif[ied] its efforts to fulfill its duties under international and domestic law to recognize, respect, protect, fulfill, and promote all human rights and fundamental freedoms of

264. Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016 (Feb. 26, 2016).

265. *Id.* part III, rule II, § 114, para. 3.

266. *Id.*

267. *Id.* part II, rule V, § 52.

268. *Id.* part III, rule II, § 123-24.

269. *Id.* part V, rule I, § 135.

270. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2009).

women, especially marginalized women, in the economic, social, political, cultural, and other fields without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status.²⁷¹

In the Magna Carta, the Philippines committed itself in “ensur[ing] that all women shall be protected from all forms of violence[.]”²⁷²

As regards labor rights, the Magna Carta granted special leave benefits of around two months for women who have undergone surgery caused by gynecological disorders.²⁷³ Moreover, Section 22 of the Magna Carta recognizes the women’s right to decent work. It provides —

Section 22. *Right to Decent Work.* — The State shall progressively realize and ensure decent work standards for women that involve the creation of jobs of acceptable quality in conditions of freedom, equity, security, and human dignity.

- (1) Decent work involves opportunities for work that are productive and fairly remunerative as family living wage, security in the workplace, and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize, participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.
- (2) The State shall further ensure:
 - (a) Support services and gears to protect them from occupational and health hazards taking into account women’s maternal functions;
 - (b) Support services that will enable women to balance their family obligations and work responsibilities including, but not limited to, the establishment of day care centers and breast-feeding stations at the workplace, and providing maternity leave pursuant to the Labor Code and other pertinent laws;
 - (c) Membership in unions regardless of status of employment and place of employment; and
 - (d) Respect for the observance of indigenous peoples’ cultural practices even in the workplace.

271. *Id.* § 2, para. 3.

272. *Id.* § 9, para. 1.

273. *Id.* § 18.

- (3) In recognition of the temporary nature of overseas work, the State shall exert all efforts to address the causes of out-migration by developing local employment and other economic opportunities for women and by introducing measures to curb violence and forced and involuntary displacement of local women. *The State shall ensure the protection and promotion of the rights and welfare of migrant women regardless of their work status, and protect them against discrimination in wages, conditions of work, and employment opportunities in host countries.*²⁷⁴

For women migrant workers in particular, the Magna Carta requires the Philippines to ensure that women are provided with employment opportunities upon their return to the country, “taking into account their skills and qualifications.”²⁷⁵ In addition, the Philippines “shall also promote skills and entrepreneurship development of returning women migrant workers.”²⁷⁶ As part of their right to education and training, women migrant workers are given the “opportunity to undergo skills training, if they so desire, before taking on a foreign job, and [even] possible retraining upon return to the country.”²⁷⁷ The Magna Carta also provided that the Philippines shall “endeavor to reduce and eventually eliminate transfer costs of remittances from abroad through appropriate bilateral and multilateral agreements.”²⁷⁸ Finally, the law mandated that there be “[a]n officer duly trained on [gender and development] to be designated as the gender focal point in the consular section of Philippine embassies and consulates[, who] shall be primarily responsible in handling gender concerns of [Filipino] women migrant workers.”²⁷⁹

5. Domestic Workers Act or *Batas Kasambahay*

Republic Act No. 10361 or the Domestic Workers Act or *Batas Kasambahay* was passed in recognition of the reality that domestic workers in general are vulnerable to — and thus need protection from — “abuse, harassment, violence, economic exploitation, and performance of work that [are] hazardous to their physical and[/or] mental health.”²⁸⁰

274. *Id.* § 22 (emphases supplied).

275. *Id.* § 23 (c).

276. The Magna Carta of Women, § 23 (c).

277. *Id.* § 24 (a).

278. *Id.* § 27 (c).

279. *Id.* § 37.

280. *Batas Kasambahay*, § 2 (c).

Batas Kasambahay requires the provision of basic necessities to the domestic worker, which “include[s] at least three [] adequate meals a day and humane sleeping arrangements that ensure safety.”²⁸¹ The law also requires employers to “provide appropriate rest and assistance to the domestic worker[, without loss of benefits,] in case[s] of illnesses and injuries[.]”²⁸² The law prohibits the deprivation of these basic necessities, even “as [a] punishment or disciplinary action to the domestic worker.”²⁸³

Batas Kasambahay likewise recognizes the domestic worker’s right to privacy as regards their personal communications and effects.²⁸⁴ In connection with this, the law obliges the employer to “grant the domestic worker access to outside communication during free time[.]” and even during work time in emergency cases.²⁸⁵

Batas Kasambahay also imposes a number of prohibitions against the employer so as to ensure the welfare of the domestic worker, such as the prohibition against deposits for loss or damage,²⁸⁶ and prohibition on debt bondage.²⁸⁷ The employer is likewise charged by the law to ensure the health and safety of the domestic worker,²⁸⁸ including mandatory minimum daily²⁸⁹ and weekly rest periods.²⁹⁰ The law also prohibits the assignment of the domestic worker to non-household work without the payment of the corresponding minimum wage for the said type of work.²⁹¹

To further ensure the domestic workers’ welfare, the *Batas Kasambahay* has set the minimum wage for domestic workers, which shall be periodically adjusted by the regional wage boards.²⁹² The law expressly requires the payment of wages in cash, at least once a month, and with the express

281. *Id.* § 6, para. 1.

282. *Id.* § 6, para. 2.

283. *Id.* § 6, para. 3.

284. *Id.* § 7.

285. *Id.* § 8.

286. *Batas Kasambahay*, § 14.

287. *Id.* § 15.

288. *Id.* § 19.

289. *Id.* § 20.

290. *Id.* § 21.

291. *Id.* § 22.

292. *Batas Kasambahay*, § 24.

prohibition against deductions from such wages except with the written consent of the worker or unless otherwise mandated by law.²⁹³ Similarly, it was likewise made “unlawful for the employer to interfere with the freedom of any domestic worker to dispose of the latter’s wages.”²⁹⁴

Finally, *Batas Kasambahay* extended to domestic workers previously unrecognized benefits, such as mandatory service incentive leave,²⁹⁵ and coverage in the Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), and the Home Development Mutual Fund or PAG-IBIG.²⁹⁶

Many of the aforementioned rights explicitly recognized or granted by the law to domestic workers appear basic. However, considering the factual reality that many domestic workers do not enjoy these rights — despite them being seemingly basic — it was important, if not groundbreaking, for the law to finally expressly recognize these rights for better and easier enforcement. With the enactment of the *Batas Kasambahay*, the Philippines has reinforced its commitment to ILO Convention No. 181²⁹⁷ on domestic workers and other internationally accepted working conditions, such as “decent employment and income, enhanced coverage of social protection, respect for human rights, and strengthened social dialogue”²⁹⁸ with domestic workers.

While it is true that the *Batas Kasambahay*’s enforceability is domestic in nature, the principles it espouses are universal. The Philippine BLA committee should be inspired by the level of protection the Philippines affords domestic workers, and it should aspire to achieve the same in our BLAs with other countries.

6. Philippine Development Plan 2017–2022

The Philippine Development Plan 2017–2022 (PDP) is the first medium-term plan which aims to lay the foundation for inclusive growth, a high-trust

293. *Id.* § 25.

294. *Id.* § 27.

295. *Id.* § 29.

296. *Id.* § 30.

297. Private Employment Agencies Convention, adopted June 19, 1997, 2115 U.N.T.S. 249.

298. *Batas Kasambahay*, § 2 (b).

society, and a globally-competitive economy for the attainment of a prosperous middle-class Philippines where no one is poor.²⁹⁹ The PDP recognizes that because of limited employment opportunities, Filipinos are forced “to migrate by necessity and not by choice.”³⁰⁰ The PDP likewise acknowledges that more than half of the 10 million Filipinos abroad are temporary or irregular migrants and of the deployments that took place in recent years, a large proportion were made up of household service workers.³⁰¹ Given this, the PDP intends to reduce the vulnerabilities of Filipino individuals and their families and has formulated the following strategies:

(1) “Intensify social protection programs for [overseas Filipinos] and their families”³⁰²

(a) Action Points:

(i) “*There will be a review of existing [S]tate-to-[S]tate government mechanisms and identification of prospective bilateral labor agreements to maximize benefits and minimize costs of international migration.*”³⁰³

(ii) “Social security benefits will be included in the standard employment contract for all types of [overseas Filipinos]. The government will establish additional SSS, PAG-IBIG, and PhilHealth representative offices overseas, alongside massive information dissemination campaigns.”³⁰⁴

(iii) “[T]o address the vulnerabilities caused by global developments, social safety nets will be extended and complemented by reintegration programs, skills

299. National Economic and Development Authority, Philippine Development Plan 2017-2022 at 1-1, available at <http://pdp.neda.gov.ph/wp-content/uploads/2017/01/PDP-2017-2022-10-03-2017.pdf> (last accessed Aug. 15, 2020) [hereinafter PDP 2017-2020].

300. *Id.* at 10-9.

301. *Id.* at 11-3.

302. *Id.*

303. *Id.* at 11-13 (emphases supplied).

304. *Id.*

upgrading, and skills matching with domestic opportunities.”³⁰⁵

(2) “Ensure successful socio-economic reintegration of [OFWs]”³⁰⁶

(a) Action Point:

(i) “The government will continue its initiatives toward the successful reintegration of [overseas Filipinos] through the Assist WELL [p]rogram.”³⁰⁷

V. REVIEW OF DOLE ADMINISTRATIVE ORDER NO. 246

In 2018, the DOLE issued A.O. No. 246 which outlines the guidelines and procedures in the Philippine BLA process.³⁰⁸ The declared policies in A.O. No. 246 are as follows:

- (1) “[F]ull protection to labor, local and overseas[;]”³⁰⁹
- (2) “[L]abor as a primary social economic force” under the 1987 Constitution and relevant laws;³¹⁰
- (3) Deployment of Filipinos to “countries where protection of their rights is clearly assured” and provided “the receiving country is taking positive, concrete measures [to this purpose; and]”³¹¹
- (4) Observance and adherence by DOLE offices and parties to the guidelines to ensure that the BLA “process remains relevant, effective, efficient, sustainable[,] and consistent with policy[.]”³¹²

A.O. No. 246 also provides for the following guiding principles to the BLA process:

- (1) “Conform[ity] with the laws, policies, thrusts[,] and priorities of the Philippine government[;]”³¹³

305. PDP 2017-2020, *supra* note 299, at 11-13.

306. *Id.* at 11-14.

307. *Id.*

308. DOLE A.O. No. 246, s. 2018.

309. *Id.* part I, para. 1.

310. *Id.* part I, para. 2.

311. *Id.* part I, paras. 3-5.

312. *Id.* part. I, para. 6.

- (2) Statement of a clear intention to “ensure that the best possible terms for OFWs are obtained;”³¹⁴
- (3) Alignment with “foreign policies and [] commitments of the Philippines;”³¹⁵
- (4) Vigilant response to global developments;³¹⁶
- (5) “Encourage[ment] of partnership or cooperation on new and innovative practices;[and]”³¹⁷
- (6) Presence of “monitoring and evaluation mechanisms[.]”³¹⁸

A. Philippine BLA Process

Under A.O. No. 246, the Philippine BLA process is put within the jurisdiction of the DOLE BLA Committee comprised of:

- (1) The Secretary of Labor;³¹⁹
- (2) Technical Working Committee;³²⁰
- (3) Review Committee;³²¹
- (4) Steering Committee;³²²

313. *Id.* part III (a).

314. DOLE A.O. No. 246, s. 2018, part III (b).

315. *Id.* part III (c).

316. *Id.* part III (d).

317. *Id.* part III (e).

318. *Id.* part III (f).

319. *Id.* part IV.

320. DOLE A.O. No. 246, s. 2018, part III. The BLA Technical Working Committee is composed of the POEA Pre-Employment Service Office as Chair, the POEA Labor Market Development Branch as Vice-Chair, and representatives from DOLE, POEA, OWWA, and other relevant government offices. *Id.*

321. DOLE A.O. No. 246, s. 2018, part III. The BLA Review Committee is composed of the DOLE Assistant Secretary for Legal and International Affairs as Chair, the POEA Pre-Employment Service Office as Vice-Chair, the Director of DOLE ILAB as Co-Vice Chair, and representatives from OWWA, POEA, Legal Service and ILAB, including Labor Attaches on home office assignment. *Id.*

- (5) Negotiating Committee;³²³ and
- (6) Oversight Committee.³²⁴

First Phase: Assessment & Formulation — During this phase, the Technical Working Committee (TWC): (1) “assess[es] the technical feasibility and political legitimacy” of having a BLA with a country of destination and (2) drafts the initial proposal.³²⁵ According to A.O. No. 246, stakeholders’ consultation is imperative during this process.³²⁶ Based on the Author’s interview with DOLE ILAB, the factors considered by the TWC in determining whether the Philippines will enter into a BLA with another country are: (1) the number of OFWs in said country; (2) its legal environment; and (3) the current working conditions of OFWs, among others.³²⁷ Thereafter, when the forging of a BLA appears to be in the best interest of the Philippines, the TWC utilizes the template in A.O. No. 246 as the first draft of the Philippine BLA proposal.³²⁸ “The template is there to be a guide on the contents of our BLA proposal so that the TWC does not have to start from scratch,”³²⁹ according to DOLE ILAB. It was also explained that the BLA template was based on two sources: (1) previous BLAs the Philippines entered into (prior to A.O. 246) and (2)

322. DOLE A.O. No. 246, s. 2018, part III. The BLA Steering Committee is composed of the Undersecretary for Legal and International Affairs as Chair, the POEA Administrator as Vice Chair, the OWWA Administrator as Co-Vice Chair, and the Assistant Secretary for Legal and International Affairs, POEA Deputy Administrator, OWWA Deputy Administrator, ILAB Director, and Legal Service Director, as members. *Id.*

323. DOLE A.O. No. 246, s. 2018, part III. The Negotiating Committee’s composition shall be determined by the Secretary of Labor as recommended by the Steering Committee. *Id.*

324. DOLE A.O. No. 246, s. 2018, part III. The Oversight Committee shall be headed by the Senior Official designated as member of the Joint Monitoring Committee in the BLA. *Id.*

325. DOLE A.O. No. 246, s. 2018, part V (A) (b)-(c).

326. *Id.* part V (A) (b).

327. Interview with Alice Q. Visperas, in Manila, Philippines (Nov. 15, 2019).

328. *Id.*

329. *Id.*

pronouncements of President Rodrigo Roa Duterte in relation to OFW protection.³³⁰

Second Phase: Review — The Review Committee reviews the draft BLA proposal guided by the policy priorities declared in A.O. No. 246.³³¹ It also reviews the draft BLA proposal commented on by the DFA, if any.³³²

Third Phase: Recommendation and Approval — The Steering Committee reviews the draft BLA of the Review Committee.³³³ After review, the Steering Committee submits the revised BLA proposal to the Secretary of Labor for final consideration.³³⁴

Fourth Phase: Approval to Negotiate — The Secretary of Labor considers the draft of the Review Committee and approves its transmittal to the DFA.³³⁵ The Secretary is also granted the authority to “[i]ssue [an] administrative order constituting the negotiating team and [the negotiating] parameters.”³³⁶

Fifth Phase: Negotiation — The Negotiating Committee “negotiates in accordance with the framework and instructions of the Secretary [of Labor.]”³³⁷ In actual practice, the Undersecretary for Legal and International Affairs of DOLE is the head of delegation, with the Overseas Workers Welfare Administration (OWWA) Administrator and POEA Administrator as members of the Negotiating Committee.³³⁸

Sixth Phase: Joint Approval and Signing — A special authorization is secured from the Office of the President, through the DFA, to allow the Secretary of Labor to sign the BLA on behalf of the Philippine government.³³⁹ A certified true copy of the BLA with the Certification of Concurrence of all the agencies that participated in the inter-agency

330. *Id.*

331. DOLE A.O. No. 246, s. 2018, part V (B) (b).

332. *Id.* part V (B) (e).

333. *Id.* part V (C) (b).

334. *Id.* part V (C) (c).

335. *Id.* part V, para. 1.

336. *Id.*

337. DOLE A.O. No. 246, s. 2018, part V (E) (a).

338. Interview with D. Palomar, in Manila, Philippines (Nov. 15, 2019).

339. DOLE A.O. No. 246, s. 2018, part V (F) (a).

consultations and negotiations is transmitted to the DFA Geographic Office for appropriate action.³⁴⁰

Seventh Phase: Entry into Force and Implementation — Once the BLA is ratified by the President, the BLA Review Committee monitors the status of the compliance with the domestic requirements of the other country.³⁴¹

Eighth Phase: Monitoring and Evaluation — The BLA Oversight Committee is tasked to ensure that both parties comply with the provisions and objectives of the BLA, by submitting to the Secretary of Labor a semi-annual written report on the status of implementation of the BLA.³⁴² However, this is not fully implemented due to the lack of personnel in the DOLE.³⁴³

As will be observed, A.O. No. 246 empowers the Secretary of Labor to decide who the members of the negotiating team will be.³⁴⁴ Moreover, the DFA is not a permanent member of the technical working committee, review committee, and even the negotiating committee created by A.O. No. 246.³⁴⁵ The practical and legal implications of this will be explained under the heading “Findings” and “Recommendations.”

*B. Substance of the BLA Template Under A.O. No. 246*³⁴⁶

I. Preamble

The Preamble of the template agreement declares the following policies:

- (1) “[P]romote compliance with principles of international conventions on the rights of women, migrants[,] and workers;”³⁴⁷
- (2) “[E]nhance [] cooperation in the protection, recruitment[,] and deployment of Filipino workers ... in a manner that recognizes

340. *Id.*

341. *Id.* part V (G).

342. *Id.* part V (H), para. 1.

343. Interview with Alice Q. Visperas, *supra* note 327.

344. DOLE A.O. No. 246, s. 2018, part IV (D).

345. *Id.*

346. A copy of the template agreement is attached as Annex A of A.O. No. 246.

347. DOLE A.O. No. 246, s. 2018, annex A, pmb1., para. 2.

the interests of both countries, maintain[s] their sovereignty[,] and ensure[s] the rights of the employer and the worker;”³⁴⁸

- (3) Acknowledgment of the laws of the country of destination “that govern[] the recruitment of workers ... and provide [] legal protection for the rights of migrant workers;”³⁴⁹
- (4) Acknowledgment of “Philippine laws, rules, and regulations on the recruitment and deployment of Filipino workers;”³⁵⁰ and
- (5) “[S]hared desire ... to uphold worker protection and welfare as well as facilitate the recruitment, entry and exit of Filipino workers ... in accordance with the [laws of both countries.]”³⁵¹

2. Areas of Cooperation

Further, the DOLE Model Agreement has identified the following as the key areas of cooperation between State parties:

- (1) “[P]rotection, welfare[,] and rights of Filipino workers” in the country of destination;³⁵²
- (2) “[E]thical recruitment policies, systems, and procedures for employment of Filipino workers[;]”³⁵³
- (3) “Adopt[ion of] a standard employment contract[;]”³⁵⁴
- (4) “Tak[ing of] legal measures against erring employers, Filipino workers, [] recruitment ... agencies for [] violation[s] of [employment] contract provisions, laws, rules and regulations[;]”³⁵⁵

348. *Id.* annex A, pmb1., para. 3.

349. *Id.* annex A, pmb1., para. 4.

350. *Id.* annex A, pmb1., para. 5.

351. *Id.* annex A, pmb1., para. 6.

352. *Id.* annex A, art. 1 (1).

353. DOLE A.O. No. 246, s. 2018, annex A, art. 1 (2).

354. *Id.* annex A, art. 1 (3).

355. *Id.* annex A, art. 1 (4).

- (5) Resolution of issues “arising from the implementation and enforcement [of the BLA;]”;³⁵⁶
- (6) “[M]echanism [for the] inspection and monitoring of the welfare of Filipino workers;”³⁵⁷
- (7) Each Parties’ “compliance with [] recruitment laws and regulations[; and]”³⁵⁸
- (8) “Post-Arrival Orientation Seminar [] for the workers upon arrival[] and employer’s orientation[.]”³⁵⁹

3. Responsibilities of the Philippines

- (1) Training and qualification of Filipino workers;³⁶⁰
- (2) Orientation of Filipino workers on “terms and conditions of the employment contract;”³⁶¹
- (3) Orientation of Filipino workers on the laws, customs, traditions of country of destination;³⁶²
- (4) Absence of infectious/transferrable diseases of the Filipino workers, including thorough medical examinations;³⁶³
- (5) Issuance of law enforcement clearance (i.e., no criminal record) to Filipino workers;³⁶⁴
- (6) Deployment of Filipinos of allowable age and with appropriate skills certification only;³⁶⁵
- (7) Deployment of Filipinos who have completed pre-departure orientation seminar;³⁶⁶

356. *Id.* annex A, art. 1 (5).

357. *Id.* annex A, art. 1 (6).

358. *Id.* annex A, art. 1 (7).

359. DOLE A.O. No. 246, s. 2018, annex A, art. 1 (8).

360. *Id.* annex A, art. 2 (1).

361. *Id.*

362. *Id.*

363. *Id.* annex A, art. 2 (2).

364. *Id.* annex A, art. 2 (3).

365. DOLE A.O. No. 246, s. 2018, annex A, art. 2 (4).

- (8) Fees charged by Philippine recruitment agencies are only those that are lawful;³⁶⁷
- (9) Non-deduction of unauthorized fees from the salary of the Filipino worker;³⁶⁸
- (10) “[R]ight of recourse to competent authorities in case of contractual disputes[;]”³⁶⁹
- (11) “[E]valuation and verification of employment contracts[;]”³⁷⁰
- (12) Recruitment of Filipino workers only through licensed recruitment agencies;³⁷¹
- (13) “[A]ccess of Filipino workers to legal assistance” in the country of destination;³⁷² and
- (14) Imposition of sanction to erring Philippine recruitment agencies.³⁷³

Most of the responsibilities of the Philippines pertain mainly to the pre-employment and pre-departure stage of the migration process.³⁷⁴ However, as will be discussed in this Article, the Philippines, as a country of origin, should play an active role in the other phases of migration such as, the protection of nationals overseas, engagement with the Filipino *diaspora* and reintegration of returning nationals.

4. Responsibilities of the Country of Destination

- (1) Recruitment, entry and exit, and repatriation of Filipino workers in accordance with laws of both parties;³⁷⁵

366. *Id.*

367. *Id.* annex A, art. 2 (5).

368. *Id.*

369. *Id.* annex A, art. 2 (6).

370. *Id.* annex A, art. 2 (7).

371. DOLE A.O. No. 246, s. 2018, annex A, art. 2 (8).

372. *Id.* annex A, art. 2 (9).

373. *Id.* annex A, art. 2 (10).

374. *See* DOLE A.O. No. 246, s. 2018, annex A, art. 2.

375. *Id.* annex A, art. 3 (1).

- (2) Assurance that employers provide an insurance that will cover employee's "disability, sickness, injury, hospitalization, unpaid wages, repatriation[,] ... and other social security benefits;"³⁷⁶
- (3) "[O]bservance of the right[] of Filipino workers to possess their passports or have [them] deposited [in] the [] Embassy[;]"³⁷⁷
- (4) Assurance that employers or recruitment agencies are "not allowed to keep in [their] possession [] personal identity documents of [Filipinos;]"³⁷⁸
- (5) Permission to Filipino workers "to have and use cellular phones[;]"³⁷⁹
- (6) Assurance that employer has no criminal record;³⁸⁰
- (7) Disqualification of employers who have records of contract violation or abuse of workers;³⁸¹
- (8) Facilitation of the opening of a bank account under the name of the Filipino worker;³⁸²
- (9) Assurance that an aggrieved Filipino worker has access to the government office which has jurisdiction to settle disputes in the contract;³⁸³
- (10) Assurance that the transfer of a Filipino worker will only be upon the request and consent of the worker and with prior evaluation of the new employment contract by the POLO;³⁸⁴ and
- (11) Assurance as to implementation of the employment contract.³⁸⁵

376. *Id.* annex A, art. 3 (2).

377. *Id.* annex A, art. 3 (3).

378. *Id.*

379. *Id.* annex A, art. 3 (4).

380. DOLE A.O. No. 246, s. 2018, annex A, art. 3 (5).

381. *Id.* annex A, art. 3 (6).

382. *Id.* annex A, art. 3 (7).

383. *Id.* annex A, art. 3 (8).

384. *Id.* annex A, art. 3 (9).

385. *Id.* annex A, art. 3 (10).

The responsibilities enumerated above are important in protecting OFWs. However, there appears to be no clear structure in the way the responsibilities were outlined. A resort to international and domestic legal frameworks, relevant ILO studies, as well as issues affecting OFWs, is recommended in order to create a more structured, comprehensive, rigorous, and responsive enumeration of responsibilities of the country of origin, keeping in mind the goal of developing a maximum Philippine position in protecting OFWs.

VI. FINDINGS AND ANALYSIS

A. Substance of the BLA Template

1. The Philippine BLA template does not incorporate the provisions of the various human rights instruments and the ILO Conventions which protect migrant workers

As outlined above, there are several UN instruments (e.g., ICRMW, ICCPR, ICESCR, CEDAW), ILO conventions (e.g., Convention No. 97, 181 and Recommendation No. 86), and even one regional agreement (i.e., ASEAN Consensus) which deal greatly with the rights of migrant workers. However, almost none of their provisions were incorporated in the Philippine BLA template. There was also no direct reference to any of these instruments. While there is a paragraph in the Preamble which mentions a desire “to promote compliance with the principles of international conventions concerning the fundamental rights of women, migrants[,] and workers,”³⁸⁶ the reference was made in general terms, without stating which specific conventions are to be applied. Moreover, the reference was made only in the Preamble which, at most, serves as a guide to the interpretation of the BLA but, on its own, has no legal effect.³⁸⁷

As mentioned, almost none of the rights guaranteed under these international instruments were incorporated in the Philippine BLA template. While it is true that international instruments are legally binding on their own without having to be specifically incorporated in the BLA, it would still be advisable to do so — especially the provisions of the ICRMW. Currently, the ICRMW only has 55 State parties to it, most of which are labor-sending

386. DOLE A.O. No. 246, s. 2018, annex A, pmb., para. 2.

387. See Liav Orgad, *The preamble in constitutional interpretation*, 8 INT’L J. CONST. L. 714, 715 (2010).

countries.³⁸⁸ Thus, incorporating the provisions of the ICRMW in the Philippine BLA template may be the only way to bind labor-receiving countries to the obligations stated therein without making them a state party to the ICRMW.

2. The Philippine BLA template disregards the particular vulnerabilities of Filipino women migrant workers

The 1987 Constitution is clear that the State has the duty to “afford full protection to labor, whether local or overseas,” and the duty to “protect working women by providing [them] safe and healthful working conditions, ... [including] facilities and opportunities that will enhance their welfare[.]”³⁸⁹ In the Magna Carta of Women, the Philippine government imposed upon itself the duty to “ensure the protection and promotion of the rights ... of [Filipino] migrant women regardless of their work status, and [to] protect them against discrimination in wages, conditions of work, and employment opportunities in host countries.”³⁹⁰

Despite these express mandates, the Philippine BLA template does not address the particular vulnerabilities of Filipino women migrant workers. It does not impose obligations on the other State to protect Filipino women against maltreatment or physical, verbal, and sexual abuse of women. It does not even guarantee a woman migrant worker’s right to safe working conditions and protection of her health. This is a concern considering that based on statistics, “women migrant workers are disproportionately vulnerable to violence at all stages of the migration cycle[.]”³⁹¹ Of the total number of migrant workers repatriated in 2016, about 67% of them were women.³⁹² Of the total number of migrant workers that experienced trafficking in the same year, about 82% of them were women.³⁹³ Thus, it is crucial that our BLA template contain provisions specifically recognizing and protecting the rights and welfare of Filipino women migrant workers.

388. See ICRMW UNTC, *supra* note 42.

389. PHIL. CONST. art. XIII, §§ 3, paras. 1 & 14.

390. The Magna Carta of Women, § 22 (c).

391. Ma. Teresa Montemayor, Safe and Fair PH: Realizing women OFWs’ rights, available at <https://www.pna.gov.ph/articles/1067390> (last accessed Aug. 15, 2020).

392. *Id.*

393. *Id.*

3. The Philippine BLA template does not represent the maximum position of the government in protecting the rights of Filipino migrant workers. It does not even address many of the reported problems of OFWs contained in the DOLE's Report to Congress

As recommended by the ILO, "origin countries should undertake negotiations from a position of strength, and attempt to get the best possible options for their workers."³⁹⁴ The Author believes that Philippine representatives should be negotiating from a maximum position — that is, being aware of all the rights of Filipino migrant workers under international and domestic law and actually invoking these during the negotiations. The ideal BLA template should afford maximum protection to Filipino migrant workers by having a thorough and comprehensive listing of all the rights of Filipino migrant workers. As discussed in this Article, the international and Philippine legal environment are replete with conventions, laws, and policies that afford protection to our migrant workers. Despite this, the current BLA template still: (1) fails to incorporate the provisions of these international instruments; (2) disregards the vulnerabilities of Filipino women migrant workers by failing to provide specific protection for this group; and (3) ignores the already prevalent problems of OFWs reflected in the DOLE's Report to Congress in 2017. Contract substitution, lack of food, maltreatment, physical and verbal abuse, poor living conditions, and lack of medical attention have already been identified by labor attaches as some of the problems plaguing Filipino migrant workers, especially those living in the Middle East. This notwithstanding, the current BLA template still does not have provisions addressing these issues. For this reason alone, the current BLA template is far-removed from affording maximum protection to our Filipino migrant workers.

B. BLA Process

1. No consultations were conducted with stakeholders: (1) when the BLA template under A.O. No. 246 was drafted and (2) when the actual BLA negotiations were conducted with destination countries

Stakeholders in the Philippine BLA process include employers, civil society organizations advocating for the rights of migrant workers, and the Filipino migrant workers themselves.³⁹⁵ However, consultations during the BLA

394. CORE ELEMENTS OF A BILATERAL AGREEMENT, *supra* note 28, at 29.

395. Interview *with* Alice Q. Visperas, *supra* note 327.

process were purely inter-government agency and without any participation from stakeholders.³⁹⁶ This is in contrast to DOLE A.O No. 246 which states that “[In assessing] the technical feasibility and political legitimacy of [BLA] proposals, stakeholder’s consultation is considered a process imperative[.]”³⁹⁷

2. The Department of Foreign Affairs should be involved in the drafting of the BLA template and in the negotiations of BLAs

The Administrative Code grants to the DFA the power to “[n]egotiate treaties and other agreements” as the lead agency in the field of foreign relations (pursuant to instructions of the President and in coordination with other government agencies).³⁹⁸ Moreover, Rule VIII of the Omnibus Rules and Regulations Implementing R.A. No. 8042, as amended by R.A. No. 10022, provides that the DFA shall take the lead and actively participate in the crafting of international and regional conventions/declarations/agreements that protect the rights and promote the welfare of OFWs.³⁹⁹ Finally, under Executive Order No. 459 (E.O No. 459), “the composition of the Philippine panel or delegation [in cases involving negotiation of agreements,] shall be determined by the President upon the recommendation of the Secretary of Foreign Affairs and the lead agency if it is not the [DFA].”⁴⁰⁰ Thus, it appears that DOLE’s A.O. No. 246, in so far as it unilaterally vests on the Secretary of Labor the power to choose the negotiating team, may have gone beyond the mandate of E.O. No. 459 and the implementing rules of R.A. No. 8042, as amended.

Moreover, a review of A.O. No. 246 reveals that the DFA is not mentioned as part of any technical, review, steering, oversight, or negotiating committees involved in the BLA process. The only specific references to the DFA under A.O. No. 246 are:

396. *Id.* & Interview with Ramon Lamberto C. Pastrana & Nida G. Demegillo, in Mandaluyong, Philippines (Nov. 21, 2019).

397. DOLE A.O. No. 246, s. 2018, part V (A) (b).

398. Instituting the “Administrative Code of 1987” [ADMINISTRATIVE CODE OF 1987], Executive Order No. 292, bk. IV, tit. I, ch. I, § 3 (5) (1987).

399. Rules and Regulations Implementing The Migrant Workers and Overseas Filipinos Act of 1995, As Amended by Republic Act No. 10022, Republic Act No. 10022, rule VIII (2010).

400. Office of the President, Providing for the Guidelines in the Negotiation of International Agreements and its Ratification, Executive Order No. 459 [E.O. No. 459], § 5 (a) (Nov. 25, 1997).

- (1) The endorsement of the final/counter-draft to DFA (and only for purposes of forwarding the same to the other party);⁴⁰¹
- (2) The accomplishment of a special authorization from the Office of the President (through the DFA) to be issued to the DOLE Secretary for the signing of the BLA on behalf of the Philippine government;⁴⁰² and
- (3) Endorsement of the signed BLA to DFA for purposes of forwarding the same to the Office of the President for ratification.⁴⁰³

No provision in A.O. No. 246 specifically requires the BLA Committees to seek DFA's participation in drafting the BLA template nor to have DFA join the negotiations.

The DFA's participation — particularly its geographic offices, the Office of the Undersecretary of Migrant Workers' Affairs, and the Office of Treaties and Legal Affairs — is crucial because these offices hold significant data and insight that may be integral to the BLA process (e.g., first-hand information on the realities in the destination country, the challenges encountered by Filipino migrant workers, and the domestic legal instruments affecting them, among others).

VII. RECOMMENDATIONS

A. Substance of the BLA Template

- I. To afford maximum protection to Filipino migrant workers, the BLA template should incorporate the provisions of various human rights instruments (especially the ICRMW), ILO Conventions, and other regional agreements

As previously mentioned, since the ICRMW is not legally binding to non-state parties, it may be beneficial for the Philippines to have the ICRMW provisions incorporated in the Philippine BLA template instead. Parties to BLAs are free to agree on its provisions provided these are consistent with, and not contrary to, international law. Thus, a non-state party to the ICRMW may give its consent to be legally bound by an ICRMW principle

401. DOLE A.O. No. 246, s. 2018, part V (D), para. 2.

402. *Id.* part V (F) (a).

403. *Id.* part V (F) (b).

that has been incorporated in a BLA. The Philippines, as a state party to the ICRMW, has a unique opportunity to raise awareness and to advocate for the signing of the ICRMW among its labor-receiving partners, specifically through bilateral relations. Under the Migrant Workers Act, as amended, the DFA “is mandated to undertake the necessary initiative such as promotion[], acceptance[,] or adherence of countries receiving Filipino workers to multilateral conventions, declaration[s,] or resolutions pertaining to the protection of migrant workers’ rights.”⁴⁰⁴ Thus, the DFA should be at the forefront of advocating for the incorporation of the ICRMW in the BLA proposal.

In any case, even if the other State does not agree with the inclusion of ICRMW principles in the BLA, the Philippines can still refer to ICCPR, ICESCR, and CEDAW provisions from which many of the ICRMW principles were lifted from. These three conventions have an average of 177 State parties around the world. Kuwait, Jordan, and Bahrain are State parties to the ICCPR.⁴⁰⁵ Saudi Arabia, the United Arab Emirates, and Singapore are State parties to the CEDAW. Under the ICCPR, Kuwait, Jordan, and Bahrain undertook the obligation to recognize the right of every individual, including a migrant worker’s “right to liberty and security of [one’s] person[,]”⁴⁰⁶ of expression,⁴⁰⁷ movement,⁴⁰⁸ including his or her right against slavery and compulsory labor.⁴⁰⁹ Meanwhile, under the CEDAW, Saudi Arabia, the United Arab Emirates, and Singapore undertook the obligation to eliminate discrimination against women in the field of employment.⁴¹⁰ Hence, the Philippine BLA Committee may consider incorporating these provisions in the BLA template and explain that this is just a confirmation of the other State’s commitment to its international obligations. After all, State parties to international conventions are bound by the principle of *pacta sunt servanda* or the obligation to comply with treaty obligations in good faith.

404. Migrant Workers and Overseas Filipinos Act of 1995, § 22.

405. See ICCPR UNTC, *supra* note 100; ICESCR UNTC, *supra* note 103; & CEDAW UNTC, *supra* note 127.

406. ICCPR, *supra* note 80, art. 9 (1).

407. *Id.* art. 19 (2).

408. *Id.* art. 12 (1).

409. *Id.* arts. 8 (1) & (3) (a).

410. CEDAW, *supra* note 119, art. 11.

2. The Philippine BLA template should include provisions specifically protecting the rights of Filipino women migrant workers

The template should afford protection to women migrant workers against all forms of abuse, harassment, and violence. It should recognize the duty of the Philippine government to provide a gender-sensitive pre-departure seminar that orients Filipino migrant women on their vulnerability to abuse and to illegal trafficking. The equal treatment between men and women in the field of employment should be provided, including fair terms of employment and decent working conditions. The template should likewise contain provisions allowing Filipino women migrant workers to keep in their possession their travel and identity documents, especially their Philippine passport. It should provide women migrant workers access to complaint mechanisms, justice, and services without fear of intimidation and retaliation. Finally, the BLA template should also promote gender equity or the fairness of treatment for women and men, based on their respective needs.

3. The Philippine BLA template should be amended to reflect the provisions of international conventions, to enhance protection measures that address actual problems encountered by Filipino migrant workers, and to include good practices in the BLA process identified by the ILO

For this purpose, a new BLA template was drafted (“recommended BLA template”) which consolidates relevant provisions of international and domestic law. Moreover, the recommended BLA template includes provisions that attempt to address some of the common problems encountered by Filipino migrant workers as provided in the DOLE’s Report to Congress. For example, contract substitution is commonly encountered by OFWs who go to the Middle East. According to the Center for Migrant Advocacy, the practice of contract substitution involves withholding the migrant worker’s flight tickets and travel papers to force him or her to sign a new employment contract on the day of departure.⁴¹¹ The new contract usually provides a smaller salary and less favorable stipulations than the originally agreed contract. To address this, the Author proposes a provision in the recommended BLA template (Article 8, paragraph 2) which requires

411. Center for Migrant Advocacy, A Call for Ratification: Philippine Labor Migration and the ILO Private Employment Agencies Convention, 1997 (A Position Paper) at *10, available at <https://centerformigrantadvocacy.files.wordpress.com/2018/04/a-call-for-ratification-philippine-labor-migration-and-ilo-private-employment-agencies-convention-1997.pdf> (last accessed Aug. 15, 2020).

the POEA to ensure that a copy of the of the employment contract be delivered to the migrant worker sufficiently in advance (or at least three weeks) before the migrant worker's departure.

It is also interesting to note that there was no provision in the DOLE's BLA template which specifically protects Filipino women migrant workers from maltreatment and other forms of abuse. Thus, the Author proposes under Article 15, paragraph 3 (a) of the recommended BLA template that Filipino women migrant workers should enjoy effective protection against all forms of abuse, harassment, and violence. Moreover, their right to safe working conditions, including the protection of their health and the safeguarding of their function of reproduction is covered under Article 15, paragraph 2 (c).

Finally, some good practices identified by the ILO have been incorporated in the Author's recommended template as follows:

Good Practices:

(1) Gender-specific Information Especially to Women Migrant Workers

(a) Proposed Provision:

(i) Article 15, Paragraph 1:

The Philippines, through the POEA, the Commission on Filipinos Overseas, and the Inter-Agency Council Against Trafficking, shall ensure that gender-sensitive pre-departure orientation seminars are provided to Filipino women migrant workers with a special focus on illegal trafficking.

(2) Provisions on Equality of Treatment

(a) Proposed Provision:

(i) Article 9, Paragraphs 1 and 2

_____ shall grant to Filipino migrants, with respect to employment in which they are eligible to engage, treatment no less favorable than that applicable to its own nationals in relation to legal or administrative provisions or collective labor agreements.

Such equality of treatment shall apply, without discrimination in respect of nationality, race,

religion or sex, to Filipino migrant workers within _____ in respect of remuneration, hours of work, weekly rest days, social security, hygiene, safety, and medical assistance.

- (3) Exchange of Information
 - (a) Proposed Provision:
 - (i) Entire Article 3
- (4) Clarification of Specific Division of Responsibility of Various Government Agencies
 - (a) Proposed Provision:
 - (i) Entire Article 4
- (5) Assistance on Information on Remittances
 - (a) Proposed Provision:
 - (i) Article 13, paragraph 2

_____ agrees to disseminate information on the national remittances system, with the aim of aiding Filipino migrant workers in the choice of the most advantageous way.

B. BLA Process

I. Consultations with stakeholders should be conducted

Stakeholders in the BLA process include civil society organizations, licensed recruitment agencies, and the migrant workers themselves.⁴¹² It is important to consult these stakeholders not only during the drafting of a Philippine BLA template, but also prior to any BLA negotiations. According to the ILO, “[w]hile the ultimate responsibility for migration policies and [international] cooperation lies with governments,”⁴¹³ policies may be more effective when based upon consultations and social dialogue.

The main purpose of entering into a BLA is to protect the rights of Filipino migrant workers; therefore, the people who are subject of this

⁴¹²Interview with Alice Q. Visperas, *supra* note 327.

⁴¹³ASSESSMENT GUIDE FOR BILATERAL AGREEMENTS, *supra* note 22, at 20.

protection should be consulted on matters that will affect their stay in the destination country.⁴¹⁴ This process may help bring to light issues that have yet to be included in the BLA template.

In the same manner, getting inputs from employers and civil society organizations is also considered a good practice.⁴¹⁵ Licensed recruitment agencies' and civil society organizations' involvement in the BLA process would help make the resulting agreement more effective and more responsive to the needs of labor markets.⁴¹⁶ Some benefits of consulting with licensed recruitment agencies are: (1) better matching of labor market needs with potential Filipino migrant supply; and (2) better understanding of the issues that arise during the migration cycle.⁴¹⁷ Meanwhile, civil society organizations provide valuable support services to migrant workers.⁴¹⁸ Their insights on how the BLA process can be improved are valuable. In fact, during an interview with the Center for Migrant Advocacy, they suggested that Philippine BLAs should contain provisions on: (1) the rights of Filipino women migrant workers; (2) dissemination of the agreed terms in the BLA to the employers in the destination country; and (3) assessment and evaluation of the effectiveness of the BLA.⁴¹⁹ Given this, it is recommended that consultations with stakeholders be made a mandatory part of the BLA process under: (1) the technical working committee's assessment of the political and technical feasibility of a BLA proposal; and (2) the monitoring and evaluation of the effectiveness of concluded BLAs.

2. The DFA and DOLE should work in partnership with each other, for the benefit of OFWs

One of the action plans of the DFA under its Strategic Plan 2017-2022 is to increase by 100% the number of bilateral, regional, and international labor and migration-related legal instruments entered into by the Philippines.⁴²⁰

414. See ASSESSMENT GUIDE FOR BILATERAL AGREEMENTS, *supra* note 22, at 20.

415. *Id.* at 20.

416. *Id.*

417. See ASSESSMENT GUIDE FOR BILATERAL AGREEMENTS, *supra* note 22, at 20.

418. *Id.*

419. Interview *with* Center for Migrant Advocacy, *in* Quezon City, Philippines (Mar. 19, 2019).

420. National Economic Development Authority, Philippine Development Plan 2017-2022, *available at* <http://www.neda.gov.ph/wp-content/uploads/2018/01/>

However, the BLA Committee created under DOLE's A.O. No. 246 does not name the DFA as a permanent member of the BLA technical working committee, review committee, and negotiating committee.⁴²¹

It is recommended that the DFA, particularly its geographic offices, the Office of the Undersecretary for Migrant Workers Affairs (OUMWA), and the Office of Treaties and Legal Affairs (OTLA), take a proactive role in every stage of the BLA process. Each of these DFA offices hold information that may be crucial to the BLA process. The geographic offices and OUMWA directly engage with the Foreign Service Posts, which have first-hand information on the realities in the destination country, especially the challenges encountered by Filipino migrant workers and the domestic legal instruments affecting them. OTLA, meanwhile, has the legal expertise especially in treaty practice. The inputs of these DFA offices are valuable in the crafting of a BLA template and in negotiating the terms of a BLA. Given that A.O. No. 246 grants to the Secretary of Labor the power to determine the members of the negotiating panel, albeit contrary to E.O. No. 459, the DFA should inform the BLA Committee that it intends to participate not just in the BLA negotiating committee but also in the technical working committee and review committee.

The nature of the BLA process is dynamic. From the drafting of the BLA template to its signing and ratification up to its monitoring and evaluation, the entire process involves inter-agency coordination. If the DFA intends to achieve its objectives in the Strategic Plan 2017-2022, it has to increase its presence in the BLA Committee, initiate studies into which countries are potential BLA partners, and take a proactive role in the entire BLA process.

VIII. CONCLUSION

There is still a lot which can be improved with the current Philippine BLA template. The most important change, however, is to shift the Philippine government's mindset on how it approaches bilateral labor agreements. An analysis of the current international human rights conventions and domestic legal framework vis-à-vis the issues affecting OFWs is recommended in order to create a more structured, comprehensive, rigorous, and responsive bilateral labor agreement — one that prioritizes the development of a

Abridged-PDP-2017-2022_Updated-as-of-01052018.pdf (last accessed Aug. 15, 2020).

421. DOLE A.O. No. 246, s. 2018, part IV.

maximum Philippine position in protecting OFWs. Any less would be a great disservice to the country and to its people.

IX. ANNEX

A. Annex A

The Author's Recommended Philippine Bilateral Labor Agreement Template

MEMORANDUM OF _____

ON _____

BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

AND THE GOVERNMENT OF THE _____

The Government of the Republic of the Philippines represented by the Department of _____, hereinafter referred to as _____ and the Government of the _____ represented by the _____, hereinafter referred to as the _____:

PREAMBLE

- (1) [Explain the context and motivation for the agreement];
- (2) Seeking to [insert basic goal of the agreement — e.g., enhance bilateral relations between the Parties; cooperate in the regulation and organization of labor migration; protect and promote the dignity and welfare of Filipino migrant workers, especially Filipino women migrant workers];
- (3) Reaffirming the Philippines' obligations as a State Party to [insert international instruments — ICCPR, ICESCR, CEDAW, ILO Convention No. 97, _____];
- (4) Equally, reaffirming _____'s obligations as a State Party to [insert international instruments — ICCPR, ICESCR, CEDAW, ILO Convention No. 97, _____];
- (5) Desiring to strengthen the Parties' commitments under [insert regional instruments, if any — i.e., ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers];

- (6) Noting the Philippines' Migrant Workers and Overseas Filipinos Act of 1995, as amended, and all other laws, rules, and regulations governing the recruitment and deployment of Filipino migrant workers;
- (7) Noting _____'s [insert title of law governing migrant workers, if any] and all other laws and regulations that govern the employment of migrant workers in _____;
- (8) Mindful of the contribution of Filipino women migrant workers in Philippine nation-building and the need to take into account their particular vulnerabilities and gender-related concerns;
- (9) Noting the shared commitment of the Parties to facilitate the recruitment, entry, and exit of Filipino migrant workers to and from _____; and
- (10) Determined to respect, promote, and realize the rights of Filipino migrant workers and improve their working conditions, in accordance with international law, Philippine laws, and _____ laws, have agreed as follows:

Article I

PURPOSES/OBJECTIVES

The objectives of this agreement are as follows:

- (1) Strengthening friendship, cultural, and social ties and mutually beneficial cooperation;
- (2) Enhancing existing friendly relations;
- (3) Promoting cooperation in the field of human resource management;
- (4) Preventing irregular migration;
- (5) Facilitating recruitment of Filipino migrant workers that meets the labor market needs of _____ and respects international agreements and the national laws of the Philippines and of _____;
- (6) Upholding fundamental rights of Filipino migrant workers;
- (7) Ensuring protection and promotion of the rights and welfare of Filipino migrant workers; and

- (8) Taking of specific measures against fraudulent or abusive recruitment methods, including those that could result in forced labor or trafficking in persons.

Article 2

DEFINITIONS

- (1) *Migrant Worker* — refers to a Filipino of legal age, who is not a national of _____ and who is to be engaged, is engaged, or has been engaged in a remunerated activity in _____.
- (2) *Recruitment Fee* — refers to any and all amounts charged by a recruitment agency from a Filipino migrant worker for its recruitment and placement services (*POEA Rules*).
- (3) *Recruitment and Placement* — refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referring, contracting services, promising, or advertising for employment in _____, whether for profit or not.
- (4) *Irregular Migration* — refers to a situation when a Filipino migrant worker has not complied with the conditions to enter, to stay, or to engage in a remunerated activity in _____ in accordance with its laws.
- (5) *Due Diligence* — refers to the obligation of a licensed Philippine recruitment agency and its partner placement agency in _____, to identify, prevent, mitigate, and account for how it addresses the adverse human rights impacts of its own activities of which may be directly linked to its operations, products, or services by its business relationships. It also includes the obligation to assess actual and potential human rights impacts, integrating and acting upon findings, tracking responses, and communicating how impacts are addressed.

Article 3

EXCHANGE OF INFORMATION

The Department of _____ of _____ shall periodically furnish appropriate information to the Department of _____ of the Philippines concerning:

- (1) legislative and administrative provisions regulating the entry, employment, residence, and settlement of migrant workers;
- (2) the number, the categories, and the occupational qualifications of the migrant workers desired and, if applicable, the language requirements needed;
- (3) the conditions of life and work for migrant workers and, in particular, cost of living and minimum wages according to occupational categories and regions of employment, supplementary allowances, if any, nature of employments available, bonus on engagement, if any, social security systems and medical assistance, provisions concerning transport of migrant workers and of their tools and belongings, housing conditions and provisions for the supply of food and clothing, measures relating to the transfer of the migrant worker's savings and other sums due; and
- (4) special facilities or measures designed to promote rapid adaptation of migrant workers.

The Department of _____ of the Philippines shall bring this information to the attention of persons or government agencies interested.

Subject to prior compliance with Philippine Data Privacy Laws and in coordination with the Philippine National Privacy Commission, the Department of _____ of the Philippines shall periodically furnish appropriate information to the Department of _____ of _____ concerning:

- (1) legislative and administrative provisions regulating the recruitment and deployment of Filipino migrant workers;
- (2) the estimated number and occupational qualifications of intending migrant workers;
- (3) the Philippine social security system; and
- (4) the environment and living conditions to which Filipino migrant workers are accustomed.

The Department of _____ of _____ shall bring this information to the attention of persons or government agencies interested.

The information mentioned above shall also be transmitted by the respective Parties to the International Labor Organization.

The Parties undertake to disseminate, within their national territory, the provisions of the present _____. The parties also agree to take all practical steps, so far as national laws and regulations permit, against misleading propaganda relating to labor migration possibilities or working and living conditions in _____, whether perpetrated by recruitment agencies, subagents, or others.

Article 4

RESPONSIBLE PARTIES OR COMPETENT AUTHORITIES

The competent authorities responsible for the enforcement of the present Agreement are:

On the part of the Philippines:

1. Department of Labor and Employment

The DOLE shall be the lead agency in ensuring that labor and social welfare laws in the foreign countries are fairly applied to Filipino migrant workers and that all employment rights, benefits, and welfare of Filipino migrant workers at the worksite are duly protected. The DOLE, through the Philippine Overseas Labor Officer (POLO), shall ensure that the employment contracts of Filipino migrant workers are consistent with the prevailing employment laws, standards, and practices in both the Philippines and in _____. In the absence of the POLO, these duties shall devolve to the Philippine Embassy/Consulate which has jurisdiction over the worksite.

2. Philippine Overseas Employment Administration

The POEA shall be in charge of regulating private sector participation in the recruitment and overseas placement of workers. It shall be responsible for the regulation and management of overseas employment from the pre-employment stage, taking into consideration the needs of Filipino migrant workers. It shall inform migrant workers not only of their rights as workers but also of their obligations in the destination country. It shall also accredit placement agencies or employers in _____ which intend to hire Filipino

migrant workers through partnerships with a licensed Philippine recruitment agency.

3. Overseas Workers Welfare Administration

The OWWA shall formulate and implement welfare programs for Filipino migrant workers and their families while they are abroad and upon their return. It shall ensure the awareness by the overseas Filipino workers and their families of these programs and other related governmental programs. It shall, in coordination with appropriate international agencies, undertake the repatriation of Filipino migrant workers in cases of war, epidemic, disaster or calamities, natural or man-made, and other similar events.

4. Other Philippine government agencies, as may be necessary to implement this Agreement

On the part of _____:

Article 5

RIGHTS OF FILIPINO MIGRANT WORKERS

- (1) Filipino migrant workers shall be free to leave _____. This right shall not be subject to any restrictions except those that are provided by _____ law, which are necessary to protect national security, public order, public health or morals or the rights and freedoms of others.
- (2) The right to life of Filipino migrant workers shall be protected by law.
- (3) No Filipino migrant worker shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
- (4) No Filipino migrant worker shall be held in slavery or servitude.
- (5) No Filipino migrant workers shall be required to perform forced or compulsory labor.
- (6) Filipino migrant workers shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others

and in public or private to manifest their religion or belief in worship, observance, practice, and teaching.

- (7) Filipino migrant workers shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
- (8) Filipino migrant workers shall have the right to hold opinions without interference. They shall have the right to freedom of expression which shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
- (9) No Filipino migrant worker shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honor and reputation.
- (10) No Filipino migrant worker shall be arbitrarily deprived of property.
- (11) Filipino migrant workers shall have the right to liberty and security of person.
- (12) Filipino migrant workers shall be entitled to effective protection by _____ against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups, or institutions.
- (13) Filipino migrant workers shall not be subjected individually or collectively to arbitrary arrest or detention. They shall not be deprived of their liberty except on such ground and in accordance with such procedures as are established by law. Any verification by law enforcement officials of the identity of Filipino migrant workers shall be carried out in accordance with procedures established by law.
- (14) When a Filipino migrant worker is arrested or committed to prison or custody pending trial or is detained in any other manner, the Philippine consular or diplomatic authorities shall be informed without delay of his or her arrest or detention and of the reasons therefor. The person concerned shall have the

right to communicate with the said authorities. The person concerned shall be informed without delay of this right to correspond and to meet with representatives of the Philippine authorities and to make arrangements with them for his or her legal representation. Filipino migrant workers who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

- (15) Filipino migrant workers who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
- (16) No Filipino migrant worker shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.
- (17) No Filipino migrant worker shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract, unless fulfilment of that obligation constitutes a condition for such authorization or permit.
- (18) 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 _____ or work permits. In no case shall it be permitted to destroy the passport or equivalent document of the Filipino migrant worker.
- (19) Filipino migrant workers shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually. Filipino migrant workers may be expelled from the territory of _____ only in pursuance of a decision taken by _____ (competent authority) in accordance with law.
- (20) Every Filipino migrant worker shall have the right to recognition in _____ as a person before the law.
- (21) Filipino migrant workers shall have the right to have recourse to the protection and assistance of the Philippine consular or diplomatic authorities whenever the rights mentioned above are impaired.
- (22) Filipino migrant workers shall have the right to receive any medical care urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis

of equality of treatment with nationals of _____. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

- (23) Nothing in the aforementioned provisions, shall have the effect of relieving Filipino migrant workers from either the obligation to comply with the laws and regulations of _____ or the obligation to respect the cultural identity of the inhabitants of _____.

Article 6

ORGANIZATION OF RECRUITMENT AND PLACEMENT

- (1) The Parties shall establish recruitment policies, systems, and procedures that:
- (a) respect, protect, and fulfil internationally recognized human rights;
 - (b) respond to established labor market needs, and not serve as a means to displace or diminish an existing workforce, to lower labor standards, wages, or working conditions, or to otherwise undermine decent work;
 - (c) take into account policies and practices that promote efficiency, transparency, and protection for workers in the process, such as mutual recognition of skills and qualifications;
 - (d) take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labor or trafficking in persons;
 - (e) mandate due diligence from licensed Philippine recruitment agencies and its partner placement agencies in _____;
 - (f) respect applicable national laws, regulations, employment contracts and applicable collective agreements of the Philippines and _____, including internationally recognized human rights, fundamental principles and rights at work, and relevant international labor standards; and

- (g) does not charge recruitment fees or related costs to Filipino migrant workers.
- (2) Recruitment fees shall not be charged to or borne by Filipino migrant workers. Prospective employers, public or private, shall bear the administrative cost of recruitment., including payment of the visa and/or working permit, air fare, POEA processing fees, and the membership contribution of the Filipino migrant worker to the OWWA.

Article 7

INFORMATION AND ASSISTANCE TO MIGRANTS

The Philippines shall provide an adequate and free service to assist Filipino migrant workers with regard to employment and to provide, in a language that they understand, accurate information as to the nature of the work for which he has been engaged, the region of employment, the undertaking to which he is assigned, travel arrangements and the conditions of life and work including health and related matters in the country and region to which he or she is going.

The Philippines shall also deliver or facilitate free or affordable gender- and rights-based pre-departure information and training programs that raise Filipino women migrant worker's awareness of potential exploitation.

On arrival in _____, Filipino migrant workers shall receive all the documents which they need for their work, their residence, and their settlement in the country, as well as an orientation to provide them information, instruction and advice regarding conditions of life and work, and any other assistance that they may need to adapt themselves to the conditions in _____.

Article 8

CONTRACT OF EMPLOYMENT

- (1) Every Filipino migrant worker to be deployed in _____ shall be covered by an individual employment contract which shall be based on a model contract established through a system of joint verification of contracts by authorities of the Philippines and _____.

- (2) The individual employment contract shall set forth the general conditions of employment provided in the model contract and shall be translated into a language which the migrant understands. The terms and conditions of employment shall not vary from those contained in the model contract except for amendments that are favorable to the migrant worker. The Philippines, through the POEA and its licensed private recruitment agencies, shall conduct a mandatory orientation for the migrant workers on the contents of the individual employment contract and shall ensure that a copy thereof shall be delivered to the migrant sufficiently in advance (or at least three weeks) before departure.
- (3) The individual employment contract shall contain necessary information, such as:
 - (a) the full name of the worker as well as the date and place of birth, his family status, his place of residence and of recruitment;
 - (b) the full name and address of the employer;
 - (c) the nature of the work and the place where it is to be performed;
 - (d) the occupational category in which the worker is placed and his/her position;
 - (e) basic salary for ordinary hours of work, overtime, night work, and holidays, and the mode of payment;
 - (f) bonuses, indemnities, and allowances if any;
 - (g) salary/wage increments based on the period of service;
 - (h) regular work hours and day off;
 - (i) vacation leave and sick leave for every year of service;
 - (j) conditions under which and extent to which the employer may be authorized to make any deductions from remuneration;
 - (k) conditions regarding food if food is to be provided by the employer;
 - (l) the duration of the contract as well as the conditions of renewal or denunciation of the country;

- (m) the conditions under which entry and residence in the territory of immigration are permitted;
 - (n) travel and identity documents to remain in the migrant worker's possession;
 - (o) workplace insurance and health-care coverage;
 - (p) the method of meeting the expenses of the journey of the migrant workers;
 - (q) the valid grounds on which a contract may be prematurely terminated by either the employer or the migrant worker;
 - (r) free transportation from and back to the point of hire and free inland transportation at the jobsite;
 - (s) settlement of disputes;
 - (t) repatriation of the worker in case of imminent danger due to war, calamity, and other analogous circumstances, at the expense of employer; and
 - (u) in case of the worker's death, repatriation of his/her human remains and personal belongings at the expense of the employer.
- (4) The Philippines shall take measures to ensure that Filipino migrant workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner.
- (5) The Parties shall jointly monitor the implementation of the employment contracts.

Article 9

EQUALITY OF TREATMENT AND NON-DISCRIMINATION

- (1) _____ shall grant to Filipino migrants, with respect to employment in which they are eligible to engage, treatment no less favorable than that applicable to its own nationals in relation to legal or administrative provisions or collective labor agreements.

- (2) Such equality of treatment shall apply, without discrimination in respect of nationality, race, religion or sex, to Filipino migrant workers within _____ in respect of the following matters:
- (a) in so far as such matters are regulated by laws or regulations, or are subject to the control of administrative authorities,
 - (i) remuneration, hours of work, weekly rest days, overtime arrangements, holidays with pay and other regulations concerning employment, including limitations on home work, minimum age provisions, and women's work;
 - (ii) access to outside communications;
 - (iii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iv) accommodation; and
 - (v) career development opportunities and resources;
 - (b) social security (*i.e.*, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme);
 - (c) employment taxes, dues or contributions payable in respect of the persons employed;
 - (d) hygiene, safety, and medical assistance; and
 - (e) right to due process in cases of violation of the employment contract and other legal proceedings relating to the matters referred to in this Agreement.

Article 10

WAGE PROTECTION MEASURES

- (1) Deductions from the agreed wage of Filipino migrant workers shall be prohibited except with the written consent of such worker or unless otherwise mandated under the laws of _____.

- (2) The Parties shall establish a complaint mechanism where Filipino migrant workers have access to dispute settlement regarding wage issues without fear of discrimination, intimidation, and retaliation. The mechanism shall provide for recovery of back wages or unpaid wages, even after the worker has returned home.

Article 11

TRAINING

- (1) The Philippines, through the POEA, Technical Education and Skills Development Authority (TESDA), and other relevant government agencies, shall ensure that Filipino migrant workers who intend to work in _____ possess the necessary skills and training required by the labor market therein. It shall also be ensured that the pre-departure orientation seminar has been completed by the Filipino migrant worker prior to his/her deployment in _____.

Article 12

SUPERVISION OF WORKING AND LIVING CONDITIONS

- (1) _____, with the assistance and cooperation of the Philippine Overseas Labor Officer (POLO), shall undertake to supervise the living and working conditions, including hygienic conditions, to which the Filipino migrant workers are subject. _____ undertakes to grant access to Philippine consular officials, subject to rules and regulations to be established by _____, to visit workplaces and places of accommodation to assess the existing working and living conditions of Filipino migrants.
- (2) Assistance with respect to the employment and living conditions of Filipino migrant workers may be given either through the regular labor inspection service of _____ or through a special service for Filipino migrants. _____ shall undertake to provide an adequate labor inspection system for carrying out this supervision.
- (3) During the period of employment, Filipino migrant workers shall be given priority assistance in regard to matters concerning their conditions of employment.

Article 13

TRANSFER OF FUNDS/REMITTANCES

- (1) _____ undertakes to facilitate the opening by the employer of a bank account under the name of the Filipino migrant worker and allow him/her the reasonable opportunity to remit his/her monthly salary to the Philippines.
- (2) _____ agrees to disseminate information on the national remittances system, with the aim of aiding Filipino migrant workers in the choice of the most advantageous way.
- (3) The Parties shall cooperate in creating mechanisms to reduce and eventually eliminate transfer costs of remittances of Filipino migrant workers.
- (4) Upon the termination of their stay in _____, Filipino migrant workers shall have the right to transfer their earnings and savings and, in accordance with applicable legislation in _____, their personal effects and belongings.

Article 14

SOCIAL PROTECTION/SOCIAL SECURITY PROVISIONS

- (1) The Parties shall determine the methods of applying a system of social security to Filipino migrant workers including the portability of the payments, subject to the laws, rules and regulations of _____. The agreement shall provide that the competent authority of _____ shall take measures to ensure to the Filipino migrant workers, treatment no less favorable than that afforded by it to its nationals, except where particular residence qualifications apply to nationals.
- (2) In accordance with its existing laws and regulations, _____ shall ensure that employers provide personal life accident insurance that will cover the Filipino migrant worker's disability, sickness, injury, hospitalization, unpaid wages, and repatriation, without cost to the worker. In addition, for areas declared by the Philippine government as war risk areas, a war risk area insurance of not less than Php100,000 shall be provided by the employer at no cost to the worker.

Article 15

PROTECTION OF FEMALE WORKERS

- (1) The Philippines, through the POEA, the Commission on Filipinos Overseas, and the Inter-Agency Council Against Trafficking, shall ensure that gender-sensitive pre-departure orientation seminars are provided to Filipino women migrant workers with a special focus on illegal trafficking.
- (2) Filipino women migrant workers shall be accorded equal treatment in the field of employment in order to ensure, on a basis of equality of men and women:
 - (a) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of quality of work;
 - (b) 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; and
 - (c) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- (3) The Parties shall ensure that Filipino women migrant workers:
 - (a) enjoy effective protection against all forms of abuse, harassment, and violence;
 - (b) enjoy fair terms of employment as well as decent working conditions and, if they reside in the household in the case of domestic workers, decent living conditions that respect their privacy; and
 - (c) are granted the right to communication and access to a multilingual complaint mechanism that ensures the privacy of their identity.
- (4) Filipino women migrant workers shall be entitled to keep in their possession their travel and identity documents especially their Philippine passport which is a property of the Philippine government under its laws and should not be in the possession of any person other than the migrant worker.

- (5) The Parties shall ensure that Filipino domestic workers are:
- (a) compliant with the minimum age requirement for overseas domestic work set by Philippine law, rules and regulations;
 - (b) provided adequate food, housing, and clothing by their employers;
 - (c) paid the agreed wage stated in the employment contract duly-approved by the POEA;
 - (d) registered in the health insurance system for their treatment in case of illness or injury
 - (e) compensated for injuries sustained in the conduct of work;
 - (f) allowed to have and to use cellular phones and other means to communicate with their families and with the Philippine consular and diplomatic authorities;
 - (g) (in case of death) paid their wages within the month in which the domestic worker died and their deceased body immediately transported to the Philippines;
 - (h) allowed access to the services of the Department of _____, which shall have jurisdiction to settle any dispute arising from the employment contract; and
 - (i) (in case of renewal of the employment contract after its completion or in case of transfer of the domestic worker to another employer) made to sign a new employment contract, duly approved by the competent authorities of _____ and submitted to the POLO, to ensure that the domestic worker consents to the renewal or transfer, as the case may be.
- (6) The Parties shall create a mechanism that provides 24-hour assistance to domestic workers and which shall monitor the level of care offered to Filipino domestic workers, in cooperation with competent authorities in _____. The 24-hour assistance shall be accessible without fear of intimidation and retaliation.
- (7) The Parties shall promote gender equity or the fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is

different but which is considered equivalent in terms of rights, benefits, obligations, and opportunities.

Article 16

SETTLEMENT OF DISPUTES BETWEEN EMPLOYERS AND WORKERS/ACCESS TO JUSTICE AND EFFECTIVE REMEDIES FOR WORKERS

- (1) _____ undertakes to provide Filipino migrant workers access to expeditious and effective reconciliation procedures, through its Department of _____, which has jurisdiction to settle disputes that may arise between the employer and the migrant worker.
- (2) _____ shall ensure that Filipino migrant workers are able to seek remedy without discrimination, intimidation, or retaliation.
- (3) The Philippines, through its embassy/consulate general, shall provide the Filipino migrant worker access to interpretation and legal services, labor courts, and judicial services, as may be needed.
- (4) The Parties agree to exchange material information on the above dispute settlement system in order to properly evaluate its effectiveness in preventing and resolving labor disputes.
- (5) The Parties shall ensure that legal measures against erring employers, Filipino migrant workers, _____ or Philippine recruitment agencies for any violation of the employment contract, applicable international laws and domestic laws, rules, and regulations of both Parties. Employers who have records of contractual violations or abuse of workers shall be disqualified from recruiting Filipino migrant workers.

Article 17

RETURN, REPATRIATION, AND REINTEGRATION

- (1) In case the employment contract of a Filipino migrant worker is pre-terminated for valid cause under the laws of _____, the licensed Philippine recruitment agencies, in coordination with the _____ placement agency, shall undertake to find a replacement.

- (2) Filipino migrant workers shall not be required to obtain the employer's or recruiter's permission to leave at the end of the employment contract or to change employment due to abusive conditions and other valid causes for pre-termination of the employment contract under the laws of _____.
- (3) The Parties shall cooperate in the adoption of measures regarding the orderly return of Filipino migrant workers to the Philippines when they decide to return or their authorization of residence or employment expires or when they are in _____ in an irregular situation.
- (4) The Philippine OWWA shall, in coordination with appropriate international agencies, undertake the repatriation of Filipino migrant workers in cases of war, epidemic, disaster or calamities, natural or man-made, and other similar events. It shall also orient returning Filipino migrant workers and their families on its welfare programs.

Article 18

JOINT WORKING COMMITTEE

Both Parties agree to establish a Joint Committee within three (3) months after the signing of this Agreement. The Joint Committee shall be composed of _____.

It shall be formed to implement the following tasks:

- (1) Draft the guidelines for the implementation of this Agreement;
- (2) Formulate the standard employment contract for Filipino workers containing the terms and conditions as provided for in this Agreement;
- (3) Revise/amend the provisions of the standard employment contract for Filipino workers, as may be necessary;
- (4) Identify issues and agree on joint solutions concerning the implementation of the BLA;
- (5) Resolve disputes between the Parties;
- (6) Monitor and evaluate the effectiveness of BLA provisions, as described in detail below, and suggest amendments and improvements thereto:

- (a) Collate information on critical variables such as number of migrant workers, profiles of migrants, complaints statistics, systems of recruitment, the wage situation, etc.;
 - (b) Conduct interviews with social partners, the international community, and civil society organizations in order to evaluate the implementation of the BLA and collect suggestions for the improvement thereon;
 - (c) Make necessary recommendations to resolve issues and problems arising from the implementation and the interpretation of the provisions of this Agreement or amendments to this Agreement;
 - (d) Take steps towards capacity building of government staff and other stakeholders for the effective monitoring and evaluation of the BLA;
 - (e) Conduct meetings annually for the purpose of discussing its findings and recommendations, as required above;
 - (f) Disseminate information about the contents of this Agreement as well as its monitoring and evaluation reports within the respective territories; and
 - (g) Create subcommittees or technical working groups as it deems necessary;
- (7) Endorse the renewal or extension of this Agreement as it sees fit; and
- (8) Provide for the cost-sharing arrangements for the monitoring and evaluation of this Agreement.

Article 19

EFFECTIVITY, VALIDITY, AND TERMINATION

- (1) This Agreement shall enter into force from the date of the final notification on which one party shall notify the other party of the completion of necessary national legal requirements for its implementation.
- (2) This Agreement may be amended by mutual consent of the Parties. The amendment shall enter into force according to the

above-mentioned procedures of the aforesaid paragraph of this Agreement.

- (3) The Agreement shall remain in full force and effect for a period of __ years, and shall be renewed for a similar period, unless a Party officially notifies the other Party, through diplomatic channels, of its desire to suspend or terminate this Agreement. In such case, the Agreement shall remain valid until sixty (60) days after date on which one Party receives an official notification from the other Party expressing the desire of the latter to suspend or terminate the validity of this Agreement.

Notwithstanding the suspension or termination of the Agreement, its provisions shall remain in force with regards to contracts and other agreements concluded during the validity of this Agreement.

B. Annex B

Quantitative Criteria for Assessing the Implementation of BLAs

As far as practicable, the data should be classified according to age and sex.

<i>Indicators</i>	<i>Source of Information</i>
(1) How many migrants signed their employment contract before departure?	POEA
(2) How many Filipino migrants have participated in PDOS before migration?	Commission on Filipinos Overseas
(3) How many migrants faced “abuses” (e.g., retention of passport, contract substitution, different job than expected)?	POLO/PE/PC, DOLE, OUMWA, NGOs
(4) How many migrants were victims of violence or harassment?	POLO/PE/PC, DOLE, OUMWA, NGOs
(5) How many workers have migrated during the effectivity of the BLA?	POEA, DOLE, POLO/PE/PC
(6) How many migrant workers have been able to receive compensation in case of occupation injury?	POLO/PE/PC, POEA, OWWA
(7) What is the percentage of migrants returning home, under the conditions defined in the BLA?	OWWA, OUMWA

(8) Is the return permanent or temporary, <i>i.e.</i> , how many migrants intend to re-migrate?	OWWA, OUWMA, POEA
(9) How many migrant workers have been able to transfer their social security benefits?	SSS, GSIS
(10) What is the average skill level of migrant workers by economic sector already present in the country?	NSO, Bureau of Immigration

Qualitative Criteria for Assessing the Implementation of BLAs

<i>Indicators</i>	<i>Source of Information</i>
(1) Which changes in legislation have been adopted as a result of new obligations in the BLA?	Department of Justice, Official Gazette, Congress
(2) Which phases of the migration cycle (departure, stay in destination country, return) have been included in the BLA?	DOLE, POEA, DFA OTLA
(3) How has the general public and possible beneficiaries been made aware of the existence of the BLA and its benefits? Have there been targeted measures for women migrant workers in this regard?	DOLE, POEA, DFA, POLO/PC/PE, Media, NGOs
(4) Are there any specific provisions in the BLA covering women migrant workers?	DOLE, POEA, DFA OTLA
(5) What is the targeted skill level of migrant workers in the destination country?	POLO/PC/PE, DOLE, POEA
(6) How have workers' and employers' organizations been involved in the implementation of the BLA?	POLO/PC/PE, DOLE, interview with workers' and employers' organizations
(7) Which mechanism for skills matching of potential migrants is foreseen in the BLA? How is it being ensured that the BLA is capitalized?	DOLE, POEA
(8) Have mechanisms for the recognition of	POLO/PC/PE,

skills and/or diplomas of migrant workers been implemented in the destination country?	focus group discussions
(9) Have NGOs operating in the field of labor migration been involved in the implementation of the BLA, and, if so, how?	NGOs
(10) What are the recruitment procedures for selecting the workers to migrate under the BLA provisions?	POEA, DOLE
(11) What has been the role of the private recruitment agencies in the implementation of the BLAs?	Private recruitment agencies
(12) What recruitment fees or related costs are charged to migrant workers?	POLO/PC/PE, POEA, focus group discussions
(13) Does the BLA allow for the portability of social security benefits, in practice?	SSS, GSIS
(14) In what ways have the diaspora organizations been involved?	POLO/PE/PC

BLA Good Practice Grid⁴²²

<i>General Information</i>	
Title	
Countries Involved	
Date of Agreement	
Date of Effectivity	
Duration	
Expiration	

422. Natalia Popova & Francesco Panzica, Tool for the Assessment of Bilateral Labour Migration Agreements (A Working Paper by the International Labor Organization) at 29-30, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_722208.pdf (last accessed Aug. 15, 2020).

Stakeholders and partners	Who are the institutions, partners, implementing agencies involved?
<i>Indicators of success</i>	<i>Dimensions to be analyzed</i>
Type of good practice	Indicate what aspect of the BLA shall be analyzed: (1) protection of migrant workers' rights (2) skills recognition; (3) access to social protection and social security portability; and (4) others (to be specified).
Relevance	To what extent does a practice succeed in achieving its targeted results?
Validation	In which way and from whom has the practice been validated?
Sustainability	What makes the practice sustainable?
Replicability	Can the practice be potentially transferred and applied to different geographical areas, societies?
Participatory nature	Have migrant workers been involved? If yes, how?
Gender sensitivity	How have gender considerations been addressed?
Non-discrimination	Is non-discrimination integrated throughout the practice, with attention to groups of migrant workers who may be exposed to situations of vulnerability?