

The Syrian Model: International Legal Cooperation in Promoting a Collaborative Human Rights-Based Approach to Access to Justice and Combatting Trafficking in Persons

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I. INTRODUCTION

Lara (not her real name) was a 46-year-old Filipina household service worker. She was overjoyed when a neighbor offered her a job in Dubai in the United Arab Emirates.¹ Dreaming of the dollars she could send to her children, without hesitation, she accepted a Philippine passport stamped with a tourist visa from her recruiter.² Traveling from port to port, she was transported from Jolo, Sulu to Sendakan, Malaysia together with other women packed like sardines in a rickety *bangka*.³ From Malaysia, they were hauled off like cargo on a transit flight to the Middle East via Colombo, Sri Lanka.⁴ However, when Lara awoke after a flight, she discovered that the plane had brought her to Damascus, Syria instead of to Dubai.⁵

1. This is an excerpt from the Complaint-Affidavit of “L.R.” in the custody of the Inter-Agency Council Against Trafficking (IACAT) and prepared by the Philippine Embassy in Syria. The complaint-affidavit is inaccessible to the public for confidentiality. See also Katie McQue, *Sold Into Syrian Servitude, Filipina Workers Tell of Abuse, Rape and Imprisonment*, WASH. POST, Jan. 24, 2021, available at https://www.washingtonpost.com/world/middle_east/trafficking-migrant-workers-syria-uae/2021/01/24/1d79e43c-3f0d-11eb-b58b-1623f6267960_story.html (last accessed Apr. 30, 2022) [<https://perma.cc/97KR-8PH7>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

In Syria, Lara's nightmare began. She was chained, treated like an animal, and locked in the *hamam* (bathroom) for seven long years.⁶ Her family thought that she had died since they had no communication with her.⁷ Her Syrian employers punched her so hard, her teeth were knocked out.⁸ Running barefoot, Lara escaped from their house and asked other kind-hearted Syrians to bring her to the Philippine Embassy in Syria.⁹ It was at the Filipino Workers Resource Center (FWRC) shelter that she was provided access to justice, as well as the means to seek redress for the abuse she suffered, with the help of a Syrian retainer lawyer, under the guidance of Embassy officials.¹⁰

Trafficking survivors like Lara have much to gain from the principle that "those who have less in life should have more in law[.]"¹¹ which has been attributed to the credo of late populist President Ramon Del Fierro Magsaysay from 29 May 1956.¹² Instead of being understood as a hackneyed expression, this creed becomes more relevant than ever, especially amidst the "new normal" in a post-COVID-19 situation,¹³ particularly in countries that are classified as International Civil Service Commission Class E Hardship Posts (e.g., Syria, Libya, and Iraq).¹⁴

6. *Id.*

7. Complaint-Affidavit of "L.R.," *supra* note 1.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Cabañero v. Employees' Compensation Commission*, G.R. No. L-50255, 111 SCRA 413, 419 (1982).

12. Ramon Magsaysay, *Magsaysay Credo*, available at <https://www.officialgazette.gov.ph/1956/05/29/magsaysay-credo> (last accessed Apr. 30, 2022) [<https://perma.cc/EC62-U9DZ>]. See also AURELIA DEL FIERRO, *MAGSAYSAY: THE LEADER OF THE MASSES* 124 (1972).

13. See Maria José Sá, *Social Sciences and Inequalities in the New Post-COVID-19 "Normal"*, 12 J. EDUCATIONAL & SOC. RES. 1, 2 (2022).

14. International Civil Service Commission, *Hardship Classification: Consolidated List of Entitlements Circular*, at 8, 9, & 14, U.N. Doc. ICSC/CIRC/HC/29/Rev.1 (Feb. 17, 2022). See also International Civil Service Commission, *Mobility & Hardship*, available at <https://icsc.un.org/Home/DataMobility> (last accessed Apr. 30, 2022) [<https://perma.cc/SNW6-YU8U>].

A to E duty stations are rated on a scale that assesses the difficulty of working and living conditions from A to E, with A being the least[,] and E, the most difficult. Categories are arrived at through an assessment of the overall quality of life. In determining the degree of hardship,

Lara is just one out of an estimated “25 million people [who are] subjected to ‘modern slavery’ in the form of forced labor or human trafficking.”¹⁵ Accordingly, “[h]uman trafficking frequently involves multiple forms of abuse, including deception, coercion, extortion, threats, and, for many, physical or sexual violence. A growing body of research shows that survivors of extreme exploitation [like Lara] often suffer severe and enduring health consequences.”¹⁶ Moreover, “[f]or trafficking survivors, persistent health problems include mental health consequences, especially symptoms of post-traumatic stress disorder, depression, anxiety, and suicidality.”¹⁷

This pandemic, which has significantly affected Lara and other distressed Overseas Filipino Workers (OFWs),¹⁸ has truly highlighted the “need for rapid

consideration is given to local conditions of safety and security, health care, housing, climate, isolation[,] and level of amenities[or] conveniences of life. The hardship allowance is paid for assignments at B, C, D[,] and E duty stations; there is no hardship allowance at A duty stations.

International Civil Service Commission, *supra* note 14.

15. Ligia Kiss & Cathy Zimmerman, *Human Trafficking and Labor Exploitation: Toward Identifying, Implementing, and Evaluating Effective Responses*, 16 PLOS MED. 1, 1 (2019) (citing INTERNATIONAL LABOUR OFFICE, ET AL., GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE 5 (2017)).
16. Kiss & Zimmerman, *supra* note 15, at 1 (citing Livia Ottisova, et al., *Prevalence and Risk of Violence and the Mental, Physical and Sexual Health Problems Associated with Human Trafficking: An Updated Systematic Review*, 25 EPIDEMIOLOGY & PSYCHIATRIC SCI. 317, 339 (2016); Ligia Kiss, et al., *Health of Men, Women, and Children in Post-Trafficking Services in Cambodia, Thailand, and Vietnam: An Observational Cross-Sectional Study*, 3 LANCET GLOBAL HEALTH. e154, e159-60 (2015); Siân Oram, et al., *Prevalence and Risk of Violence and the Physical, Mental, and Sexual Health Problems Associated with Human Trafficking: Systematic Review*, 9 PLOS MED. 1, 9-10 (2012); & World Health Organization, *Understanding and Addressing Violence Against Women: Human Trafficking*, at 2-4, available at http://apps.who.int/iris/bitstream/10665/77394/1/WHO_RHR_12.42_eng.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/H85Y-YQA7>]).
17. Kiss & Zimmerman, *supra* note 15, at 1 (citing Ottisova, et al., *supra* note 16, at 317; Kiss, et al., *supra* note 16, at e154; Siân Oram, et al., *Human Trafficking and Health: A Survey of Male and Female Survivors in England*, 106 AM. J. PUB. HEALTH 1073, 1076 (2016); & Ligia Kiss, et al., *Exploitation, Violence, and Suicide Risk Among Child and Adolescent Survivors of Human Trafficking in the Greater Mekong Subregion*, JAMA PEDIATRICS, Volume No. 169, Issue No. 9, at 1).
18. See generally Aurora Javate de Dios, *Migration of Filipinos in the Time of COVID: Issues, Challenges and Recommendations*, in COVID-19: EVERYWOMAN’S

and decisive action by governments in order to ensure that the most vulnerable people and economic agents have the necessary legal support and access to channels to address their legal problems[.]”¹⁹ Without concrete measures to provide access to justice, deepening inequalities caused by the economic, social, and political crisis²⁰ under the Enhanced Community Quarantine of 2020 may aggravate human rights violations that cut across all sectors of society, especially with respect to migrant workers who are either stranded in their host governments²¹ or repatriated back to the Philippines to face the prospects of long-term unemployment.²² In 2020, the Philippines experienced a 75% drop in overseas deployment while facing unprecedented repatriation as a result of the COVID-19 pandemic.²³ The economic fall-out was indeed catastrophic for the Philippines, a country with “one of the largest diasporas in the world” and where “remittances from OFWs reached a record high of USD 33.9 billion, equivalent to nearly 10[%] of the country’s gross domestic product (GDP).”²⁴

Historically, Magsaysay’s concern for access to justice, particularly for those who had “less in life,”²⁵ was embedded in the

FEMINIST RESPONSE AND RECOVERY PLAN 28-30 (Sylvia Estrada Claudio ed., 2020).

19. Organisation for Economic Co-operation and Development, *Impact of COVID-19 on Access to Justice*, at 1, available at https://www.oecd.org/gov/Impact_of_COVID19_on_Access_to_Justice_Draft_agenda.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/PR2W-B6LS>].
20. See, e.g., Clement A. Tisdell, *Economic, Social and Political Issues Raised by the COVID-19 Pandemic*, 68 *ECON. ANALYSIS & POL’Y* 17, 20-26 (2020).
21. See Ferdinand Patinio, *OWWA Assists Almost 13K Stranded OFWs*, *PHIL. NEWS AGENCY*, Apr. 22, 2020, available at <https://www.pna.gov.ph/articles/1100668> (last accessed Apr. 30, 2022) [<https://perma.cc/9T7N-NKQD>].
22. See Jong Woo Kang & Ma. Concepcion G. Latoja, *COVID-19 and Overseas Filipino Workers: Return Migration and Reintegration into the Home Country — The Philippine Case*, at 36, available at <https://www.adb.org/sites/default/files/publication/767846/sewp-021-covid-19-ofws-return-migration-reintegration.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/CD3J-LKSZ>].
23. International Organization for Migration, *COVID-19 Impact Assessment on Returned Overseas Filipino Workers*, at 4, available at <https://dtm.iom.int/reports/covid-19-impact-assessment-returned-overseas-filipino-workers> (last accessed Apr. 30, 2022) [<https://perma.cc/Q3NZ-W4QY>].
24. *Id.* at 10.
25. 2 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 46, at 617 (1986).

Universal Declaration of Human Rights (UDHR) nine years before Magsaysay's speech.²⁶ In 1947, General Carlos P. Romulo, former Secretary of Foreign Affairs, worked with Anna Eleanor Roosevelt²⁷ on the draft that came to be known as one of the pillars of the "International Bill of Rights."²⁸

In his speech during the 20th Anniversary of the UDHR, Gen. Romulo explained that "human rights had become the object of international concern and the individual the subject of international law. ... From that time onward, no State could with impunity violate or deny the rights of its own citizens without arousing the conscience of mankind and inviting condemnation and possible sanctions by the international community."²⁹

Looking past a violations scenario, it bears emphasizing that the basic human rights enshrined in the UDHR, as well as in the other pillars in the "International Bill of Rights," namely the

economic, social[,] and cultural rights[,] are complementary and interdependent with civil and political rights. Ensuring the enjoyment of one right leads to the realization or better enjoyment of another. [Rights of vulnerable groups] under economic provisions of treaties are inextricably

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26. See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 28, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948) [hereinafter UDHR]. The Declaration provides that "[e]veryone is entitled to a *social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.*" UDHR, *supra* note 26, art. 28 (emphasis supplied).
27. KEVIN L. NADAL & THE FILIPINO AMERICAN NATIONAL HISTORICAL SOCIETY METROPOLITAN NEW YORK CHAPTER, *IMAGES OF AMERICA: FILIPINOS IN NEW YORK CITY* 32 (2015) & Roberto R. Romulo, *Carlos P. Romulo*, PHIL. STAR, Jan. 13, 2017, available at <https://www.philstar.com/business/2017/01/13/1661817/carlos-p-romulo> (last accessed Apr. 30, 2022) [<https://perma.cc/B9MB-E69K>].
28. See NADAL & THE FILIPINO AMERICAN NATIONAL HISTORICAL SOCIETY METROPOLITAN NEW YORK CHAPTER, *supra* note 27, at 32. "Romulo served on the [United Nations' Human Rights Commission until the UN General Assembly finally adopted the Universal Declaration of Human Rights[,]"] which became one of the eventual components of the International Bill of Rights. NADAL & THE FILIPINO AMERICAN NATIONAL HISTORICAL SOCIETY METROPOLITAN NEW YORK CHAPTER, *supra* note 27, at 32.
29. Romulo, *supra* note 27.

linked to their other rights. Thus, legal reforms must take into account that the furtherance of these rights are not separate but connected.³⁰

As a State Party to eight core human rights treaties,³¹ the Philippines has “consented to be bound”³² and is obligated to comply with the international law principles of free consent, good faith, and *pacta sunt servanda*.³³ In addition, the Department of Foreign Affairs (DFA) also maintains a repository of other treaties and bilateral agreements between the Philippines and other states, as well as multilateral and regional organizations.³⁴ State reports on compliance with and implementation of treaty obligations are also monitored and submitted by the DFA before the different treaty bodies and in consultation with the lead agency or central authority denoted in the treaty.³⁵ The DFA, in practice, also participates in the preparation of the national report and the Philippine statements for the Universal Periodic Review (UPR) process before the United Nations Human Rights Council.³⁶

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30. Vida Soraya S. Verzosa, *Empowerment Within the Veil: Amending Provisions of the Code of Muslim Personal Laws on Property Relations, Support and Succession in Conformity with International Treaty Obligations Under CEDAW and the 1987 Constitution of the Philippines*, at 19 (2010) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).
 31. An Act to Promote and Protect the Rights of Human Rights Defenders, S.B. No. 179, explan. n., 18th Cong., 1st Reg. Sess. (2019).
 32. Vienna Convention on the Law of Treaties art. 2 (f) & (g), *opened for signature* May 23, 1969, 1155 U.N.T.S. 331.
 33. *Id.* pmb1.
 34. J. Eduardo Malaya & Johaira Wahab-Manantan, *Dynamics Between Diplomacy and International Law: Reflections on the Philippine Experience*, 16 PHIL. Y.B. INT’L L. 1, 27 (2017).
 35. See, e.g., Philippine Commission on Women, *Reporting to CEDAW*, available at <https://pcw.gov.ph/reporting-to-cedaw> (last accessed Apr. 30, 2022) [<https://perma.cc/P6FG-VREX>].
 36. See Department of Foreign Affairs, *PH Reaffirms Support for UN’s Universal Periodic Review of States’ Human Rights Record*, available at <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/30110-ph-reaffirms-support-for-un-s-universal-periodic-review-of-states-human-rights-record> (last accessed Apr. 30, 2022) [<https://perma.cc/W4AA-SC4M>] & United Nations Human Rights Council, *Universal Periodic Review*, available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (last accessed Apr. 30, 2022) [<https://perma.cc/7GZ6-TWMM>].

It is also worth noting that the Philippines, as a State with about 10% of its nationals abroad,³⁷ is among the largest migrant-sending countries in the world, with about 12 million Filipinos working or residing overseas,³⁸ bringing in personal remittances worth USD 2.9 billion in August 2019.³⁹

Contextualizing the so-called “Filipino diaspora”⁴⁰ in an increasingly globalized society threatened by the COVID-19 pandemic demonstrates that the “globalization coin” has two sides.⁴¹ “On the positive side, the cross-border flow of people, goods, money[,] and information creates new wealth and opportunity”⁴² — hence, the term “*Bagong Bayani*” was popularized to designate migrant workers as “heroes” in the framework of transforming global and political-economic structures.⁴³ “On the negative side, though, it can exacerbate global disparities, enable international terrorism and cross-border crime, and allow for the rapid spread of disease[]”⁴⁴ — the very same

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37. Maruja M.B. Asis, *The Philippines: Beyond Labor Migration, Toward Development and (Possibly) Return*, available at <https://www.migrationpolicy.org/article/philippines-beyond-labor-migration-toward-development-and-possibly-return> (last accessed Apr. 30, 2022) [<https://perma.cc/CF3E-2WBY>].
38. Xinhuanet, *Remittances From Filipinos Abroad Reach 2.9 Bln USD in August 2019*, available at www.xinhuanet.com/english/2019-10/15/c_138473763.htm (last accessed Apr. 30, 2022) [<https://perma.cc/7LQE-F4RE>] (“The government estimates the number of overseas Filipino workers at 12 million, accounting for one-tenth of the country’s population.”) *Id.*
39. Melissa Luz Lopez, *Remittances Hit \$2.9B in August*, CNN PHIL., Oct. 15, 2019, available at <https://www.cnnphilippines.com/business/2019/10/15/OFW-remittances-August-2019.html> (last accessed Apr. 30, 2022) [<https://perma.cc/H9ZG-SX98>].
40. See generally Rory Jay Sta. Catalina Dacumos, *Development and the Filipino Diaspora*, at *1, available at https://www.researchgate.net/publication/280976344_Development_and_the_Filipino_Diaspora (last accessed Apr. 30, 2022) [<https://perma.cc/3Z9T-MPC3>].
41. See generally Mie Oba, *Coronavirus and the Future of Globalization*, DIPLOMAT, Mar. 18, 2020, available at <https://thediplomat.com/2020/03/coronavirus-and-the-future-of-globalization> (last accessed Apr. 30, 2022) [<https://perma.cc/63LV-GX96>].
42. *Id.*
43. See Jean Encinas-Franco, *Overseas Filipino Workers (OFWs) as Heroes: Discursive Origins of the “Bagong Bayani” in the Era of Labor Export*, 12 HUMAN. DILIMAN 56, 57 (2015).
44. Oba, *supra* note 41.

reasons why international legal cooperation must be strengthened, instead of responding with knee-jerk lockdowns of national borders.

Some of the repercussions of the “Filipino diaspora” include the prevalence of inter-cultural relations and inter-marriages between Filipinos and foreigners.⁴⁵ According to the Vital Statistics report by the Philippine Statistics Authority, 3.5% of the total marriages celebrated in the Philippines in 2018 involved foreign nationals.⁴⁶ Presently, the DFA Office of Consular Affairs — Consular Records Division acts as the receiving and initial processing office for the registration of various reports of vital events (civil registry documents such as Reports of Birth, Marriage, and Death) to and from different Foreign Service Posts (FSPs) worldwide.⁴⁷

The frequency of Filipino-foreigner marriages,⁴⁸ the rising number of children borne out of these blended, dual-nationality families,⁴⁹ and the effects of the two-sided coin of globalization⁵⁰ earlier discussed have created a largely uncharted legal regime to navigate Philippine foreign policy governing negotiation of treaties and international agreements, as well as their ratification.⁵¹ This is due in part to the vast challenge of extraterritoriality that is faced by all parties to a dispute.⁵²

45. See generally Glenda Lynna Anne Tibe Bonifacio, *Activism from the Margins: Filipino Marriage Migrants in Australia*, 30 FRONTIERS: J. WOMEN STUD. 142, 142 (2009).

46. Philippine Statistics Authority, *Marriages in the Philippines, 2018*, available at <https://psa.gov.ph/content/marriages-philippines-2018> (last accessed Apr. 30, 2022) [<https://perma.cc/G6XN-CDH5>].

47. See Department of Foreign Affairs — Office of Consular Affairs, *Consular Records Corner*, available at <https://dfa-oca.ph/services/consular-records> (last accessed Apr. 30, 2022) [<https://perma.cc/AN89-M3DL>].

48. See generally Bonifacio, *supra* note 45, at 142.

49. *Id.* at 151.

50. Oba, *supra* note 41.

51. See Office of the President, *Providing for the Guidelines in the Negotiation of International Agreements and Its Ratification*, Executive Order No. 459, Series of 1997 [E.O. No. 459, s. 1997] (Nov. 25, 1997).

52. See Ralph Wilde, *Human Rights Beyond Borders at the World Court: The Significance of the International Court of Justice’s Jurisprudence on the Extraterritorial Application of International Human Rights Law Treaties*, 12 CHINESE J. INT’L L. 639, 642 (2013). The contentious nature of “extraterritoriality” can be understood in relation to the application of the principle with respect to human rights treaties. Phrased differently, international law remains conflicted on the “question of whether human rights treaties apply extraterritorially at all[.]” Wilde, *supra* note 52, at 642.

In fact, concern for overseas Filipinos and their exposure to foreign criminal elements was raised by the late Chief State Counsel Ricardo V. Paras III when he presented his position on expanding the Philippine government's extraterritorial application of criminal statutes under the Passive Personality Principle,⁵³ "which recognizes that a sovereign can adopt laws that apply to foreign nationals who commit crimes against the sovereign's nationals outside the sovereign's territory."⁵⁴

Presently, there is a plethora of legal instruments that can be invoked to respect, protect, and promote the human rights of Filipinos abroad and on local soil, in both civil and criminal matters.⁵⁵ The negotiation, ratification, and implementation of these international legal instruments constitute the gamut of international legal cooperation that the Philippines desires to strengthen.⁵⁶ Interestingly, in the discourse on access to justice, the intersection between public and private international law is even more apparent now, taking exception to the historical divide that has cleaved the mechanisms for their implementation in separate legal systems.⁵⁷ Lawyer-diplomats in the Philippine foreign service are faced with the challenges of legal interpretation and real-world implementation of the three pillars of Philippine Foreign Policy:

- (1) Preservation and enhancement of national security[:]
- (2) Promotion and attainment of economic security[: and]
- (3) Protection of the rights and promotion of the welfare and interest of Filipinos overseas.⁵⁸

53. J. EDUARDO MALAYA, ET AL., ENHANCING INTERNATIONAL LEGAL COOPERATION: EXTRADITION, MUTUAL LEGAL ASSISTANCE, TRANSFER OF SENTENCED PERSONS, AND COOPERATION ON TRANSNATIONAL ORGANIZED CRIMES AND NARCOTIC DRUGS 64 (2019) (citing Ricardo V. Paras III, Chief State Counsel, Department of Justice, Speech at the 2017 Colloquium on International Law Issues (Dec. 4, 2017)).

54. *Id.*

55. See PATRICIA STO. TOMAS, PROTECTING MIGRANT WORKERS FROM THE PHILIPPINES 15-16 (2009).

56. See MALAYA, ET AL., *supra* note 53, at 65.

57. ALEX MILLS, THE CONFLUENCE OF PUBLIC AND PRIVATE INTERNATIONAL LAW: JUSTICE, PLURALISM AND SUBSIDIARITY IN THE INTERNATIONAL CONSTITUTIONAL ORDERING OF PRIVATE LAW 1-3 (2009).

58. Department of Foreign Affairs, Philippine Foreign Policy, *available at* <https://dfa.gov.ph/80-transparency-category/75-philippine-foreign-policy> (last accessed Apr. 30, 2022) [<https://perma.cc/KTA8-K6UM>].

The question is this — how can the Philippine government make justice available for those who need it most, especially in relation to the third pillar of foreign policy?

It is against this backdrop that the role of international legal cooperation in promoting a human rights-based approach to access to justice and the rule of law must be examined with fresh eyes, especially in the aftermath of the COVID-19 pandemic and its effects on anti-trafficking in persons and anti-illegal recruitment measures.

II. HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE AND THE RULE OF LAW

In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same.

— Albert Einstein⁵⁹

A. Overview of the Human Rights-Based Approach

Can the Philippine government, circa 2022, champion human rights for those who have “less in life[.]” in a manner similar to how Magsaysay⁶⁰ articulated it?

The answer is yes, but if, and only if, it commits to mainstreaming a “human rights-based approach” or HRBA⁶¹ in the legal reforms that the State will adopt in the post-COVID-19 legal regime. An HRBA is often defined as

a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to [analyze] obligations, inequalities[,] and vulnerabilities, and to tackle discriminatory practices and unjust distributions of power that impede and undercut human rights.

Under a human rights-based approach, plans, policies[,] and [programs] are anchored in a system of rights and corresponding obligations established by international law. This helps to promote sustainability, empowering people themselves (rights holders) — especially the most marginalized — to

59. ARTHUR AUSTEN DOUGLAS, 1955 QUOTES OF ALBERT EINSTEIN 321 (2016).

60. Magsaysay, *supra* note 12.

61. Social Protection and Human Rights, Introduction to a Rights-Based Approach, available at <https://socialprotection-humanrights.org/introduction-to-a-rights-based-approach> (last accessed Apr. 30, 2022) [<https://perma.cc/M2CQ-7NHW>].

participate in policy formulation and hold accountable those who have a duty to act (duty[-]bearers).⁶²

In March 2010, the Asian Consortium on Human Rights-Based Approach to Access to Justice (The Consortium) “held its first regional conference ... in Manila to discuss the concept and application of the human rights-based approach to access to justice, and its main focuses and plan[s] for the next activities.”⁶³ Some of the key discussion points in the conference were as follows —

Legal empowerment, seen as key to the application of the human rights based approach to access to justice, was considered crucial in addressing various forms of discrimination and in utilizing the difficult legal/judicial systems to address problems.

The participants also discussed the experiences in applying the human rights based approach to access to justice on issues regarding indigenous peoples, legal empowerment of the poor, gender equality, environmental protection, and peace-building and post-conflict situations.

As possible activities of the Consortium, the participants discussed capacity-building for duty-bearers and rights-holders, and the organizational requirements to undertake them.⁶⁴

62. *Id.* Additionally, “[t]he UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding) was adopted by the United Nations Development Group (UNDG) in 2003.” HRBA Portal, The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies, available at <https://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> (last accessed Apr. 30, 2022) [<https://perma.cc/6PPL-5FLQ>].

63. Jefferson R. Plantilla, Human Rights Based Approach to Access to Justice, available at <https://www.hurights.or.jp/archives/focus/section2/2010/06/human-rights-based-approach-to-access-to-justice.html> (last accessed Apr. 30, 2022) [<https://perma.cc/YP4U-SJU9>].

The group was composed of the following institutions (in alphabetical order): Alternative Law Group, Association of Schools of Public Administration in the Philippines, Ateneo Human Rights Center, Commission on Human Rights, Economic, Social and Cultural Rights-Asia, Lawyers League for Liberty, Philippine Judicial Academy, Supreme Court of the Philippines [—] Program Management Office, and the University of the Philippines [—] Institute of Human Rights. The Institute of Human Rights is currently hosting the secretariat of the Consortium.

Id.

64. *Id.*

I. Rights Holders and Their Entitlements

In the desire to promote legal empowerment in providing access to justice for distressed Overseas Filipinos as rights holders, or even for Filipino litigants in Philippine jurisdictions but in need of extraterritorial legal services, capacity-building must inform every aspect of any legal reform initiatives being implemented.⁶⁵

According to the Consortium, “rights holders should become aware of basic human rights and know how to assert, claim, and access them. They should be provided legal assistance[,] as well as be empowered to participate in policy-making, dialogue with the government and donors, and access funds.”⁶⁶

For example, the Office of the Undersecretary for Migrant Workers Affairs (OUMWA) provides a Legal Assistance Fund (LAF) for “Assistance to Nationals” (ATN) cases of Overseas Filipinos.⁶⁷ As explained by former Secretary of Foreign Affairs Alan Peter S. Cayetano —

The LAF may be availed of by a distressed overseas Filipino who is unable to engage the services of private counsel, and who is in a country where there is no system of legal aid or public defenders, or where there is no access to counsel *de officio*, or any lawyer provided by the foreign host government[.]⁶⁸

65. *Id.*

66. *Id.*

67. Department of Foreign Affairs, Republic of the Philippines, Note, FACEBOOK, available at <https://m.facebook.com/notes/347907763293519> (last accessed Apr. 30, 2022) [<https://perma.cc/K22N-8647>]. The “[Office of the Undersecretary for Migrant Workers Affairs] is primarily responsible for the provision and over-all coordination of all Assistance to Nationals (ATN) and legal services to all overseas Filipinos in distress and their families through the Foreign Service Posts (Philippine Embassies/Consulates).” *Id.* See also Department of Foreign Affairs, DFA Assures OFWs of Quicker Response, Improved Services with Signing of New Guidelines on Use of P1-B in ATN Funds, available at <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/15069-dfa-assures-ofws-of-quicker-response-improved-services-with-signing-of-new-guidelines-on-use-of-p1-b-in-atn-funds> (last accessed Apr. 30, 2022) [<https://perma.cc/8STD-FVRQ>] [hereinafter DFA Assurance].

68. DFA Assurance, *supra* note 67.

The fund also includes disbursements for walk-in clients⁶⁹ and for the repatriation of Filipinos,⁷⁰ in coordination with relevant government agencies under the “One Country-Team Approach.”⁷¹

In addition to government measures ensuring access to justice through funding, the “United Nations system also supports the provision of legal aid by strengthening capacities of rights holders, enhancing legal aid [programs,] empowering rights holders, particularly the poor and marginalized groups, and supporting legal awareness[, legal aid clinics,] and public outreach campaigns.”⁷²

In some foreign service posts, legal aid clinics are also organized for the Filipino communities to participate in *ad hoc* legal empowerment activities, in partnership with the Integrated Bar of the Philippines,⁷³ the Department of Justice (DOJ),⁷⁴ and the Public Attorney’s Office.⁷⁵

At the Philippine Embassy in Syria, the Filipino community therein similarly participated in a free legal aid clinic conducted by the Author,

69. See Department of Foreign Affairs, Assistance to Overseas Filipinos in Distress, available at <https://dfa.gov.ph/assistance-to-overseas-filipinos-in-distress> (last accessed Apr. 30, 2022) [<https://perma.cc/9334-68MX>].

70. *Id.*

71. Directing the Adoption of the Country-Team Approach in the Conduct of Development Diplomacy, Executive Order No. 74, Series of 1993 [E.O. No. 74, s. 1993], whereas cl. para. 5 (Mar. 29, 1993).

72. United Nations and the Rule of Law, Access to Justice, available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice> (last accessed Apr. 30, 2022) [<https://perma.cc/NL46-ANLZ>].

73. See, e.g., Judiee Vega, IBP Davao Holds Legal Aid Mission with OFWs, available at <http://edgedavao.net/latest-news/2018/01/26/ibp-davao-holds-legal-aid-mission-ofws> (last accessed Apr. 30, 2022) [<https://perma.cc/PKV7-6TYL>].

74. See, e.g., Department of Foreign Affairs, PHL Embassy, DOJ Hold Free Legal Clinic for Filipinos in Doha, available at <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/6005-phl-embassy-doj-hold-free-legal-clinic-for-filipinos-in-doha> (last accessed Apr. 30, 2022) [<https://perma.cc/JU8A-LFWL>].

75. See generally Department of Justice Public Attorney’s Office, 2016 Revised Public Attorney’s Office Operations Manual, art. 5 (5) (2016).

together with a Syrian retainer lawyer and a Syrian interpreter to translate the discussion for the Facebook Live audience.⁷⁶

2. Duty-Bearers and Their Obligations

Duty-bearers in the executive, legislative, and judiciary branches must all hyper-focus on the roles that State actors play to ensure that plans, policies, and programs are deeply rooted in this system of rights and obligations. At the same time, the emerging trend is to see even non-State actors and business entities who are carrying the same obligations in becoming duty-bearers.⁷⁷

In the context of the HRBA for promoting access to justice, the Consortium recommended the following in their 2010 Conference —

Duty-bearers such as judges and government officials should undergo training workshops to sensitize them on the challenges faced by disadvantaged groups in accessing justice; to learn substantive equality and non[-]discrimination principles, civil/cultural/economic/political/social rights, ‘care’ for the poor, and gender issues; and to learn how to incorporate methodologies on public participation in policy-making and legislative processes. Their training program should be suited to their national context and include case studies, good practices and experiences, community exposure visits, and training of trainers. They should also have incentives for keeping positive attitude, fulfilling their obligations, and providing service through formal and informal justice systems. They should become familiar about norms or indicators that measure accountability.⁷⁸

Some of the duty-bearers directly involved in international legal cooperation include: (1) the DOJ Office of the Chief State Counsel (Legal Staff), as the Central Authority “in connection with requests for extradition or formal requests for legal assistance and to represent in courts the foreign state or government with which the Republic of the Philippines has a treaty

76. See Philippine Embassy in Syria, Video, *Live Free Legal Aid Clinic: “Karapatan Para sa Kalahatan,”* FACEBOOK, Feb. 11, 2021: 8:24 p.m., available at <https://fb.watch/bq9Fc2gviT> (last accessed Apr. 30, 2022) [<https://perma.cc/4P8C-6456>].

77. NADIA BERNAZ, BUSINESS AND HUMAN RIGHTS: HISTORY, LAW AND POLICY — BRIDGING THE ACCOUNTABILITY GAP 108-09 (2017) & Paul Hunt, *The Challenge of Non-state Actors: The Experience of the UN Special Rapporteur on the Right to the Highest Attainable Standard of Health* (2002-08), in THE UNITED NATIONS SPECIAL PROCEDURES SYSTEM 339 (Aoife Nolan, et al. eds., 2017).

78. Plantilla, *supra* note 63.

on extradition or mutual legal assistance in criminal matters[;]”⁷⁹ (2) the Department of the Interior and Local Government (DILG) for law enforcement cooperation agreements;⁸⁰ (3) the Supreme Court — Office of the Court Administrator (SC-OCA) for extraterritorial service of documents, once the Hague Service Convention (HSC) takes effect;⁸¹ and (4) the DFA — Office of Treaties and Legal Affairs (DFA-OTLA), which shepherds the coordination and communications between the Philippines and its foreign counterparts.⁸²

In international legal cooperation concerning the rights of migrant workers and anti-trafficking in persons, the DFA-OUMWA leads the substantive aspect of the negotiations.⁸³ It is also the DFA-OUMWA that

79. Department of Justice, International Legal Cooperation, *available at* <https://www.doj.gov.ph/international-legal-cooperation.html> (last accessed Apr. 30, 2022) [<https://perma.cc/AHS6-4RAR>].

80. *See* Department of the Interior and Local Government, DILG: Phl Active in ASEAN Move to Tighten Legal Cooperation in Combating Trafficking in Persons, *available at* <https://dilg.gov.ph/news/DILG-Phl-active-in-ASEAN-move-to-tighten-legal-cooperation-in-combating-trafficking-in-persons/NC-2017-1128> (last accessed Apr. 30, 2022) [<https://perma.cc/3QUL-YLM9>].

81. Supreme Court, Guidelines on the Implementation in the Philippines of the Hague Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters, Administrative Order No. 251-2020 [SC A.O. No. 251-2020], pt. II, ¶ 2 (Sept. 11, 2020). *See also* J. Eduardo Malaya & Jilliane Joyce R. De Dumo-Cornista, *The HCCH Conventions and Their Practical Effects to Private International Law in the Philippines*, 45 *IBP J.* 41, 68 (2020).

82. *See* Malaya & Wahab-Manantan, *supra* note 34, at 24 & 26-27. “OTLA’s linkage to international law is direct and pronounced, inasmuch as the office is consulted and often involved in the negotiation of international agreements[.]” Malaya & Wahab-Manantan, *supra* note 34, at 24.

83. *See* 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, § 24 (1995).

represents the DFA in the Inter-Agency Council Against Trafficking (IACAT),⁸⁴ given the transnational nature of the crime.⁸⁵

Labor law violations are also inherently country-specific.⁸⁶ Thus, it is important to approach labor issues involving Filipino nationals abroad from a more global perspective that transcends domestic legal regimes.

It is worth noting as well that the creation of the new Department of Migrant Workers⁸⁷ has caused massive changes in the interaction of duty-bearers, considering that the said Department will subsume the functions of the DFA-OUMWA and other agencies handling labor issues for OFWs.⁸⁸ This will be discussed more extensively below.

3. Access to Justice Principles and Standards from International Human Rights Treaties

From the Preambular statements of United Nations resolutions, one can observe common recognition of the same purposes and principles invoked in the Charter of the United Nations, the Universal Declaration of Human Rights, and the Vienna Declaration and Programme of Action, as well as the International Covenants on Human Rights and all other relevant instruments, which operate as guiding principles for such policy statements.⁸⁹

84. Inter-Agency Council Against Trafficking, Member Agencies, *available at* https://iacat.gov.ph/?page_id=59 (last accessed Apr. 30, 2022) [<https://perma.cc/N9WE-YUU4>].

85. SUSAN KNEEBONE & JULIE DEBELJAK, *TRANSNATIONAL CRIME AND HUMAN RIGHTS: RESPONSES TO HUMAN TRAFFICKING IN THE GREATER MEKONG SUBREGION II* (2012)

86. *See generally* Haroon Bhorat, et al., *Compliance with Labor Laws in Developing Countries*, at 1, *available at* <https://wol.iza.org/uploads/articles/489/pdfs/compliance-with-minimum-wage-laws-in-developing-countries.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/W3FW-UYLM>].

87. An Act Creating the Department of Migrant Workers, Defining Its Powers and Functions, Rationalizing the Organization and Functions of Government Agencies Related to Overseas Employment and Labor Migration, Appropriating Funds Therefor, and for Other Purposes [Department of Migrant Workers Act], Republic Act No. 11641, § 4 (2021).

88. *Id.* § 19.

89. *See, e.g.*, Situation of Human Rights in the Syrian Arab Republic, G.A. Res. 76/228, pmbl., U.N. Doc. A/RES/76/228 (Jan. 10, 2022).

Through the subsequent provisions, the resolution is drafted with an expository discussion on the legal, policy, and institutional framework for expressing the subject matter in terms that member States can adopt in their own national legislations, with a view towards effective implementation.⁹⁰

Access to justice must then be examined on the basis of both *de jure* and *de facto* contributions⁹¹ of the measures implemented by the State towards the objectives laid out in the international legal instruments.

a. First and Second-Generation Rights Under the Universal Declaration of Human Rights

Articles 4 to 21 of the Universal Declaration of Human Rights enumerate the civil and political rights that came to be known as First Generation Rights.⁹² Thereafter, Articles 23 to 27 elaborate on the economic, social, and cultural rights, or the Second Generation Rights.⁹³ The First Generation Rights were introduced in Article 3,⁹⁴ while the Second Generation Rights were introduced in Article 22.⁹⁵ Almost three decades after the UDHR was adopted, the First Generation Rights were encapsulated in the International Covenant on Civil and Political Rights (ICCPR)⁹⁶ and the Second

90. See, e.g., Elevating Pandemic Prevention, Preparedness and Response to the Highest Level of Political Leadership, G.A. Res. 76/257, pmb., U.N. Doc. A/RES/76/257 (Mar. 31, 2022).

91. Rapporteurship on the Rights of Women, Access to Justice for Women Victims of Violence in the Americas, ¶ 5, available at <http://www.cidh.org/women/acesso7/chap1.htm> (last accessed Apr. 30, 2022) [<https://perma.cc/R646-GZ7E>].

92. David G. Thompson, *The High Price of Unity: The Universal Declaration of Human Rights*, in EVERYDAY THEOLOGY: HOW TO READ CULTURAL TEXTS AND INTERPRET TRENDS 104 (Kevin J. Vanhoozer, et al. eds., 2007). See also UDHR, *supra* note 26, arts. 4–21.

93. Thompson, *supra* note 92, at 105 & Hilary Landorf, *The Universal Declaration of Human Rights*, 76 SOC. EDUC. 247, 248 (2012). See also UDHR, *supra* note 26, arts. 23–27.

94. See Thompson, *supra* note 92, at 104. “The first 21 articles center on the first generation of rights closely tied to liberty and equality[.]” with “Article 3 [mandating] a right to life[.]” Thompson, *supra* note 92, at 104. See also UDHR, *supra* note 26, art. 3.

95. *Id.* at 105 (citing UDHR, *supra* note 26, art. 22).

96. H. VICTOR CONDÉ, A HANDBOOK OF INTERNATIONAL HUMAN RIGHTS TERMINOLOGY 90 (2004).

Generation Rights in the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁹⁷

For purposes of the human right to access to justice, Article 8 of the UDHR is said to be the main provision, even if “access to justice” as a term appears nowhere in the text.⁹⁸ Article 8 provides that “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁹⁹ As the #StandUp4HumanRights campaign website paraphrases it, “You have the right to obtain legal help and access the justice system when your rights are not respected.”¹⁰⁰

However, since the UDHR is not a legally binding document,¹⁰¹ despite views to the contrary that categorize it as a new rule of Customary International Law,¹⁰² there is still a need for other covenants that will be discussed below.

b. Access to Justice in the International Convention on Civil and Political Rights

Article 2 of the ICCPR is the main provision which recognizes the right to access to justice,¹⁰³ meaning that duty-bearers of the State must comply with the following undertakings —

97. *Id.* at 236.

98. Migena Leskoviku & Mirgen Prenc, *Access to Justice for Children, An Evolving Concept*, 6 MEDITERRANEAN J. SOC. SCI. 103, 104 (2015). See also UDHR, *supra* note 26, art. 8.

99. UDHR, *supra* note 26, art. 8.

100. UN Office of the High Commissioner for Human Rights, Universal Declaration of Human Rights, available at <https://www.standup4humanrights.org/en/article.html> (last accessed Apr. 30, 2022) [<https://perma.cc/X6CR-6UWG>].

101. See Republic v. Sandiganbayan, G.R. No. 104768, 407 SCRA 10, 86 (2003) (citing PIETER N. DROST, HUMAN RIGHTS AS LEGAL RIGHTS 32-33 (1951)).

102. See Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 323 (1996).

103. Melina Buckley, *Searching for the Constitutional Core of Access to Justice*, 42 SUP. CT. L. REV. 567, 579 (2008) (citing International Covenant on Civil and Political Rights art. 2, opened for signature Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]).

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, [color], sex, language, religion, political or other opinion, national or social origin, property, birth[,] or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative[,] or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.¹⁰⁴

While aspects of Article 2 and subsequent access to justice provisions of the ICCPR are institutionalized through the 1987 Philippine Constitution¹⁰⁵ and by several domestic laws that are saturated with the same language,¹⁰⁶ such is also balanced out by the right of derogation.¹⁰⁷

104. ICCPR, *supra* note 103, art. 2.

105. *See* Ocampo v. Enriquez, G.R. No. 225973, 807 SCRA 223, 411 n. 287 (2016).

106. *See, e.g.*, An Act Providing for Reparation and Recognition of Victims of Human Rights Violations During the Marcos Regime, Documentation of Said Violations, Appropriating Funds Therefor, and for Other Purposes [Human Rights Victims Reparation and Recognition Act of 2013], Republic Act No. 10368, § 2, para. 2 (2013).

107. *See* ICCPR, *supra* note 103, art. 4, ¶ 1.

In the desire to curb the spread of the COVID-19 pandemic, as observed by the United Nations (UN) Human Rights Committee, States parties to the ICCPR have notified the UN Secretary-General of emergency measures permitted under Article 4 of the Covenant, in derogation of their obligations.¹⁰⁸ However, “States parties may not resort to emergency powers or implement derogating measures in a manner that is discriminatory, or that violates other obligations that they have undertaken under international law, including under other international human rights treaties from which no derogation is allowed.”¹⁰⁹ This includes “ensuring respect for the rule of law and the principle of legality even in times of public emergency, including the right of access to court, due process guarantees[,] and the right of victims to obtain an effective remedy[.]”¹¹⁰

Stark contrasts in the everyday brutality of socio-economic division have been heightened during the pandemic.¹¹¹ Thus, the limited means available to people living in poverty to access legal and adjudicatory processes and mechanisms are not only a violation of human rights themselves under Article 14 of the ICCPR,¹¹² but

108. Human Rights Committee, *Statement on Derogations from the Covenant in Connection with the COVID-19 Pandemic*, ¶ 1, U.N. Doc. CCPR/C/128/2 (Apr. 30, 2020).

109. *Id.* ¶ 2 (d).

110. *Id.*

111. Max Fisher & Emma Bubola, *As Coronavirus Deepens Inequality, Inequality Worsens Its Spread*, N.Y. TIMES, Mar. 15, 2020, available at <https://www.nytimes.com/2020/03/15/world/europe/coronavirus-inequality.html> (last accessed Apr. 30, 2022) [<https://perma.cc/2BDW-2G8U>].

112. Article 14 of the ICCPR states —

Article 14

- (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent[,] and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile

are also the consequence of numerous other rights violations.¹¹³

persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

- (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
- (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
- (4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
- (5) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
- (6) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
- (7) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

ICCPR, *supra* note 103, art. 14.

113. See generally U.N. Secretary-General, *Extreme Poverty and Human Rights*, ¶¶ 17-90, 67th Session of the General Assembly, U.N. Doc. A/67/278 (Aug. 9, 2012).

Accordingly,

[t]he impacts of the pandemic have uncovered the weakness of the return and reintegration programs of the Philippines for OFWs and members of their families. According to the report released by the IOM, months after returning home due to the COVID-19 pandemic, more than 80% of Filipino migrant workers continue to be unemployed.¹¹⁴

On 25 June 2021, the Commission on Human Rights submitted to the Special Rapporteur for the Human Rights of Migrants certain points highlighting much needed reforms for the Philippines, to wit —

(b) To take the necessary steps to address the concerns faced by repatriated OFWs, particularly improper compensation, non-payment of wages, and job loss. Compensation funds must be set up at the national level, and contributions to the funds could be ensured by the government, private contributions, business, and philanthropic foundations. Funds advanced by the government could be later recouped from employers and businesses responsible for compensation and non-payment of wages. This approach would ensure that migrant workers are paid their dues without delay, and that their cases are resolved swiftly.

(c) Measures at the national level that have addressed claims related to compensation and non-payment of wages need to be intensified and infused with greater political will. These include waiving court fees, putting in place wage protection systems, ramping up documentation in cooperation with embassies and consulates, allowing for remote testimony post-repatriation, providing legal aid, and encouraging workers to come forward to record their labor grievances.¹¹⁵

114. Special Rapporteur on the Human Rights of Migrants, *After One and Half Year: The Impact of COVID-19 on the Human Rights of Migrants*, ¶ 24, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/CFI-COVID/SubmissionsCOVID/NHRI/Philippines-CHRP.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/9JPJ-ZXMT>] (citing International Organization for Migration, *supra* note 23, at 9 & John Gabriel Agcaoili, *83% of OFWs Still Jobless 3 Months After Returning Home: UN Migration Agency*, ABS-CBN NEWS, May 20, 2021, available at <https://news.abs-cbn.com/news/05/20/21/83-of-ofws-still-jobless-3-months-after-returning-home-un-migration-agency> (last accessed Apr. 30, 2022) [<https://perma.cc/WK7T-UZPD>]).

115. Special Rapporteur on the Human Rights of Migrants, *supra* note 114, ¶ 29 (b) & (c).

In Syria, certain aspects of these measures are in place, but only to a limited extent.¹¹⁶ This is primarily because of the inherent challenges of functioning within the Alert Level 4 status¹¹⁷ that has subjected the country to sanctions under the Caesar Syria Civilian Protection Act of 2019.¹¹⁸

116. See The World Bank, Syria's Economic Update — April 2022, available at <https://www.worldbank.org/en/country/syria/publication/economic-update-april-2022> (last accessed Apr. 30, 2022) [<https://perma.cc/L2VX-KXF2>].

117. U.S. Department of State – Bureau of Consular Affairs, Syria Travel Advisory, available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/syria-travel-advisory.html> (last accessed Apr. 30, 2022) [<https://perma.cc/Z9JG-HGHG>].

118. Caesar Syria Civilian Protection Act of 2019, Pub. L. No. 116-92, 133 Stat. 2291 (2019). See also U.S. Department of State, Caesar Syria Civilian Protection Act, available at <https://2017-2021.state.gov/caesar-syria-civilian-protection-act/index.html> (last accessed Apr. 30, 2022) [<https://perma.cc/ET8X-973K>]. The United States Department of State's government website claims —

Our sanctions under the Caesar Act and Executive Order 13894 are not intended to harm the Syrian people, but rather to promote accountability for the Assad regime's violence and destruction that has killed hundreds of thousands of civilians; subjected thousands of Syrians to arbitrary detention, the majority of whom remain missing, and many of whom are exposed to torture and sexual violence; and devastated the country's civilian infrastructure, including homes, hospitals, and marketplaces, resulting in the displacement of over half the population. This Act is meant to send a clear signal that no foreign business should enter into business with or otherwise enrich such a regime.

Executive Order 13894 includes menu-based sanctions including travel restrictions to the United States and isolation from the United States' financial system for foreign persons who engage in or finance the obstruction, prevention, or disruption of a ceasefire or political solution to the conflict in Syria and members of their family, among other actions.

Mandatory sanctions under the Caesar Act target foreign persons who facilitate the Assad regime's acquisition of goods, services, or technologies that support the regime's military activities as well as its aviation and oil and gas production industries.

The Caesar Act also mandates sanctions on those profiting off the Syrian conflict by engaging in reconstruction activities.

Id.

Access to legal aid is also emphasized in this excerpt from the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Principles and Guidelines) —

8. For the purposes of the Principles and Guidelines, the term ‘legal aid’ includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence[,] and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, ‘legal aid’ is intended to include the concepts of legal education, access to legal information[,] and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.

9. For the purposes of the Principles and Guidelines, the individual who provides legal aid is herein referred to as the ‘legal aid provider[,]’ and the organizations that provide legal aid are referred to as the ‘legal aid service providers[,]’ The first providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations[,] and academia. Provision of legal aid to foreign nationals should conform to the requirements of the Vienna Convention on Consular Relations and other applicable bilateral treaties.

10. It should be noted that States employ different models for the provision of legal aid. These may involve public defenders, private lawyers, contract lawyers, *pro bono* schemes, bar associations, paralegals[,] and others. The Principles and Guidelines do not endorse any specific model but encourage States to guarantee the basic right to legal aid of persons detained, arrested[,] or imprisoned, suspected or accused of, or charged with a criminal offence, while expanding legal aid to include others who come into contact with the criminal justice system and diversifying legal aid delivery schemes.

11. The Principles and Guidelines are based on the recognition that States should, where appropriate, undertake a series of measures that, even if not strictly related to legal aid, can maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on a properly functioning criminal justice system and on access to justice.¹¹⁹

119. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, G.A. Res. 67/187, annex, ¶¶ 8-11, U.N. Doc. A/RES/67/187 (Mar. 28, 2013) (citing Vienna Convention on Consular Relations, *signed* Apr. 24, 1963, 596 U.N.T.S. 261 & Body of Principles for the Protection of All Persons

Legal services provided by the State through diplomatic and consular foreign posts can also be considered as part of these measures that can positively impact a legal aid system in the Philippines through enhancing access to justice.¹²⁰ It is submitted that legal aid service providers can also include employees working in Embassies and Consulates who have been trained to handle the needs of stakeholders who request for assistance.

In Syria, as well as other foreign service posts, the usual practice is to secure the services of retainer lawyers or law offices who provide legal services to the nationals who request assistance.

c. Sustainable Development Goal 16

Transitioning to the adoption of the 2030 Agenda for Sustainable Development,¹²¹ access to justice was included as Sustainable Development Goal (SDG) 16, calling upon governments to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all[,] and build effective, accountable[,] and inclusive institutions at all levels[.]”¹²²

Access to justice for all necessarily includes legal empowerment mechanisms¹²³ to support right-holders who may not be able to seek relief from grievances or even enforcement of judgments, simply because, for instance, they do not have the resources to move for extraterritorial service of summons or to have the perpetrator of violence extradited. On the flipside, legal empowerment also includes supporting duty-bearers in being accountable with respect to accomplishing targets and indicators in the global indicator framework.¹²⁴ Ideally, this should not just be oriented towards States

Under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, U.N. Doc. 43/173 (Dec. 9, 1988).

120. Department of Foreign Affairs, PH Embassy in Paris, Hosts IBP Free Legal Service for Filipinos in France, *available at* <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/18475-ph-embassy-in-paris-hosts-ibp-free-legal-service-for-filipinos-in-france> (last accessed Apr. 30, 2022) [<https://perma.cc/U8DN-L65X>].

121. Transforming Our World: The 2030 Agenda for Sustainable Development, G.A. Res. 70/1, U.N. Doc. A/RES/70/1 (Oct. 21, 2015).

122. *Id.* at 25.

123. Plantilla, *supra* note 63.

124. See United Nations Department of Economic and Social Affairs, Sustainable Development, *available at* <https://sustainabledevelopment.un.org/sdg16> (last accessed Apr. 30, 2022) [<https://perma.cc/RL93-U4K7>]. Further,

aiming for a favorable review of their progress reports at the UN High-Level Political Forum on Sustainable Development (HLPF).¹²⁵ The long-term goal is to ensure that “no one will be left behind[]” in pursuing the 2030 Agenda for Sustainable Development.¹²⁶ Therefore, both rights-holders and duty-bearers must be committed to objectively verifying whether implementation of laws and policies contribute to the achievement of the SDGs.

d. Fundamental Elements of Access to Justice

Access to justice, according to the United Nations Development Programme (UNDP), “is, therefore, much more than improving an individual’s access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.”¹²⁷ It is not enough that a litigant has counsel *de officio* assigned by the court. In a David versus Goliath courtroom battle, the right-holders, or “Davids,” should actually be given a fighting chance using the pebbles of international legal cooperation instruments against the “Goliaths,” who are perpetrators of human rights violations.¹²⁸

[t]he global indicator framework was developed by the Inter-Agency and Expert Group on SDG Indicators (IAEG-SDGs) and agreed to, as a practical starting point at the 47th session of the UN Statistical Commission held in March 2016. The report of the Commission, which included the global indicator framework, was then taken note of by ECOSOC at its 70th session in June 2016.

Katarzyna Malgorzata Miszczyńska, *Challenges and Opportunities of the Sustainability in Healthcare: Multicriteria Assessment of Polish Healthcare Sector*, in SOCIAL, ECONOMIC, AND ENVIRONMENTAL IMPACTS BETWEEN SUSTAINABLE FINANCIAL SYSTEMS AND FINANCIAL MARKETS 125 (Magdalena Ziolo ed., 2019).

125. See Sustainable Development Goals Knowledge Platform, High-Level Political Forum on Sustainable Development, *available at* <https://sustainabledevelopment.un.org/hlpf> (last accessed Apr. 30, 2022) [<https://perma.cc/E646-XCF6>].

126. G.A. Res. 70/1, *supra* note 121, pmb1.

127. United Nations Development Programme, Access to Justice: Practice Note, at 6, *available at* https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice_PN_En.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/CQ2Z-PGFZ>].

128. The David versus Goliath analogy is typically invoked in the context of lawsuits between individual litigants and corporate violators of human rights. See *e.g.*, Jolene Lin, *Climate Change and the Individual: Case Study of the Philippines*, in

The first step in applying a human rights-based approach to development is

to identify the grievance that calls for a remedy or redress. A grievance is defined as a gross injury or loss that constitutes a violation of a country's civil or criminal law, or international human rights standards. The capacity and actions needed to achieve access to justice, following a human rights-based approach, [in terms of legal protection,] are outlined below[, in the subsequent discussion, when the types of support are explored].¹²⁹

Fundamental elements of access to justice also include the actions needed when a grievance is identified, i.e., there should be recognition of that grievance and the capacities needed that would focus on the legal protection.¹³⁰ For the element of awareness, the capacities needed include legal awareness.¹³¹ For the element of claiming, the capacities needed require legal aid and counsel.¹³² For adjudicating, the capacities needed would include adjudication.¹³³ Finally, for the element of enforcing, the capacities needed must include enforcement and civil society oversight, with the end result defined as the legal remedy sought for that grievance.¹³⁴

e. Types of Support to Promote Access to Justice

In the Philippines, there are various institutions that provide principal areas of support for access to justice, which are said to be key actors in the realm of legal protection. Another layer to contextualize this would be the extent of legal protection that can be provided for extraterritorial application, when it comes to the situation of Filipinos overseas. The types of support to promote access to justice will be discussed below.

i. Legal Protection

Provision of legal standing in formal or [in] traditional law — or both — involves the development of capacities to ensure that [people's] rights ... are recognized within the scope of justice systems, thus giving entitlement to remedies through either formal or traditional mechanisms. Legal protection

COMPARATIVE CLIMATE CHANGE LITIGATION: BEYOND THE USUAL SUSPECTS
253 (Francesco Sindico, et al. eds., 2019).

129. United Nations Development Programme, *supra* note 127, at 6.

130. *Id.* at 6 fig. 1.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

determines the legal basis for all other [stages in the] access to justice [process].
Legal protection ... can be enhanced through:

- (a) [treaty ratification] and [] implementation in [] domestic law;
- (b) ... constitutional law;
- (c) national legislation;
- (d) [implementing rules,] regulations and administrative orders; and
- (e) traditional and customary law.¹³⁵

The key actors include:

- (1) Parliament;¹³⁶
- (2) Ministries of Foreign Affairs;¹³⁷
- (3) Ministries of Law and Justice;¹³⁸
- (4) National Human Rights Commissions;¹³⁹
- (5) Law Reform/Legislative Commissions;¹⁴⁰
- (6) Legal drafting cells of relevant ministries;¹⁴¹
- (7) Local officials involved in legal drafting;¹⁴²
- (8) “Judges, particularly of courts whose decisions are binding on lower courts or, under the law, are able to influence courts in other jurisdictions[;]”¹⁴³
- (9) Traditional Councils;¹⁴⁴
- (10) Community leaders (chiefs, religious leaders);¹⁴⁵ and

135. United Nations Development Programme, *supra* note 127, at 7 tbl. 1.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. United Nations Development Programme, *supra* note 127, at 7 tbl. 1.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

(11) Civil society organizations (CSOs).¹⁴⁶

Accordingly, “[i]n some cases, the Ministry of Foreign Affairs takes the lead in representing the State in international disputes and the Ministry of Justice may be consulted in the process. In the case where there is no legal department within the Foreign Ministry, the Ministry of Justice takes the lead.”¹⁴⁷ In the Philippines, the DFA-OTLA is part of the Philippine delegation for the negotiation of treaties, as well as their ratification and implementation in domestic law, in terms of submitting the national reports on the status of compliance.¹⁴⁸ The DFA also provides input during legislative committee hearings for technical working groups that craft national legislation.¹⁴⁹ Further, the DFA also supports the Office of the Solicitor General and the DOJ in handling these cases by facilitating and coordinating with various foreign ministries and foreign service posts,¹⁵⁰ especially in the extraterritorial service of foreign judgments and other legal processes.¹⁵¹

146. *Id.*

147. UNITED NATIONS DEVELOPMENT PROGRAMME, PROGRAMMING FOR JUSTICE: ACCESS FOR ALL 63 n. 1 (2005).

148. See Malaya & Wahab-Manantan, *supra* note 34, at 24 (citing Department of Foreign Affairs, Regulations of the Department of Foreign Affairs, Department Order No. 19A-95, Series of 2004 [DFA D.O. No. 19A-95, s. 2004] (2004)). DFA D.O. No. 19A-95, s. 2004 is an internal document available only to members of the DFA.

149. See, e.g., Center for Police Strategy Management, 1st Joint TWG-NAGPTD Meeting for CY 2021, *available at* <http://cpsm.pnp.gov.ph/2021/10/10/1st-joint-twg-nagptd-meeting-for-cy-2021> (last accessed Apr. 30, 2022) [<https://perma.cc/AD7J-V3BJ>].

150. See, e.g., Isabelita C. Vinuya, et al. v. The Honorable Executive Secretary Alberto G. Romulo, et al., G.R. No. 162230, Apr. 28, 2010, *available at* <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/53867> (last accessed Apr. 30, 2022). In the case, the petitioners, as “victims of rape by Japanese military forces in the Philippines during” World War II, alleged “that since 1998, they [had] approached the Executive Department through the DOJ, DFA, and OSG, requesting assistance in filing a claim against the Japanese officials and military officers who ordered the establishment of the ‘comfort women’ stations in the Philippines.” *Id.*

151. Integrated Bar of the Philippines, Office of Legal Affairs, Requirements and Procedure for the Extraterritorial Service of Documents Through Philippine Embassies and Consulates, ¶ 1, *available at* <http://www.ibp.ph/pdf/announcement/DFA%20Announcement%20to%20Chapters.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/92ZC-8CEJ>]. See also

In foreign service posts, the Ambassador or the highest-ranking officer is also part of the Philippine delegation and continues to act as the bridge during these diplomatic negotiations.¹⁵²

This was emphasized in the UN General Assembly Resolution on Violence Against Women Migrant Workers, which urged

[g]overnments to enhance bilateral, regional, interregional[,] and international cooperation to address violence against women migrant workers, fully respecting international law, including international human rights law, as well as to strengthen efforts to reduce the vulnerability of women migrant workers by promoting decent work, by, *inter alia*, adopting minimum wage policies and employment contracts in accordance with applicable laws and regulations, facilitating effective access to justice and effective action in the areas of law enforcement, prosecution, prevention, capacity-building and victim protection and support, exchanging information and good practices in combating violence and discrimination against women migrant workers and fostering sustainable development alternatives to migration in countries of origin[.]¹⁵³

One good example of how international cooperation between the Republic of the Philippines and the Kingdom of Bahrain can provide legal protection and fund assistance, as part of victim compensation, is the recent landmark decision on an international human trafficking conviction based on judicial affidavits prepared by the DFA, in coordination with a civil society organization and law enforcement partners in both countries.¹⁵⁴ According to the Director-General of Criminal Investigation and Forensic Science of Bahrain, “the anti-human trafficking police had arrested eight males and

2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 14, para. 2 (a) & Malaya & Wahab-Manantan, *supra* note 34, at 27.

152. See, e.g., Official Gazette, Philippines and Germany Conclude Final Round of Negotiations on a New Double Taxation Agreement, *available at* <https://www.officialgazette.gov.ph/2012/07/25/philippines-and-germany-conclude-final-round-of-negotiations-on-a-new-double-taxation-agreement> (last accessed Apr. 30, 2022) [<https://perma.cc/84QM-ZK4X>].

153. Violence Against Women Migrant Workers, G.A. Res. 72/149, ¶ 13, U.N. Doc. A/RES/72/149 (Jan. 17, 2018).

154. OFW Help, Status Update, FACEBOOK, Feb. 28, 2020, 11:09 a.m., *available at* <https://web.facebook.com/OFWHelpPH/posts/ph-and-bahrain-award-financial-assistance-and-scholarships-to-two-victors-of-hum/217898386269839> (last accessed Apr. 30, 2022) [<https://perma.cc/9J9F-HL8B>].

females, including three Bahrainis for deprivation of liberty of 21 foreign women and forcing them into vice activities.”¹⁵⁵

This was an unprecedented case where the foreign law enforcement and prosecutorial authorities dispensed with the need for the personal appearance of the victims and recognized the need for the duty-bearers to work together and bring justice to the rights-holders who were incapable of seeking the services of private counsel.¹⁵⁶ During the awarding ceremony for the Victim’s Assistance fund from the Labour Market Regulatory Authority (LMRA) of the Kingdom of Bahrain and the ATN Fund from OUMWA, representatives from the Office of the President, Office of the Special Envoy to the Gulf Cooperation Council, DOJ, National Bureau of Investigation (NBI), and Blas Ople Policy Center joined the DFA in celebrating this important anti-trafficking milestone.¹⁵⁷

ii. Legal Awareness

Legal Awareness includes the

[d]evelopment of capacities and effective dissemination of information that would help disadvantaged people understand the following: (a) their right to seek redress through the justice system; (b) the various officials and institutions entrusted to protect their access to justice; and (c) the steps involved in starting legal procedures. UNDP’s service line on access to information provides an opportunity to develop capacities and strategies to promote legal awareness.¹⁵⁸

Many right-holders, including workers, and other marginalized groups, “may not be aware of their rights under employment contracts[,]”¹⁵⁹ or even their own basic human rights. This lack of knowledge underscores the need

155. Gulf Insider, Human Trafficking in Bahrain; 8 Arrested, *available at* <https://www.gulf-insider.com/human-trafficking-in-bahrain-8-arrested> (last accessed Apr. 30, 2022) [<https://perma.cc/2KY7-V3F3>].

156. See Sabrina Thulander, Philippines Partners Assist Bahrain in Conviction of Eight Traffickers, Guilty of Trafficking Two OFWs, *available at* <https://www.gfems.org/uncategorized/philippines-partners-assist-bahrain-in-conviction-of-eight-traffickers-guilty-of-trafficking-two-ofws> (last accessed Apr. 30, 2022) [<https://perma.cc/JQ8S-MS66>].

157. *Id.*

158. United Nations Development Programme, *supra* note 127, at 7 tbl. 1.

159. ASIAN DEVELOPMENT BANK INSTITUTE, ET AL., SAFEGUARDING THE RIGHTS OF ASIAN MIGRANT WORKERS FROM HOME TO THE WORKPLACE 31 (2017).

to promote legal awareness for right-holders so that they can identify a violation of the basic rights they are entitled to in the first place.

iii. Legal Aid and the Right to Counsel

According to the UN Principles and Guidelines, “[l]egal aid is an essential element of a fair, humane[,] and efficient criminal justice system that is based on the rule of law.”¹⁶⁰ It is a “foundation for the enjoyment of other rights, including the right to a fair trial, ... a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.”¹⁶¹ Unsurprisingly, legal aid and the right to counsel are usually the first concepts that come to mind in the “access to justice” discourse, often described as the

[d]evelopment of the capacities (from technical expertise to representation) that people need to enable them to initiate and pursue justice procedures. Legal aid and counsel can involve professional lawyers (as in the case of public [defense] systems and *pro bono* representation), laypersons with legal knowledge (paralegals), or both (as in ‘alternative lawyering’ and ‘developmental legal aid’).¹⁶²

The Principles and Guidelines¹⁶³ seek to codify criminal justice and crime prevention norms in key principles that the international community must adopt through individual national legislation.

160. G.A. Res. 67/187, *supra* note 119, annex, ¶ 1.

161. *Id.* This was recognized in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Principles and Guidelines), adopted by the General Assembly in December 2012 in Resolution 67/187. The UN Principles and Guidelines made it an obligation for Member States to put in place an “accessible, effective, sustainable[,] and credible[]” legal aid system, and “to ensure the quality of legal aid services, in particular those provided at no cost[.]” *Id.* annex, ¶¶ 15 & 71 (c).

In Resolution 67/187, adopting the UN Principles and Guidelines, the United Nations Office on Drugs and Crime was requested “to provide advisory services and technical assistance to Member States, upon request, in the area of criminal justice reform, including ... the development of integrated plans for the provision of legal aid[.]” as well as to make the UN Principles and Guidelines available “through the development of relevant tools[.]” G.A. Res. 67/187, *supra* note 119, ¶¶ 6-7.

162. United Nations Development Programme, *supra* note 127, at 7 tbl. 1.

163. Here are some key provisions:

From an international legal cooperation perspective, provision of legal aid to foreign nationals should conform to the requirements of the Vienna Convention on Consular Relations (VCCR)¹⁶⁴ and other applicable bilateral treaties. As part of consular assistance to foreign nationals, the DFA also serves as a liaison between the consular officials of different foreign missions and the justice sector institutions where foreign nationals are involved, whether as

Principle 1 recognizes that access to legal aid is a fundamental component in ensuring the “right to a fair trial,” and that legal aid is a “safeguard” to ensure “public trust in the criminal justice process[.]” *Id.* annex, ¶ 14.

Principle 2 provides that

States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable[,] and credible. States should allocate the necessary human and financial resources to the legal aid system.

Id. annex, ¶ 14.

Principle 3 holds that legal aid shall be made available “at all stages” of criminal justice when the offense is “punishable by a term of imprisonment or the death penalty” and when “the interests of justice so require [regardless of the means],” and that children should have the same or “more lenient conditions” in access to legal aid. *Id.* annex, ¶¶ 20-22.

Moreover, “[i]t is the responsibility of police, prosecutors[,] and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.” *Id.* annex, ¶ 23.

Principle 7 establishes that legal aid should be effective, requiring “unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files[,] and adequate time and facilities to prepare their [defense].” It should also be prompt and available “at all stages of the criminal justice process.” *Id.* annex, ¶¶ 27-28.

Principle 9 holds that “States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed[,] or denied[.]” G.A. Res. 67/187, *supra* note 119, annex, ¶ 31.

Principle 13 requires

States [to] put in place mechanisms to ensure that all legal aid providers possess [the] education, training, skills[,] and experience that are commensurate with the nature of their work, including the gravity of the [offenses] dealt with, and the rights and needs of women, children[,] and groups with specific needs.

Id. annex, ¶ 37.

164. Vienna Convention on Consular Relations, *supra* note 119.

victims, accused, or party-litigants for different classes of cases.¹⁶⁵ The consular notification requirement under the VCCR contemplates the right of all foreign detainees and prisoners to be informed in a language they understand of their right to request contact with their consular authorities without delay.¹⁶⁶ In some countries, the foreign ministry can also facilitate the provision of the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate, as part of the duty to protect its nationals in the host country.¹⁶⁷

iv. Adjudication

Formal modes of access to justice, through courts or other quasi-judicial and administrative bodies, necessarily require adjudication as a means “to determine the most adequate type of redress or compensation.”¹⁶⁸ Other key actors, aside from the judiciary or other tribunals, include national human rights institutions (e.g., the Commission on Human Rights), alternative dispute resolution (ADR) mechanisms (whether court-annexed mediation or arbitration under administrative bodies), as well as traditional and indigenous ADR (e.g., Agama arbitration councils under the Code of Muslim Personal Laws or Presidential Decree (P.D.) No. 1083 and the customary laws for dispute settlement under the Indigenous Peoples’ Rights Act or Republic Act No. 8371).¹⁶⁹

165. See Malaya & Wahab-Manantan, *supra* note 34, at 27.

166. Vienna Convention on Consular Relations, *supra* note 119, art. 36 (1) (b).

167. See, e.g., Council of Europe, Explanatory Report to the European Convention on Consular Functions, ¶¶ 39 & 153, Nov. 12, 1967, E.T.S. 61.

168. United Nations Development Programme, *supra* note 127, at 7 tbl. 1.

169. *Id.* & An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes [The Indigenous Peoples’ Rights Act of 1997], Republic Act No. 8371, §§ 62, 63, & 65-70 (1997). See also PHIL. CONST. art. XIII, §§ 17-19; 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 18, §§ 8-9; Department of Justice, Adopting Accreditation Guidelines for Alternative Dispute Resolution Provider Organizations and Training Standards for Alternative Dispute Resolution Practitioners, Department Circular No. 49, Series of 2012 [DOJ Dept. Circ. No. 49, s. 2012] (Aug. 17, 2012); & A Decree to Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for Its Administration and for Other Purposes [MUSLIM CODE], Presidential Decree No. 1083, bk. 4, tit. II, arts. 160-63 (1977).

Even in the recognition and civil registration of Muslim Filipinos, adjudication also includes the duty of reporting, as in the case of the Clerk of Court of the *Shari'a* Circuit Court, who is entrusted with the responsibility of recording “Muslim [m]arriages, [d]ivorces, [r]evocations of [d]ivorces, and [c]onversions” to Islam.¹⁷⁰ This represents an access to justice element, as part of the recognition by the Philippine government of the rights of Muslim Filipinos, not only in the *Qur'an* and the *Hadith*, but even in a secular instrument, or P.D. No. 1083.¹⁷¹

Among the unexplored aspects of access to justice in civil matters includes the issue of adjudication by a fair and impartial tribunal on the recognition of foreign divorce judgments filed by a foreign spouse against the Filipino citizen in a foreign court.¹⁷² Absent a divorce law in the Philippines,¹⁷³ not all Filipino citizens are able to comply with the stringent requirements that Philippine courts may set.¹⁷⁴ This leads to situations where overseas Filipinos co-habit with different partners while in the host country instead of undergoing the correct legal process of severing the marital ties with the legal spouse first.¹⁷⁵

v. Enforcement

This is one of the most difficult types of support for access to justice advocates, especially in terms of the “[d]evelopment of capacities for enforcing orders, decisions[,] and settlements emerging from formal or traditional adjudication. It is critical to support the capacities to enforce civil court decisions and to institute reasonable appeal procedures against arbitrary actions or rulings.”¹⁷⁶

170. MUSLIM CODE, tit. VI, ch. I, art. 81.

171. *Id.* pmb., whereas cl. paras. 2 & 4.

172. See MELENCIO S. STA. MARIA, JR., PERSONS AND FAMILY RELATIONS LAW 180 (2015).

173. Garcia v. Recio, G.R. No. 138322, 366 SCRA 437, 446 (2001) (citing Rubén F. Balane, *Family Courts and Significant Jurisprudence in Family Law*, 27 IBP L.J. 29, 33 (2001)).

174. Ana P. Santos, *Ending a Marriage in the Only Country that Bans Divorce*, ATLANTIC, June 25, 2015, available at <https://www.theatlantic.com/international/archive/2015/06/divorce-philippines-annulment/396449> (last accessed Apr. 30, 2022) [<https://perma.cc/G77T-XJZ9>].

175. Josephus B. Jimenez, *Why Some OFWs Are Unfaithful*, PHIL. STAR, Oct. 3, 2009, available at <https://www.philstar.com/opinion/2009/10/03/510397/why-some-ofws-are-unfaithful> (last accessed Apr. 30, 2022) [<https://perma.cc/7DCV-TYAR>].

176. United Nations Development Programme, *supra* note 127, at 7 tbl. 1.

For key actors in the DOJ National Prosecution Service and formal law enforcement institutions (the Philippine National Police (PNP), the NBI, and prison authorities), the biggest challenge is to ensure that the judicial or quasi-judicial decision goes beyond being a mere scrap of paper, but more so a method to ensure that both the criminal and civil aspects of the decision are complied with.¹⁷⁷

In Syria, after five years of litigation in a case filed by the Philippine Embassy against a Syrian recruitment agency, the judge finally awarded the penalty after a judgment of conviction was meted against the latter.¹⁷⁸ This was the first case ever won by foreign migrant workers under the custody of the Philippine Embassy against perpetrators of illegal recruitment and human trafficking.¹⁷⁹

Under the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,

18. 'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss[,] or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological[,] and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.¹⁸⁰

International legal cooperation is an essential aspect of providing for victim compensation and ensuring that both the criminal aspect of penal provisions

177. See generally ASIAN DEVELOPMENT BANK, BACKGROUND NOTE ON THE JUSTICE SECTOR OF THE PHILIPPINES 43-49 (2009).

178. Department of Foreign Affairs, PH Embassy in Damascus Wins First Human Trafficking Case vs Recruitment Agency, available at <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/30098-ph-embassy-in-damascus-wins-first-human-trafficking-case-vs-recruitment-> (last accessed Apr. 30, 2022) [<https://perma.cc/VW9R-RQCL>].

179. *Id.*

180. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, annex, ¶¶ 18-20, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

and the civil aspect of fines and forfeitures are enforced, even through the extraterritorial application of enforcement of these judgments.¹⁸¹

vi. Civil Society and Parliamentary Oversight

Civil society is a crucial aspect of strengthening accountability within the justice system due to the monitoring and advocacy activities¹⁸² of key actors, such as CSOs, “business forums, faith-based organizations, labor and professional organizations, local community groups, philanthropic and charitable organizations, gender and women’s associations, social movements (including representatives of the informal sector and rural areas), academics, research centers[,] and think tanks.”¹⁸³ These “CSOs can be concerned with a country, a region, or have a global operation.”¹⁸⁴ It is alleged that “[a] broad and inclusive understanding of the contribution of CSOs to the SDGs is needed [—] stressing their specific contributions to implementation via *regulation* (as watchdogs) and *representation* (as voice for people, especially those ‘left behind’), as well as *reali[z]ation* of sustainable development outcomes through service delivery.”¹⁸⁵

To move forward and achieve the 2030 Agenda for Sustainable Development’s overarching goal of eradicating poverty, the Philippine statement during the SDG Summit emphasized that the Philippines “must now develop our national plans and budgets for its implementation and monitoring. In doing so, we will collaborate with civil society and all stakeholders in line with the principle of inclusiveness and accountability.”¹⁸⁶

181. See generally Arthur T. von Mehren, *Recognition and Enforcement of Foreign Judgments: A New Approach for the Hague Conference?*, 57 LAW & CONTEMP. PROBS. 271, 278-79 (1994).

182. United Nations Development Programme, *supra* note 127, at 7 tbl. 1.

183. 2015 Staff Guidelines on the IMF Staff Engagement with Civil Society Organizations, at 2 n. 2, available at https://www.imf.org/external/np/exr/consult/2015/civilsociety/pdf/CSOs_Guidelines.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/DX37-2JYF>].

184. *Id.*

185. Graham Long, How Should Civil Society Stakeholders Report Their Contribution to the Implementation of the 2030 Agenda for Sustainable Development?, at 3, available at https://sustainabledevelopment.un.org/content/documents/18445CSOreporting_paper_revisions_4May.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/HHD2-QLQQ>].

186. Arsenio M. Balisacan, Secretary of Socioeconomic Planning, National Economic and Development Authority, Philippine Statement at the UN Summit for the

III. LEGAL FRAMEWORK FOR ACCESS TO JUSTICE MECHANISMS IMPLEMENTED BY THE DEPARTMENT OF FOREIGN AFFAIRS

There is a plethora of legal instruments governing the work of the DFA as it interacts with other government entities, non-state actors, and people like Lara in the access to justice continuum.

In the early part of 2020, there was a pending discussion presented regarding the proposed Supreme Court Guidelines on Virtual Hearings.¹⁸⁷ This was part of a series of reforms in the Judiciary, in addition to the release of the 2020 Interim Rules on Remote Notarization of Paper Documents.¹⁸⁸ Since these measures were interim in character, the DFA was also requested to provide input on the formulation of guidelines for other upcoming measures.¹⁸⁹ The primary concerns that were raised include the following:

First, the proposed Supreme Court Guidelines on Virtual Hearings need to be aligned with international legal and judicial cooperation measures for parties and witnesses abroad who will be testifying in cases heard in the Philippines through virtual hearings abroad in our Philippine Embassies and Consulates. Necessarily, the DFA submitted that it would be beneficial if the SC-OCA would be able to take into consideration the legal provisions below, in relation to coursing requests through diplomatic channels.¹⁹⁰

Adoption of the 2030 Agenda for Sustainable Development, 70th Session of the United Nations General Assembly (Sept. 27, 2015) (transcript *available at* <https://sustainabledevelopment.un.org/content/documents/21008philippines.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/Y6F4-KYJ6>]).

187. See Joel R. San Juan, *SC Lays Down Strict Guidelines on Virtual Conduct of Court Hearings and Processes*, BUSINESSMIRROR, May 5, 2020, *available at* <https://businessmirror.com.ph/2020/05/05/sc-lays-down-strict-guidelines-on-virtual-conduct-of-court-hearings-and-processes> (last accessed Apr. 30, 2022) [<https://perma.cc/CPD6-BKBR>] & PROPOSED GUIDELINES ON THE CONDUCT OF VIDEOCONFERENCING, A.M. No. 20-12-01-SC (Dec. 9, 2020).

188. 2020 INTERIM RULES ON REMOTE NOTARIZATION OF PAPER DOCUMENTS, A.M. No. 20-07-04-SC (July 14, 2020).

189. Eliseo Zuñiga, *Philippines: Non-resident Foreign Nationals Allowed to Testify Remotely Through Videoconferencing by 30 June 2021*, *available at* <https://www.globalcompliancenews.com/2021/07/05/philippines-non-resident-foreign-nationals-allowed-to-testify-remotely-through-videoconferencing-by-30-june-2021-21062021> (last accessed Apr. 30, 2022) [<https://perma.cc/KXB5-CCB6>].

190. These concerns and comments were raised in an internal discussion between the Supreme Court and the DFA, and included in the Article to provide context.

Second, on the possibility of having the witnesses attend virtual hearings in Philippine Embassies and Consulates abroad, the proposed Guidelines must take into consideration the following factors: Availability of resources in our FSPs, the distance of the parties or witnesses to the FSPs, internal security measures of the Philippines, and political sensitivities with the host country.¹⁹¹

Creating guidelines and mechanisms to allow virtual hearings and remote online notarization abroad would be consistent with the international treaty obligations on access to justice previously mentioned. At the same time, balancing of interests would require thorough review of other existing laws, regulations, and policies that would be affected by the Guidelines.

On 29 December 2020, the Supreme Court released OCA Circular No. 209-2020,¹⁹² annexing the Resolution dated 9 December 2020 of the Honorable Court *En Banc* in A.M. No. 20-12-01-SC (Re: Proposed Guidelines on the Conduct of Videoconferencing), which took effect on 16 January 2021,¹⁹³ as well as OCA Circular No. 133-2021 on the Guidelines on the Conduct of Videoconferencing with Respect to Remote Appearance from Abroad.¹⁹⁴ The latter began with a paragraph explaining the suspension of the implementation of the Guidelines on the Conduct of Videoconferencing, “upon the request of Secretary of Foreign Affairs Teodoro L. Locsin, Jr., due to the ‘need to consider concerns raised by [the] various Foreign Service Posts,’ such as the ‘extraterritorial application of Philippine laws’ and ‘operational concerns by reasons of COVID-19 and other circumstances.’”¹⁹⁵

When the moratoriums lapsed, the Supreme Court allowed such motions for videoconferencing to be acted upon, with the *collatilla* that “the concerned embassy or consulate of the Philippines has allowed the use of its facilities for videoconferencing[.]”¹⁹⁶ The specific concerns of the FSPs were also considered in these circulars, especially in ensuring “proper coordination with

191. *Id.*

192. Office of the Court Administrator, Court En Banc Resolution Dated 9 December 2020 in A.M. No. 20-12-01-SC (Re: Proposed Guidelines on the Conduct of Videoconferencing), OCA Circular No. 209-2020 (Dec. 29, 2020).

193. *Id.*

194. Office of the Court Administrator, Guidelines on the Conduct of Videoconferencing with Respect to Remote Appearance from Abroad, OCA Circular No. 133-2021 (Nov. 3, 2021).

195. *Id.* para. 1.

196. *Id.* para. 2.

the concerned embassy or consulate[]” and mindful of “working hours of [] Philippine courts[.]”¹⁹⁷

In Syria, the Ministry of Foreign Affairs and Expatriates has not yet granted permission to conduct videoconferencing hearings, and, thus, out of respect for the applicable laws and regulations, as well as agreement with the host country, the Philippine Embassy has not yet conducted these processes. Despite the provision on overseas Filipinos under Coverage and Applicability, “[w]hen a litigant or witness is an Overseas Filipino Worker or Filipino residing abroad or temporarily outside the Philippines[,]”¹⁹⁸ the requirement of agreement with the host country would still prevail.

Nevertheless, the judicial and legal processes that were implemented at the Philippine Embassy were based on the legal framework discussed below.

A. Legal Mandate of the Department of Foreign Affairs

*1. Vienna Convention on Diplomatic Relations (VCDR)*¹⁹⁹

In relation to the VCDR functions under Article 3 (1) thereof, “[t]he functions of a diplomatic mission consist *inter alia* in: (a) representing the sending State in the receiving State; [and] (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law[.]”²⁰⁰ This is consistent with the third pillar of Philippine Foreign Policy on the protection of Filipino nationals,²⁰¹ or part of the ATN functions.

In Syria, the largest percentage of the work involves ATN functions. As part of diplomatic negotiations, representation is an important function of the Embassy.

Under Article 24 of the VCDR, “[t]he archives and documents of the mission shall be inviolable at any time and wherever they may be.”²⁰² This can be taken together with Article 31 (2), which provides that “[a] diplomatic

197. *Id.*

198. PROPOSED GUIDELINES ON THE CONDUCT OF VIDEOCONFERENCING, pt. I (3) (b) (vii).

199. Vienna Convention on Diplomatic Relations, *adopted* Apr. 14, 1961, 500 U.N.T.S. 95 [hereinafter VCDR].

200. *Id.* art. 3.

201. *See* Department of Foreign Affairs, *supra* note 58.

202. VCDR, *supra* note 199, art. 24.

agent is not obliged to give evidence as a witness.”²⁰³ These are important provisions to consider in judicial and legal proceedings with a foreign element.

The first consideration that Philippine courts must verify should be the existence of diplomatic relations with the country where the party or witness is located. It must be noted that courts, as co-equal bodies with the Executive Branch,²⁰⁴ must emphasize that diplomatic agents cannot be compelled to appear in judicial tribunals as witnesses and must expressly waive immunity for these special cases.²⁰⁵

Corollary, the Philippine Embassy may also enter its appearance in foreign courts in the event that there is a need for a diplomatic agent to present testimonial evidence in favor of a Filipino national.²⁰⁶ In the case of Syria, there have been many hearings in Syrian courts where the diplomatic agent, like an ATN officer, expressly waived immunity to appear as a witness so that she could provide testimony that would be favorable to the Filipina trafficking survivor.²⁰⁷

2. Vienna Convention on Consular Relations (VCCR)²⁰⁸

In addition to giving testimonial evidence, under Chapter 1, Article 5 (f) of the VCCR and Optional Protocols, a State’s consular office shall act “as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature[.]”²⁰⁹

203. *Id.* art. 31 (2).

204. *Philippine Sinter Corporation v. Cagayan Electric Power and Light Co., Inc.*, G.R. No. 127371, 381 SCRA 582, 591 (2002) (citing *Freeman, Inc. v. Securities and Exchange Commission*, G.R. No. 110265, 233 SCRA 735, 742 (1994) (citing *Philippine Pacific Fishing Co., Inc. v. Luna*, G.R. No. L-59070, 112 SCRA 604, 613 (1982))).

205. VCDR, *supra* note 199, art. 32.

206. *See* Department of Foreign Affairs, *supra* note 178 & Commission on Filipinos Overseas, Primer on RA 9208 (Anti-Trafficking in Persons Act of 2003) as Amended by RA 10364 (Expanded Anti-Trafficking in Persons Act of 2012), at 23-24, available at http://web.archive.org/web/20220708090642/https://cfo.gov.ph/wp-content/uploads/2021/05/ATIP-2019_rev8Mar2021_smaller.pdf.

207. *See* Department of Foreign Affairs, *supra* note 178. Ms. Sheila Solas, an ATN officer then, filed the complaint and consequently appeared as a witness for the victims.

208. Vienna Convention on Consular Relations, *supra* note 119.

209. *Id.* art. 5 (f).

In the labor trafficking cases involving Filipino nationals, the Philippine Embassy in Syria acts as notary for the complaint-affidavits or sworn statements executed by distressed OFWs.²¹⁰ For those requiring civil registration, the Embassy also provides these services to Filipino nationals in the host country and those within its territorial jurisdiction.²¹¹

Article 5 (j) of the VCCR also provides the legal basis for the service of judicial documents, defining the transmittal of judicial and extrajudicial documents, as well as the principle of reciprocity, as part of consular functions.²¹² While this function is not commonly performed in Syria, there are numerous other foreign service posts that experience a deluge of requests on a daily basis, especially because of the volume of Filipino nationals engaged in litigious claims.²¹³

Similar to the abovementioned provisions in the VCCR, under Article 44 (3) of the VCCR,

[m]embers of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.²¹⁴

Philippine courts must also take judicial notice of the VCCR provisions, especially considering the nature of the consular functions that are performed by FSPs abroad. Parties and witnesses who are summoned to give their virtual testimonies or compelled to attend virtual hearings in the Embassies and

210. See, e.g., Christia Marie Ramos, *PH Embassy in Syria Fights Trafficking by Giving Victims 'Access to Justice'*, PHIL. DAILY INQ., Apr. 25, 2021, available at <https://globalnation.inquirer.net/195512/ph-embassy-in-syria-fights-trafficking-by-giving-victims-access-to-justice> (last accessed Apr. 30, 2022) [<https://perma.cc/5SA2-ZDZ8>].

211. See Philippines Visa, Diplomatic Missions, Embassies, and Consulates of the Philippines, available at <https://www.philippinesvisa.com/philippines-embassies-and-consulates> (last accessed Apr. 30, 2022) [<https://perma.cc/N2HC-A7U7>].

212. Vienna Convention on Consular Relations, *supra* note 119, art. 5 (j).

213. See generally Philippine Consulate General, Los Angeles, California, Service of Legal Process (Summons, Court Orders, Depositions etc.) from the Philippines available at <https://www.philippineconsulatela.org/consular-services-2/notarials/related-services/service-of-legal-process-summons-court-orders-depositions-etc-from-the-philippines> (last accessed Apr. 30, 2022) [<https://perma.cc/A7SQ-8Q3K>].

214. Vienna Convention on Consular Relations, *supra* note 119, art. 44 (3).

Consulates are also, in a way, subjected to Philippine territorial jurisdiction following the theory that the Post is an extension of Philippine territory.²¹⁵

This must also be counterbalanced with the need to provide access to justice in cases where it is necessary for the consular officer to appear during these proceedings.

In the labor trafficking cases filed by the Embassy against Syrian recruitment agencies and errant employers, the consular officer or ATN officer delegated with the responsibility to attend the hearings is also given consent to present official documents that describe the law of the sending State or the Philippines.²¹⁶ Official records may also be presented, but proponents must be mindful of the confidentiality provisions of Philippine law on this subject.²¹⁷

3. United Nations Convention Against Transnational Crime,²¹⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,²¹⁹ and the Protocol Against the Smuggling of Migrants by Land, Sea and Air²²⁰

On 15 November 2000, the United Nations General Assembly adopted Resolution 55/25 in relation to the United Nations Convention Against

215. *See* *Reagan v. Commissioner of Internal Revenue*, G.R. No. L-26379, 30 SCRA 968, 975 (1969).

216. This practice has not yet been documented elsewhere as the Author and her team in Syria are the first to implement the same.

217. *See generally* Memorandum *from* the Executive Secretary, Inventory of Exceptions to Executive Order No. 2 (S. 2016), *to* All Heads of Departments, Bureaus and Agencies of the National/Local Governments Including Government-Owned and Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), and All Others Concerned (Nov. 24, 2016) (on file with the Office of the President).

218. United Nations Convention Against Transnational Organized Crime, *signed* Nov. 15, 2000, 2225 U.N.T.S. 209 (entered into force Sept. 29, 2003) [hereinafter UNTOC].

219. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *signed* Nov. 15, 2000, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003).

220. Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, *signed* Nov. 15, 2000, 2241 U.N.T.S. 507.

Transnational Organized Crime (UNTOC),²²¹ which has been described as the “main international instrument in the fight against transnational organized crime.”²²² According to the UN Office of Drugs and Crime official website,

[i]t opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Countries must become parties to the Convention itself before they can become parties to any of the Protocols.

The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption[,] and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance[,] and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

221. United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

222. United Nations Office on Drugs and Crime, United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, *available at* <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (last accessed Apr. 30, 2022) [<https://perma.cc/9UDK-JG9D>].

The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, entered into force on 28 January 2004. It deals with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Protocol was that, for the first time[,] in a global international instrument, a definition of smuggling of migrants was developed and agreed upon. The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.²²³

These legal instruments were incorporated into the domestic Anti-Trafficking in Persons legislation of the Philippines.²²⁴ Examining the definition of trafficking in persons in Philippine law²²⁵ and in the laws of other countries, including that of Syria,²²⁶ there are universal similarities based on these global binding legal instruments.²²⁷

The UNTOC has provisions on extradition and mutual legal assistance that are also essentially covered by international legal cooperation. A unique aspect of the UNTOC provides that

[i]f a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which

223. *Id.* (emphasis omitted).

224. See generally An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for Its Violations, and for Other Purposes [Anti-Trafficking in Persons Act of 2003], Republic Act No. 9208 (2003).

225. Anti-Trafficking in Persons Act of 2003, § 3 (a).

226. To Combat Trafficking in Persons, Legislative Decree No. 3/2010, art. 4 (1) (2010) (Syria).

227. *But see* U.S. Department of State — Office to Monitor and Combat Trafficking in Persons, 2021 Trafficking in Persons Report: Syria, available at http://www.protectionproject.org/wp-content/uploads/2010/09/Syria_Trafficking-Law_2010-arabic.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/UYE9-RDHM>]. “Decree No. 3 of 2010 appeared to criminalize some forms of sex trafficking and labor trafficking, but it did not include a clear definition of human trafficking.” U.S. Department of State — Office to Monitor and Combat Trafficking in Persons, *supra* note 227.

it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offen[s]e to which this article applies.²²⁸

Extradition shall be discussed further below, but the fact that this Convention itself can be used as legal basis is a landmark development in the field of prosecuting transnational offenses.²²⁹ While there has been no pending request yet from the Syrian government to extradite offenders, the Syrian Ministry of Justice has conveyed its openness to future international legal cooperation requests, with an undertaking from the Philippine government that the principle of reciprocity shall also be observed.²³⁰

Survivors of trafficking in persons from Syria are also provided legal bases for their repatriation through the provisions of Article 8 of the Protocol, which recognizes the need to provide travel documents to facilitate the victim's return to the country of origin or where the trafficked person is a national.²³¹

The Embassy, exercising its consular and diplomatic functions, would be able to facilitate the provision of these documents after making the necessary verification that the victim of trafficking in persons is its national or, at the minimum, has the right of permanent residence in its territory.²³² For this purpose, the Philippine Embassy provides consular services *gratis*, or free of charge, to assist distressed OFWs who are classified as survivors of Trafficking in Persons.²³³

228. UNTOC, *supra* note 218, art. 16, ¶ 4.

229. See Frank G. Madsen, *The Historical Evolution of the International Cooperation Against Transnational Organised Crime: An Overview*, in INTERNATIONAL LAW AND TRANSNATIONAL ORGANIZED CRIME 21 (Pierre Hauck & Sven Peterke eds., 2016).

230. Philippine Embassy in Syria, Status Update, FACEBOOK, Jan. 26, 2021, *available at* <https://www.facebook.com/PHinSyria/photos/a.465938040189243/3615535515229464/?type=3> (last accessed Apr. 30, 2022) [<https://perma.cc/37PE-WEVS>].

231. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *supra* note 219, art. 8 (4).

232. See Philippines Visa, *supra* note 211.

233. See Commission on Filipinos Overseas, *supra* note 206, at 27.

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

On 1 July 2003, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force.²³⁴ This Convention “is a comprehensive international treaty focusing on the protection of migrant workers’ rights. It emphasizes the link between migration and human rights — a policy topic that is drawing increasing attention worldwide.”²³⁵

Access to justice is a relevant aspect of this Convention because States that ratify or accede to it undertake to adopt necessary measures to comply with standards for laws and for judicial and administrative procedures,²³⁶ as well as to “ensure that migrant workers whose rights have been violated may seek an effective remedy.”²³⁷

In campaigning for the ratification of this Convention, the concept of “Migrants’ Rights are Human Rights” became the battle cry for different groups that united to raise awareness and gain universal acceptance, even if there are sensitive political issues.²³⁸ Some of the groups that joined the United Nations Secretariat and intergovernmental agencies include —

Human Rights Watch, International Catholic Migration Commission, International Confederation of Free Trade Unions, International [Labor] Office, International Organization for Migration, Migrant Forum in Asia, Migrants Rights International, Office of the United Nations High Commissioner for Human Rights (OHCHR), Public Services International, United Nations Educational, Scientific and Cultural Organization, Women’s International League for Peace and Freedom, and World Council of Churches.²³⁹

234. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *signed* Dec. 18, 1990, 2220 U.N.T.S. 3.

235. Office of the United Nations High Commissioner for Human Rights, The International Convention on Migrant Workers and Its Committee (Fact Sheet No. 24 (Rev.1)), at 1, *available at* <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet24rev.1en.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/J4DD-YYT>].

236. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *supra* note 234, art. 84.

237. Office of the United Nations High Commissioner for Human Rights, *supra* note 235, at 1.

238. *Id.* at 3.

239. *Id.*

In the Philippines, the DFA actively participates in the campaign to advocate for better rights for migrant workers,²⁴⁰ especially in countries where there are more documented cases of abuse and exploitation.²⁴¹

On the principle of non-discrimination, it is notable that the list of prohibited grounds of distinction in the Convention is broader than in other human rights conventions, as stated below —

Article 7 of the Convention provides that States parties should respect and ensure the rights contained in the Convention without distinction of any kind such as sex, race, [color], language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth[,] or other status. Article 1 also states that the Convention applies to all migrant workers and members of their families without distinction of any kind. Although the enumeration of the prohibited grounds of distinction is illustrative and not exhaustive, it is worth noting that the list in the Convention is broader than those found in other human rights conventions, such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.²⁴²

This is also an important aspect of the Convention because migrant workers and their families are subject to particular vulnerabilities that require specific needs for protection,²⁴³ even when they are in the host country, and regardless of their status. Whether they are “documented[,] or in a regular situation” (e.g., “authorized to enter, to stay[,] and to engage in a remunerated activity”), or “non-documented[,] or in an irregular situation[,]” this Convention would still be applicable.²⁴⁴

Philippine Embassies and Consulates are also bound to implement the provisions of Article 23 of the Convention, which defines

the right of migrant workers and members of their families to have recourse to the protection and assistance of the consular or diplomatic authorities of

240. See Department of Migrant Workers Act, § 6 (e).

241. See, e.g., Department of Foreign Affairs, Philippines Continues Firm Advocacy on Migrants Rights at the United Nations, *available at* <https://dfa.gov.ph/newsroom/news-from-our-foreign-service-postsupdate/13858-philippines-continues-firm-advocacy-on-migrants-rights-at-the-united-nations> (last accessed Apr. 30, 2022) [<https://perma.cc/T8FZ-2FXF>].

242. Office of the United Nations High Commissioner for Human Rights, *supra* note 235, at 5.

243. *Id.*

244. *Id.*

their State of origin whenever the rights recognized under the Convention are impaired. Similarly, [A]rticle 16 (7) gives arrested or detained migrant workers and members of their families the right to communicate with the consular or diplomatic authorities of their State of origin.²⁴⁵

In Syria, as of 2022, there are zero migrant workers arrested or detained in Immigration Detention facilities through representation and negotiations via diplomatic channels. The Embassy also consistently conducts campaigns to inform OFWs under its territorial jurisdiction about how they can report cases of labor violations to the consular and diplomatic authorities.²⁴⁶ This is done through various social media networks and in-person training activities at the Philippine Embassy Chancery.²⁴⁷

5. ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

On 13 January 2007 in Cebu, Philippines, “the Heads of State/Government of the Member Countries of the Association of Southeast Asian Nations” (ASEAN) prepared the Declaration, which also cites the UDHR, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child in its preambulatory phrases.²⁴⁸ Along with other ASEAN instruments on the promotion of human rights obligations,²⁴⁹ this Declaration was a landmark step in recognizing the

245. *Id.*

246. *See, e.g.*, Department of Foreign Affairs, PH Embassy in Syria Joins 18-Day VAW Campaign in Damascus, Aleppo, *available at* <https://dfa.gov.ph/gad-feature-news/29905-ph-embassy-in-syria-joins-18-day-vaw-campaign-in-damascus-aleppo> (last accessed Apr. 30, 2022) [<https://perma.cc/V2JV-EKZZ>] & Roy Mabasa, *Affidavits of Filipino Trafficking Victims in Syria Led to Arrest of Alleged ‘Big-Time’ Illegal Recruiter in Zamboanga*, MANILA BULL., *available at* <https://mb.com.ph/2021/07/07/affidavits-of-filipino-trafficking-victims-in-syria-led-to-arrest-of-alleged-big-time-illegal-recruiter-in-zamboanga> (last accessed Apr. 30, 2022) [<https://perma.cc/32YV-BG2K>].

247. *See, e.g.*, Department of Foreign Affairs, PH Embassy Holds Seminar on Brunei Labor Law, *available at* <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/24955-ph-embassy-holds-seminar-on-brunei-labor-law> (last accessed Apr. 30, 2022) [<https://perma.cc/43TA-DHEF>].

248. ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, pmbll., *adopted* Jan. 13, 2007.

249. *See generally* ALISON DUXBURY & TAN HSIEN-LI, CAN ASEAN TAKE HUMAN RIGHTS SERIOUSLY? 140-43 (2019).

contributions of migrant workers to the society and economy of both receiving states and sending states of the ASEAN.²⁵⁰

In this instrument, ASEAN Commitments include the following:

For purposes of protecting and promoting the rights of migrant workers, ASEAN Member Countries in accordance with national laws, regulations and policies, will:

15. Promote decent, humane, productive, dignified[,] and remunerative employment for migrant workers;
16. Establish and implement human resource development [programs] and reintegration [programs] for migrant workers in their countries of origin;
17. Take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities;
18. Facilitate data-sharing on matters related to migrant workers, for the purpose of enhancing policies and [programs] concerning migrant workers in both sending and receiving states;
19. Promote capacity building by sharing of information, best practices[,] as well as opportunities and challenges encountered by ASEAN Member Countries in relation to protection and promotion of migrant workers' rights and welfare;
20. Extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements;
21. Encourage international [organizations], ASEAN dialogue partners[,] and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and
22. Task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers, consistent with ASEAN's vision of a caring and sharing Community, and direct the Secretary-General of ASEAN to

250. See ASIAN DEVELOPMENT BANK INSTITUTE, ET AL., *SAFEGUARDING THE RIGHTS OF ASIAN MIGRANT WORKERS FROM HOME TO THE WORKPLACE* 42-43 (2017).

submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.²⁵¹

In Syria, the Philippine Embassy and the Indonesian Embassy are the only remaining ASEAN members with active diplomatic and consular missions.²⁵² Both the Philippines and Indonesia face similar challenges in protecting the rights of their nationals who are employed as household service workers in the homes of affluent Syrians.²⁵³ Presently, there are informal diplomatic arrangements based on person-to-person interactions that provide a way to assist nationals of both countries, especially when it comes to handling immigration law violations (for instance, *Iqama* or work permit violations such as overstaying and non-payment of penalties).²⁵⁴ In some cases, the Embassy has experienced assisting even Indonesian nationals when the Filipino national insists that both migrant workers must be extracted from their situations of vulnerability.²⁵⁵

6. The 1987 Philippine Constitution

Article II, Section 2 of the 1987 Philippine Constitution²⁵⁶ states, “The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”²⁵⁷ The Constitution also provides for articles on labor and social legislation that can be applicable to OFWs.²⁵⁸

251. ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, ¶¶ 15-22.

252. Department of Foreign Affairs, PH-Indonesia Embassies Hold First ASEAN Day in Syria, *available at* <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postupdate/17806-ph-indonesia-embassies-hold-first-asean-day-in-syria> (last accessed Apr. 30, 2022) [<https://perma.cc/W7S3-JZV3>].

253. *See* The New Humanitarian, Domestic Workers in Syria Await Repatriation, *available at* <https://www.thenewhumanitarian.org/feature/2012/09/20/domestic-workers-syria-await-repatriation> (last accessed Apr. 30, 2022) [<https://perma.cc/8QAU-27Z4>].

254. This narration is based on the Author’s personal experience and that of other Embassy officials and diplomatic attachés. The practice is focused more in conducting negotiations through informal channels rather than codified legal instruments.

255. *Id.*

256. PHIL. CONST. art. II, § 2.

257. PHIL. CONST. art. II, § 2.

258. *See* PHIL. CONST. art. II, § 18 & art. XIII, § 3.

International cooperation is one of the guiding principles in the DFA's conduct of foreign policy,²⁵⁹ consistent with the Philippine Constitution.²⁶⁰ Thus, any anti-trafficking and anti-illegal recruitment strategy would need to include international legal and judicial cooperation as part of Philippine foreign relations. Labor violation hearings would need to include evidence reflecting the international treaty obligations of the Philippines and its adherence to bilateral agreements. At the same time, cooperation would require examining the political impact of these measures on the bilateral relationships of both countries.

7. Executive Orders and Special Laws in Relation to Assistance to Nationals for Overseas Filipinos

a. Executive Order No. 292 (The Administrative Code of 1987)

Under Executive Order (E.O.) No. 292, or the Administrative Code of the Philippines,²⁶¹ the DFA's mandate is to be "the lead agency that shall advise and assist the President in planning, organizing, directing, coordinating[,] and evaluating the total national effort in the field of foreign relations."²⁶² For all overseas Filipinos, foreign relations would primarily include their labor concerns, in addition to their personal status as individuals,²⁶³ subject to the laws of the host government while being covered by Philippine law under the *lex nationalis* principle.²⁶⁴

259. See Malaya & Wahab-Manantan, *supra* note 34, at 25.

260. Malaya & Wahab-Manantan, *supra* note 34, at 23. See also PHIL. CONST. art. II, § 2.

261. Instituting the "Administrative Code of 1987" [ADMIN. CODE], Executive Order No. 292 (1987).

262. *Id.* bk. IV, tit. I, ch. I, § 2.

263. See Alberto G. Romulo, *The 3 Pillars of Philippine Foreign Policy: Economy, Security and OFWs (1st of 2 Parts)*, PHIL. STAR, Jan. 7, 2011, available at <https://www.philstar.com/other-sections/letters-to-the-editor/2011/01/07/645636/3-pillars-philippine-foreign-policy-economy-security-and-ofws-1st-2-parts> (last accessed Apr. 30, 2022) [<https://perma.cc/8JXV-7H45>]. "[T]he DFA has been guided by the Three Pillars of Philippine Foreign Policy, namely the preservation and enhancement of national security, the promotion and attainment of economic security[,] and the protection of the rights and the *promotion of the welfare and interest of all Filipinos overseas*." Romulo, *supra* note 263 (emphasis supplied).

264. See *Fujiki v. Marinay*, G.R. No. 196049, 700 SCRA 69, 91 (2013).

Note as well that E.O. No. 582, Series of 2006²⁶⁵ mandated the DFA-Office of Consular Affairs to be the “agency solely responsible for authenticating documents certified as authentic by the issuing agency[.]”²⁶⁶ This is an important point, considering that several labor law violations involve Filipinos falling prey to criminal syndicates that present falsified documents (e.g., fake birth certificates, overseas employment certificates, travel documents) to secure Philippine passports, to which tourist visas are attached.²⁶⁷

The DFA also works closely with the Department of Labor and Employment, which is the agency with the following mandate —

SEC. 2. *Mandate.* — The Department shall be the primary policy-making, programming, coordinating[,] and administrative entity of the Executive Branch of the government in the field of labor and employment. It shall assume primary responsibility for:

- (1) The promotion of gainful employment opportunities and the optimization of the development and utilization of the country’s manpower resources;
- (2) The advancement of workers’ welfare by providing for just and humane working conditions and terms of employment;
- (3) The maintenance of industrial peace by promoting harmonious, equitable, and stable employment relations that assure equal protection for the rights of all concerned parties.²⁶⁸

Special laws also govern the role of DFA in handling cases of overseas Filipinos, in addition to labor-related issues.²⁶⁹

265. Office of the President, Streamlining the Process of Authenticating Documents Intended for Use Abroad and Transferring the Authentication Office from the Office of the President to the Department of Foreign Affairs, Executive Order No. 582, Series of 2006 [E.O. No. 582, s. 2006] (Dec. 4, 2006).

266. *Id.* § 1.

267. *See, e.g.*, Department of Foreign Affairs, Filipinos Reminded Not to Seek Fake Documents and Assistance from Mr. Albert Guanzon and Associates, *available at* <https://dfa.gov.ph/statements-and-advisories/1082-filipinos-reminded-not-to-see-fake-documents-and-assistance-from-mr-albert-guanzon-and-associates> (last accessed Apr. 30, 2022) [<https://perma.cc/J89T-7LVL>].

268. ADMIN CODE, bk. IV, tit. VII, ch. 1, § 2.

269. *See, e.g.*, Department of Migrant Workers Act, § 6 (e).

b. Republic Act No. 7157 (Philippine Foreign Service Act of 1991)

FSPs are the main actors in the implementation of access to justice mechanisms outside the territorial jurisdiction of the Philippines.²⁷⁰ The nature of the work involved can be seen in the Foreign Service Act,²⁷¹ as follows —

SEC. 12. *Establishment of Foreign Service Posts.* — The national interest and security shall be the paramount consideration in the establishment of embassies, missions, consulates general[,] and other foreign service establishments maintained by the Department and the priority areas shall be in the countries where the following exist:

- (a) Extending diplomatic, financial, material, humanitarian support[,] and other expressions of solidarity;
- (b) Favorable trade relations and investments currently exist or prospects for trade and investments are favorable;
- (c) A considerable number of Filipino citizens; and
- (d) Adherence to the principle of reciprocity and where such is extended to us.

The Secretary shall define the territorial limits of consular jurisdictions.²⁷²

In Syria, the Embassy handles these functions and works with the Honorary Consul General assigned in Aleppo in the Syrian Arab Republic,²⁷³ with consular jurisdiction over areas that are geographically distant from the capital in Damascus. The honorary consul-general was appointed by the Secretary of Foreign Affairs to maintain operations in Aleppo City, covering Homs, Latakia, and Tartous governorates. There is another honorary consul general covering Damascus countryside,²⁷⁴ together with Hama and the other neighboring governorates, but the consul is located outside Syria. The legal basis for this is also in the Foreign Service Act, to wit —

270. *See, e.g.*, Department of Foreign Affairs, *supra* note 178.

271. An Act Revising Republic Act No. 708, as Amended [Philippine Foreign Service Act of 1991], Republic Act No. 7157 (1991).

272. *Id.* § 12.

273. The Philippine Honorary Consulate General in Aleppo, Syria, Wassim Nanaa, *available at* <https://www.phcaleppo.org> (last accessed Apr. 30, 2022) [<https://perma.cc/95C4-XKMQ>].

274. *See* Department of Foreign Affairs, Philippine Embassies and Consulates, *available at* <https://dfa.gov.ph/index.php/2013-03-21-05-48-17> (last accessed Apr. 30, 2022) [<https://perma.cc/3M77-YXCG>].

SEC. 25. Appointments. — The Secretary may appoint honorary consuls in areas where there are no Philippine embassies or consulates, under such regulations as may be prescribed by the Department. Honorary consuls shall be appointed from among qualified private persons preferably of Philippine citizenship to perform certain consular functions on non-career basis. Honorary consuls are not given fixed salaries or allowances.²⁷⁵

After the Mandatory Repatriation Program was implemented in Syria as a consequence of the armed conflict that erupted in March 2022,²⁷⁶ a limited number of Filipino citizens in Syria are still unwilling to be repatriated.²⁷⁷ Several Filipinos married to Syrian nationals, Filipinos employed as household service workers, and those who are working for international organizations are considered part of the Filipino Community in Syria.

c. Republic Act No. 8239 (Philippine Passport Act of 1996)

“Philippine consular officers in a foreign country” assigned to the FSPs with consular functions “shall be authorized by the Secretary [of Foreign Affairs] to issue, verify, restrict, cancel[,] or refuse a passport in the area of jurisdiction of the Post.”²⁷⁸ For distressed OFWs, the passport is one of the most important documents that is required for travel to the foreign workplace. Under Section 3 or the Definition of Terms of the Philippine Passport Act:²⁷⁹

(d) Passport means a document issued by the Philippine government to its citizens and requesting other governments to allow its citizens to pass safely and freely, and in case of need to give him/her all lawful aid and protection;

(e) Travel Document means a certification or identifying document containing the description and other personal circumstances of its bearer,

275. Philippine Foreign Service Act of 1991, § 25.

276. Etana Syria, Syria Military Brief: South Syria – 03 March 2022, *available at* <https://etanasyria.org/syria-military-brief-south-syria-03-march-2022> (last accessed Apr. 30, 2022) [<https://perma.cc/5RQ9-WFK5>].

277. Based on personal interviews of the Author with the Filipino community members in Syria, especially those married to Syrian nationals and working in establishments as chefs (not household service workers) or those with the United Nations/International Committee of the Red Cross. Some of them are unwilling to leave Syria. *See also* Department of Foreign Affairs, PHL Embassies in Damascus and Beirut Repatriate 28 OFWs From Syria, *available at* <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/6796-phl-embassies-in-damascus-and-beirut-repatriate-28-ofws-from-syria> (last accessed Apr. 30, 2022) [<https://perma.cc/RJ8J-JZ7D>].

278. Philippine Passport Act of 1996, Republic Act No. 8239, § 4 (1996).

279. *Id.* § 3.

issued for direct travel to and from the Philippines valid for short periods or a particular trip. It is issued only to persons whose claim to Philippine citizenship is doubtful or who fall under the category enumerated in [§] 13 of this Act;

(f) Supporting Documents mean any paper or document which is required to be submitted with the passport application supporting claims to Filipino citizenship to complete the application for a passport without which such application would be deemed incomplete or otherwise become subject to denial by the issuing authority[.]²⁸⁰

For majority of the human trafficking survivors and victims of labor rights violations, the passport is frequently secured using fraudulent supporting documents, stamped with mere tourist visas, rather than working visas, and later on, withheld by erring recruitment agencies and employers.²⁸¹ In those cases when the passport is not surrendered by the employer to the Embassy prior to repatriation of the Filipino trafficking survivor, the Embassy has the option to issue a travel document.²⁸²

The practice in Syria is to also include the Arabic translation of the travel document. This has proven to be effective since some of the Immigration Officers are unfamiliar with the English words on the travel document and thus, the Arabic text is what Syrian officials rely on.²⁸³

For illegal recruitment and trafficking cases that have already been filed in Philippine courts with a warrant of arrest that has been issued by the Presiding Judge for an illegal recruiter or a trafficker who is attempting to evade arrest as a fugitive from justice, this can be submitted as part of the grounds for cancellation if his or her passport falls under Section 8 (b) of the Philippine Passport Act, which provides for the following grounds: “(1) When the holder is a fugitive from justice; (2) When the holder has been convicted of a criminal offense; Provided, That the passport may be restored after service of sentence; or (3) When a passport was acquired fraudulently or tampered with.”²⁸⁴

280. *Id.* § 3 (d), (e), & (f).

281. Bureau of Immigration, Republic of the Philippines, Status Update, FACEBOOK, Feb. 26, 2022, *available* <https://www.facebook.com/officialbureauofimmigration/posts/327466772754435> (last accessed Apr. 30, 2022) [<https://perma.cc/BM4A-W2AU>].

282. Philippine Passport Act of 1996, § 13 (a).

283. This practice is also among the innovative solutions developed by the Author and her team in Syria.

284. *Id.* § 8 (b).

For most of the cases where the overseas Filipino worker traveled with an assumed identity through forgery of supporting documents to fraudulently obtain a passport, the passport may also be cancelled to prevent its use in more illegal activities based on the provisions above. In fact, any person who “[u]ses or attempts to use, any passport issued or designed for the use of another or any supporting documents for a passport application which belongs to another”²⁸⁵ can even be subject to punishment by a “fine of not less than [60] thousand pesos (₱60,000) nor more than [150] thousand pesos (₱150,000) and imprisonment of not less than six [] years nor more than [15] years.”²⁸⁶

These heavy penalties underscore the gravity of passport fraud-related cases. Yet, there are many OFWs, even minors, who eventually end up being trafficking victims in Syria²⁸⁷ because they used falsified supporting documents to obtain passports, especially from the Mindanao-based consular offices (e.g., Cotabato, General Santos, and Zamboanga).²⁸⁸

If the trafficking or illegal recruitment case would progress to a judgment of conviction, the Philippine Passport Act can also be the legal basis for cancellation of the passport of the convicted person.²⁸⁹

For instance, during a raid in 2015 in Zamboanga, around 200 passports were confiscated from the residence of Hajja Paksatul Anding y Idres, a.k.a. “Hajja Paksa,” one of the most influential human traffickers in Mindanao who was leading the criminal activities identified by the victims in the Filipino Workers Resource Center shelter at the Embassy.²⁹⁰ If the complaint-affidavits of the trafficking victims from Syria would be used as part of prosecuting the case against Hajja Paksa, not only can she be held liable for the charges in the Information and Resolution of the handling prosecutor, but she can also be made accountable for the Passport Act violations.

285. *Id.* § 19 (d) (1).

286. *Id.* § 19 (c) (2).

287. See Christia Marie Ramos, *Made to Travel with Fake Passports, Filipina Teens Fall Victim to Trafficking in Syria*, PHIL. DAILY. INQ., May 4, 2021, available at <https://globalnation.inquirer.net/195813/made-to-travel-with-fake-passports-filipina-teens-fall-victim-to-syria-trafficking> (last accessed Apr. 30, 2022) [<https://perma.cc/6G2G-7KEP>].

288. See, e.g., Mabasa, *supra* note 246.

289. Philippine Passport Act of 1996, § 8 (b) (2).

290. Mabasa, *supra* note 246.

In so many instances of exploitative labor practices, some OFWs also use their passports as collaterals for loans²⁹¹ from private entities that are not registered as a formal financial institution in the host country. Worst of all, some employers withhold access to their passports to prevent travel of the Filipino worker staying in-house.²⁹² These are blatant violations of Section 11, which clearly states —

SEC. 11. Ownership of Passports. — A Philippine passport remains at all times the property of the Government, the holder being a mere possessor thereof as long as it is valid and the same may not be surrendered to any person or entity other than the government or its representative: Provided, [t]hat a Filipino citizen may voluntarily surrender his/her passport to a Philippine Service Post for storage and safekeeping for which a proper receipt shall be issued for use when reclaiming the passport at a later date.²⁹³

Even if the Filipino worker has his or her name on the said passport, it remains the property of the Philippine government and cannot be used for those other purposes that are contrary to law.²⁹⁴

d. Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), Republic Act No. 10022 (Amending the Migrant Workers and Overseas Filipinos Act of 1995), and Republic Act No. 11641 (Department of Migrant Workers Act)

On the eve of Bonifacio Day, 30 December 2021, President Rodrigo Roa Duterte signed the Department of Migrant Workers Act,²⁹⁵ with the 18th Congress beginning the deliberations as early as 26 July 2021.²⁹⁶ While

291. *PH to OFWs: Passports Not Collateral*, RAPPLER, May 27, 2015, available at <https://www.rappler.com/moveph/94435-passports-not-collateral> (last accessed Apr. 30, 2022) [<https://perma.cc/W4BP-PF93>].

292. See Department of Labor and Employment, Baldoz Warns Agencies, Employers Withholding OFW Passports, available at <https://www.dole.gov.ph/news/baldoz-warns-agencies-employers-withholding-ofw-passports> (last accessed Apr. 30, 2022) [<https://perma.cc/ETK3-HMQU>].

293. Philippine Passport Act of 1996, § 11.

294. *Id.*

295. An Act Creating the Department of Migrant Workers, Defining Its Powers and Functions, Rationalizing the Organization and Functions of Government Agencies Related to Overseas Employment and Labor Migration, Appropriating Funds Therefor, and for Other Purposes [Department of Migrant Workers Act], Republic Act No. 11641 (2021).

296. International Labour Organization, Does the Philippines Need an OFW Department?, available at <https://apmigration.ilo.org/news/does-the-philippines->

preparations are underway for the transition to the creation of the new Department of Migrant Workers, as of this writing,²⁹⁷ the DFA continues to handle cases of distressed Overseas Filipinos, especially those who are considered undocumented or illegal migrants.

Under Section 2 on the Declaration of Policies,²⁹⁸ the new law attempts to amalgamate all the State policies in previous labor laws pertaining to Migrant Workers. However, it goes beyond this and incorporates the international labor law principles on protecting the rights and promoting the welfare of OFWs and their families in other instruments, as follows —

- (a) ensuring that private recruitment shall meet professional, legal, and ethical standards;
- (b) obtaining the best possible conditions of work that uphold the dignity of Overseas Filipino Workers;
- (c) providing timely and responsive services to address their needs regardless of legal status;
- (d) ensuring their participation in the formulation of policies affecting their welfare; and
- (e) providing mechanisms for skills development and reintegration.

In adherence to ratified international conventions and bilateral or multilateral treaties on migration, the State commits to progressively align its programs and policies towards the fulfillment of the [23] objectives of the Global Compact for Safe, Orderly[,] and Regular Migration (GCM).

The State does not promote overseas employment as a means to economic growth and national development and shall continuously aim to make it a choice and not a necessity. The State shall institute measures that will

need-an-ofw-department (last accessed Apr. 30, 2022) [<https://perma.cc/PM6G-6JTA>]. On 23 June 2022, former President Rodrigo Roa Duterte signed the new Republic Act No. 11862 or the Expanded Anti-Trafficking in Persons Act of 2022, including more provisions that are relevant to cases of Filipino workers trafficked to Syria. Azer Parrocha, Duterte Inks Expanded Anti-Trafficking in Persons Law, *available at* <https://www.pna.gov.ph/articles/1177728> (last accessed Apr. 30, 2022) [<https://perma.cc/P5QT-KN7P>].

297. Joyce Ann L. Rocamora, Dept. of Migrant Workers Still in Transition Period: DFA, *available at* <https://www.pna.gov.ph/articles/1171739> (last accessed Apr. 30, 2022) [<https://perma.cc/RQ7X-BS9E>].

298. Department of Migrant Workers Act, § 2.

strengthen the domestic labor market for the effective reintegration of Overseas Filipino Workers.²⁹⁹

Truth be told, the last paragraph is a very telling response to criticisms. Certain advocacy groups claim that the Philippine government has excessively relied on “exporting labor” and failed to provide economic empowerment opportunities on the domestic front.³⁰⁰ In reality, the importance of a dedicated agency mandated to help distressed migrants like Lara from Syria is part of the recognition of the State of the seemingly irreversible trend of feminization of migration.³⁰¹

The new law also continues to recognize the role of the DFA in implementing its foreign policy pillar on protection of the rights and promotion of the welfare of overseas Filipinos, in Section 6, Powers and Functions, as follows —

(e) Support and assist the Department of Foreign Affairs (DFA) and relevant government agencies in building strong and harmonious partnerships with counterpart and relevant agencies in foreign countries in order to facilitate the implementation of strategies and programs for the protection and promotion of the rights and well-being of OFWs and their families, and to continuously monitor economic, political, and labor developments therein;

(f) Support and assist the DFA in the negotiation of bilateral and multilateral agreements, initiatives and programs, including intergovernmental processes, which primarily concern labor migration;

(g) Represent, in coordination with and under the guidance of the DFA, interests pertaining to OFWs in bilateral, regional, and multilateral fora and international bodies. A written authorization shall be secured by the Department from the President, through the Secretary of Foreign Affairs, prior to any international meeting or negotiation of a treaty or executive agreement on any subject matter within its mandate;

...

(o) Develop and create a training institute that will provide substantive, analytical[,] and strategic leadership training programs meant to equip employees of the Department, especially those who will be working overseas,

299. *Id.*

300. See Chia Siow Yue, *Understanding International Labor Migration in East Asia*, PHIL. INST. DEV. STUD., Volume No. 25, Issue No. 3, at 4.

301. See generally Maelan Le Goff, *Feminization of Migration and Trends in Remittances*, available at <https://wol.iza.org/uploads/articles/220/pdfs/feminization-of-migration-and-trends-in-remittances.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/C4SN-379R>].

with necessary knowledge and skills, such as, but not limited to, the language, customs, traditions, and laws of the host countries where OFWs are located, with due regard to the training services being provided by the Foreign Service Institute of the DFA. The training shall also include effective means and methods in handling the concerns of OFWs;

...

(q) In coordination with the DFA, conduct regular, timely, and relevant political and security risk assessment of the conditions in the receiving country, including adequate evacuation plans that will be communicated with all migrant workers thereat, not only for deployment purposes but more especially in cases of emergencies which will require swift actions including, but not limited to, possible evacuation of our migrant workers;

...

The exercise of the powers and functions of the Department shall in no way limit, restrict, or diminish the pursuit of an independent foreign policy or the conduct of foreign relations and treaty negotiations by the DFA.

Protection of the rights and promotion of the welfare of overseas Filipinos is a pillar of Philippine foreign policy. The DFA shall continue providing assistance to other Filipino nationals not covered under this Act.³⁰²

These powers and functions clearly describe that the diplomatic and consular work of the DFA are indispensable aspects of any labor or migration-related discourse, especially in the context of combatting human trafficking. For instance, treaty negotiations and bilateral labor agreements would necessarily go through the legal requirements of E.O. No. 459 of 1997,³⁰³ declaring that “negotiations of all treaties and executive agreements, or any amendment thereto, shall be coordinated with, and made only with the participation of, the Department of Foreign Affairs[.]”³⁰⁴ This was highlighted in Section 15 on the Migrant Workers Office (MWO), “[i]n all cases, all incidents relating to provision of ATN and other services shall be consistent with the implementation of the One Country-Team Approach. To this end, the functions of the MWO shall complement the diplomatic and consular functions of the DFA.”³⁰⁵

302. Department of Migrant Workers Act, § 6 (e), (f), (g), (o), & (q).

303. Office of the President, Providing for the Guidelines in the Negotiation of International Agreements and Its Ratification, Executive Order No. 459, Series of 1997 [E.O. No. 459, s. 1997], § 1 (Nov. 25, 1997).

304. *Id.* § 1.

305. Department of Migrant Workers Act, § 15.

Even the professionalization of the employees of the new Department would require inputs from the Foreign Service Institute of the DFA since the same has been providing Pre-Departure Orientation Seminars (PDOS) to other diplomatic and consular personnel to be deployed.³⁰⁶

While the new law would subsume all the functions of the Office of the Undersecretary for Migrant Workers' Affairs of the DFA and absorb all the functions of the Philippine Overseas Employment Administration (POEA), the DFA shall retain the ATN and Legal Assistance Funds for the benefit of other Filipinos overseas and for consular assistance services.³⁰⁷

This new law appears to be a convergence of previous existing labor laws (e.g., the 1974 Labor Code of the Philippines or Presidential Decree No. 442,³⁰⁸ as amended, Executive Order No. 797 creating the Philippine Overseas Employment Administration,³⁰⁹ and Republic Act No. 8042 or the 1995 Migrant Workers and Overseas Filipinos Act of 1995,³¹⁰ which created the Office of the Undersecretary or Migrant Workers Affairs of the DFA,³¹¹ and its amendment, Republic Act No. 10022).³¹²

306. *Id.* § 6 (o).

307. *Id.* §§ 9 (c) & 14.

308. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442 (1974) (as amended).

309. 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, Series of 1982 [E.O. No. 797, s. 1982] (May 1, 1982).

310. 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).

311. *Id.* § 24.

312. 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).

The Republic Act No. 10022 amendment is like the backbone of the new law, as it

aims to further improve the standard of protection and promotion of the welfare of migrant workers, their families[,] and the overseas Filipinos in distress. It establishes a regular and continuous monitoring of international conventions, ratifies those that guarantee protection of the migrant workers and enter[s] bilateral agreement[s] with the countries hosting OFWs, and provides for free and accessible skills development and enhancement program[s] for the unskilled workers.³¹³

From an access to justice perspective, the Republic Act No. 10022 amendments recognize the need to provide adequate legal assistance and free access to the courts and quasi-judicial bodies, to wit —

(e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/documented or irregular/undocumented, are adequately protected and safeguarded.³¹⁴

In Syria, this is also provided by the Embassy through free legal aid clinics and free legal services³¹⁵ endorsed to the Syrian retainer lawyer. Human trafficking cases are filed through Syrian courts, the Human Trafficking Department under the Ministry of Interior, and the domestic courts in the Philippines, after going through preliminary investigation by the City or Provincial Prosecutor who would resolve the case once the trafficked Filipina is repatriated and turns over the complaint-affidavits for filing.³¹⁶ While the Filipino migrant worker is still in the shelter, she is connected with volunteer

313. Cynthia R. Lorenzo, *Migrant Workers and Overseas Filipinos in the Face of the Pandemic and Other Global Challenges* (Congressional Policy and Budget Research Department Policy Brief No. 2021-08), at 3, *available at* https://cpbrd.congress.gov.ph/images/PDF%20Attachments/CPBRD%20Policy%20Brief/PB2021-08_Migrant_Workers_and_Overseas_Filipinos_in_the_Face_of_the_Pandemic_and_Other_Global_Challenges.pdf (last accessed Apr. 30, 2022) [<https://perma.cc/ST8L-EFGB>].

314. Republic Act No. 10022, § 1.

315. *See* Commission on Filipinos Overseas, *supra* note 206, at 27.

316. *See id.* at 23-24.

lawyers and law students through the program of the Philippine Embassy, as well as the prosecution division of the POEA.³¹⁷

The role of the POEA and the DFA in regulating deployment, prior to these functions being absorbed or subsumed by the new Department of Migrant Workers, is clearly stipulated in Republic Act No. 10022, to wit —

SEC. 4. Deployment of Migrant Workers. - The State shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:

- (a) It has existing labor and social laws protecting the rights of workers, including migrant workers;
- (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and
- (c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers:

Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b)[,] and (c) hereof.

In the absence of a clear showing that any of the aforementioned guarantees exists in the country of destination of the migrant workers, no permit for deployment shall be issued by the Philippine Overseas Employment Administration (POEA).

...

For this purpose, the Department of Foreign Affairs, through its foreign posts, shall issue a certification to the POEA, specifying therein the pertinent provisions of the receiving country's labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers.³¹⁸

In the same way, the POEA and the DFA may also terminate or impose a ban on the deployment of migrant workers, similar to the case of Syria and Libya, in pursuit of the national interest or when public welfare so requires.³¹⁹

317. See Joyce Ann L. Rocamora, 22 Trafficked Pinoys from Syria Home After 'Lengthy' Negotiations, *available at* <https://www.pna.gov.ph/articles/1145100> (last accessed Apr. 30, 2022) [<https://perma.cc/L9DN-9JXK>].

318. Republic Act No. 10022, § 3.

319. *Id.* § 4.

Despite the deployment ban, there are still so many Filipino nationals whose vulnerabilities are exploited and who eventually fall prey to illegal recruiters and human traffickers who continue profiting from their illegal acts.³²⁰ While there are cases where the host government would provide employment documents to these irregular or undocumented migrant workers while the deployment ban has not yet been lifted, they should not be in that particular country in the first place.

Illegal recruitment, as defined in Republic Act No. 8042, as amended by Republic Act No. 10022, includes the following relevant provisions that are salient to the experience of OFWs in Syria —

SEC. 6. Definition. - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising[,] or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee[,] or holder of authority:

...

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

...

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

...

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

320. See Embassy of the Philippines, Beirut, Lebanon, PH Embassy Boosts Advocacy Against Human Trafficking & Illegal Recruitment to Lebanon, *available at* <https://beirutpe.dfa.gov.ph/newsroom/embassy-news/326-ph-embassy-boosts-advocacy-against-human-trafficking-illegal-recruitment-to-lebanon> (last accessed Apr. 30, 2022) [<https://perma.cc/S4GA-BVJL>].

...

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations[.]³²¹

In the case of distressed OFWs in Syria, majority of them were recruited by non-licensed and unauthorized recruiters who would promise them jobs abroad, transport them using fictitious tour packages under a tourist visa secured through false travel arrangements, and furnish them false information about the destination country and other terms of employment. There are innumerable instances when the OFW would be adversely affected by contract substitution or in some cases, force her to sign the contract in a language she does not understand,³²² i.e., Arabic language in the Middle East.

There are cases wherein the worker is in a harmful workplace such as the case of Gina (not her real name), who was forced to repack prohibited drugs and massage her employer, over and above her regular tasks as a household service worker in Syria.³²³ In the case of Faith and Hope (not their real names) or the two sex trafficking survivors who were rescued from Manama, Bahrain, they were promised work in a salon but instead, they were trapped in a brothel by fellow Filipinos who sold them for commercial sexual services, in exchange for money.³²⁴

OFWs are also frequently victimized by unscrupulous illegal recruiters who would demand exorbitant sums of money for allegedly processing their travel documents or passports, just to alter their identities and provide a

321. Republic Act No. 10022, § 5.

322. See MST News, *OFWs Contracts in Local Dialects*, MANILA STAND., May 4, 2015, available at <https://manilastandard.net/news/main-stories/176307/ofws-contracts-in-local-dialects.html> (last accessed Apr. 30, 2022) [<https://perma.cc/C993-VSM9>].

323. Based on personal interviews of the Author with Filipino Workers Resource Center (FWRC) wards. Gina (not her real name) shared her experience with the Embassy. The cases mentioned, and the corresponding Affidavits, are written in original Arabic language and are in the custody of Syrian courts and the IACAT.

324. Sabrina Thulander, *Philippines Partners Assist Bahrain in Conviction of Eight Traffickers*, available at <https://www.gfems.org/uncategorized/philippines-partners-assist-bahrain-in-conviction-of-eight-traffickers-guilty-of-trafficking-two-ofws> (last accessed Apr. 30, 2022) [<https://perma.cc/WTY9-QUJH>].

different name, date of birth, health condition, or any other personal information.³²⁵

e. Republic Act No. 9208 (Anti-Trafficking in Persons Act of 2003), as Amended by Republic Act No. 10364 (Expanded Anti-Trafficking in Persons Act of 2012), and Implementing Rules and Regulations of Republic Act No. 9208

Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation.³²⁶ The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.³²⁷ The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.³²⁸ In this case, Republic Act No. 9208³²⁹ is the domestic legislation enacted in compliance with the Philippine government's obligations under the previously mentioned Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, as part of the UNTOC (Palermo Protocol).

In establishing programs that address trafficking in persons, Section 16 of Republic Act No. 9208 spelled out the mandate of the DFA as follows —

(a) Department of Foreign Affairs (DFA) – shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs.

The DFA shall take necessary measures for the efficient implementation of the Machine Readable Passports to protect the integrity of Philippine

325. See INTERNATIONAL LABOUR ORGANIZATION, FAIR PERSPECTIVE: STORIES OF FILIPINO MIGRANT WORKERS IN THE MEDIA (2018).

326. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 60–61 (2009).

327. *Id.*

328. *Id.*

329. An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for Its Violations, and for Other Purposes [Anti-Trafficking in Persons Act of 2003], Republic Act No. 9208 (2003).

passports, visas[,] and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

It shall establish and implement a pre-marriage, on-site[,] and pre-departure counseling program on intermarriages.³³⁰

These provisions are aligned with the third pillar of Philippine Foreign Policy on the protection of the rights and promotion of the welfare of overseas Filipinos.³³¹ So even if the new Department of Migrant Workers is operational, the DFA still plays a significant role in providing assistance to Filipino nationals. The DFA is also a member of the IACAT,³³² an intergovernmental body with non-government organization representatives from sectors representing women, OFWs, and children, with a proven record of involvement in the prevention and suppression of trafficking in persons.³³³

Exhaustive research on trafficking in persons mainly focused on the definition of terms and the acts, means, and purpose, as elements to prove the crime of trafficking in persons.

However, based on the experience of the Philippine Embassy in Syria, one of the provisions that needs to be repeatedly emphasized to the trafficking survivor refers to legal protection to trafficked persons, which states —

SEC. 17. Legal Protection to Trafficked Persons. – Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.³³⁴

Most of the time, trafficked Filipinas in Syria are afraid to report to law enforcement authorities because of an unfounded belief that they might be

330. *Id.* § 16 (a).

331. *See* Department of Foreign Affairs, *supra* note 58.

332. Department of Foreign Affairs, Five Human Trafficking Survivors from Syria Now in Manila on Eve of World Day Against Trafficking 2021, *available at* <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/29293-five-human-trafficking-survivors-from-syria-now-in-manila-on-eve-of-world-day-against-trafficking-2021> (last accessed Apr. 30, 2022) [<https://perma.cc/VVT4-A534>].

333. *See* Inter-Agency Council Against Trafficking, History, *available at* https://iacat.gov.ph/?page_id=63 (last accessed Apr. 30, 2022) [<https://perma.cc/9PZ5-32JM>]. *See also* Anti-Trafficking in Persons Act of 2003, § 20 (g).

334. Anti-Trafficking in Persons Act of 2003, § 17.

arrested or involved in lengthy and complicated litigation. Section 17, when communicated to them in a language that they understood, provides the legal basis to be recognized as a victim and that their consent, in relation to the acts of exploitation, would be considered irrelevant.³³⁵

On 6 February 2013, Republic Act No. 10364 or the Expanded Anti-Trafficking in Persons Act of 2012³³⁶ was signed into law, thereby amending Republic Act No. 9208. These amendments include the following —

SEC. 3. *Definition of Terms.* ...

(a) *Trafficking in Persons* – refers to the recruitment, *obtaining, hiring, providing, offering,* transportation, transfer, *maintaining,* harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders *by means of* threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person *for the purpose of exploitation* which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude[,] or the removal or sale of organs.³³⁷

The definition of terms expanded a broader coverage of elements for proving the acts, means, and purpose in determining the criminal liabilities under the law. It also included more punishable acts under Section 3 (d), (e), (f), and (g), to wit —

(d) *Forced Labor* – refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of, force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage[,] or deception including any work or service extracted from any person under the menace of penalty.

(e) *Slavery* - refers to the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

335. *Id.*

336. An Act Expanding Republic Act No. 9208, Entitled “An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for Its Violations and for Other Purposes” [Expanded Anti-Trafficking in Persons Act of 2012], Republic Act No. 10364 (2013).

337. *Id.* § 3 (a) (emphases supplied).

(f) *Involuntary Servitude* – refers to a condition of enforced and compulsory service induced by means of any scheme, plan[,] or pattern, intended to cause a person to believe that if he or she did not enter into or continue in such condition, he or she or another person would suffer serious harm or other forms of abuse or physical restraint, or threat of abuse or harm, or coercion including depriving access to travel documents and withholding salaries, or the abuse or threatened abuse of the legal process.

(g) *Sex Tourism* – refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.³³⁸

For the labor trafficking cases in Syria, majority of the complainants who were in the custody of the Philippine Embassy shelter filed complaint-affidavits on the basis of the new Sections 4 (a), (j), and (k), as follows:

(a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of *domestic or overseas employment* or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation;

...

(j) To recruit, transport, transfer, harbor, obtain, maintain, offer, hire, provide[,] or receive a person by means defined [under] Section 3 of this Act for purposes of *forced labor, slavery, debt bondage and involuntary servitude*, including a *scheme, plan, or pattern* intended to cause the person either:

(1) To believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or

(2) To abuse or threaten the use of law or the legal processes; and

(k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt[,] or receive a child for purposes of exploitation or trading them, including but not limited to, the act of bartering and/or selling a *child* for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:

(1) All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage[,] and forced labor, including recruitment of children for use in armed conflict;

338. *Id.* § 3 (d), (e), (f), & (g).

- (2) The use, procuring[,], or offering of a child for prostitution, for the production of pornography, or for pornographic performances;
- (3) The use, procuring[,], or offering of a child for the production and trafficking of drugs; and
- (4) The use, procuring[,], or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety[,], or morals[.]³³⁹

Majority of the trafficking survivors in Syria benefited from the amendments because the expanded law includes more situations that were not contemplated in the previous iteration of the law. There were some cases of distressed OFWs who were recruited when they were still children but after years of staying in Syria, they were repatriated and turned over to the IACAT Operations Center as adults. The facts establishing minority and vulnerability were also included in the complaints to allege that the acts were committed against them when they were still children and that their vulnerable situations were exploited by the perpetrators of the crime.³⁴⁰

Relevant to Filipino nationals who were recruited as children from the Bangsamoro Autonomous Region of Muslim Mindanao, the traffickers can also be held liable for Attempt to Commit Trafficking in Persons, as part of the new Section 4-A of the law — “(a) Facilitating the travel of a child who travels alone to a foreign country or territory without valid reason therefor and without the required clearance or permit from the Department of Social Welfare and Development, or a written permit or justification from the child’s parent or legal guardian[.]”³⁴¹

There were several cases of children trafficked to Syria who were able to travel alone to a foreign country because the tradition of wearing a *hijab* (head scarf) to cover their faces was used to prevent age verification and detection by authorities.³⁴² Rather than engage in more thorough investigations at the immigration counter, whistleblowers from the Bureau of Immigration

339. *Id.* § 4 (a), (j), & (k) (emphases supplied).

340. Based on the Author’s experiences in the Embassy.

341. *Id.* § 4-A.

342. Elmor Santos, *Young Filipino Women Trafficked to Syria*, CNN PHIL., May 4, 2021, available at <https://www.cnnphilippines.com/news/2021/5/4/filipino-minors-human-trafficking-syria.html> (last accessed Apr. 30, 2022) [<https://perma.cc/VV5Q-FYB6>].

revealed that because of the so-called “*pastillas*” scheme, the passengers in the internal list of the criminal syndicate were not inspected further.³⁴³

Filipinas trafficked from Syria also benefited from the stronger law enforcement and prosecution-related provisions of the new law, as included in Sections 8 (a), (b), and (c), as follows —

(a) *Initiation of Investigation.* — Law enforcement agencies are mandated to immediately initiate investigation and counter-trafficking-intelligence gathering upon receipt of statements or affidavit from victims of trafficking, *migrant workers, or their families* who are in possession of knowledge or information about trafficking in persons cases.

(b) *Prosecution of Cases.* — *Any person who has personal knowledge of the commission of any offense under this Act, such as the trafficked person, the parents, spouse, siblings, children[,] or legal guardian may file a complaint for trafficking.*

(c) *Affidavit of Desistance.* — *Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private prosecutors are directed to oppose and manifest objections to motions for dismissal.*

Any act involving the means provided in this Act or any attempt thereof for the purpose of securing an Affidavit of Desistance from the complainant shall be punishable under this Act.³⁴⁴

These provisions were very useful for migrant workers to avail of access to justice mechanisms even after their repatriation back to the Philippines. The new sections, in effect, sought to prevent the dismissal of cases on the basis of fraudulently obtained affidavits of desistance,³⁴⁵ especially those from remote provinces of the Philippines wherein families are subjected to harassment by the illegal recruiters or human traffickers.

The abovementioned laws were also incorporated in the Philippine Embassy in Damascus Anti-Trafficking in Persons Action Plan 2021–2023,³⁴⁶ with the “4 Ps” Anti-Trafficking Paradigm, as follows:

343. *Id.*

344. Expanded Anti-Trafficking in Persons Act of 2012, § 8 (a), (b), & (c) (emphases supplied).

345. *Id.* § 8 (c).

346. The Philippine Embassy in Damascus Syria submitted this Anti-Trafficking Action Plan, an internal document guiding the operations of the Assistance-to-Nationals section, to DFA-OUMWA as part of the Report to Congress for 2021 and in response to instructions of the Secretary of Foreign Affairs to “empty out

PREVENTION - promote human dignity, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly,

PROTECTION - protect the people from any threat of violence and exploitation,

PROSECUTION - eliminate trafficking in persons, [and]

PARTNERSHIPS - to ensure their recovery, rehabilitation[,] and reintegration into the mainstream of society.³⁴⁷

The 4 Ps were also based on the IACAT Resolution No. 08, Series of 2017,³⁴⁸ the Resolution Adopting the “2017-2021 National Strategic Action Plan Against Trafficking in Persons.”³⁴⁹ The Resolution, citing Sections 16 and 21 of the abovementioned laws, “mandates all government agencies tasked under the Expanded Act to establish and implement preventive, protective[,] and rehabilitative programs for trafficked persons”³⁵⁰ and “formulate a comprehensive and integrated program to prevent and suppress [] trafficking in persons[.]”³⁵¹ IACAT then held four consultative summits from September 2016 to February 2017, gathering recommendations from all anti-trafficking task forces, civil society organizations, local government units, trafficking survivor groups, national line agencies, and other relevant government

the shelter” amidst media reports that went viral in 2021. See Katie McQue, *The Philippines Repatriates Dozens of Women Trafficked to Syria After Report About Abuses*, WASH. POST., July 8, 2021, available at https://www.washingtonpost.com/world/middle_east/philippines-human-trafficking-maids-syria/2021/07/07/b8334b20-de8c-11eb-a27f-8b294930e95b_story.html (last accessed Apr. 30, 2022) [<https://perma.cc/U6SR-F2VP>].

347. See IACAT, Action Plan Against Trafficking in Persons, at 4, available at <https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/asia/national%20strategic%20plan%20against%20trafficking%20in%20persons%202004-2010/national%20strategic%20action%20plan%20-%202004%20to%202010.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/Q5K9-LSCL>]. This is the older version of the National Strategic Action Plan Against Trafficking in Persons.

348. Inter-Agency Council Against Trafficking, Resolution Adopting the “2017 – 2021 National Strategic Action Plan Against Trafficking in Persons, Resolution No. 08, Series of 2017 [IACAT Res. No. 08, s. 2017] (July 2017).

349. *Id.*

350. *Id.* whereas cl. para. 1.

351. *Id.* whereas cl. para. 2.

agencies to recommend strategic directions and interventions that were incorporated in the National Strategic Action Plan.³⁵²

A review of the abovementioned laws would also require studying the relevant provisions of other related laws that are part and parcel of the Anti-Trafficking in Persons strategy, namely: Republic Act No. 10365 (Expanded Anti-Money Laundering Act),³⁵³ Republic Act No. 10175 (Cybercrime Prevention Act of 2012),³⁵⁴ Republic Act No. 10022 (An Act Amending the Migrant Workers and Overseas Act of 1995), Republic Act No. 6955 (Mail Order Bride Law),³⁵⁵ Republic Act No. 8043 (Inter-Country Adoption Act of 1995),³⁵⁶ Republic Act No. 7610 (Special Protection of Filipino Children Abuse, Exploitation, and Discrimination),³⁵⁷ Republic Act No. 9231 (Worst Forms of Child Labor),³⁵⁸ Republic Act No. 9995 (Anti-Photo and Video

352. See Inter-Agency Council Against Trafficking, *Accomplishment Report for the Reporting Period: CY 2017*, at 11, available at <https://aseanactpartnershiphub.com/wp-content/uploads/2022/02/2017-IACAT-Annual-TIP-Report.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/U2QH-LWED>].

353. An Act Further Strengthening the Anti-Money Laundering Law, Amending for the Purpose Republic Act No. 9160, Otherwise Known as the “Anti-Money Laundering Act of 2001” as Amended, Republic Act No. 10365 (2013).

354. An Act Defining Cybercrime, Providing for the Prevention, Investigation, Suppression and the Imposition of Penalties Therefor and for Other Purposes [Cybercrime Prevention Act of 2012], Republic Act No. 10175 (2012).

355. An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on A Mail-Order Basis and Other Similar Practices, Including the Advertisement, Publication, Printing or Distribution of Brochures, Fliers and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefor, Republic Act No. 6955 (1990).

356. An Act Establishing the Rules to Govern Inter-Country Adoption of Filipino Children, and for Other Purposes [Inter-Country Adoption Act of 1995], Republic Act No. 8043 (1995).

357. An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610 (1992).

358. An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as Amended, Otherwise Known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” Republic Act No. 9231 (2003).

Voyeurism Act),³⁵⁹ Republic Act No. 9775 (An Act Defining and Penalizing the Crime of Child Pornography),³⁶⁰ Republic Act No. 7170 (Organ Donation Act of 1991),³⁶¹ and the Revised Penal Code, as amended.³⁶² These will no longer be covered in this Article.

8. DFA Rules and Regulations

In addition to the abovementioned laws, internal rules and regulations of the DFA are also important elements in providing access to justice for the protection of the basic human rights of distressed Overseas Filipinos. The following explains the transition in the change of policy issuances from prohibiting foreign service personnel from serving certain legal processes, towards a more permissive regime that allows the same for civil, administrative, and commercial cases, except criminal cases, which shall also be discussed below.

a. DFA Rules and Regulations, Sec. 617 (Original)

As a general rule, foreign service personnel are forbidden from serving subpoenas, citations, complaints, or other forms of legal process in connection with cases pending in Philippine courts.³⁶³ However, there are certain exceptions to this, namely:

- (1) Unless prohibited by the law of the host country, service of subpoena commanding a Filipino witness to appear and give his testimony;

359. An Act Defining and Penalizing the Crime of Photo and Video Voyeurism, Prescribing Penalties Therefor, and for Other Purposes [Anti-Photo and Video Voyeurism Act of 2009], Republic Act No. 9995 (2009).

360. An Act Defining the Crime of Child Pornography, Prescribing Penalties Therefor and for Other Purposes [Anti-Child Pornography Act of 2009], Republic Act No. 9775 (2009).

361. An Act Authorizing the Legacy or Donation of All or Part of a Human Body After Death for Specified Purposes [Organ Donation Act of 1991], Republic Act No. 7170 (1992).

362. An Act Revising the Penal Code and Other Penal Laws [REV. PENAL CODE], Act No. 3815 (1930).

363. Department of Foreign Affairs, Department Order No. 19A-95 [DFA D.O. No. 19A-95] (1995). This is an internal document available only to members of the DFA.

- (2) Subpoena issued by a court upon the application for the Office of the Solicitor General to compel attendance of a Filipino witness at a criminal trial;
- (3) Order to show cause issued in a Contempt Proceedings against a Filipino witness; and
- (4) Documents relating to fraudulent naturalization.³⁶⁴

These cases have not yet been initiated in Syria but are frequent occurrences in other countries.

b. DFA Rules and Regulations, Sec. 617 (Revised in 1997)

Under the old rule in Section 617 (Service of Legal Process), “personnel of the Foreign Service are *forbidden to serve subpoenas* in the country of their assignment in connection with the criminal cases pending in the courts of the Philippines.”³⁶⁵ However, the revised rule contemplates that DFA may serve summons and other judicial documents, except subpoenas in criminal cases.

For labor law violations, this is part of the legal remedy can may be availed of but so far, it has not yet occurred in Syria.

c. DFA Rules and Regulations, Sec. 617 (Revised in 2005)

The provisions of the DFA Rules and Regulations³⁶⁶ describes the changes in 2005, and finally, the latest rule that is being enforced, as follows —

SEC. 617. Service of Legal Process. - Unless prohibited by local law, foreign service personnel shall, upon the request of a clerk of court or proper Philippine court authorities duly endorsed by the Home Office, serve subpoenas, citations or complaints, or other forms of legal process in the country of their assignment in connection with cases pending in the courts of the Philippines.

The service of legal processes on Filipino citizens may be completed through personal service or registered mail; in the latter case, there must be a notice to the postal authorities to return the mail to sender if undelivered within ten (10) days. Service on non-Filipino citizens should be coursed through the assistance of the host foreign ministry, with an accompanying assurance

364. Based on an internal document available only to members of the DFA. These were also briefly discussed by officers of the DFA who were requested to present on the topic during Mandatory Continuing Legal Education lectures.

365. *Id.* (emphasis supplied).

366. *Id.*

that Philippine authorities will reciprocate any assistance extended by the host foreign country.³⁶⁷

Under the latest rule, the DFA may serve summons and other judicial documents, including subpoenas, but the same must be transmitted through the host country, in case of service to a foreigner.³⁶⁸ In Syria, the transmittal process must be coursed through diplomatic channels by formally conveying to the Ministry of Foreign Affairs and Expatriates, then the Ministry shall convey the judicial documents to the proper recipient through its own internal processes.³⁶⁹

In practice, the DFA-OTLA observes that for cases wherein service of documents in criminal cases are requested by the OFW, which must go through the DOJ Office of the Chief State Counsel,³⁷⁰ such is not mentioned in the DFA Rules and Regulations because there is a separate process for these cases.

d. DFA Rules and Regulations on Notarization of Documents

Section 618 of the DFA Rules and Regulations also provides for the Notarial Duties performed by FSPs abroad for Overseas Filipinos, including the following:

- (1) Administration of all oaths and affirmations provided for by law in all matters incident to the notarial office;
- (2) Execution of affidavits, depositions, and other documents requiring an oath;
- (3) To receive proof and acknowledgment of all writings relating to commerce and navigation and such other writings as are commonly proved or acknowledged before notaries;
- (4) Acting as a magistrate, in the writing of affidavits or depositions; and
- (5) Making declarations and certifying to the truth thereof.³⁷¹

367. *Id.*

368. *Id.*

369. *Id.*

370. Based on an internal document available only to members of the DFA. These were also briefly discussed by officers of the DFA who were requested to present on the topic in Mandatory Continuing Legal Education lectures.

371. *Id.*

For the *Sinumpaang Salaysay* or Complaint-Affidavits of trafficking survivors from Syria, the Philippine Embassy performed these notarial services to enable them to bring these documents to the Philippines and endorse these to IACAT.³⁷²

Philippine Embassies and Consulates must also be mindful of Sections 619 and 620 of the DFA Rules and Regulations, which provide for the Officers Authorized to Administer Oaths:

- (1) Officers whose appointment is vested in the President such as Ambassador, Ministers, and Foreign Service Officers (FSOs);
- (2) Both diplomatic and consular officers have the authority to perform notarial services;
- (3) Diplomatic officers should not, as a rule, perform notarial services if a consular officers is available; and
- (4) Notarial acts to be performed by FSO assigned in a consular capacity.³⁷³

In the case of Syria, since there is only one foreign service officer with a Consular Commission and concurrently performs diplomatic functions, then the notarial acts must be performed by the same officer, while there are no other consular officers available.³⁷⁴

Another important reminder for providing access to justice for distressed Overseas Filipinos is under Section 621 of the DFA Rules and Regulations, as it provides for the Situs of Notarial Services.³⁷⁵ As a general rule, notarial services are performed at the offices and within consular jurisdiction of the foreign service post.³⁷⁶ As an exception, it may be performed elsewhere when it is practically impossible for the parties to appear at the office.³⁷⁷

For example, in the recent jail visit to the Adraa Prison in Damascus, Syrian Arab Republic, these services were provided to the detained OFW because of the physical impossibility of her personal appearance at the consular

372. *Id.*

373. *Id.*

374. *Id.*

375. *Id.*

376. Based on an internal document available only to members of the DFA. These were also briefly discussed by officers of the DFA who were requested to present on the topic in Mandatory Continuing Legal Education lectures.

377. *Id.*

section of the Embassy.³⁷⁸ Further, during one of the consular missions of the Embassy, access to justice as an accommodation mechanism was provided to one of the Overseas Filipinos married to a Syrian national.³⁷⁹ Due to the distance of the Tartous Governorate to Damascus proper, these services were provided to her during the mobile consular mission.³⁸⁰

e. DFA Rules and Regulations on Deposition-Taking

While the Philippines has not acceded to the Hague Evidence Convention,³⁸¹ these provisions can be considered in providing access to justice mechanisms for trafficking survivors who would need to prepare statements while in the custody of the Embassy or Consulate, for parties or witnesses that require deposition-taking.

Section 641 of the DFA Rules and Regulations defines depositions as “the testimony of a witness taken in writing under oath or affirmation, before a judicial officer or notary public or some other officer in answer to interrogatories, oral or written.”³⁸²

Supreme Court Circular No. 4 (1987) provides that all courts are “[directed], in the interest of justice, to course all requests for the taking of deposition of witnesses residing abroad through the [DFA].”³⁸³ In practice, requests for taking of depositions must be endorsed by the court and not directly sent by the counsel to the DFA.

As early as October 2017, the SC-OCA issued SC Circular No. 209-2017 which disseminated the Guidelines in Taking Depositions Before Philippine

378. Based on the Author’s personal experience.

379. *Id.*

380. See generally Department of Foreign Affairs, PHL Embassy Conducts Mobile Consular Services Outreach, Overseas Voters Registration in Auckland and Other Areas in North Island of New Zealand, available at <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postupdate/3738-phl-embassy-conducts-mobile-consular-services-outreach-overseas-voters-registration-in-auckland-and-other-areas-in-north-island-of-new-zealand> (last accessed Apr. 30, 2022) [<https://perma.cc/6TSM-5XU8>].

381. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, opened for signature Mar. 18, 1970, 847 U.N.T.S. 231.

382. Based on an internal document available only to members of the DFA.

383. Supreme Court, Taking of Deposition of Witnesses Residing Abroad to be Coursed Through the Department of Foreign Affairs, Circular No. 4-87 [SC Circ. No. 4-87], para. 3 (Apr. 6, 1987).

Consular Officers issued by the DFA.³⁸⁴ This requires all requests for depositions to be coursed through the DFA-OTLA.³⁸⁵

There are some reminders to consider in these types of deposition requests. As a general rule, taking of depositions before Philippine consular officers abroad are generally allowed only in civil cases.³⁸⁶ In the Supreme Court cases of *Manguerra v. Risos*³⁸⁷ and *Go v. People*,³⁸⁸ it was held that deposition proceedings are not generally allowed in criminal cases, the examination of the witness should be made before the court or judge where the case is pending and if examination is done elsewhere, the accused might not be able to attend.³⁸⁹ The Court asserted that the judge must be able to observe the deportment of the witness to assess his credibility and the rights of the accused must be protected.³⁹⁰

However, considering the changes brought by the COVID-19 pandemic situation, the jurisprudential doctrines in *Manguerra* and *Go* can give way to more relevant policies that reflect the need for virtual hearings, including deposition-taking, especially in urgent cases like those encountered by human trafficking survivors, prior to their repatriation.

The following enumerates the requirements and procedure in taking of depositions abroad, based on the DFA Guidelines and the aforementioned SC-OCA Circular:

- (1) Letter addressed to OTLA Assistant Secretary requesting assistance stating:³⁹¹
 - (a) Proposed date and time which is not less than three weeks from Office of Legal Affairs receipt of the letter;³⁹²

384. Office of the Court Administrator, Guidelines in the Taking of Depositions Before the Philippine Consular Officers Abroad, OCA Circular No. 209-2017 (Oct. 11, 2017).

385. *Id.* pt. 1.

386. *See* *Vda. de Manguerra v. Risos*, G.R. No. 152643, 563 SCRA 499, 506 (2008) & *Go v. People*, G.R. No. 185527, 677 SCRA 213, 219 (2012).

387. *Vda. de Manguerra v. Risos*, G.R. No. 152643, 563 SCRA 499 (2008).

388. *Go v. People*, G.R. No. 185527, 677 SCRA 213 (2012).

389. *Vda. de Manguerra*, 563 SCRA at 506 & *Go*, 677 SCRA at 219.

390. *Vda. de Manguerra*, 563 SCRA at 510 & *Go*, 677 SCRA at 219.

391. OCA Circular No. 209-2017, pt. 1 (a).

392. *Id.* pt. 1 (a) (i) (emphasis omitted).

- (b) “[N]ame and contact details of the deponent;”³⁹³
- (c) Name and “contact details of the requesting counsel[.]”³⁹⁴
- (2) Order issued by the court “requesting the [DFA] to assist the requesting counsel in taking the deposition abroad;”³⁹⁵
- (3) Written interrogatories with annexes;³⁹⁶
- (4) Cross interrogatories, if applicable; and
- (5) Procedure in Taking of Depositions Abroad
 - (a) Submit requirements to DFA-OTLA;³⁹⁷
 - (b) OTLA transmits the documents to the Post that has jurisdiction over the place of residence of the deponent and inform Post of the proposed schedule for deposition;³⁹⁸
 - (c) Post comments on “acceptability of the proposed schedule” and indicates the name of the consular officer that will take the deposition;³⁹⁹
 - (d) DFA-OTLA provides feedback to the requesting counsel;⁴⁰⁰
 - (e) Requesting counsel coordinates directly with the deponent to ensure his appearance during the scheduled time;⁴⁰¹
 - (f) Consular officer takes the deposition of the deponent at the premises of the Embassy or Consulate;⁴⁰²

393. *Id.* pt. 1 (a) (ii).

394. *Id.* pt. 1 (a) (iii).

395. *Id.* pt. 1 (b).

396. *Id.* pt. 1 (c).

397. OCA Circular No. 209-2017, pt. 1.

398. *Id.* pt. 2.

399. *Id.* pt. 3.

400. *Id.*

401. *Id.* pt. 4.

402. *See id.* pt. 5.

- (g) Deponent or representative of the requesting party pays the consular fees;⁴⁰³
- (h) Consular officer prepares or supervises the preparation of the transcript of the deposition and sends the same by pouch to DFA-OTLA;⁴⁰⁴ and
- (i) OTLA transmits the transcript of the deposition to the requesting court.⁴⁰⁵

In Syria, there are no cases yet pertaining to deposition requests. However, the system implemented by the Embassy was an innovation on online evidence-gathering through case build-up via Google Meet videoconferencing.⁴⁰⁶ This will be discussed further below.

IV. SYRIAN LAWS ON TRAFFICKING IN PERSONS AND SYRIAN LABOR LAW

A. Legislative Decree No. 3 of 2010

Under Legislative Decree No. 3 of 2010 (Decree on the Crimes of Trafficking in Persons in the Syrian Arab Republic),⁴⁰⁷ the State provides a legal foundation for prosecuting trafficking offenses and for protecting victims, incorporating the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), in the definition, as well as basic human rights standards for migrant workers.⁴⁰⁸

403. OCA Circular No. 209-2017, pt. 5.

404. *Id.*

405. *Id.* pt. 6.

406. See Department of Foreign Affairs, PH Embassy in Damascus Launches First-Ever “*Sandigan Sa Syria* Series 1: Virtual Dialogue” with Compass PH, available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1040&context=mjil> (last accessed Apr. 30, 2022) [https://perma.cc/S8GK-DVZV].

407. Legislative Decree No. 3/2010 (English translation of the original Arabic text were provided by the Ministry of Justice of the Syrian Arab Republic in an internal publication formally delivered to the Philippine Embassy in December 2020). See also Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Consideration of the Combined Second and Third Periodic Reports Submitted by the Syrian Arab Republic Under Article 73 of the Convention, Due in 2011 and 2016*, U.N. Doc. CMW/C/SYR/2-3 (Jan. 24, 2020).

408. See *id.* art. 2.

This is a welcome development in human rights legislation in the Arab world, especially since “many Arab countries have passed comprehensive laws” to combat these worst forms of modern-day slavery.⁴⁰⁹ Aside from Syria, other Arab countries that enacted their own anti-trafficking laws include: “United Arab Emirates (U.A.E.), Algeria, Bahrain, Djibouti, Egypt, Jordan, Mauritania, Oman, Saudi Arabia, Qatar, and Lebanon.”⁴¹⁰ Notably, these are also some of the countries that have a huge population of OFWs⁴¹¹ and thus, the Philippine Embassies and Consulates in these countries often have their own labor attachés from the Overseas Workers Welfare Administration and social welfare attachés from the Department of Social Welfare and Development (DSWD), unlike in Syria.⁴¹²

Notably, the Philippine government partners with the government of the Syrian Arab Republic in facilitating the repatriation of distressed OFWs.⁴¹³ While there is no *de jure* “*kafala*” (sponsorship) system in Syria, migrant workers still need to secure a no objection certificate from the Immigration Department to signify the consent of the “*kafeel*” (sponsor) before the worker can be granted an exit visa prior to her departure from the country.⁴¹⁴ In effect, it is *de facto* “*kafala*” system, but in a different manner from the way it is implemented in the Gulf countries.

For the first time in history, the shelter was completely emptied with the assistance of the Syrian government.⁴¹⁵ Through extensive diplomatic negotiations, the distressed OFWs were repatriated *en masse* on 24 June 2021,

409. See Mohamed Y. Mattar, *Human Rights Legislation in the Arab World: The Case of Human Trafficking*, 33 MICH. J. INT’L L. 101, 103 (2011).

410. *Id.* at 104.

411. Department of Foreign Affairs, Distribution on Filipinos Overseas, available at <https://dfa.gov.ph/distribution-of-filipinos-overseas> (last accessed Apr. 30, 2022), [https://perma.cc/P222-BXFL].

412. See Department of Labor and Employment, Baldoz Designates Two Veteran Labor Attaches to Riyadh and Jeddah POLOs, available at <https://www.dole.gov.ph/news/baldoz-designates-two-veteran-labor-attaches-to-riyadh-and-jeddah-polos> (last accessed Apr. 30, 2022), [https://perma.cc/RP5C-T4GV].

413. Rocamora, *supra* note 317.

414. See SOUTH ASIAN MIGRATION IN THE GULF: CAUSES AND CONSEQUENCES 19 (Mehdi Chowdhury & S. Irudaya Rajan eds., 2018).

415. Rocamora, *supra* note 317.

after invoking provisions of the Syrian laws on trafficking in persons, labor, and immigration-related concerns.⁴¹⁶

Salient provisions of the Syria Anti-Trafficking Law hold parallels to the Anti-Trafficking in Persons legislations of the Philippines.⁴¹⁷ The Syrian law also created the Anti-Human Trafficking Department,⁴¹⁸ an agency of the Ministry of Interior in Syria that is specialized in combatting trafficking in persons offenses, “[i]n addition to coordinating the efforts of Ministries and agencies concerned with combat[t]ing human trafficking, and promoting joint application of [anti-trafficking] in persons [law] to prosecute perpetrators of trafficking crimes, and to provide protection for victims and witnesses, and to strengthen[] international cooperation to combat this crime.”⁴¹⁹

Under the Syrian law,

[t]he Minister of Interior appoints the Director of the department, as well as those who work in it, while taking into account to employ military or civilians, who must be of both genders and who have a variety of academic and linguistic qualifications which ... [are] compatible with the nature of the administration’s tasks.⁴²⁰

Some of the goals of the Syrian Anti-Human Trafficking Department that are stipulated in the Legislative Decree No. 3 of 2010⁴²¹ include:

- (1) Preventing trafficking in persons[;]
- (2) To activate the anti-human trafficking law and apply it[;]
- (3) Detecting trafficking in persons networks[,] ... arresting its members[,] and bringing them to justice[;]
- (4) Pay due attention to trafficking in persons victims in general, and to women and children in particular[;]
- (5) Providing support to trafficking in persons victims to help them heal quickly from the negative effects that resulted in these offen[s]es[,] [i]n

416. *Id.*

417. *Compare* Expanded Anti-Trafficking in Persons Act of 2012 *with* Anti-Human Trafficking Department Primer from the Syrian Ministry of Interior (2010) [hereinafter Syria Anti-Trafficking Law Primer] (on file with Author).

418. Legislative Decree No. 3/2010, art. 17.

419. Syria Anti-Trafficking Law Primer, *supra* note 417, at *1.

420. *Id.*

421. Legislative Decree No. 3/2010, art. 17.

addition to helping the victims reintegrate in coordination with other departments[; and]

- (6) Taking into account[] the following measures in accordance with article (15) of the Legislative Decree No. 3 of year 2010:
 - (a) A female officer should attend while conducting interviews with female victims.
 - (b) Not to detain victims in facilities that are inappropriate to their situation as victims.
 - (c) Providing medical, physical, and emotional support[,] and other needed financial assistance.
 - (d) Confidentiality and non-disclosure of their names, whereabouts, or information that might identify them or identify their family members.
 - (e) Providing advice and information concerning their legal rights in a language understandable to them.⁴²²

The forms of trafficking in persons under the Syrian law are also very similar to the definition of terms in Philippine law, when describing the prohibited acts, as follows:

- (1) Exploitation of the prostitution of others (prostitution rings)[;]
- (2) Other sexual exploitations[;]
- (3) Forced work or service[;]
- (4) Slavery and other similar practice[;]
- (5) Exploitation of domestic workers in a way that is against the legislation governing concerning the recruitment and employment of domestic workers[;]
- (6) Trafficking in human organs[; and]
- (7) Trafficking in children for the purpose of exploiting them in criminal activities, including prostitution, pornography[,] and forced labor (such as beggar[s] network).⁴²³

This enumeration includes provisions of the Palermo Protocol, as well as penalizing acts of trafficking in Syria that are causing harm to both Syrian nationals and foreigners who are under exploitative situations.⁴²⁴ For the

422. Syria Anti-Trafficking Law Primer, *supra* note 417, at *1-2.

423. *Id.* at 2.

424. Legislative Decree No. 3/2010, art. 6.

OFWs in Syria, the common stipulations of facts in their complaints refer to the exploitation against recruitment and employment of domestic workers, especially because of the maltreatment and adverse working conditions they are enduring in some Syrian households.⁴²⁵ Unlike other Arab countries, OFWs in Syria are not victimized by prostitution rings or sex trafficking operations, but instead, they are recruited from remote provinces to work in households as cooks, cleaners, and caretakers of children and the elderly.⁴²⁶

In accordance with the provisions of Article 18 of Decree No. 3 of year 2010, the Anti-Human Trafficking Department undertakes the following tasks:

- (1) Proposing the general policy and executive programs for approval of the Minister of Interior[;]
- (2) Organizing and providing a reference base for information, investigations, [statistical data,] and other matters relating to crimes of trafficking in persons, and providing them to the concerned authorities[;]
- (3) Exchange of information with countries, international organizations, or relevant authorities [with] regard[to]trafficking in persons[;]
- (4) Develop and follow up on specialized training programs for those involved in combat[t]ing trafficking in persons crimes[;]
- (5) Take appropriate measures to ensure that control is exercised within the territory of the State and across borders in order to confront the crimes of international trafficking in persons[;]
- (6) Cooperation with relevant organizations and official ... bodies to publish an appropriate media culture to educate the public about the danger of this crime[;]
- (7) Take appropriate measures to alert the relevant authorities [regarding] the arrival of persons who they clearly see to be among the original perpetrators of this crime, its accomplices, or one of its victims[; and]

425. Based on the Author's personal experiences in the Embassy. These were also documented in the confidential Complaint-Affidavits of the workers that were submitted to IACAT.

426. See Department of State, United States of America, Trafficking in Persons Report (June 2021), at 104, available at <https://bz.usembassy.gov/wp-content/uploads/sites/279/TIPR-GPA-upload-07222021.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/AR6P-WX5L>] [hereinafter Trafficking in Persons Report].

- (8) The task of coordinating international cooperation with relevant organizations and counterpart bodies in other countries in accordance with international agreements to which Syria is a party, or the principle of reciprocity, and coordination with the concerned authorities to serve the objectives of this legislative decree.⁴²⁷

After elevating a trafficking case to the Syrian court against a Syrian recruitment agency, the Philippine Embassy was able to secure a conviction for the first time, when the court ruled in favor of the Embassy and the Filipina migrant workers.⁴²⁸

B. Labor Law

Accordingly, “[w]hile the work of domestic servants is not covered under Syria’s labor law, Decree 27 of March 2009 and Decree 108 of December 2009 provide regulations concerning domestic worker recruitment agencies and guidelines for employment contracts; their enforcement could prevent forced labor.”⁴²⁹

According to Syrian Labor Law, for domestic workers, there is no precise legal definition of the term “domestic workers,” but what is meant by custom and jurisprudence is the group of people who carry out work-related service to the family and does domestic work.⁴³⁰ The permanent servant of the family members enables him to know their domestic and personal secrets and makes him akin to being one of them.⁴³¹ This category is subject to the rules of civil law which cannot be considered sufficient to provide adequate protection to the weak party.⁴³² It is up to the trial court to characterize the contract as a domestic service contract or not, according to the facts presented before it.⁴³³ For example, domestic workers can refer to: the private servant, the nurse, the chef, the janitor of the private house, the caregiver, the driver of the private

427. Syria Anti-Trafficking Law Primer, *supra* note 417, at *2.

428. Department of Foreign Affairs, *supra* note 178.

429. United States Department of State, 2011 Trafficking in Persons Report – Syria, available at <https://www.refworld.org/docid/4e12ee442.html> (last accessed Apr. 30, 2022) [<https://perma.cc/AA4Y4-U7S9>].

430. SAMER MAHMOUD ALAHMAR & RUBA MOHAMAD ZARZOUR, YOUR GUIDE IN THE LABOR LAWSUIT FOR PRIVATE SECTOR WORKERS 1–50 (Ramzi Habash trans.) (translated to English from the original Arabic and on file with Author).

431. *Id.*

432. *Id.*

433. *Id.*

car, the bodyguard, the gardener in the garden of the house, and so forth.⁴³⁴ However, the following do not fall under the category of domestic workers: servants of hotels, hospitals, social facilities, and so forth, because these are subject to the labor law.⁴³⁵

Therefore, for trafficking and labor violations cases of OFWs in Syria, the court is the one that classifies the nature of the contract, subject to the testimonial and documentary evidence presented.

Syria also recognizes that due to the difficult conditions that the country is going through, especially the economic ones, which led to a significant decline in the value of the Syrian pound and an increase in the burden of living on both public and private sector workers, there are adjustments in the salary provided to workers.⁴³⁶ However, salaries of Overseas Filipinos are often given in U.S. dollars rather than Syrian pounds.⁴³⁷ Due to the inflationary rates and the effects of the sanctions, most OFWs no longer receive the amount of dollars initially promised to them⁴³⁸ and thus, they resort to requesting for assistance from the Embassy for their unpaid salary.

Under Syrian Labor Law, there is also a night-work limitation on the kind of work that women are allowed to be employed in, according to the Minister of Social Affairs and Labor Resolution No./17/ of 2010, to wit —

Article 2 -

The jobs in which women may be employed during the night work period shall be specified as follows:

1. Hospitals, clinics, and pharmacies.
2. The media.
3. Management works and works of a technical nature.

434. *Id.*

435. *Id.*

436. ALAHMAR & ZARZOUR, *supra* note 430, at 150-57 (Sami Kawass trans.).

437. See Jerome Aning, *Most Filipino Maids in Syria Won't Come Home*, PHIL. DAILY INQ., Dec. 26, 2011, available at <https://globalnation.inquirer.net/21647/most-filipino-maids-in-syria-wont-come-home> (last accessed Apr. 30, 2022) [<https://perma.cc/R5LP-KBBX>].

438. See Suleiman Al-Khalidi, *Syrian Pound Hits Record Low Ahead of New U.S. Sanctions: Dealers*, REUTERS, June 9, 2020, available at <https://www.reuters.com/article/us-syria-economy-currency-idUSKBN23F2YL> (last accessed Apr. 30, 2022) [<https://perma.cc/GJB3-C8RV>].

4. Commercial and liberal professions.
5. Theaters and music halls.
6. Private airlines and tourism offices.
7. Social care institutions.
8. Hotels and restaurants.⁴³⁹

However, for majority of the trafficked overseas Filipinos in Syria, they are not in these types of establishments but mostly confined to working in private households.

In Article 53 of the Syrian Labor Law, there is an option for termination of contracts, for those with fixed term employment, to wit —

The employer may terminate the fixed-term employment contract at any time during its term, provided that he pays the worker his wages for the remaining period of the contract.

The worker may also terminate the aforementioned contract at any time, provided that he notifies the employer in writing two months prior to the date set for termination. In the event of non-observance of this period, the worker must pay compensation to the employer equivalent to his wages for the notice period or the remaining part of it.⁴⁴⁰

There has only been one case of an Overseas Filipino who attempted to avail of this legal remedy. However, the case was amicably settled by the employer. Again, this emphasizes the role of the Embassy in providing legal assistance to trafficking survivors who are also provided negotiation assistance in dealing with employers.

C. Overview of Criminal Procedure

Based on the Syrian Criminal Procedure, it is important to note that access to justice mechanisms is available to distressed Overseas Filipinos who are possible victims of trafficking in persons.⁴⁴¹ An overview of the process⁴⁴² is discussed below, recalling the case of Lara, the 46-year-old trafficked Filipina who was repatriated back in June 2021.

439. ALAHMAR & ZARZOUR, *supra* note 430, at 160-90 (Salma Hourani trans.).

440. *Id.* at 190-200 (Raed Hawat trans.).

441. Ramos, *supra* note 210.

442. Interview *with* Atty. Omar Al Zaem, Syrian Retainer Lawyer, Eleanor Limochin, ATN Officer, Girlie Corpin, Executive Assistant, & Salma Hourani, Syrian Translator, *in* Damascus, Syrian Arab Republic (Feb. 16, 2022).

In the case of Lara, cases of violation (e.g., labor exploitation and maltreatment) can be reported by the Next-of-Kin or by the parents, children, spouses, and other family members.⁴⁴³ At the time when she was in Syria, her family thought she had already died since there was no longer any contact after she was imprisoned by her employers in the toilet.⁴⁴⁴

One of the worst forms of human rights violations suffered by a distressed OFW in the hands of a Syrian employer was the case of the late Joanna D. Demafelis in Kuwait.⁴⁴⁵ She was found dead in the freezer after she was murdered by her Syrian and Lebanese employers.⁴⁴⁶ The family members in the Philippines reported her missing, triggering an investigation wherein the Kuwaiti authorities discovered her tortured and strangled body in the freezer of an abandoned apartment belonging to her former employers.⁴⁴⁷ After the International Criminal Police Organization (INTERPOL) arrested the perpetrators of the crime, Nader Essam Assaf, a Lebanese national, was imprisoned in Beirut while his wife, Mouna Zali Hassoun, is serving sentence in Damascus, Syria.⁴⁴⁸ They were both sentenced to death by hanging by a Kuwaiti court, sparking diplomatic tensions between the Philippines and Kuwait.⁴⁴⁹

The human rights violations can also be reported by the Filipina herself and any other person (e.g., her friends, like those belonging to the Filipino community groups), or any other person with personal knowledge and connection to the distressed OFW can report the case.⁴⁵⁰ For example, the

443. *Id.*

444. Complaint-Affidavit of “L.R.”, *supra* note 1.

445. Amy B. Wang & Brian Murphy, *How a Maid Found Dead in a Freezer Set Off a Diplomatic Clash Between the Philippines and Kuwait*, WASH. POST., Apr. 3, 2018, available at <https://www.washingtonpost.com/news/worldviews/wp/2018/04/03/how-a-maid-found-dead-in-a-freezer-set-off-a-diplomatic-clash-between-the-philippines-and-kuwait> (last accessed Apr. 30, 2022) [<https://perma.cc/Q9L8-7N26>].

446. *Id.*

447. *Id.* & Al Jazeera, *Kuwait Court Sentences Couple to Death in Filipina Maid's Murder*, AL JAZEERA, Apr. 1, 2018, available at <https://www.aljazeera.com/news/2018/4/1/kuwait-court-sentences-couple-to-death-in-filipina-maids-murder> (last accessed Apr. 30, 2022) [<https://perma.cc/CYT8-SW79>].

448. Wang & Murphy, *supra* note 445.

449. *Id.*

450. Interview with Al Zaeem, *supra* note 442.

Embassy might receive a call from a Filipina worker in Syria; even if the Embassy cannot reach her phone again, but in her last call, if she reported that she was maltreated, the Embassy can ask the Immigration Passport Department (*Al-Hijraa wa Al Jawazat*), under Ministry of Interior (*Wazarat Al Dakhliyah*), for the name of the employer of the missing Filipina.⁴⁵¹ The Ministry of Interior has an archive of the name of all the workers, the name of employer, the address, the copy of the identification (I.D.) card; and the Embassy can then use this information to prepare a Complaint (*Shakwa*) to request investigation.⁴⁵²

The Syrian retainer lawyer of the Embassy can then go to the General Attorney (*Al-Muhami Al-Aam*) and send a Note to state the claims in writing.⁴⁵³ Concurrently, the Embassy can also send a Note *Verbale* to officially transmit the Complaint via formal diplomatic channels.⁴⁵⁴

The General Attorney will study the request, then the General Attorney has two options on the basis of Criminal Law (*Qanoun Al-Jazaat*) and his own authority (by appointment as General Attorney).⁴⁵⁵ He can either: (1) transmit the request; he will direct the lawyer where to go next; for example, the case can be brought to the human trafficking department (*Idarit Al Itijar bil Al Ashkhas*); or (2) transmit to the police (*Al-Shurta*).⁴⁵⁶

The Embassy can notify the Human Trafficking Department (through the lawyer of the Embassy and the diplomatic Note *Verbale* from the Embassy, because the lawyer was given a *waqala* or Special Power of Attorney, so he is authorized to send it).⁴⁵⁷ This notification can state that the distressed OFW, for example, Lara, suffered the specific offense subject of the Complaint, together with complete facts of the case.⁴⁵⁸

At the Human Trafficking Department, the Syrian retainer lawyer presents evidence (*Dalae*), (in Syria, evidence can either be documentary, testimonial, and object evidence, including videos).⁴⁵⁹ The witnesses (*Al-Shoud*), e.g.,

451. *Id.*

452. *Id.*

453. *Id.*

454. *Id.*

455. *Id.*

456. Interview with Al Zaeem, *supra* note 442.

457. *Id.*

458. *Id.*

459. *Id.*

ATN officer, translator/interpreter, when in the Human Trafficking Department, can present to the officials the Complaint (*Shakwa*) that was submitted to the General Attorney.⁴⁶⁰ For example, the translator can be authorized by the ATN officer to show the I.D. card of the OFW that was submitted by Embassy as an attachment to the Complaint.⁴⁶¹ The Lieutenant Colonel of the Human Trafficking Department will then interview the ATN officer, take the statements, ask them to sign and attest to the truth of their statements, then number the file with the date, then it will be sent back to the General Attorney.⁴⁶²

Within the Complaint, if the Embassy would mention names, the Human Trafficking Department will summon the named persons so the officials will hear the testimony of all the parties before it will be sent back to the General Attorney.⁴⁶³ For example, officials of the Human Trafficking Department will all be present to listen to all the statements.

In a statement, the General Attorney will determine if the sponsor or employer (*Kafeel*) will be imprisoned or released.⁴⁶⁴ He can issue a warrant of arrest based on the endorsement of the Human Trafficking Department.⁴⁶⁵ If there is an arrest warrant, the person will be taken to Adraa Prison (Jail), but his file will go to the General Prosecution Judge (*Niabieh Al-Ammeh*), and then they will refer the case to the Investigation Judge (*Kadi Al-Tahqiq*).⁴⁶⁶

The Investigation Judge will study the case again if it is a serious offense or a light offense (for example, determine if it is merely an *Iqama* or work permit violation only or if murder) then decide if it will be sent to the Court of First Instance (*Bidayt Al Jaza'a*, for light offenses like stealing jewelry, a common complaint by employers against the OFWs) or the Magistrate court (*Silih Al-Jaza'a* for other light offenses like *Iqama* violations), or the Court of Committal (*Al Ihalieh* for cases punishable by death penalty or similar heinous crimes, like the case of Mouna Hassoun in the previously mentioned Joanna Demafelis murder case).⁴⁶⁷

460. *Id.*

461. *Id.*

462. Interview with Al Zaeem, *supra* note 442.

463. *Id.*

464. *Id.*

465. *Id.*

466. *Id.*

467. *Id.* See also Wang & Murphy, *supra* note 445 & Al Jazeera, *supra* note 447.

Then the judge of the court where the case was sent will make a Decision (*Qarar*) on the basis of the documents and the evidence he has attached to the Complaint.⁴⁶⁸ The judge can make a decision in favor of either party, the employer or the employee, subject to Appeal (*Tain*).⁴⁶⁹ This Decision can be questioned within 15 days through an appeal to be filed by the lawyer, with the approval of the judge who issued the questioned decision and with notification to the Opposing Counsel (*Al-Khasim*) and all parties involved.⁴⁷⁰ The file with the Appeal documents (*Malaf Al Istinaf*) shall be sent to the Appeal Court (*Mahkamit Al Istinaf al-Jounnah*) then the Appellate Judge (*Qadi Istinaf Al-Jounnah*) will study the case again and listen to all the witnesses.⁴⁷¹ The Embassy can provide new evidence (both newly discovered evidence and those existing previously but not filed in lower Court).⁴⁷²

The Appellate Judge will issue the new Decision, either affirming the same decision as the previous one or reversing the previous Decision or modifying the Decision.⁴⁷³ In practice, if it is not in favor of the Philippine Embassy and Lara, the distressed OFW, then this is open to another appeal to elevate the case to the Supreme court (*Mahkamit Al Naqid*), in the Criminal Chamber (*Al Ghourfieh Al-Jazaieh*), depending on the nature of the case.

At the Supreme court, parties cannot present new evidence because the review shall only be based purely on questions of law, in writing and how this Decision was against a certain law or contrary to the correct interpretation.⁴⁷⁴ The lawyer must present the Decision and how the judge made a mistake in the interpretation of the text of the law for this case.⁴⁷⁵ The case must be studied very well and presented purely through written arguments.⁴⁷⁶ There are no oral arguments.⁴⁷⁷ There will be four Counselors and one President of the Committee, all of them high-ranking.⁴⁷⁸ After the Committee in the

468. Interview with Al Zaeem, *supra* note 442.

469. *Id.*

470. *Id.*

471. *Id.*

472. *Id.*

473. *Id.*

474. Interview with Al Zaeem, *supra* note 442.

475. *Id.*

476. *Id.*

477. *Id.*

478. *Id.*

Supreme court makes a Decision, it will either affirm the same Decision as the previous one or reverse the previous Decision or modify it.⁴⁷⁹

In rare cases, there are appeals to Supreme Court decisions, but these are called Exceptional Appeal (*Tain Istihnai*) to reconsider the Decision.⁴⁸⁰ There is also an option to file a case against the Supreme court Committee.⁴⁸¹

The lawyer can file a case against the Committee to include the Minister of Justice (*Wazeer Al Adil*), the President of the Committee, the Counselors who made the questioned Decision, on the basis of Misconduct (*Mukhasameh Al Haya'a Al Amme*) due to deprivation of due process.⁴⁸² For example, one of the Appeal Committee Judges committed a misconduct if one of the Judges during Appeal was one who made the Decision in the Court of First Instance, contrary to law. This case is no longer appealable.

If the party wins the case, the lawyer needs to notify the opposing party in order for them to be estopped from further appealing the Decision.⁴⁸³ The Judgment needs to be enforced and implemented with finality.⁴⁸⁴

Human trafficking cases in Syria can be elevated to international courts and Syria has good cooperation with INTERPOL for crimes with a transnational element.⁴⁸⁵ There are specialists in Human Trafficking cases assigned to INTERPOL in Syria, in HTEG (Human Trafficking Expert Group).⁴⁸⁶ INTERPOL referrals are done through sending the Complaint via the court when it is at the final stages of applying the Decision (for example, when Mouna Hassoun murdered Ms. Demafelis in Kuwait, the Arrest Warrant was sent to INTERPOL and Mouna Hassoun was caught in Syria by them, working with the Criminal Security department of Syria).⁴⁸⁷

In one of the complicated labor trafficking cases in 2022 handled by the Embassy, this was filed before the Criminal court instead of a labor violation, because she suffered under bad working conditions, and she was emotionally abused, especially since another Filipina in the same house died. The Embassy

479. *Id.*

480. Interview with Al Zaeem, *supra* note 442.

481. *Id.*

482. *Id.*

483. *Id.*

484. *Id.*

485. *Id.*

486. Interview with Al Zaeem, *supra* note 442.

487. *Id.* See also Al Jazeera, *supra* note 447.

asked the Human Trafficking Department to interview the ATN officer about the facts of the case and asked them to summon the distressed OFW to talk to her. This case is currently pending.

Confidentiality rules in Syria also provide that pending cases are *sub judice* and not allowed under the Due Process law (Proceedings Law is also known as *Qanoun Ousoul Al Mouhakamat*) in front of the judge (for example, Filipinos who post on Facebook regarding pending cases can be punished under Syrian law for violating the confidentiality provisions on social media); even lawyers cannot be allowed to take photographs of the file due to the confidentiality rules in Syria.⁴⁸⁸

Based on the experience of the Philippine Embassy's Syrian retainer lawyer, rather than file cases as labor law violations, cases of trafficked Filipinas are filed under criminal law because these have more severe punishments.⁴⁸⁹ Penalties under the law may include seizure of assets (e.g., motor vehicles, real properties).⁴⁹⁰ It covers a lot of practice areas since criminal law in Syria contemplates not only human trafficking cases, but also cases under the criminal security department, or other security-related offenses.⁴⁹¹ For instance, one of the local hire employees previously terminated for committing forgery and other online fraudulent practices can be charged through a complaint filed by the Embassy under Criminal Law specifically covering Information Security for cybercrime violations.⁴⁹²

V. THE SYRIA MODEL AS A BEST PRACTICE STRATEGY

A. Online Collaboration

With reference to queries on the best practices on available protection mechanisms and rehabilitation support for survivors of cross border trafficking developed under "The Syria Model: Illegal Recruitment and Human Trafficking Online Case Build-Up Project (a Pioneering Collaboration Initiative of Damascus Philippine Embassy (PE) and partner institutions),"⁴⁹³

488. Interview *with* Al Zaeem, *supra* note 442.

489. *Id.*

490. *Id.*

491. *Id.*

492. *Id.*

493. Philippine Embassy in Syria, Video, FACEBOOK, Mar. 6, 2021, available at <https://facebook.com/100038844577572/videos/441893270448822> (last accessed Apr. 30, 2022) [<https://perma.cc/DUL7-7ELV>]. See also REAP Form by Australia Awards (on file with Author) [hereinafter REAP Form].

the Philippine Embassy was able to share the following points regarding the said project:

- (1) The said project was part of the Re-Entry Action Plan (REAP) of the Author through the auspices of the University of Queensland Gender Equality Disability and Social Inclusion (GEDSI) Mainstreaming Short Course under the Australia Awards and Alumni Engagement Program — Philippines (AAAEP-P);⁴⁹⁴
- (2) The outputs that the REAP Project should produce include the following, in consideration of achieving the organizational outcomes previously identified:
 - (a) Online capacity-building trainings for legal empowerment of frontliners of the DFA on the topic of “Gender-Based, Victim-Friendly, and Trauma-Informed Approach to Reducing Vulnerability of Individuals and Families Exposed to Trafficking in Persons and other Assistance-to-Nationals Cases” by including the following modules:
 - (i) “How to Prepare Legal and Judicial Affidavits of women, men, persons with disabilities, ethnic minorities, and other socially excluded people, including Human Trafficking and other ATN Cases,” preferably in cooperation with OUMWA, for the ATN officers;
 - (ii) “Needs Assessment Data-Gathering Workshop for women, men, persons with disabilities, ethnic minorities, and other socially excluded people” that are walk-in clients of the DFA; and
 - (iii) “Gender-Based, Victim-Friendly, and Trauma-Informed Approaches to Care for Vulnerable Individuals and Families” who are clients of the DFA.
 - (b) Production of a Handbook containing a summary of the topics abovementioned, legal references, and legal forms, for distribution to DFA Offices, Regional Consular Offices, and FSPs that need access to legal empowerment resources.

494. Memorandum *from* Antonio A. Morales, Assistant Secretary and Head of the GAD Secretariat, *to* the Undersecretary, UA, and Chairperson of the GAD Focal Point System Executive Committee (June 26, 2020) (on file with Author).

The materials abovementioned were informed by the GEDSI Mainstreaming strategy[;]⁴⁹⁵

- (3) The original title of the REAP was “Gender-Based, Victim-Friendly, and Trauma-Informed Approach to Reducing Vulnerability of Individuals (women, men, people with a disability, ethnic minorities, and other excluded people) and Families Exposed to Trafficking in Persons and other Assistance-to-Nationals Cases Through Legal Empowerment Trainings for Frontliners in the Department of Foreign Affairs”⁴⁹⁶ but it was later monikered “The Syria Model” by members of the IACAT;
- (4) The reasons for the revision include the fact that the Author was posted on foreign assignment to the Philippine Embassy in Damascus, Syria,⁴⁹⁷ whereas her previous office when she was doing this short course was at the OTLA.⁴⁹⁸ The Author was also informed during the strategic planning session of the Embassy that the budget for publication of the Handbook will be available in 4th Quarter of 2021 and thus, the other training components started early but the Handbook will be published later than expected. There were also supervening public diplomacy challenges encountered by Post as an aftermath of the viral Washington Post article;⁴⁹⁹
- (5) The Outcomes⁵⁰⁰ that were reported upon conclusion of the REAP include the following:

495. REAP Form, *supra* note 493, at 4-5.

496. *Id.* at 1.

497. See generally Christia Marie Ramos, *New PH Envoy to Syria Bares ‘Re-Trafficking’ of OFWs in Embassy Shelter*, PHIL. DAILY INQ., Apr. 25, 2021, available at <https://globalnation.inquirer.net/195527/new-ph-envoy-to-syria-bares-re-trafficking-of-ofws-in-embassy-shelter> (last accessed Apr. 30, 2022) [<https://perma.cc/U79P-3544>].

498. See *id.*

499. Katie McQue, *supra* note 1.

500. These Outcomes are based on the Worksheet 6: Building Your Authority, Acceptance and Ability, calibrated to adjust to the revisions in the original REAP due to the fundamental change in circumstances (i.e., COVID-19 pandemic, foreign service posting to the Philippine Embassy in Damascus, budget release, etc.). Worksheet 6: Building Your Authority, Acceptance and Ability (on file with Author) [hereinafter Worksheet 6].

- (a) Outcome 1: Include the Anti-Trafficking Law and other relevant laws, as well as the legal services that can be provided by DFA in its orientation seminars and other training programs.⁵⁰¹

The Author conducted these trainings face-to-face and online, through virtual dialogues with their families and Facebook Live seminars, simultaneously livestreamed through MS Teams.⁵⁰² The Author also incorporated GEDSI concepts in the training proper.

Description — This Author wanted to address the following causes and sub-causes identified in the REAP design: (1) “[l]ack of knowledge of women OFWs as household service workers of their human rights under the Anti- Trafficking Law, and other relevant laws[;]”⁵⁰³ (2) “[l]ack of awareness by parents[] and elders on human trafficking, prodding women adults and youth to work abroad (land-based household workers, sea-based workers, and *au pairs*)[;]”⁵⁰⁴ and “[l]ack of advocacy and awareness[-]raising campaign on the dangers of human trafficking in multi-media.”⁵⁰⁵

- (b) Outcome 2: Conduct GEDSI-informed capacity-building trainings on providing legal and support services to Trafficking In Persons (TIP) victims among the DFA stakeholders after a needs-assessment and data-gathering workshop.⁵⁰⁶ The Author conducted these trainings and the workshop (face-to-face and online, through virtual dialogues with their families and Facebook Live seminars, simultaneously livestreamed through Google Meet).⁵⁰⁷

501. *Id.* at *1.

502. *See, e.g.*, Philippine Embassy in Syria, Video, FACEBOOK, July 30, 2021, *available at* <https://facebook.com/PhinSyria/videos/2937089233286012> (last accessed Apr. 30, 2022) [<https://perma.cc/7QQM-NNXC>].

503. Worksheet 6, *supra* note 500, at *1.

504. *Id.*

505. *Id.*

506. *See id.* at *2.

507. *See* Australia Awards Philippines, Applying GEDSI Mainstreaming Principles to Combat Human Trafficking, *available at*

Description — The Author wanted to address the following causes and sub-causes identified in the REAP: (1) “[l]ack of legal knowledge by DFA front liners, and ATN workers on how to provide legal and support services to TIP victims[;]”⁵⁰⁸ (2) “[l]ack of capacity-building training among DFA front liners in home office (DFA-OUMWA) and foreign service posts[;]”⁵⁰⁹ (3) “[l]ack of documented legal guidance (e.g., seeking refuge in the shelter of a Philippine Embassy, legal assistance in filing criminal complaints, etc.)”⁵¹⁰ (4) “[l]ack of trained legal officers in OUMWA and in foreign service posts who are knowledgeable about trafficking and GEDSI mainstreaming[;]”⁵¹¹ and (5) the “[s]hortage of lawyers in DFA with TIP prosecution experience and background in human trafficking and GEDSI, who can capacitate and empower DFA front liners.”⁵¹²

The Embassy then conducted “*Sandigan Sa Syria*” Virtual Dialogues to address these concerns via Google Meet.⁵¹³

- (c) Outcome 3: Conduct capacity-building trainings on providing legal and support services to prosecution service providers through international legal cooperation mechanisms with a GEDSI lens.⁵¹⁴ The Author conducted these trainings and preparation meetings (face-to-face and online, through virtual dialogues with their families and Facebook Live seminars, simultaneously livestreamed through Google Meet.) The Author also created “Discussion Groups” by utilizing Facebook

<https://www.australiaawardsphilippines.org/assets/articles/shortcourse-alumni-stories/sc-alumni-story-vida> (last accessed Apr. 30, 2022) [<https://perma.cc/X9GV-SUE9>].

508. Worksheet 6, *supra* note 500, at *2.

509. *Id.*

510. *Id.*

511. *Id.*

512. *Id.* at *3.

513. Department of Foreign Affairs, *supra* note 411.

514. Worksheet 6, *supra* note 500, at *3.

Messenger Group Chats and Video Calls for members of the IACAT to facilitate technology-based communications and case build-up/evidence gathering.

Description — The Author wanted to address the following causes and sub-causes identified in the REAP: (1) “[l]ack of capacity to prosecute traffickers in destination countries of victims, through international legal cooperation mechanisms[;]”⁵¹⁵ (2) “[l]ack of trained legal officers in OUMWA and in foreign service posts on prosecution and litigation of trafficking cases[;]”⁵¹⁶ (3) “[l]ack of capacity in data collection and case-building documentation against perpetrators of trafficking and foreign service posts[;]”⁵¹⁷ (4) “[l]ack of legal guidance on prosecution and litigation of traffickers, as well as other international legal cooperation measures[;]”⁵¹⁸ and (5) “[s]hortage of lawyers in DFA with TIP prosecution experience and background in litigation of human traffickers[.]”⁵¹⁹

As part of equipping partners in this access to justice mechanism, there was a program entitled “Illegal Recruitment and Human Trafficking Online Case Build-Up: The Syria Model” (a Pioneering Collaboration Initiative of Damascus PE and partner institutions, i.e., Ateneo de Naga University College of Law, Ateneo Human Rights Center, POEA, Bureau of Immigration, and the IACAT Secretariat) that was conducted on 6 March 2021 and 14 June 2021.⁵²⁰

515. *Id.*

516. *Id.*

517. *Id.*

518. *Id.* at *4.

519. *Id.*

520. Philippine Embassy in Syria, Status Update, FACEBOOK, June 28, 2021, *available at* <https://facebook.com/PhinSyria/posts/pfbido2sLbbsexf2mst3uY3yXY4Su5yvvguuM4tmRhxBPPzSVRv1LEPo55aobjQ7QfnujxQl> (last accessed Apr. 30, 2022) [<https://perma.cc/C95Z-99ZR>] & Philippine Embassy in Syria, *supra* note 502.

- (6) The other ensuing positive results from implementing the REAP at the Embassy include the following:
- (a) As a result of the REAP implementation and completion, when the Author was invited to the Senate hearing by Senator Ana Theresia “Risa” N. Hontiveros,⁵²¹ the Author was able to share the positive outcomes of the REAP which was called “The Syria Model” by external stakeholders. This was welcomed by Senator Hontiveros, Senator Maria Imelda Josefa Remedios “Imee” R. Marcos, and Senator Emmanuel Joel J. Villanueva, since this was an innovation from the way the Philippine Embassy was handling trafficking in persons cases prior to the arrival of the Author (the previous system was “buying-out” through paying compensation of deployment cost).⁵²² The REAP was also cited as one of the responses of the DFA to the allegations in the Washington Post article on Filipinas trafficked to Syria,⁵²³ as a way to proactively address the concerns of the public about the actions taken by the Philippine Embassy.⁵²⁴
 - (b) The REAP outcomes resulted in filing of TIP cases for prosecution of their traffickers in the Philippine courts and administrative bodies.⁵²⁵ It was not just an online

521. See Anthony Esguerra, 5 Shocking Details from the Testimony of Young Filipino Women Trafficked to Syria, *available at* <https://www.vice.com/en/article/akggja/philippines-domestic-worker-syria-trafficking> (last accessed Apr. 30, 2022) [<https://perma.cc/NPE5-SG4Q>].

522. Rudy Santos, *DFA: Repatriation of OFWs from Syria to Cost ₱200 Million*, PHIL. STAR, Jan. 5, 2012, *available at* <https://www.philstar.com/headlines/2012/01/05/764624/dfa-repatriation-ofws-syria-cost-p200-million> (last accessed Apr. 30, 2022) [<https://perma.cc/UT3Y-WQCN>].

523. McQue, *supra* note 1.

524. See, e.g., Bella Perez-Rubio, *Senate Probe Sought on Trafficking of Filipino Women*, PHIL. STAR, Feb. 2, 2021, *available at* <https://www.philstar.com/headlines/2021/02/02/2074810/senate-probe-sought-trafficking-filipino-women> (last accessed Apr. 30, 2022) [<https://perma.cc/6DS6-YTMM>].

525. See Department of Foreign Affairs, *Final Batch of Filipino Human Trafficking Survivors from Syria Arrives Home*, *available at* <https://dfa.gov.ph/dfa-news/dfa->

training or capacity-building workshop but actual implementation of the learnings which later on produced tangible results for the beneficiaries who were given “access to justice and legal empowerment” opportunities, both in Syria, and when they were repatriated and reintegrated back to their communities in the Philippines.⁵²⁶

- (c) In addition to the intended audience (DFA employees), there were several training participants who benefited from the materials developed under the REAP of the Author, namely:
- (i) 42 distressed Overseas Filipino;
 - (ii) Workers who are 100% human trafficking victims;
 - (iii) 12 Philippine Embassy employees;
 - (iv) 70 Ateneo de Naga University College of Law Students, Faculty, and other government agencies;
 - (v) 22 Ateneo Human Rights Center volunteer lawyers and legal interns;⁵²⁷
 - (vi) 220 Department of Science and Technology – National Research Council of the Philippines (DOST-NRCP) GEDSI Webinar participants;⁵²⁸ and
 - (vii) thousands of viewers of the Facebook Live video webinars and free legal aid programs of Post.⁵²⁹

releasesupdate/29151-latest-batch-of-filipino-human-trafficking-survivors-from-syria-arrives-home (last accessed Apr. 30, 2022) [<https://perma.cc/Y7BT-95ZC>].

526. *Id.*

527. See Philippine Embassy in Syria, *supra* note 520.

528. Department of Science and Technology, National Research Council of the Philippines, Gender-Sensitive and Responsive Management Towards Development, available at <https://nrcp.dost.gov.ph/feature-articles/956-gender-sensitive-and-responsive-management-towards-development> (last accessed Apr. 30, 2022) [<https://perma.cc/XS3P-KG7D>].

529. Philippine Embassy in Syria, *supra* note 76.

- (7) The Author was able to use knowledge and skills gained from the Australia Awards training through the following applications of “The Syria Model:”
- (a) Conducted a GEDSI webinar for the DOST-NRCP;⁵³⁰
 - (b) Included GEDSI concepts and the “intersectionality” discussion in her speaking engagements as resource person for Magna Carta of Women;⁵³¹
 - (c) Incorporated GEDSI in the National Women’s Month Celebration 2021 activities of the Philippine Embassy in Damascus;⁵³²
 - (d) Embedded GEDSI in the Gender and Development (GAD) Plan of the Philippine Embassy in Damascus;⁵³³
 - (e) Used the “leading change” lessons for the drastic personnel movements (reassignment to DFA Home Office of Embassy staff and replacement with a new team to augment the human resources of the Embassy, as documented in the Twitter announcements of the Secretary of Foreign Affairs);⁵³⁴

530. Department of Science and Technology, National Research Council of the Philippines, *supra* note 528.

531. CatSU Office of Student Support Services, Status Update, FACEBOOK, Mar. 25, 2021, *available at* <https://facebook.com/OSSSCATSU/photos/a.235670247201614/949701895798442> (last accessed Apr. 30, 2022) [<https://perma.cc/56NU-EYKC>].

532. *See* Department of Foreign Affairs, PH Embassy in Damascus Kicks Off the Celebration of the National Women’s Month with Award Winning Films, *available at* <https://dfa.gov.ph/gad-feature-news/30240-ph-embassy-in-damascus-kicks-off-the-celebration-of-the-national-women-s-month-with-award-winning-films> (last accessed Apr. 30, 2022) [<https://perma.cc/AXB8-BX59>].

533. The GAD plan is submitted by Embassies to the DFA, which then submits the compiled version to the Philippine Commission on Women (PCW). The actual documents are usually confidential, and the public versions are released in the form of press releases after the activities in the GAD plan have been implemented.

534. Teddy Locsin, Jr., @teddyboyllocsin, Tweet, TWITTER, June 26, 2021: 10:05 p.m., *available at* <http://web.archive.org/web/20210626182937/https://twitter.com/teddyboyllocsin/status/1408788467539140609> & DFA Philippines, @DFAPHL, Tweet, TWITTER, Jan. 27, 2021: 7:07 p.m., *available at*

- (f) Participated in Autism Awareness Week,⁵³⁵ Women with Disabilities Week,⁵³⁶ and other national-level commemorations by discussing GEDSI with Filipino Community constituents and staff;⁵³⁷ and
- (g) Initiated sex-disaggregated data collection with disability and social inclusion indicators for the OFW I.D. registration in Consular Outreach Missions in Damascus, Aleppo, and Latakia.⁵³⁸

The Philippine Embassy submits that the mechanism for efficient and regular contact between the Department and the members of the IACAT are important aspects of implementing “The Syria Model” because this falls under the “Partnership” pillar of the “4 Ps” paradigm of combatting human trafficking, namely: Prevention, Protection, Prosecution, and Partnership.⁵³⁹

Partnerships also include working with volunteer lawyers and law students who were “force multipliers” in preparing the evidence packets that were printed and notarized at Post.⁵⁴⁰ These enabled the “evidence packets” to be filed directly at the Office of the City Prosecutor instead of laboriously conducting the judicial affidavit preparation only when the wards have been repatriated.⁵⁴¹ This process ensured that the wards were also sufficiently

<http://web.archive.org/web/20210127110908/https://twitter.com/DFAPHL/status/1354385638850654209>.

535. See Philippine Embassy in Syria, Video, FACEBOOK, Apr. 3, 2022, *available at* <https://facebook.com/PhinSyria/videos/361243809351167> (last accessed Apr. 30, 2022) [<https://perma.cc/YN4R-5UTU>].

536. Philippine Embassy in Syria, Status Update, FACEBOOK, Apr. 6, 2022, *available at* <https://facebook.com/PhinSyria/posts/pfbido2aAP9vvGWSmFavpsmySdkCXvVxDohZnrYYrefp1TPLPF9pGcudgR8CBijPR3f8NBI> (last accessed Apr. 30, 2022) [<https://perma.cc/9V9K-KR8U>].

537. *Id.*

538. See Philippine Embassy in Syria, Status Update, FACEBOOK, Apr. 28, 2021, *available at* <https://facebook.com/PhinSyria/posts/pfbido2BEK6kdMKq8ok7ninmw62F4bEGez7NvY4GhDWkiKZVSqu4G9VLYJFvo55NXUWjqpKI> (last accessed Apr. 30, 2022) [<https://perma.cc/Q4Y6-WN5Q>].

539. IACAT, *supra* note 347.

540. Philippine Embassy in Syria, Photo, FACEBOOK, Feb. 6, 2021, *available at* <https://facebook.com/photo/?fbid=3643570872425928&set=pcb.3643573432425672> (last accessed Apr. 30, 2022) [<https://perma.cc/WM7K-U4WN>].

541. *See id.*

endorsed to other IACAT member agencies (IACAT Operation Center, OWWA, POEA, Bureau of Immigration, DSWD, and CSOs that provide livelihood assistance and trainings) to facilitate more prosecution assistance.⁵⁴² In effect, this reduced the risk of “attrition” for the cases because the wards had a greater appreciation of the importance of participating in the prosecution side of anti-TIP efforts, even after they were discharged from the Embassy shelter and currently immersed in their communities.

As part of international legal cooperation, the evidence packets also had a translated Arabic version covered by a *Waqala* (special power of attorney and notarized by a Syrian Ministry of Justice representative).⁵⁴³ These were also filed before the Syrian courts to prosecute the recruitment agencies and the employers who maltreated the trafficked Filipinas in the Embassy shelter.⁵⁴⁴ Cases have been won while some are ongoing.⁵⁴⁵

Another notable outcome of “The Syria Model” was the arrest of the number one most influential trafficker in Zamboanga, based on the “evidence packets” of the repatriates in the Embassy shelter.⁵⁴⁶ The news gained significant media coverage in various news outlets as a testament to strong partnership of the Department and law enforcement partners in Mindanao.⁵⁴⁷

The Embassy also has pending negotiations for the Philippine-Syria Memorandum of Understanding on Combatting Transnational Crime

542. See Philippine Embassy in Syria, Status Update, Facebook, Feb. 6, 2021, available at <https://facebook.com/PhinSyria/posts/pfbido28VCC1LhhCPTmWwq cjtMjX1DPZ8zDdWidx4HbesoML2rQGLKwbn2UBGTyDudqJPfnl> (last accessed Apr. 30, 2022) [<https://perma.cc/9N7P-H57J>].

543. The *Waqala* and the evidence-packet preparation work with the Syrian Ministry of Justice was an innovation developed at the Philippine Embassy in Syria when the Author assumed leadership on 20 December 2020.

544. See Ramos, *supra* note 210.

545. See, e.g., Department of Foreign Affairs, PH Embassy in Damascus Wins First Human Trafficking Case vs Recruitment Agency, *supra* note 178.

546. Mabasa, *supra* note 246.

547. See *id.* See also Joyce Ann L. Rocamora, PH Sustains Campaign vs. Human Trafficking Despite Pandemic, available at <https://www.pna.gov.ph/articles/1146996> (last accessed Apr. 30, 2022) [<https://perma.cc/4J9M-HQM6>].

including Countering Terrorism and Trafficking in Persons⁵⁴⁸ that can be helpful for sustaining anti-TIP efforts under “The Syria Model.”

B. Assessing Compliance with the Trafficking in Persons Report Indicators

Part of monitoring Philippine government compliance with the international and national legal frameworks on trafficking in persons include specific monitoring and evaluation tools that are used by different Philippine Embassies and Consulates abroad in the reporting process for the Trafficking in Persons Report.⁵⁴⁹

In making a thorough assessment on how access to justice was affected by the COVID-19 pandemic, the questionnaire also included portions on this factor. A copy of the questionnaire is set forth below —

OTHER NECESSARY DETAILS:

INTERNATIONAL COOPERATION:

Did the government cooperate with foreign counterparts on any law enforcement activities? YES or NO. If yes, please describe:

How many new/ongoing investigations, prosecutions, etc., including extraditions? Were these investigations/prosecutions/convictions included in the data chart above?

Describe any new/ongoing investigations, prosecutions, etc., involving cooperation with foreign counterparts:

Were there any bilateral, multilateral, or regional enforcement coordination arrangements with foreign counterparts? YES or NO. Describe:

OFFICIAL COMPLICITY: Were there allegations of official complicity in trafficking crimes, via contacts, media, or other sources, including of state-sponsored forced labor? YES or NO. If yes, please answer the following:

Were law enforcement, military, security, state or municipal employees, or other officials or state institutions allegedly involved directly in the crime? YES or NO. Describe:

Were law enforcement, military, security, state or municipal employees, or other officials allegedly facilitating the crime or obstructing justice (e.g. taking bribes)? YES or NO. Describe:

548. Philippine Embassy in Syria, *supra* note 230.

549. *See generally* Trafficking in Persons Report.

Did government policies, regulations, or agreements relating to migration, labor, trade, and investment facilitate vulnerabilities to, or incidence of, forced labor or sex trafficking? YES or NO. Describe:

Was official involvement in trafficking crimes part of national directive or policy? YES or NO. Describe:

Did host country diplomats allegedly exploit domestic workers overseas? YES or NO. Describe:

Did any allegedly complicit officials exploit domestic workers overseas? YES or NO. Describe:

Did any allegedly complicit officials face administrative fines or demotions? YES or NO. Describe:

What actions did the government take to ensure that its policies, regulations, and agreements relating to migration, labor, trade, border security measures, and investment did not facilitate trafficking?

TRAINING: Did the government train officials on anti-trafficking enforcement, policies, and laws? YES or NO. Describe, including details on how many and which officials the government trained on what topics, as well as who funded and implemented the training:

ADDITIONAL CONSIDERATIONS: If applicable, describe briefly how the COVID-19 pandemic or other challenges impacted law enforcement efforts during reporting period.

For example, did law enforcement personnel experience personnel shortages?

Were police able to carry out routine operations and conduct investigations in all areas of the country?

Were there specific challenges faced in collecting law enforcement data?

Did courts remain open and operate at normal capacity? If not, please detail the timeline and regional extent of the disruption.

Other updates not captured above:

GOVERNMENT ANTI-TIP LEADERSHIP AND COORDINATION: Is there a designated lead anti-trafficking official/agency and/or national coordinating body? YES or NO. Describe:

In what ways was this body effective or ineffective and what results did it produce?

Did the government seek the input of survivors in crafting its anti-trafficking laws, regulations, policies, programs, or in their implementation? If so, did the government take steps to ensure input was received from a diverse group of survivors? YES or NO. Describe:

RESEARCH AND ACCOUNTABILITY: Did the government undertake or support any new projects to research, assess, and/or publicize its trafficking issues and efforts to combat trafficking? YES or NO. Describe:

AWARENESS CAMPAIGN: Did the government fund and/or conduct awareness activities?

Did the government contribute in-kind resources to NGO or IO awareness campaigns? YES or NO. Describe:

Did the government carry out any efforts to raise awareness or train foreign governments on trafficking? YES or NO. Describe:

Were campaign materials readily available, cost-free, and accessible in various languages, including braille?

What strategies did the campaigns employ to ensure messaging and images did not legitimize and/or perpetrate harmful or racialized narratives and/or stereotypes about what victims/survivors and perpetrators look like?

LABOR RECRUITMENT REGULATION AND OVERSIGHT: Were there any changes to how the government regulated and oversaw labor recruitment for licensed and unlicensed recruitment agencies, individual recruiters, and sub-brokers?

Did the government prohibit worker-paid recruitment fees? Describe:

Did the government have agreements, with a transparent oversight mechanism, with sending countries on safe and responsible recruitment that included measures to prevent trafficking vulnerabilities? YES or NO. Describe:

Did the government allow migrant workers to change employers in a timely manner without obtaining special permissions? YES or NO.⁵⁵⁰

While the Philippines has consistently remained on Tier I of the Trafficking in Persons Report,⁵⁵¹ there is much work to be done to maintain this, including several reforms that would come in the wake of the new Department of Migrant Workers.

The Syria Model has been cited as one of the best practice examples on inter-agency collaboration.⁵⁵² It would be ideal if the same system can possibly

550. Questionnaire from the DFA Office of the Undersecretary for Migrant Workers Affairs (2022) (on file with the Philippine Embassy). This is an internal document for the U.S. Trafficking in Persons Report 2022 submissions of States.

551. Trafficking in Persons Report, *supra* note 426, at 67.

552. See Australia Awards Philippines, *supra* note 507. As a result of this, the Author was invited to share the positive outcomes of her REAP with the Philippine Senate, where she received a commendation for her approach — dubbed “The

be institutionalized or replicated in different Philippine Embassies and Consulates, but the same would require policy changes and adjustments on resource allocation to ensure that it would be a sustainable initiative.

VI. INTERNATIONAL AGREEMENTS AND INITIATIVES ON LEGAL AND JUDICIAL COOPERATION

The DFA supports the Judiciary, the Office of the Solicitor General, and the DOJ in handling cases of trafficked Filipinos, and even civil or commercial cases with substantial connection to the Philippines by facilitating and coordinating with the various foreign ministries and foreign service posts, especially in the extraterritorial service of foreign judgments and other legal processes such as depositions, authentication, and notarization functions.⁵⁵³

Accordingly, “[i]n some cases, the [Department] of Foreign Affairs, takes the lead in representing the State in international disputes and the Ministry of Justice may be consulted in the process. In the case where there is no legal department within the Foreign Ministry, the Ministry of Justice takes the lead.”⁵⁵⁴ The DFA also provides inputs during legislative committee hearings for technical working groups that craft national legislation, including those governing public international law and private international law concerns.⁵⁵⁵

As mentioned earlier, the DFA also supports other IACAT Member Agencies such as the POEA in the preparation of “evidence packets” for the purpose of case build-up in the context of prosecuting illegal recruitment and human trafficking cases.⁵⁵⁶ These labor law violations are not just situated in one country but there are several elements spanning across different continents. Thus, the international element would necessarily require more foreign relations functions.

The following describes some of the international legal and judicial cooperation measures that may be considered by the Supreme Court in subsequent amendments to the Guidelines for Virtual Hearings. At the same time, these measures also feed into the access to justice and rule of law principles that were earlier discussed, for civil and commercial matters, as well as administrative and criminal matters.

Syria Model” — because it was an innovation in the way the Philippine Embassy was handling trafficking in person cases.

553. See Integrated Bar of the Philippines, *supra* note 151.

554. UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 147, at 63, n. 1.

555. See, e.g., Center for Police Strategy Management, *supra* note 149.

556. See Mabasa, *supra* note 246.

Note as well that these measures are present in the UN Convention on Transnational Organized Crime and its Protocols,⁵⁵⁷ especially because law enforcement and prosecution responses would require a more collaborative inter-country approach due to the cross-border nature of these crimes.

A. Extradition Treaties

Extradition is the process of seeking the transfer of a fugitive/accused/sentenced person to another State for the purpose of prosecution or service of sentence.⁵⁵⁸ Under the Philippine Extradition Law,⁵⁵⁹ if there is no extradition treaty between the Philippines and another country, a person accused of committing a crime or sentenced for committing a crime in another country may not be transferred from the Philippines to the other requesting country.⁵⁶⁰

In practice, when the request is only for mutual legal assistance in a criminal matter, the same may be granted even in the absence of a mutual legal assistance treaty between the Philippines and the requesting State. However, in the absence of a mutual legal assistance treaty, there is no obligation for the Philippines to provide the assistance requested, and requests requiring compulsory processes, such as freezing of assets and executing searches and seizures, may not be undertaken unless there is basis in domestic law (e.g., freezing of assets based on Anti-Money Laundering Act).⁵⁶¹

In the conduct of virtual hearings, especially for Persons Deprived of Liberty (PDL), one of the considerations would include the strict reglementary periods required by extradition treaties from the time the accused has been provisionally arrested (e.g., through an INTERPOL Red Notice) to the time

557. See, e.g., UNTOC, *supra* note 218, arts. 1 & 7 (4).

558. Harvard Research in International Law, *Draft Convention on Extradition*, 29 AM. J. INT'L L. 21, 21 (1935).

559. Prescribing the Procedure for the Extradition of Persons who have Committed Crimes in a Foreign Country [Philippine Extradition Law], Presidential Decree No. 1089 (1977).

560. *Id.* § 3.

561. See Department of Justice, Mutual Legal Assistance in Criminal Matters: A Guide for Domestic and Foreign Central and Competent Authorities, at 4-5, available at <https://www.doj.gov.ph/files/2021/MLACM/Guidelines%20on%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/76KD-9B8J>] & Republic Act No. 10365, § 7.

when the formal extradition request has been officially communicated through diplomatic channels.⁵⁶²

For example, one of the successful extradition cases handled by the DFA, the DOJ, and the NBI involved a prominent case in Cebu City wherein the accused was extradited from Spain to the Philippines.⁵⁶³ The communication through virtual means facilitated the speedy transmission of the requests and prevented the lapse of the reglementary periods.

This was a demonstration of how diplomatic channels can also be availed of, in order to facilitate access to justice for those who were prejudiced by potential extraditees. For trafficking in persons cases, diplomatic channels are also very effective means to facilitate a more efficient way to provide assistance to the Filipino survivors.

B. Transfer of Sentenced Persons Agreement

Transfer of Sentenced Persons is the process of seeking the transfer of a sentenced person to his/her country of nationality for humanitarian reasons.⁵⁶⁴ In the alternative, some countries prefer to implement a “Mutual Grant of Executive Clemencies” in the absence of a Transfer of Sentenced Persons Agreement, to ensure that Filipino nationals also have a mutually beneficial arrangement, based on the political considerations recommended by geographic offices.⁵⁶⁵

With relevance to the Guidelines on the conduct of virtual hearings in relation to PDLs,⁵⁶⁶ Philippine courts may wish to consider if this is an available option, as part of jail decongestion measures. Similarly, Filipino

562. See, e.g., Philippine Extradition Law, § 20 (d).

563. Consuelo Marquez, *Gaisano Kin Offers ₱2-M Reward for Arrest of Suspect in ₱3.2-B Investment Scam*, PHIL. DAILY INQ., Sept. 9, 2020, available at <https://newsinfo.inquirer.net/1333153/gaisano-kin-offers-p2-m-reward-for-arrest-of-suspect-in-p3-2-b-investment-scam> (last accessed Apr. 30, 2022) [<https://perma.cc/JW78-5NKJ>].

564. See UNITED NATIONS OFFICE ON DRUGS AND CRIME, HANDBOOK ON THE INTERNATIONAL TRANSFER OF SENTENCED PERSONS 7 & 11 (2012) [hereinafter Handbook].

565. See *id.* at 22.

566. See Supreme Court, Proposed Guidelines on the Use of Videoconferencing Technology for the Remote Appearance or Testimony of Certain Persons Deprived of Liberty in Jails and National Penitentiaries, A.M. No. 19-05-05-SC, (June 25, 2019).

nationals who are incarcerated abroad on various charges may be benefited by the legal and judicial cooperation measures by proposing transfers.

One landmark example pertains to a case in Cebu City wherein the sentenced prisoner was transferred to another country for the remainder of service of his sentence.⁵⁶⁷ Other cases that were coursed through diplomatic channels prevented Filipino citizens from being sentenced to death penalty through a form of prisoner exchange.⁵⁶⁸

C. Mutual Legal Assistance Treaties in Criminal Matters and Civil Matters

From an international legal cooperation perspective, provision of access to justice through free legal aid for Overseas Filipinos in a foreign jurisdiction and foreign nationals in the Philippine jurisdiction, in terms of allowing them to participate in virtual hearings or other consular services of the Embassy or Consulate, should conform with the requirements of the VCCR and other applicable bilateral treaties.

As part of consular assistance to foreign nationals, in a manner that makes a positive impact towards access to justice, the DFA also serves as liaison between the consular officials of different foreign missions and the justice sector institutions where foreign nationals are involved, whether as victims, accused, or party-litigants for different classes of cases.⁵⁶⁹ The consular notification required by the VCCR includes the right of all foreign detainees and prisoners in the Philippines to be informed in a language they understand of their right to request contact with their consular authorities without delay.⁵⁷⁰ In some countries, the foreign ministry can also facilitate providing the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate, as part of the duty to protect its nationals in the host country.⁵⁷¹

567. See Pia Lee Brago, *DFA Chief Defends RP-Spain Prisoner Transfer Treaty*, PHIL. STAR, Sept. 12, 2009, available at <https://www.philstar.com/headlines/2009/09/12/504218/dfa-chief-defends-rp-spain-prisoner-transfer-treaty> (last accessed Apr. 30, 2022) [<https://perma.cc/TYW2-V8S4>].

568. *Id.*

569. See Department of Foreign Affairs, *supra* note 178.

570. Vienna Convention on Consular Relations, *supra* note 119, art. 36 (1) (b).

571. Explanatory Report to the European Convention on Consular Functions, *supra* note 167, ¶¶ 39 & 153.

Requests for Mutual Legal Assistance (MLA) in Criminal Matters are coursed through diplomatic channels by transmitting them to our Philippine FSPs, while some are directly transmitted to DFA-OTLA, until it is then conveyed to the DOJ Office of the Chief State Counsel as the Central Authority for international legal cooperation implementation.⁵⁷²

The following are some forms of MLA requests in bilateral treaties: service of judicial documents; taking of evidence for use in the criminal proceedings; executing searches and seizures; freezing of assets; examining objects and sites; providing information, evidence, items and expert evaluations; instituting criminal proceedings; providing information on law, documents and records; notifying results of criminal proceedings and supplying criminal records; return or sharing of assets; other forms of assistance that are not contrary to the laws of the requested State; providing documents and records; identifying proceeds of crime, property, instrumentalities, or other things for evidentiary purposes; facilitating the appearance or giving of evidence of persons in the requesting State including persons in custody; identifying and locating persons; delivery of property including lending of exhibits.⁵⁷³

In certain child sex trafficking cases where a foreign sex offender was tried abroad and the evidence was available in the Philippines, this system of requesting for MLA in a Criminal Matter was used by the handling prosecutors to share evidence to prove the liability of the accused.⁵⁷⁴ For labor trafficking cases in Syria, the evidence that was prepared at the Embassy was also used for the courtroom proceedings in the Philippines and at the same time, if the appearance of the ATN Officer or the translator would be required, this can also be duly provided by the Embassy.⁵⁷⁵

572. Department of Justice, *supra* note 561, at 7 & 15.

573. Based on discussions of the Author with other members of the Philippine delegation authorized to represent the DFA during the international legal cooperation and judicial cooperation agreements negotiation of the Philippines and the Kingdom of Saudi Arabia (2019).

574. See Department of Justice, *supra* note 561, at 7 & 15, & IJM, Court Finds 2 Traffickers Guilty of Online Sexual Exploitation of Children in Pateros, *available at* <https://osec.ijm.org/news-and-insights/news-updates/court-finds-2-traffickers-guilty-of-online-sexual-exploitation-of-children-in-pateros> (last accessed Apr. 30, 2022) [<https://perma.cc/6QTP-BD3Z>] (“We also utilized the Mutual Legal Assistance Treaty or MLAT process here through which the [U.S.] Homeland Security Investigations was able to provide valuable assistance in further strengthening the prosecution evidence.” *Id.* (emphasis omitted)).

575. *Id.* at 22.

The following are the proceedings where MLA in a Criminal Matter may be sought — if MLA request is based on a treaty, in making a request for legal assistance, the law enforcement agency or prosecution office has to be identified.⁵⁷⁶

For example, the Philippines-U.S. Mutual Legal Assistance Treaties (MLAT)-Senate or Blue Ribbon Committee investigation is not considered as a valid basis for an MLA request because it is an investigation conducted in aid of legislation.⁵⁷⁷ However, for the IACAT and the Inter-Agency Council Against Child Pornography (IACACP), MLA requests are commonly used to prosecute offenses that have a transnational character, such as human trafficking and illegal recruitment.

Mindful that in these types of cases, the proceeding must relate to criminal cases only and not to purely administrative proceedings or civil actions, unless the civil action is closely linked or related to a criminal proceeding.⁵⁷⁸ To illustrate, under the Philippines-U.S. MLAT-MLA request to recover proceeds of corruption of two former generals of the Armed Forces of the Philippines where the case pending in the Philippines was a civil action for forfeiture and not a criminal proceeding, in order for the request to proceed, the request must be able to establish the relation between the civil action where legal assistance is sought vis-à-vis a criminal proceeding such as, in this case, the criminal case for graft and corruption against the same officials.⁵⁷⁹

The legal bases for MLA requests in Criminal Matters can be found in treaties or conventions, whether bilateral, regional, and international agreements.⁵⁸⁰ As discussed earlier, conventions with MLA Provisions may also be invoked in these requests (e.g., United Nations Convention Against

⁵⁷⁶. *Id.* at 16.

⁵⁷⁷. See S. Rules of Procedure Governing Inquiries in Aid of Legislation, § 1, 15th Cong. (Aug. 9, 2010).

⁵⁷⁸. See *id.* at 3.

⁵⁷⁹. Ricardo V. Paras III, Former Chief State Counsel, DOJ, *Extradition, Mutual Legal Assistance and Transfer of Sentenced Persons Agreements*, Presentation at the 2017 Colloquium on International Law Issues, Pasay City (Dec. 4, 2017) (transcript available at <https://law.upd.edu.ph/wp-content/uploads/2021/09/International-Legal-aid-Judicial-Cooperation.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/6R39-BG86>]).

⁵⁸⁰. Department of Justice, *supra* note 561, at 4.

Corruption,⁵⁸¹ UNTOC,⁵⁸² ASEAN Convention on Counter Terrorism,⁵⁸³ and ASEAN Convention Against Trafficking in Persons, Especially Women and Children).⁵⁸⁴

In considering the access to justice implications of these treaties, it is necessary that the Philippine government would facilitate more efficient implementation to eliminate the potential bottlenecks in processing the requests.

As it applies to mutual legal assistance, the principle of reciprocity is “a promise that the requesting State will provide the requested State the same type of assistance in the future, should the requested State ever be asked to do so[.]”⁵⁸⁵ When the request is based on a treaty and the circumstances of the request falls within the parameters of the treaty, it is the obligation of the Philippine Government to grant the MLA request.⁵⁸⁶ When the request for assistance is based on the promise of reciprocity, it is discretionary on the part of the Philippines’ part whether or not to grant the request.⁵⁸⁷ In making such a decision, the Philippines may consider factors such as national or public interest in the suppression of serious crimes.⁵⁸⁸

For a majority of the pending requests, not just in human trafficking cases, the undertaking usually contains a statement on the basis of the principle of reciprocity,⁵⁸⁹ to give more leeway for diplomatic negotiations through various channels.

For the MLA request to proceed, the same must contain: the name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates; the purpose of the request; the basis of the request (e.g., treaty, convention, or principle of reciprocity);

581. United Nations Convention against Corruption art. 37, *signed* Oct. 31, 2003, 2349 U.N.T.S. 41.

582. UNTOC, *supra* note 218, art. 7 (4).

583. ASEAN Convention on Counter Terrorism art. VI, *signed* Jan. 13, 2007, 3200 U.N.T.S.

584. ASEAN Convention Against Trafficking in Persons, Especially Women and Children art. 12, *signed* Nov. 21, 2015.

585. UNITED NATIONS OFFICE ON DRUGS AND CRIME, MANUAL ON MUTUAL LEGAL ASSISTANCE AND EXTRADITION 23 (2012).

586. *See* Department of Justice, *supra* note 561, at 4.

587. *Id.* at 5.

588. *See id.*

589. *Id.* at 12.

the nature of the assistance sought; and “a description of the nature of the criminal matter and its current status[.]”⁵⁹⁰

In Syria, requests for assistance are mostly coursed through diplomatic channels, by sending diplomatic Notes to the Ministry of Foreign Affairs and Expatriates and attaching the necessary documentation.

For criminal cases, the DOJ Office of the Chief State Counsel of the Philippines may request for other supporting documents or information or request for clarification in order to properly evaluate the request for MLA in a criminal matter or to enable the execution of the request.⁵⁹¹ The English translation of the request and all supporting documents must also be provided, together with a statement that the MLA request must be kept confidential by the requested State.⁵⁹²

The same confidentiality provision in human trafficking cases in the Philippines and in Syria are important aspects of MLA requests. Where the request cannot be executed without breaching such confidentiality such as when a case has to be filed in court — the requesting State must be informed of such circumstance to enable it to decide whether it still wishes to proceed with the execution of its request,⁵⁹³ including the consent to present the information in a virtual hearing.

Not all requests are granted by the Philippines. Thus, the following are the enumerated grounds to refuse the MLA request:

- (1) national or public interest;⁵⁹⁴
- (2) severity of punishment;⁵⁹⁵
- (3) bank secrecy;⁵⁹⁶
- (4) political offenses;⁵⁹⁷

590. Department of Justice, *supra* note 561, at 11.

591. *Id.* at 7–8.

592. *Id.* at 16.

593. *See, e.g.*, Treaty with the Philippines on Mutual Legal Assistance in Criminal Matters, Phil.-U.S., art. 5, Nov. 13, 1994.

594. UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 585, at 70.

595. *Id.* at 71.

596. *Id.*

597. *Id.* at 72.

- (5) human rights considerations;⁵⁹⁸
- (6) double jeopardy;⁵⁹⁹
- (7) the rights of suspects charged with criminal offenses may be prejudiced;⁶⁰⁰
- (8) specific types of assistance involving the seizing and freezing of assets;⁶⁰¹
- (9) relates to a military offense;⁶⁰²
- (10) offense has already prescribed;
- (11) possible violations of non-discrimination laws, particularly prosecutions by reason of race, religion, or nationality;
- (12) nature of the involvement of a national of the requested State; if the offense is punishable by death in the requesting State;⁶⁰³ and
- (13) when there is already prosecution being undertaken by the requested State relating to same acts or omissions that are subject of the request.⁶⁰⁴

For the Embassies and Consulates handling MLA requests for trafficking cases, these can also be considered in evaluating the propriety of entertaining the request for a virtual hearing in a criminal case, with respect to MLA, whether on the basis of a treaty or reciprocity. Security concerns are valid considerations, both for the FSPs and parties or witnesses who will be attending the virtual hearings.⁶⁰⁵ Most FSPs are located in the capital cities of the host country⁶⁰⁶ and thus, some parties need to travel long distances before arrival at the FSP. Furthermore, political sensitivities with the host country must be considered, especially if the foreign relations with that host country

598. *Id.*

599. *Id.* at 73.

600. UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 585, at 73.

601. *Id.* at 76.

602. Handbook, *supra* note 564, at 22-23.

603. *Id.* at 50.

604. *See id.* at 69.

605. *See* Department of Justice, *supra* note 561, at 31.

606. *See* Department of Foreign Affairs, Our Foreign Service Posts, available at <https://dfa.gov.ph/about/dfa-directory/our-foreign-service-posts-dfa> (last accessed Apr. 30, 2022) [<https://perma.cc/GR9F-LMDH>].

may be precarious and possibly jeopardized by certain legal proceedings that would be entertained within the territorial jurisdiction of the FSP.

As to the access to justice aspect, the Philippine government also considers the nationality of the person subject of the request.⁶⁰⁷ If a Filipino national is involved, part of the evaluation processes focuses on analyzing if the basis for the request is anchored on a political offense with human rights considerations. There are instances when the DFA, prior to making a determination on the request, conducts an inter-agency consultation⁶⁰⁸ to collate the views of the other government officials involved. This resulted in a broader perspective that takes into consideration the inputs of all the other agencies who are duty-bearers and decision-makers.

VII. THE HAGUE SERVICE CONVENTION AND ACCESS TO JUSTICE

A. *The Hague Service Convention*

With the Philippine accession to the HSC,⁶⁰⁹ and its entry into force on 1 October 2020,⁶¹⁰ the following processes would be in effect:

For inbound documents, the Service Convention will allow foreign courts to send directly to the Philippine Central Authority the legal documents intended to be served to a person residing in the Philippines,⁶¹¹ without the need of coursing the same through its Ministry of Foreign Affairs and Embassy or Consulate in Manila.

607. *See id.* at 12.

608. Department of Justice, *supra* note 561, at 14.

609. Department of Foreign Affairs, *PH Deposits Instrument of Accession to the Hague Conference on Private International Law*, available at <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/26142-ph-deposits-instrument-of-accession-to-the-hague-conference-on-private-international-law> (last accessed Apr. 30, 2022) [<https://perma.cc/WKG2-YE4P>].

610. HCCH, *Service Convention Enters into Force for the Philippines*, available at <https://www.hcch.net/en/news-archive/details/?varevent=752> (last accessed Apr. 30, 2022) [<https://perma.cc/7QMA-3YG2>].

611. Supreme Court, *Guidelines on the Implementation in the Philippines of the Hague Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters*, SC Admin. Order No 251-2020, pt. III (1). *See also* *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* art. 10, *opened for signature* Nov. 15, 1965, 658 U.N.T.S. 163.

For outbound documents, the Service Convention will allow Philippine courts (or Executive Judges) to send directly to the Central Authorities of other countries the legal documents intended to be served to a person residing abroad, without the need of coursing the same through the DFA and the Philippine Embassy or Consulate abroad.⁶¹²

Essentially, Court documents would no longer be coursing through diplomatic channels and would allow the Central Authorities to coordinate.⁶¹³ While the Guidelines on the Implementation in the Philippines of the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters is under review,⁶¹⁴ DFA-OTLA is still fulfilling these functions.

However, to facilitate access to justice for party-litigants, it is recommended that this function would also be absorbed by the SC-OCA for countries that are not signatories to the HSC to prevent further delay arising from confusion on whether or not the requested State has acceded to the HSC.

This is relevant for those handling trafficking cases in the Philippines because most prosecutors with pending cases of distressed OFWs would require legal documents to be sent and ensure that these documents are not only authenticated but sent through the proper Central Authorities.

In one of the cases of repatriated trafficking survivors from Syria, the provincial prosecutor drafting the resolution after her preliminary investigation has made several queries on how this function can be efficiently implemented so that the “long arm of the law” can also reach even the perpetrators of modern slavery in Syria.⁶¹⁵ As of this writing, the case is still under consideration by the authorities.

VIII. CHALLENGES ENCOUNTERED BY THE DFA

Over the years, these are some of the challenges encountered by the DFA in handling trafficking cases of distressed Overseas Filipinos, including executing requests for MLA in Criminal Matters and other consular services for OFWs:

- (1) Lack of law governing the grant and execution of MLA requests by other countries, especially those with a completely different legal regime from the Philippines;

612. SC Admin. Order No 251-2020, pt. II (2).

613. *See id.* pts. II (2) & III (1).

614. *See generally* SC Admin. Order No 251-2020.

615. This is based on the experience of the Embassy.

- (2) Where the MLA request involves the taking of statements of witnesses:
- (a) Lack of rules on hearing via video conferencing in the host government, even if there are existing Supreme Court Guidelines on the Philippine side;
 - (b) Lack of video conferencing equipment in Philippine courts and the FSPs because not all Embassies have the Capital Outlay to procure such equipment;
 - (c) Limited resources of the Philippine Government, such as the NBI and the PNP, especially for those countries where there are no police attachés and there are limited working relationships with foreign law enforcement agents;
 - (d) Delayed turn-around time for the Philippine Government to act upon MLA requests and resolve after preliminary investigation of the human trafficking complaints, especially due to the shortage of prosecution lawyers or State Counsels who are capable of processing these requests; and
 - (e) Incomplete information and lack of English translations by other States on the requirements to serve as basis for MLA requests, as well as trafficking complaints that are not written in a language that would be understandable by all parties to these cases.⁶¹⁶

In Syria, as mentioned earlier, the Caesar Act sanctions⁶¹⁷ add another layer of difficulty to casework since there are technology challenges in relation to the lack of electricity and Internet connectivity.

FSPs also encounter requests for transmittal of warrants of arrest, hold departure orders, and allowance of departure orders, which are then conveyed to the DFA Office of Consular Affairs for inclusion in the Visa Look-Out list⁶¹⁸ and/or cancellation of passports or placement in the Passport Look Out

616. Based from the Author's own experience.

617. Caesar Syria Civilian Protection Act of 2019, §§ 102, 201, & 202.

618. Philippine Embassy Madrid, Frequently-Asked Questions Regarding Visas, at 8, available at <https://www.philembassymadrid.com/wordpress/wp-content/uploads/Forms/Visa%20FAQs.pdf> (last accessed Apr. 30, 2022) [<https://perma.cc/BU32-LJA8>].

List.⁶¹⁹ To enable these requests to be duly acted on, these processes also require that there should be original or certified true copies of the evidentiary documents prior to approving the request for cancellation of passports to prevent flight of fugitives from justice.⁶²⁰

At this point, despite various requests for blacklisting and cancellation of passports of the illegal recruiters and traffickers,⁶²¹ there are still a lot of work to be done to ensure that the distressed Overseas Filipinos would not be affected adversely by the perpetrators of these crimes.

IX. CONCLUSION AND RECOMMENDATIONS

Lara, as one out of around 10 million Filipino migrant workers, was assisted by an ATN officer of the Philippine Embassy. The role of ATN officers as frontline workers in the anti-trafficking strategy would necessarily require the constant equipping and training so that they can continue providing quality services to distressed Overseas Filipinos with a human rights lens. This was part of the goals of designing and implementing “The Syria Model.”⁶²²

It is recommended that ATN officers and eventually, employees of the Department of Migrant Workers, would be willing to study the case files and if possible, bring complete files in the court, especially a copy of the passport/s. If there is a copy of the contract, it is much better to also bring this to the proceedings, in both the Arabic versions and the English translation, if available. There should also be a process of familiarization of all the cases handled prior to courtroom appearances. More importantly, mental preparation is a major requirement prior to every hearing so that the ATN officer would not be intimidated by the foreign presiding judge and the opposing counsels in an adversarial process. Each statement given in Court is

619. See Office of the Consular Affairs, External Services, *available at* <https://consular.dfa.gov.ph/directory/250-information-board-courtesy-lane> (last accessed Apr. 30, 2022) [<https://perma.cc/3FJ2-F4WT>].

620. See 2019 AMENDMENTS TO THE 1997 RULES OF PROCEDURE, rule 130, § 30.

621. See *generally* Department of Labor and Employment, Cleansing Overseas Placement: Govt Blacklists Foreign Recruiters; Suspends Erring Agencies, *available at* <https://www.dole.gov.ph/news/govt-blacklists-foreign-recruiters-suspends-erring-agencies> (last accessed Apr. 30, 2022) [<https://perma.cc/ZC3G-ZX88>].

622. REAP Form, *supra* note 493, at 1.

duly sworn and signed by the ATN officer to attest to the truth of the testimony and thus, the facts of the case should be clear and truthful.⁶²³

In interviewing Lara and other distressed Filipinas, the first thing to ask would be to check if there are specific mental health concerns and safety concerns they may have, especially if they have just been extracted from an exploitative situation. ATN officers often conduct the interview to check when they arrived in Syria and what is the nature of the complaint if it is related to their work and their employer. In lean Embassies like the Philippine Embassy in Syria, the ATN officer is also assigned as the house mother who manages the Filipino Workers Resource Center.⁶²⁴ This would then require her to give motherly advice on how not to be deceived again by fraudulent promises of illegal recruiters and traffickers, while processing her casework related documents in preparation for repatriation.⁶²⁵

With the crafting of the Supreme Court Guidelines on Videoconferencing, under the One Country Team Approach, Philippine Embassies and Consulates can support this as an access to justice initiative to ensure cases of Overseas Filipinos are heard in a timely manner, especially for the Philippines, as a State with about 10% of its nationals abroad,⁶²⁶ as previously mentioned. As soon as the host government would consent to the same, implementation of these programs would also be beneficial to the Filipino community members who would be interested in seeking justice for their grievances.

This pandemic has truly highlighted the “need for rapid and decisive action by governments in order to ensure that the most vulnerable people and economic agents have the necessary legal support and access to channels to address their legal problems.”⁶²⁷

There is a need for the Philippines to consider continuously reforming institutions to accommodate more inclusion. Diversity and inclusion must be seen not as checklists for substantial compliance but critical for accomplishment of goals of these institutions. Government top management can encourage officers to demonstrate cultural intelligence and develop innovations, managing talent in a manner that offers resources for diversity of

623. Interview *with* Eleanor Limochin, ATN Officer, *in* Philippine Embassy in Syria (Feb. 16 2022).

624. *Id.*

625. *Id.*

626. Asis, *supra* note 37.

627. Organisation for Economic Co-operation and Development, *supra* note 19, at 1.

thought across a wider demographic. Individuals in the institution can learn to manage unconscious bias effectively and gain the support of mentors and peers to navigate the rapidly changing work environment. The traditional ways of approaching access to justice may no longer keep up with the specific needs of Overseas Filipinos who are experiencing different ways of victimization as labor traffickers also become more technologically savvy.

Now, more than ever, the Philippines needs to be flexible in addressing these challenges with digital transformation and technological innovation, balancing this with compassion for distressed OFWs, with all branches of government, working together, to heal as one.