

# Republic Act No. 11641: Strengthening Legal Protections for Migrant Workers Through the Creation of a New Department

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## I. INTRODUCTION

Overseas Filipino Workers (OFWs) represent “one of the most important sectors” in the Philippines.<sup>1</sup> Filipino migrant workers can be found in almost every country around the world, with the Philippines ranking as one of the largest countries of origin for migrants around the world.<sup>2</sup> The considerable number of Filipino migrant workers, which at one point reached an estimated

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The positions expressed in this publication are those of the Author. Thus, they do not constitute the official views of the Department of Foreign Affairs of the Republic of the Philippines.

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1. Manila Times, *Sun Life Launches Talk Show for Overseas Pinoys*, MANILA TIMES, May 11, 2022, available at <https://www.manilatimes.net/2022/05/11/public-square/sun-life-launches-talk-show-for-overseas-pinoys/1843182> (last accessed July 31, 2022) [<https://perma.cc/5Q23-PBMS>].
2. Pew Research Center, *Overview of Migrants' Origins and Destinations*, available at <https://www.pewresearch.org/religion/2012/03/08/religious-migration-overview-of-migrants-origins-and-destinations> (last accessed July 31, 2022) [<https://perma.cc/BY4N-8U9P>].

10% of the country's total population,<sup>3</sup> plays a big role in the country's development through their billions of dollars in remittances, equivalent to more than eight percent of the country's gross domestic product as of 2021.<sup>4</sup> Due to their enormous contribution to the Philippine economy, issues involving Filipino migrant workers have oftentimes occupied a prominent position in the national spotlight, including electoral campaigns.<sup>5</sup>

During the different stages of their migration journey, OFWs often have to face complex and intricate challenges, starting with the recruitment process and actual deployment, up until their repatriation to the country and their reintegration into its social and economic life.<sup>6</sup> Among these challenges, OFWs often complain about the hassle of being passed around from one government office to another, whether it be for the purposes of securing important documents or of availing of government services and programs.<sup>7</sup> This was emphasized even further with the onset of the COVID-19 pandemic, wherein many distressed OFWs who lost their jobs abroad were confused as

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3. Yvette Collymore, *Rapid Population Growth, Crowded Cities Present Challenges in the Philippines*, available at <https://www.prb.org/resources/rapid-population-growth-crowded-cities-present-challenges-in-the-philippines> (last accessed July 31, 2022) [<https://perma.cc/52UL-ZSKE>].
  4. Ben O. de Vera, *Cash Remittances to PH Hit New High of \$31.4B in 2021*, PHIL. DAILY INQ., Feb. 16, 2022, available at <https://business.inquirer.net/341015/cash-remittances-to-ph-hit-new-high-of-31-4b-in-2021> (last accessed July 31, 2022) [<https://perma.cc/G7ZE-23YA>].
  5. See Michelle Abad, *Presidential Bets Vow to Negotiate with Countries to Protect OFWs*, RAPPLER, Apr. 4, 2022, available at <https://www.rappler.com/nation/elections/presidential-candidates-want-build-bilateral-talks-protect-overseas-filipinos-comelec-debate-2022> (last accessed July 31, 2022) [<https://perma.cc/9LHF-HJZD>].
  6. See, e.g., Alanah Torralba, *Fair and Ethical Recruitment: Protecting Overseas Filipino Workers (OFWs) Begins Before They Are Hired*, in *FAIR PERSPECTIVE: STORIES OF FILIPINO MIGRANT WORKERS IN THE MEDIA 15-23* (International Labour Organization ed., 2018).
  7. See Edith Regalado, *Duterte Wants Department of OFWs Up by December*, PHIL. STAR, July 14, 2019, available at <https://www.philstar.com/headlines/2019/07/14/1934524/duterte-wants-department-of-fws-december> (last accessed July 31, 2022) [<https://perma.cc/7F4E-D7DL>]. See also 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 15, available at <https://www.adb.org/sites/default/files/publication/767846/sewp-021-covid-19-ofws-return-migration-reintegration.pdf> (last accessed July 31, 2022) [<https://perma.cc/3CAN-QDJF>].

to which agency will be responsible for providing them with assistance they seek, whether it be documentation, legal, repatriation, medical, or livelihood reintegration assistance.<sup>8</sup> As a result, OFWs are oftentimes tempted to take shortcuts and shun the same government agencies and government programs that were instituted and designed to actually provide them with legal protection and to minimize their vulnerabilities.<sup>9</sup>

Although there have already been stopgap measures which were implemented in the past to resolve these issues, such as the creation of a joint manual of operations among various government agencies<sup>10</sup> and the setting up of one-stop service centers for OFWs,<sup>11</sup> the clamor among OFW groups for more efficiency and streamlining of government services continues to persist.<sup>12</sup> Taking these into account, the House of Representatives passed in March 2020 its own version of the proposal to create a new department for migrant workers by an overwhelming majority.<sup>13</sup> Thereupon, then President Rodrigo R. Duterte certified as urgent the Senate version of the proposed

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8. See Ruby Baclid, *Protecting the Rights and Welfare of the OFWs*, available at <https://www.bria.com.ph/articles/protecting-the-rights-and-welfare-of-the-ofws> (last accessed July 31, 2022) [<https://perma.cc/C5N6-KYRX>].

9. See Buena Bernal, *'Slow' Gov't Process Makes OFWs Fall for Illegal Recruiters*, RAPPLER, Apr. 16, 2015, available at <https://www.rappler.com/nation/90013-slow-government-process-ofws-illegal-recruiters> (last accessed July 31, 2022) [<https://perma.cc/9T4K-9S4R>].

10. Department of Labor and Employment, *Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos a Guidepost on Government Services* — Baldoz, available at <https://www.dole.gov.ph/news/joint-manual-of-operations-in-providing-assistance-to-migrant-workers-and-other-filipinos-a-guidepost-on-government-services-baldoz> (last accessed July 31, 2022) [<https://perma.cc/XW7D-7K22>].

11. Don Kevin Hapal, *One-Stop Service Center for OFWs Opens for Business*, RAPPLER, Aug. 15, 2016, available at <https://www.rappler.com/moveph/143085-poea-one-stop-service-center> (last accessed July 31, 2022) [<https://perma.cc/JZ8B-MYPA>].

12. See Press Release by House of Representatives, *DOLE, DFA, DBM, Other Gov't Officials Back DOFW Bill of Speaker Cayetano, Cong. Paolo Duterte and Rep. Lani Cayetano* (Sept. 18, 2019) (on file with the House of Representatives).

13. An Act Creating the Department of Filipinos Overseas and Foreign Employment, Defining Its Mandate, Powers, and Functions, Appropriating Funds Therefor, H.B. No. 5832, 18th Cong., 1st Reg. Sess. (2020). See also CNN Philippines Staff, *House Approves OFW Department Bill*, CNN PHIL., Mar. 11, 2020, available at <https://www.cnnphilippines.com/news/2020/3/11/House-approves-OFW-department-bill.html> (last accessed July 31, 2022) [<https://perma.cc/L5QU-QTCM>].

measure, Senate Bill No. 2234,<sup>14</sup> citing it as priority legislation.<sup>15</sup> The Senate eventually responded by approving its version of the proposal unanimously, voting 20-0 with no abstentions.<sup>16</sup> Subsequently, the House of Representatives adopted the Senate version in its entirety, dispensing with the need for a bicameral conference committee to reconcile the two versions of the proposed measure.<sup>17</sup> This paved the way for President Duterte to sign into law Republic Act No. 11641 (R.A. No. 11641), otherwise known as the Department of Migrant Workers Act, on 30 December 2021.<sup>18</sup> The date is symbolic, as it coincides with the occasion of the 125th anniversary of the martyrdom of the Philippine national hero, Dr. Jose P. Rizal,<sup>19</sup> who himself experienced life as a Filipino migrant worker when he worked as an ophthalmologist in Hong Kong.<sup>20</sup>

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14. An Act Creating the Department of Migrant Workers and Overseas Filipinos, Defining Its Powers and Functions, Rationalizing the Organization and Functions of Government Agencies Related to Overseas Employment and Migration, Appropriating Funds Therefor, and for Other Purposes, S.B. No. 2234, 18th Cong., 2d Reg. Sess. (2021).
  15. CNN Philippines Staff, *Duterte Certifies as Urgent Bills Creating OFW Department, Taxing POGOs*, CNN PHIL., May 31, 2021, available at <https://www.cnnphilippines.com/news/2021/5/31/Duterte-certifies-as-urgent-bills-creating-OFW-department--taxing-POGOs.html> (last accessed July 31, 2022) [<https://perma.cc/2XZY-N6DS>].
  16. CNN Philippines Staff, *Senate Unanimously Approves Bill Creating OFW Department on Final Reading*, CNN PHIL., Dec. 14, 2021, available at <https://www.cnnphilippines.com/news/2021/12/14/Senate-OFW-department-bill-final-reading.html> (last accessed July 31, 2022) [<https://perma.cc/LD4Y-PK4R>].
  17. Filane Mikee Cervantes, *House Adopts Senate Version of Bill Creating OFW Dept.*, available at <https://www.pna.gov.ph/articles/1162862> (last accessed July 31, 2022) [<https://perma.cc/3KZN-4FPT>].
  18. 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).
  19. National Library of the Philippines, *December 30 Is Rizal Day*, available at <http://web.nlp.gov.ph/nlp/?q=node/10704> (last accessed July 31, 2022) [<https://perma.cc/2AMY-37X5>].
  20. Tracy B. Ravin, *José Rizal: Philippine National Hero and Ophthalmologist*, 119 AM. MED. ASS'N 280, 281 (2001).

Upon the enactment of the law, it was immediately met with mixed but mostly positive reaction from various sectors. Some labor groups hailed the creation of a new department whose sole focus will be to address the needs of OFWs, while others lamented the lack of consultations in the crafting of the law.<sup>21</sup> It was also recognized internationally, gaining entry into the Repository of Practices,<sup>22</sup> a list of replicable and best practices compiled by the United Nations (UN)<sup>23</sup> in relation to the implementation of the Global Compact for Migration (GCM).<sup>24</sup> In giving its stamp of approval to R.A. No. 11641, the UN Network on Migration praised the law for providing a concrete definition of “ethical recruitment” and for making the Philippines “the first country in the world to include in its law the progressive realization of the 23 Objectives of the GCM.”<sup>25</sup> It also hailed the law for providing “a single destination for OFWs in checking available overseas jobs, processing and issuance of overseas employment certificates, legal assistance for cases, repatriation, reintegration, and other necessary assistance[,]”<sup>26</sup> as well as giving “greater voice and representation [to] OFWs” through the designation of the agency as a *department*, which will see its head — the DMW Secretary — represented in Cabinet.

## II. LEGAL AND HISTORICAL ANTECEDENTS

As mentioned above, the OFW sector has consistently been highlighted in the national consciousness. Consequently, even prior to the passage of R.A. No. 11641, Philippine laws have steadily evolved to provide ever greater protection towards this vulnerable sector.

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21. MJ Blancaflor, *OFW Dep't a 'Great Gift'*, DAILY TRIB., Dec. 31, 2021, available at <https://tribune.net.ph/index.php/2021/12/31/ofw-dept-a-great-gift> (last accessed July 31, 2022) [<https://perma.cc/Y4W7-L982>].

22. United Nations Network on Migration, *Creation of the Department of Migrant Workers Created Under Republic Act No. 11641*, available at <https://migrationnetwork.un.org/practice/creation-department-migrant-workers-created-Under-republic-act-no-11641> (last accessed July 31, 2022) [<https://perma.cc/5JHS-7467>].

23. United Nations Network on Migration, *Repository of Practices*, available at <https://migrationnetwork.un.org/hub/repository-of-practices/about> (last accessed July 31, 2022) [<https://perma.cc/SJ5L-2J55>].

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

25. United Nations Network on Migration, *Creation of the Department of Migrant Workers Created Under Republic Act No. 11641*, *supra* note 22.

26. *Id.*

Constitutional policy vis-à-vis Filipino migrant workers first came about with the adoption of the 1987 Philippine Constitution.<sup>27</sup> Section 3, Article XIII thereof states that, “[t]he State shall afford full protection to labor, local and *overseas*, organized and unorganized, and promote full employment and equality of employment opportunities for all.”<sup>28</sup>

The mention of the word “overseas” when referring to labor represents a tiny but significant change in the wording of the provision. It reflects the growing emphasis and changing attitude of the State policy towards Filipino migrant workers from nonchalance and passivity towards recognition and protection. In interpreting this provision in *Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*,<sup>29</sup> the Court stated that the guarantees provided under this constitutional provision are “not stripped off when Filipinos work in a different jurisdiction.”<sup>30</sup> The case of *Philippine Association of Service Exporters, Inc. v. Drilon*,<sup>31</sup> however, qualifies this by stating that “[p]rotection to labor [ ] does not signify the promotion of employment alone,” since the 1987 Constitution is concerned in paramount for “an employment [to] be above all, decent, just, and humane.”<sup>32</sup> Hence, according to this case, the government is “duty-bound to insure that [ ] toiling expatriates have adequate protection, personally and economically, while away from home.”<sup>33</sup>

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27. See generally PHIL. CONST.

28. PHIL. CONST. art. XIII, § 3 (emphasis supplied).

29. *Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, G.R. No. 200811, 904 SCRA 573 (2019).

30. *Id.* at 586-87 (citing *Sameer Overseas Placement Agency, Inc. v. Cabiles*, G.R. No. 170139, 732 SCRA 22, 42 (2014)).

31. *Philippine Association of Service Exporters, Inc. v. Drilon*, G.R. No. L-81958, 163 SCRA 386 (1988).

32. *Id.* at 397.

33. *Id.*

Comparatively, both Article II, Section 9 of the 1973 Constitution<sup>34</sup> and Article XIII, Section 6 of the 1935 Constitution<sup>35</sup> did not mention the word “overseas” when referring to the State’s duty to afford full protection of labor.

The constitutional directive was subsequently strengthened and made more concrete in the aftermath of the massive public outcry that followed the death of Flor Ramos Contemplacion, a Filipina domestic worker in Singapore who was executed by hanging in 1995 after being accused of murdering another Filipina domestic worker and her four-year-old Singaporean ward.<sup>36</sup> In response to the outpouring of anger following her execution, wherein the government was accused of mishandling the case and of not doing enough to save her, Republic Act No. 8042 (R.A. No. 8042), otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995,<sup>37</sup> was enacted into law in the hopes of establishing a higher standard of protection and promotion of

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34. 1973 PHIL. CONST. art. II, § 9 (superseded in 1987). Article II, Section 9 states

SEC. 9. The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.

1973 PHIL. CONST. art. II, § 9 (superseded in 1987).

35. 1935 PHIL. CONST. art. XIII, § 6 (superseded in 1973). Section 6, Article XIII, states —

SEC. 6. The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration.

1935 PHIL. CONST. art. XIII, § 6.

36. Joaquin L. Gonzalez III, *Domestic and International Policies Affecting the Protection of Philippine Migrant Labor: An Overview and Assessment*, 44 PHIL. SOCIOLOGICAL REV. 162, 162 (1996) & Carlos Piocos, *Why Mourning Matters: The Politics of Grief in Southeast Asian Narratives of Women’s Migration*, 33/34 KRITIKA KULTURA 806, 814 (2019).

37. 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).

the welfare of migrant workers.<sup>38</sup> Aside from positive changes that R.A. No. 8042 introduced in terms of penalizing the crime of illegal recruitment<sup>39</sup> (in contrast with the provisions of Article 38 of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines)<sup>40</sup> and in regulating the deployment of Filipino migrant workers abroad,<sup>41</sup> this law is likewise significant for specifying the particular roles that government agencies like the Department of Foreign Affairs (DFA) and Department of Labor and Employment (DOLE) should play when it comes to protection of OFWs.<sup>42</sup>

Applying the same procedures provided under Executive Order No. 74, Series of 1993 in the protection of Philippine nationals,<sup>43</sup> Section 28 of R.A. No. 8042 mandated the adoption of the One-Country Team Approach (OCTA) in the provision of assistance to nationals (ATN) services.<sup>44</sup> This means that “all officers, representatives[,] and personnel of the Philippine government posted abroad[,] regardless of their mother agencies[, should] ... act as one country-team ... under the leadership of the ambassador.”<sup>45</sup> In the same token, Section 24 of R.A. No. 8042 established, under the umbrella of the DFA, the Office of the Legal Assistant for Migrant Workers’ Affairs (OLAMWA), which later became known as the Office of the Undersecretary for Migrant Workers’ Affairs (OUMWA).<sup>46</sup> According to R.A. No. 8042, this office shall be tasked with the responsibility of managing an exclusive fund dedicated toward the provision of legal assistance to Filipino migrant workers.<sup>47</sup>

38. Gonzales III, *supra* note 36, at 167.

39. Migrant Workers and Overseas Filipinos Act of 1995, § 7.

40. 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, art. 38 (1974) (as amended).

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

42. *Id.* § 23.

43. Office of the President, 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], §§ 1-3 (Mar. 29, 1993).

44. Migrant Workers and Overseas Filipinos Act of 1995, § 28.

45. *Id.*

46. *Id.* § 24, para. 1 & ASEAN COMMITTEE ON THE IMPLEMENTATION OF THE ASEAN DECLARATION ON THE PROTECTION AND PROMOTION ON THE RIGHTS OF MIGRANT WORKERS, COMPENDIUM ON MIGRANT WORKERS’ EDUCATION AND SAFE MIGRATION PROGRAMMES 69 (2017).

47. Migrant Workers and Overseas Filipinos Act of 1995, § 24 (d).

Thereafter, amendments were introduced to R.A. No. 8042 through Republic Act No. 10022 (R.A. No. 10022),<sup>48</sup> with the goal of further expanding OFW protections.<sup>49</sup> Among the new positive measures introduced by this law is the institution of a three-step process that serves as a prerequisite before deployment of OFWs to a particular country.<sup>50</sup> Under Section 3 of R.A. No. 10022 and Section 1, rule III of its Implementing Rules and Regulations (IRR),<sup>51</sup> it is necessary that the DFA shall first issue a certification specifying that the host countries guarantee protection of the rights of OFWs.<sup>52</sup> Then, a Philippine Overseas Employment Agency (POEA) resolution should be promulgated to allow deployment to the complying host countries, which will be followed by the processing of workers' documents to countries identified in the said POEA resolutions.<sup>53</sup>

Complementing these developments is the passage of Republic Act No. 9208 (R.A. No. 9208), as amended, initially known as the Anti-Trafficking in Persons Act of 2003<sup>54</sup> (later being renamed in 2022 as the Expanded Anti-Trafficking in Persons Act of 2022).<sup>55</sup> This law aims to impose harsh penalties on acts constituting as human trafficking, such as prostitution, debt bondage,

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48. 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).

49. *See id.* § 1.

50. *Id.* § 3.

51. Department of Labor and Employment, Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, Republic Act No. 8042 (2010).

52. *Id.* rule III, § 1 & Republic Act No. 10022, § 3.

53. *Id.*

54. 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) (short title replaced in 2022).

55. An Act Strengthening the Policies on Anti-Trafficking in Persons, Providing Penalties for Its Violations, and Appropriating Funds Therefor, Amending for the Purpose of Republic Act No. 9208, as Amended, Otherwise Known as the "Anti-Trafficking in Persons Act of 2003," and Other Special Laws, Republic Act No. 11862, § 1 (2022). The law amended the short title to be Expanded Anti-Trafficking in Persons Act of 2022. *Id.*

slavery, and forced labor,<sup>56</sup> to which many Filipino migrant workers have already fallen victim to.<sup>57</sup> Just like the Migrant Workers and Overseas Filipinos Act of 1995, Section 20 of this law adopts an inter-agency approach towards tackling human trafficking,<sup>58</sup> with Section 16 reenforcing this strategy by mandating different government branches, including law enforcement and local government units, to adopt programs designed to prevent trafficking as well as to protect and rehabilitate its victims.<sup>59</sup> This law was subsequently strengthened through Republic Act No. 10364 (R.A. No. 10364),<sup>60</sup> specifying additional roles and responsibilities for government agencies in the fight against human trafficking.<sup>61</sup> Included in the amendments introduced by R.A. No. 10364 is the duty given to the DFA to

provide Filipino victims of trafficking overseas with free legal assistance and counsel to pursue legal action against his or her traffickers, represent his or her interests in any criminal investigation or prosecution, and assist in the application for social benefits and/or regular immigration status as may be allowed or provided for by the host country.<sup>62</sup>

Likewise, it also tasked the DFA to repatriate trafficked Filipinos upon their consent and to coordinate with DOLE in providing “free temporary shelters and other services to Filipino victims of trafficking overseas through migrant workers and other overseas Filipinos resource centers established overseas under [R.A.] No. 8042, as amended.”<sup>63</sup> Subsequently, R.A. No. 9208 was again reinforced through Republic Act No. 11862 (R.A. No. 11862), wherein the DFA is given the further mandate of coordinating with the

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56. *Id.* §§ 4 & 10.

57. See Narcisa H. Guevarra, *Trafficking in Women and Children and Smuggling of Migrants* (Paper Presented at the 122nd International Training Course), at 126, *available at* [https://www.unafei.or.jp/publications/pdf/RS\\_No62/No62\\_17PA\\_Guevarra.pdf](https://www.unafei.or.jp/publications/pdf/RS_No62/No62_17PA_Guevarra.pdf) (last accessed July 31, 2022) [<https://perma.cc/QDJ5-H7UB>].

58. Expanded Anti-Trafficking in Persons Act of 2022, § 20.

59. *Id.* § 16.

60. 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 (2012).

61. *Id.* § 15.

62. *Id.*

63. *Id.*

Bureau of Immigration and the Department of Justice to “[d]evelop mechanisms to ensure the timely [ ] and effective response to cross-border cases of trafficking[.]”<sup>64</sup> to “[p]rovide immediate protection [ ] [and] repatriation [ ] to Filipino victims of trafficking overseas[.]”<sup>65</sup> as well as to “undertake joint activities to enhance cooperative efforts and mutual assistance among foreign countries through bilateral or multilateral arrangements to promote the registration of trafficking and sex offenders and their notification to persons concerned[.]”<sup>66</sup>

Thenceforward, Republic Act No. 10801 (R.A. No. 10801), also known as the Overseas Workers Welfare Administration Act,<sup>67</sup> and Republic Act No. 11227, also known as Handbook for OFWs Act of 2018,<sup>68</sup> were signed into law. The former strengthened the support of the government to Overseas Filipino Workers by making reforms to the Overseas Worker Welfare Administration (OWWA), thereby enabling it to receive funding from the government rather than continuing to rely solely on the contributions of OFWs.<sup>69</sup> This allowed OWWA to enhance its assistance and reintegration programs for migrant workers.<sup>70</sup> The latter law, on the other hand, provides for the creation of a handbook to be given to all OFWs free of charge, with the objective of apprising them of their legal rights and benefits as well as informing them of existing legal mechanisms for seeking assistance and redress.<sup>71</sup>

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64. *Id.* § 11.

65. *Id.*

66. *Id.*

67. An Act Governing the Operations and Administration of the Overseas Workers Welfare Administration [Overseas Workers Welfare Administration Act], Republic Act No. 10801 (2016).

68. An Act Mandating the Philippine Overseas Employment Administration (POEA) to Develop, Publish, Disseminate and Update a Handbook on the Rights and Responsibilities of Migrant Workers, Amending for the Purpose Republic Act No. 8042, Otherwise Known as the “Migrant Workers and Overseas Filipinos Act of 1995”, as Amended by Republic Act No. 10022 [Handbook for OFWs Act of 2018], Republic Act No. 11227 (2019).

69. Overseas Workers Welfare Administration Act, § 53 & Department of Labor and Employment, Baldoz Welcomes New OWWA Law, *available at* <https://www.dole.gov.ph/news/baldoz-welcomes-new-owwa-law> (last accessed July 31, 2022) [<https://perma.cc/K7YE-KA2T>].

70. See Department of Labor and Employment, Baldoz Welcomes New OWWA Law, *supra* note 69.

71. Handbook for OFWs Act of 2018, §§ 2-3.

Concurrently, the Philippines has been very active in ratifying all the major legal instruments related to migration<sup>72</sup> including inter alia, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW),<sup>73</sup> the International Labor Organization (ILO) Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers,<sup>74</sup> the ILO Convention Concerning Decent Work for Domestic Workers,<sup>75</sup> the ILO Convention Concerning Migration for Employment,<sup>76</sup> the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,<sup>77</sup> and the Protocol Against the Smuggling of Migrants by Land, Sea and Air.<sup>78</sup>

### III. LEGAL MANDATE OF THE NEW DEPARTMENT

In order to create the new department, R.A. No. 11641 consolidates the functions of seven different agencies catering to OFW concerns and merges them into a single entity.<sup>79</sup> These seven agencies are identified under Section 19 of the law.<sup>80</sup> They are:

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72. See United Nations Department of Economics and Social Affairs, *International Migration Report*, at 48, U.N. Doc. ST/ESA/SER.A/438 (2019).

73. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *signed* Nov. 15, 1993, 2220 U.N.T.S. 3 (entered into force July 1, 2003).

74. Convention (No. 143) Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, *adopted* June 24, 1975, 1120 U.N.T.S. 323 (entered into force Dec. 9, 1978).

75. Convention (No. 189) Concerning Decent Work for Domestic Workers, *adopted* June 16, 2011, 2955 U.N.T.S. 407 (entered into force Sept. 5, 2013).

76. Convention (No. 97) Concerning Migration for Employment, *adopted* July 1, 1949, 120 U.N.T.S. 71 (entered into force Jan. 22, 1952).

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

78. Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, *signed* Dec. 14, 2000, 2241 U.N.T.S. 480 (entered into force Jan. 28, 2004).

79. Department of Migrant Workers Act, § 19.

80. *Id.*

- (1) Philippine Overseas Employment Administration (POEA),<sup>81</sup> which was created under Executive Order No. 797, Series of 1982<sup>82</sup> and reorganized by Executive Order No. 247, Series of 1987<sup>83</sup> and R.A. No. 8042;<sup>84</sup>
- (2) Office of the Undersecretary for Migrant Workers' Affairs (OUMWA),<sup>85</sup> which was created by R.A. No. 8042 under the DFA;<sup>86</sup>
- (3) Office of the Social Welfare Attaché (OSWA),<sup>87</sup> which was established by Republic Act No. 11299<sup>88</sup> under the Department of Social Welfare and Development (DSWD);<sup>89</sup>
- (4) National Maritime Polytechnic (NMP),<sup>90</sup> which was established by virtue of Presidential Decree No. 1369 (P.D. No. 1369)<sup>91</sup> under the DOLE;<sup>92</sup>

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81. *Id.* § 19 (a).

82. 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], § 4 (May 1, 1982).

83. Office of the President, Reorganizing the Philippine Overseas Employment Administration and for Other Purposes, Executive Order No. 247, Series of 1987 [E.O. No. 247, s. 1987], § 2 (July 24, 1987).

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

85. Department of Migrant Workers Act, § 19 (b).

86. Migrant Workers and Overseas Filipinos Act of 1995, § 24.

87. Department of Migrant Workers Act, § 19 (g).

88. An Act Establishing the Office for Social Welfare Attaché, Amending for the Purpose Republic Act No. 8042, Otherwise Known as the “Migrant Workers and Overseas Filipinos Act of 1995,” as Amended, and for Other Purposes, Republic Act No. 11299, § 2 (2019).

89. *Id.*

90. Department of Migrant Workers Act, § 19 (f).

91. Creation of a National Maritime Polytechnic, Presidential Decree No. 1369, ¶ 1 (1978).

92. Department of Migrant Workers Act, § 19 (f) & Office of the President, Reorganizing the Ministry of Labor and Employment and for Other Purposes, Executive Order No. 126, Series of 1987 [E.O. No. 126, s. 1987], § 19 (h) (Jan. 30, 1987).

- (5) International Labor Affairs Bureau (ILAB),<sup>93</sup> which was created by virtue of Executive Order No. 126, Series of 1987<sup>94</sup> under the DOLE;<sup>95</sup>
- (6) National Reintegration Center for OFWs (NRCO)<sup>96</sup> which was established by R.A. No. 10022<sup>97</sup> under the DOLE;<sup>98</sup> and
- (7) Philippine Overseas Labor Offices (POLOs)<sup>99</sup> of the DOLE.<sup>100</sup>

OWWA, which was created under Presidential Decree No. 1694<sup>101</sup> and whose mandate is specified under the previously mentioned R.A. No. 10801, and which has hitherto been an attached agency of the DOLE,<sup>102</sup> shall now become an attached agency of the Department of Migrant Workers, with the DMW Secretary replacing the DOLE Secretary as Chairperson of the OWWA Board.<sup>103</sup>

According to Section 5 of R.A. No. 11641, the newly established department shall become “the primary agency ... to protect the rights and promote the welfare of OFWs, regardless of status and of the means of entry into the country of destination.”<sup>104</sup> Such duty is not exclusively limited to OFWs alone however, as Section 6 (d) expands this mandate to also include the protection and promotion of the welfare, well-being, and interests of the families of OFWs.<sup>105</sup> In defining the term “OFW,” Section 3 (g) of R.A. No. 11641 uses the same standard as R.A. No. 8042<sup>106</sup> and R.A. No. 10022,<sup>107</sup> that is, if the overseas Filipino is “to be engaged, is engaged, or has been engaged in remunerated activity of the country of which he or she is not ...

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93. Department of Migrant Workers Act, § 19 (d).

94. E.O. No. 126, s. 1987, § 16.

95. Department of Migrant Workers Act, § 19 (d).

96. *Id.* § 19 (e).

97. Republic Act No. 10022, § 10.

98. *Id.*

99. *Id.* § 19 (c).

100. *Id.*

101. Organization and Administration of the Welfare Fund for Overseas Workers, Presidential Decree No. 1694 (1980).

102. Overseas Workers Welfare Administration Act, § 4.

103. Department of Migrant Workers Act, § 20.

104. *Id.* § 5.

105. *Id.* § 6 (d).

106. *See* Migrant Workers and Overseas Filipinos Act of 1995, § 3 (a).

107. *See* Republic Act No. 10022, § 2.

[a] [ ] citizen[.]”<sup>108</sup> It, however, also specifies that the term “OFW” shall not apply if the Overseas Filipino is an immigrant or a permanent resident of that country.<sup>109</sup> It also excludes those who are merely “awaiting naturalization, recognition, [ ] admission,” as well as those who are engaged “under a government-recognized exchange visitor program for cultural and educational purposes.”<sup>110</sup>

It is noteworthy that the law added the phrase “regardless of status” in the definition of an OFW under Section 3 (g) as well as the phrase “OFWs, regardless of status and of the means of entry into the country of destination” in specifying the mandate of DMW under Section 5.<sup>111</sup> The addition is significant since it eliminates the existing delineation between the so-called documented and undocumented OFWs.<sup>112</sup> This modification would certainly mean that even those OFWs whose employment contracts were not processed and verified, as well as those who do not possess valid travel documents, passports, and visas, will still be covered by the mandate of the new department and enjoy the benefits of its programs.<sup>113</sup> This is completely different from the previous setup, where undocumented OFWs often complain about being disqualified from availing of assistance and benefits provided to documented OFWs under various government programs.<sup>114</sup>

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108. *Id.* § 3 (g).

109. *Id.*

110. *Id.*

111. *Id.* §§ 3 (g) & 5.

112. *See generally* Department of Labor and Employment, Former Undocumented OFWs Obtain Livelihood from the DOLE-RO I, *available at* <https://ro1.dole.gov.ph/news/former-undocumented-ofws-obtain-livelihood-from-the-dole-ro-i> (last accessed July 31, 2022) [<https://perma.cc/8R7S-98U5>]. An undocumented OFW refers to

one who [acquires a] passport through fraud or misrepresentation; possesses expired visa or permits to stay; has no travel documents whatsoever; has valid but inappropriate visa; or whose employment contract was not processed by the POEA or subsequently verified and registered on-site by POLO, if required by law or regulation.

*Id.*

113. *See id.*

114. *See* Lian Buan, *Stuck and Undocumented: A Transiting OFW’s Tough Choice*, RAPPLER, May 26, 2020, *available at* <https://www.rappler.com/nation/262026-transiting-ofw-tough-choice-coronavirus-pandemic> (last accessed July 31, 2022) [<https://perma.cc/6JZS-ZYFR>].

Likewise, it should also be pointed out that R.A. No. 11641 expanded the definition of what it means for an Overseas Filipino to be considered as “in distress.”<sup>115</sup> In contrast, both R.A. No. 8042 and R.A. No. 10022 did not define what being “in distress” means, despite applying it as one of the qualifications for the use of the Legal Assistance Fund (LAF).<sup>116</sup> Nonetheless, the IRR of R.A. No. 10022 supplemented this omission by defining “in distress” as a “medical, psycho-social, or legal assistance problem requiring treatment, hospitalization, counseling, legal representation[,] ... or any [ ] kind of intervention with the authorities in the country where [the Overseas Filipino] is found.”<sup>117</sup> Keeping in mind the numerous crises that OFWs have faced in the years since the adoption of this definition such as the recent COVID-19 pandemic, the legislature expanded this definition in Section 3 (c) of R.A. No. 11641 to include being in a country where there is “actual or potential war, civil unrest, pandemic[,] or other analogous circumstances and situations[,]” which would require “medical treatment, hospitalization, counseling, legal representation, rescue, repatriation, or any other kind of analogous intervention, including the repatriation of remains[.]”<sup>118</sup> It also now includes violations of one’s human rights as well as experience of abuse or exploitation.<sup>119</sup>

To help DMW fulfill its mandate, the new department is given access to a newly-established fund, the so-called *Agarang Kalinga at Saklolo para sa mga OFWs na Nangangailangan* (AKSYON) Fund, which it can use “to provide legal, medical, financial, and other forms of assistance to [OFWs] [such as] repatriation[] [and] shipment of remains[.]”<sup>120</sup> It should be stressed, however, that despite the status of OWWA as an attached agency of the DMW, the OWWA Trust Fund under R.A. No. 10801 cannot be tapped by the DMW to supplement the AKSYON Fund nor can it be conjoined with it. This is because Sections 37 and 38 of R.A. No. 10801 are clear in stating that the OWWA Trust Fund must not be “conjoined with government money” nor can it be used to respond, aid, supplement, or in any manner augment any required expenditure by other government agencies.<sup>121</sup> Just the same, the

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115. Department of Migrant Workers Act, § 3 (c).

116. Migrant Workers and Overseas Filipinos Act of 1995, § 26 & Republic Act No. 10022, § 19.

117. Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, rule II, § 1 (ii).

118. Department of Migrant Workers Act, § 3 (c).

119. *Id.*

120. *Id.* § 3 (a).

121. Overseas Workers Welfare Administration Act, §§ 37-38.

DMW will also have officials deployed at Philippine Foreign Service Posts (FSPs), who shall have the designation of attachés and who shall be responsible for the establishment of its Migrant Workers Offices (MWO).<sup>122</sup> According to Section 15 of R.A. No. 11641,

[t]he MWO [will take over] all the powers, existing functions[,] and personnel of the Philippine Overseas Labor Offices (POLO), and the Office for the Social Welfare Attaché (OSWA), [as well as] the powers and functions of existing ATN units of [FSPs] with regard to OFWs in all Philippine embassies and consulates[.]<sup>123</sup>

The MWO is envisioned by law to “complement the diplomatic and consular functions of the DFA”<sup>124</sup> and “shall have the same jurisdiction, including concurrent and consular jurisdiction, as the [FSP of the DFA] to which it is attached.”<sup>125</sup> In the deployment of MWO officials, the DMW is required by law to first secure clearance from the Secretary of Foreign Affairs.<sup>126</sup> This makes it consistent with Section 41 of Republic Act No. 7157 (R.A. No. 7157), otherwise known as the Philippine Foreign Service Act of 1991,<sup>127</sup> which states that before the “assignment and accreditation of personnel in any department, bureau[,] or agency of the [g]overnment as service attachés to embassies or representatives to consulates[, it must first] have the prior clearance [from] the Secretary [of Foreign Affairs.]”<sup>128</sup> In the same vein, the DMW is required to observe the relevant provisions of the Vienna Convention on Diplomatic Relations,<sup>129</sup> the Vienna Convention on Consular Relations,<sup>130</sup> as well as the rules and regulations of the receiving State in its deployment of MWO officials.<sup>131</sup> Furthermore, in line with Section 28 of

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122. *Id.* §§ 14–15.

123. *Id.* § 15.

124. *Id.*

125. Department of Migrant Workers Act, § 15.

126. *Id.*

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

128. *Id.* § 41.

129. Department of Migrant Workers Act, § 15. *See generally* Vienna Convention on Diplomatic Relations, *adopted* Apr. 14, 1961, 500 U.N.T.S. 95 (entered into force Apr. 24, 1964).

130. Department of Migrant Workers Act, § 15. *See generally* Vienna Convention on Consular Relations, *adopted* Apr. 22, 1963, 596 U.N.T.S. 261 (entered into force Mar. 19, 1967).

131. Department of Migrant Workers Act, § 15.

R.A. No. 8042 and Section 43 of R.A. No. 7157,<sup>132</sup> the deployed MWO Officials are required to observe OCTA under the leadership of the ambassador.<sup>133</sup> Section 23, rule VIII of the IRR of R.A. No. 11641 expounds on this by stating that “[n]o MWO Official shall serve as acting principal officer” of any consulate general or embassy of the DFA.<sup>134</sup> Neither shall such MWO officials precede in rank any foreign service officer of the DFA.<sup>135</sup>

Be that as it may, it might be asked then which agency shall be responsible for providing assistance to Overseas Filipinos who do not fall within the definition of an OFW or who were expressly excluded from it by Section 3 (g) of R.A. No. 11641. The answer to this question lies in Section 14, which explicitly states that “[t]he DFA shall retain [its] ATN and [LAF][.]” which is to be separate from the AKSYON Fund of the DMW, and which shall be used “for the benefit of other Filipinos overseas,” as well as for “consular assistance services.”<sup>136</sup> The general term that was used by the law, “other Filipinos overseas,” properly covers the whole gamut of the “Overseas Filipino” population not falling under the OFW category, such as tourists, students, missionaries, and permanent residents. This being said, it must be remembered, however, that the previously mentioned OWWA Fund is still separate from the DFA’s ATN and LAF as well as from the DMW’s AKSYON Fund, since Section 38 of R.A. No. 10801 is clear in stating that the OWWA Fund can only be used serve the welfare of member-OFWs and their families.<sup>137</sup> Hence, while all distressed OFWs can benefit from the DMW’s AKSYON Fund, and while all distressed other “Overseas Filipinos” not falling within the definition of an OFW can become beneficiaries of the DFA’s ATN and LAF Funds, only OFWs who become OWWA members can benefit from the OWWA Fund under R.A. No. 10801.<sup>138</sup>

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132. Migrant Workers and Overseas Filipinos Act of 1995, § 28 & Philippine Foreign Service Act of 1991, § 43.

133. *Id.*

134. Department of Migrant Workers, Rules and Regulations Implementing the Department of Migrant Workers Act, Republic Act No. 11641, rule VIII, § 23 (2022).

135. *Id.*

136. Department of Migrant Workers Act, § 14.

137. Overseas Workers Welfare Administration Act, § 38.

138. *Id.*

This allocation of functions is also recognized in R.A. No. 11862, the law strengthening anti-trafficking policies under R.A. No. 9208 and R.A. No. 10364.<sup>139</sup> Under Section 11 of R.A. No. 11862, which amended Section 16 of R.A. No. 9208, both the DFA and the DMW are given the mandate to provide legal and repatriation assistance to trafficking victims.<sup>140</sup> R.A. No. 11862, however, noticeably limits the DMW's mandate of legal and repatriation assistance to "labor" trafficking victims and trafficked OFWs, in recognition of the more specific jurisdiction of the DMW.<sup>141</sup>

Notwithstanding the foregoing, the delineation created by R.A. No. 11641 between OFWs and all other overseas Filipinos does not mean that the DFA can adopt a hands-off attitude towards OFWs in general. In the previously cited R.A. No. 11862, all officers of the foreign service are required by law to "advise the DMW through the fastest means of communication available[, of] the discovery and other relevant information [relating to] trafficked migrant workers."<sup>142</sup> Comparably, Section 6 of R.A. No. 11641 states that the "[p]rotection of the rights and promotion of the welfare of overseas Filipinos is [still] a pillar of Philippine foreign policy."<sup>143</sup> This is consistent with Section 1 of Republic Act No. 10022, which is still operative and which states that in the pursuit of an independent foreign policy, the State must "uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular, continuously monitor international conventions, adopt/be signatory to and ratify those that guarantee protection to our migrant workers, and endeavor to enter into bilateral agreements with countries hosting overseas Filipino workers."<sup>144</sup> Moreover, the DFA is required under Section 14 of the law to perform the functions of MWOs in its FSPs where no MWO has been established yet.<sup>145</sup> It also goes without saying that under Executive No. Order 292, otherwise known as the Administrative Code of 1987,<sup>146</sup> the DFA is still entrusted with the task of protecting and assisting all Philippine nationals abroad.<sup>147</sup>

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139. Republic Act No. 11862, § 11.

140. *Id.*

141. *Id.*

142. *Id.*

143. Department of Migrant Workers Act, § 6.

144. Republic Act No. 10022, § 1.

145. Department of Migrant Workers Act, § 14.

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

147. *Id.* bk. IV, tit. I, ch. I, § 3 (9).

Against this backdrop, it is important to remember in this context that by creating the DMW, the Philippines is neither institutionalizing labor migration into the fabric of its society nor creating a band-aid solution in lieu of creating domestic jobs.<sup>148</sup> Section 2 of R.A. No. 11641 states that the creation of the new department is not intended to promote overseas employment “as a means to economic growth and national development[.]”<sup>149</sup> It also states that overseas employment must be “a choice and not a necessity.”<sup>150</sup> In this regard, it commands the State to “strengthen the domestic labor market[.]”<sup>151</sup> In addition, Section 27 of R.A. No. 11641 empowers a Reorganization Commission composed of the Secretaries of the DFA, DOLE, DMW, National Economic Development Authority (NEDA), and the Department of Budget and Management (DBM) to “recommend the reorganization, consolidation, or abolition of the Department should circumstances prove that there is no more need for its existence[.]” five years after its creation.<sup>152</sup> It also mandates the review of the “relevance and practicality of maintaining the Department every five [ ] years after the five[ ]-year mandatory review period.”<sup>153</sup> Included in the list of indicators that must be considered by the Reorganization Commission for the mandatory review are the “number of decent jobs created, [the existence of a] broader social protection coverage, [the increase in] job options for women and cultural minorities, and [the] less[er] proportion of OFWs in high-risk and precarious occupations[.]”<sup>154</sup> among others. The foregoing pronouncements from R.A. No. 11641 echoes Section 2 (c) of R.A. No. 8042, which emphasizes that it is not a state policy to “promote overseas employment as a means to sustain economic growth and achieve national development” and which commands the State to “continuously create local employment opportunities.”<sup>155</sup> It is also in line with the Philippine commitment under Objective No. 2 of the Global Compact

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148. Department of Migrant Workers Act, § 2. *See also* Hannah Balba & Emi Kingan, Will the Philippines Election Be an Opportunity to Rethink the Country’s Labour Export Strategy?, *available at* <https://www.asiapacific.ca/publication/election-watch-philippines-dispatch-5-future-of-overseas-workers> (last accessed July 31, 2022) [<https://perma.cc/H9TU-43CR>].

149. Department of Migrant Workers Act, § 2.

150. *Id.*

151. *Id.*

152. *Id.* § 27.

153. *Id.*

154. *Id.*

155. Migrant Workers and Overseas Filipinos Act of 1995, § 2 (c).

for Migration, which seeks to “[m]inimize the adverse drivers and structural factors that compel people to leave their country of origin.”<sup>156</sup>

#### IV. POWERS AND FUNCTIONS

The DMW is given broad powers under R.A. No. 11641 to exercise policymaking and strategy formulation functions.<sup>157</sup> This includes the power to “formulate [ ] and implement national [ ] plans [and] programs[ ] that will ensure the protection of OFWs, including their safe, orderly[,] and regular migration, ... [as well as] their reintegration into Philippine society.”<sup>158</sup> Similarly, it shall also have the function of protecting and promoting the “welfare, well-being, and interests of the families [and next-of-kins] of OFWs[.]”<sup>159</sup> Towards this end, it shall also have the powers to:

- (1) “[E]nhance information and resource sharing among related agencies [as well as to] develop an electronic database” in order that services for OFWs can be improved;<sup>160</sup>
- (2) “Foster the professionalization, promote ethical recruitment practices, and ensure compliance with legal and ethical standards, training, and capacity-building of private recruitment and manning agencies;”<sup>161</sup>
- (3) “Establish a 24/7 Emergency Response and Action Center Unit and media and social media monitoring center to respond to the emergency needs of OFWs and their families;”<sup>162</sup>
- (4) “Provide, in cooperation with the Department of Education (DepEd), the Department of Trade and Industry (DTI), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), the Maritime Industry Authority (MARINA), and other government agencies, civil society organizations, nongovernmental organizations[,] and the private sector, trainings aimed at

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156. Global Compact for Safe, Orderly and Regular Migration, *supra* note 24, annex, ¶ 16.

157. *See* Department of Migrant Workers Act, § 6.

158. *Id.* § 6 (a).

159. *Id.* § 6 (d).

160. *Id.* § 6 (i).

161. *Id.* § 6 (k).

162. *Id.* § 6 (l).

promoting the global competitiveness of OFWs, as well as job matching services to persons desiring to become OFWs;”<sup>163</sup>

- (5) “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, 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[;]”<sup>164</sup> and
- (6) “Develop and create an institute for advanced and strategic studies on migration and development, which shall, among others, conduct advanced, strategic[,] and up-to-date studies and research on global migration and development trends[.]”<sup>165</sup>

In creating its own training institute, Section 6 of R.A. No. 11641 states that the DMW should have “due regard to the training services already being provided by the Foreign Service Institute [(FSI),]”<sup>166</sup> the training arm of the Department of Foreign Affairs which was created by virtue of Presidential Decree No. 1060,<sup>167</sup> and whose mandate was later expanded by R.A. No. 7157.<sup>168</sup> This is because the law envisions that the DMW’s training institute should complement rather than overlap the FSI’s mandate.<sup>169</sup> Simultaneously, Section 24 of R.A. No. 11641 recognizes Republic Act No. 11054 or the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao,<sup>170</sup> by commanding the DMW to “coordinate with the

163. Department of Migrant Workers Act, § 6 (h).

164. *Id.* § 6 (o).

165. *Id.* § 6 (p).

166. *Id.* § 6 (o).

167. Creating the Foreign Service Institute, Authorizing It to Establish a Career Foreign Service Development Program Providing Funds Therefor, and Other Purposes [Foreign Service Institute Decree of the Philippines], Presidential Decree No. 1060 (1976).

168. Philippine Foreign Service Act of 1991, §§ 56–59.

169. *See* Department of Migrant Workers Act, § 15.

170. An Act Providing for the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, Repealing for the Purpose Republic Act No. 6734, Entitled “An Act Providing for An Organic Act for the Autonomous Region in Muslim Mindanao,” as Amended by Republic Act No. 9054, Entitled “An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao” [Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao], Republic Act No. 11054 (2018).

Bangsamoro Ministry of Labor and Employment (MOLE) on the training, protection[,] and deployment of overseas Bangsamoro workers.”<sup>171</sup>

Along with those enumerated above, the DMW is provided equally with investigative and regulatory functions, such as the following:

- (1) “Regulate the recruitment, employment, and deployment of OFWs;”<sup>172</sup>
- (2) “Investigate, initiate, sue, pursue, and help prosecute, in cooperation with the Department of Justice (DOJ) and the Inter-Agency Council Against Trafficking (IACAT), illegal recruitment and human trafficking cases[;]”<sup>173</sup>
- (3) “Regulate the operations of private recruitment and manning agencies involved in the deployment of OFWs abroad to protect the interests and well-being of these workers;”<sup>174</sup>
- (4) “Require private recruitment and manning agencies to provide comprehensive insurance to the OFWs they deploy in accordance with the law[;]”<sup>175</sup> and
- (5) “Create a system for the blacklisting of persons, both natural and juridical, including local and foreign recruitment agencies, their agents, and employers, who are involved in trafficking as defined in Section 16 (h), second paragraph of [R.A.] No. 9208, as amended.”<sup>176</sup>

In the exercise of the DMW’s regulatory powers over deployment, it should be noted that it will also have the same powers previously exercised by the POEA Governing Board to impose deployment bans, in accordance with R.A. No. 8042.<sup>177</sup> Such deployment bans, according to the case of *Philippine Association of Service Exporters, Inc. v. Drilon*, will not be violative of the right to travel under Section 6, Article III of the 1987 Constitution since the right “is subject, among other things, to the requirements of ‘public safety[.]’”<sup>178</sup> Nevertheless, it is also a settled judicial precedent that “[t]he right to travel is

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171. Department of Migrant Workers Act, § 24.

172. *Id.* § 6 (b).

173. *Id.* § 6 (c).

174. *Id.* § 6 (j).

175. *Id.* § 6 (n).

176. *Id.* § 6 (r).

177. Department of Migrant Workers Act, § 8 (k).

178. *Philippine Association of Service Exporters, Inc.*, 163 SCRA at 396 (citing PHIL. CONST. art. III, § 6).

part of the ‘liberty’ of ... citizen[s, including OFWs, which] cannot be deprived [of] due process of law.”<sup>179</sup>

It is relevant to mention likewise, that with regard to the investigatory powers of the DMW, Section 13 of R.A. No. 11862 reaffirmed Section 8 (h) of R.A. No. 11641 in designating the Secretary of Migrant Workers as a member of the Inter-Agency Council Against Trafficking.<sup>180</sup> In conjunction with this, R.A. No. 11641 provides the DMW Secretary and his or her authorized deputy the powers to:

- (1) “[I]ssue subpoena or subpoena *duces tecum* to any person for investigation for illegal recruitment or trafficking in persons cases as defined under R.A. No. 9208, as amended, and other existing laws and other issuances;”<sup>181</sup>
- (2) “[H]old or cite any person in contempt”<sup>182</sup> in accordance with Section 44, Rule XIV of the IRR of R.A. No. 11641;”<sup>183</sup>
- (3) “[A]dminister oaths upon cases under investigation;”<sup>184</sup> and
- (4) “[A]ccess to all public records and to records of private parties and concerns, in accordance with law[.]”<sup>185</sup>

Appropos to this is the jurisprudential doctrine in *Evangelista v. Jarencio*,<sup>186</sup> which is arguably applicable to the exercise of the DMW’s power to issue subpoenas as well. Hence, the DMW can exercise its powers to issue subpoenas in suspected illegal recruitment cases even in the absence of pending complaints for as long as it is for a lawfully authorized purpose, to wit —

*[A]dministrative agencies may enforce subpoenas issued in the course of investigations, whether or not adjudication is involved, and whether or not probable cause is shown and even before the issuance of a complaint. It is not necessary, as in the case of a warrant, that a specific charge or complaint of violation of law be pending or that the order be made pursuant to one. It is enough that the investigation be for a lawfully authorized purpose. The purpose of the subpoena is to discover evidence, not to prove a pending charge, but upon which to make one if the discovered evidence so justifies. Its obligation cannot rest on a trial of the value of*

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179. *Genuino v. De Lima*, G.R. No. 197930, 861 SCRA 325, 367 (2018) (citing *Kent v. Dulles*, 357 U.S. 116, 125 (1958)).

180. Republic Act No. 11862, § 13.

181. Department of Migrant Workers Act, § 6 (c).

182. *Id.*

183. Rules and Regulations Implementing the Department of Migrant Workers Act, rule XIV, § 51.

184. Department of Migrant Workers Act, § 6 (c).

185. *Id.*

186. *Evangelista v. Jarencio*, G.R. No. L-29274, 68 SCRA 99 (1975).

testimony sought; it is enough that the proposed investigation be for a lawfully authorized purpose, and that the proposed witness be claimed to have information that might shed some helpful light. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues on litigations it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. The administrative agency has the power of inquisition which is not dependent upon a case or controversy in order to get evidence, but can investigate merely on suspicion that the law is being violated or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it, too may take steps to inform itself as to whether there is probable violation of the law. In sum, it may be stated that a subpoena meets the requirements for enforcement if the inquiry is (1) within the authority of the agency; (2) the demand is not too indefinite; and (3) the information is reasonably relevant.<sup>187</sup>

#### V. QUALIFICATIONS, COMPOSITION, AND STRUCTURE

Section 7 of R.A. No. 11641 states that the new Department shall consist of the “Office of the Secretary, the offices of the Undersecretaries and Assistant Secretaries, the Service Units, the Bureaus, Regional offices,” and MWOs.<sup>188</sup> Harmonizing itself with Section 16, Article VII of the 1987 Constitution,<sup>189</sup> the same section provides that the DMW Secretary, upon appointment by the President, should undergo confirmation proceedings before the Commission on Appointments.<sup>190</sup>

On the other hand, Section 10 specifies the qualifications of the Secretary, Undersecretaries, and Assistant Secretaries of the DMW.<sup>191</sup> For one to be appointed to these positions, it is required that they should be “a citizen and resident of the Philippines, of good moral character, and of proven integrity

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187. *Id.* at 106-07 (citing 1964 RULES OF CIVIL PROCEDURE, rule 23, § 4; KENNETH C. DAVIS, ADMINISTRATIVE LAW TREATISE 171 (1967); National Labor Relations Board v. Anchor Rome Mills, Inc., 197 F.2d 447, 448-49 (5th Cir. 1952) (U.S.); Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 209 (1946); Securities and Exchange Commission v. Vacuum Can Co., 157 F.2d 530, 532 (7th Cir. 1947) (U.S.); *In re* Application of Waterfront Com’n, 32 N.J. 323, 336 (1960) (U.S.); United States v. Morton Salt Co., 338 U.S. 632, 643 (1950); & Adams v. FTC, 296 F.2d 861, 866 (8th Cir. 1961) (U.S.)) (emphasis supplied).

188. Department of Migrant Workers Act, § 7.

189. *See* PHIL. CONST. art. VII, § 16.

190. Department of Migrant Workers Act, § 7.

191. *Id.* § 10.

and competence in public administration[.]”<sup>192</sup> In addition, it is also necessary that they should either have a “recognized expertise in governance involving OFWs [ ] or experience as [an] OFW[.]”<sup>193</sup>

In construing the above qualifications, it may well be pertinent to note that in *Jardeleza v. Sereno*,<sup>194</sup> the Court equated integrity with a “good reputation for honesty, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards.”<sup>195</sup> It adds that as a qualification, “the term is taken to refer to a virtue, such that, ‘integrity is the quality of a person’s character.’”<sup>196</sup> Consonantly, the Court stated in *Republic v. Sereno*<sup>197</sup> that a public official who has failed to comply with the requirement of filing the Statement of Assets, Liabilities and Net Worth (SALN) cannot be said to be of proven integrity.<sup>198</sup> Hence, it may be argued that persons who fail to comply with the constitutional and statutory requirements of filing SALN are likewise disqualified from being appointed as the DMW Secretary — or an undersecretary or assistant secretary — due to the fact that they cannot be deemed to be persons of proven integrity.

Meanwhile, the requirement of good moral character for a potential DMW appointee can also be related to the jurisprudential pronouncement in *Arnobit v. Arnobit*.<sup>199</sup> According to this case, “good moral character is more than just the absence of bad character[,] ... [as it is] the will to do the unpleasant thing if it is right and the resolve not to do the pleasant thing if it is wrong.”<sup>200</sup> In *Royong v. Oblena*,<sup>201</sup> it was comparably stated that “[o]ne’s own approximation of himself is not a gauge to his moral character.”<sup>202</sup> Rather, good moral character is defined as “what a person really is, ... as distinguished from good reputation, or from the opinion generally entertained of him, [or] the estimate in which he is held by the public in the place where he is

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192. *Id.*

193. *Id.*

194. *Jardeleza v. Sereno*, G.R. No. 213181, 733 SCRA 279 (2014).

195. *Id.* at 332-33 (emphasis omitted).

196. *Id.* at 333 (citing Stanford Encyclopedia of Philosophy, Integrity, available at <https://plato.stanford.edu/entries/integrity> (last accessed July 31, 2022) [<https://perma.cc/B6WC-HDA4>]).

197. *Republic v. Sereno*, G.R. No. 237428, 866 SCRA 494 (2018).

198. *Id.* at 557-58.

199. *Arnobit v. Arnobit*, A.C. No. 1481, 569 SCRA 247 (2008).

200. *Id.* at 252.

201. *Royong v. Oblena*, A.C. No. 376, 7 SCRA 859 (1963).

202. *Id.* at 871.

known.”<sup>203</sup> At the very least, according to jurisprudence, good moral character should include common honesty.<sup>204</sup> Germane to this discussion, the Supreme Court has declared in a litany of cases, including in the recently decided case of *Zerna v. Zerna*,<sup>205</sup> that the act of engaging in illicit affairs during the subsistence of a marriage is equivalent to a failure to retain one’s good moral character.<sup>206</sup> Hence, it can be considered that a person who engaged in illicit affairs is also disqualified from becoming an appointee to the positions enumerated in Section 10 of R.A. No. 11641.<sup>207</sup>

This notwithstanding, R.A. No. 11641 prohibits expressly a person involved in the business of recruitment and deployment of OFWs from being appointed as Secretary, Undersecretary, or Assistant Secretary of the DMW.<sup>208</sup> This prohibition similarly applies to relatives of such persons up to the fourth degree of consanguinity or affinity.<sup>209</sup> Conjointly,

it [is] [ ] unlawful for any official or employee of the [DMW] or other government agencies involved in the implementation of [R.A. No. 11641], [as well as] their relatives within the fourth degree of consanguinity or affinity, to engage, directly or indirectly, in the business of recruitment and placement of OFWs.<sup>210</sup>

This prohibition echoes Section 8 of R.A. No. 8042 that states —

SEC. 8. *Prohibition on Officials and Employees.* — It shall be unlawful for any official or employee of the Department of Labor and Employment, the Philippine Overseas Employment Administration (POEA), or the Overseas Workers Welfare Administration (OWWA), or the Department of Foreign Affairs, or other government agencies involved in the implementation of this Act, or their relatives within the fourth civil degree of consanguinity or affinity, to engage, directly or indirectly, in the business of recruiting migrant workers as defined in this Act. The penalties provided in the immediate preceding paragraph shall be imposed upon them.<sup>211</sup>

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203. *Id.*

204. *Id.* (citing MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 626 (1957)).

205. *Zerna v. Zerna*, A.C. No. 8700, 950 SCRA 46 (2020).

206. *Id.* at 58.

207. *See* Department of Migrant Workers Act, § 10.

208. *Id.* § 10.

209. *Id.*

210. *Id.*

211. Migrant Workers and Overseas Filipinos Act of 1995, § 8.

By the same token, it also analogous to rule V, Section 1 of R.A. No. 10022, which specifies the following —

Section 1. Disqualification. — The following personnel shall be prohibited from engaging directly or indirectly in the business of recruitment of migrant workers:

- (a) Any official or employee of the DOLE, POEA, OWWA, DFA, DOJ, DOH, BI, IC, NLRC, TESDA, CFO, NBI, Philippine National Police (PNP), Manila International Airport Authority (MIAA), Civil Aviation Authority of the Philippines (CAAP), and other government agencies involved in the implementation of the Act, regardless of the status of his/her employment; and
- (b) Any of his/her relatives within the fourth civil degree of consanguinity or affinity.

Any government official or employee found to be violating this section shall be charged administratively, according to Civil Service Rules and Regulations without prejudice to criminal prosecution.

The government agency concerned shall monitor and initiate, upon its initiative or upon the petition of any private individual, action against erring officials and employees, and/or their relatives.<sup>212</sup>

In addition to foregoing, the law states that the DMW Secretary possesses the power to exercise “control over the entire operations of the [DMW][.]”<sup>213</sup> This includes the administration and management of the AKSYON Fund,<sup>214</sup> with the assistance of the Undersecretary for Foreign Employment and Welfare Services.<sup>215</sup> In this respect, Section 8 (f) provides that the DMW Secretary shall have the power to issue guidelines on the use of the AKSYON Fund,<sup>216</sup> which must be issued within 30 days from the promulgation of the R.A. No. 11641, and upon consultation with relevant stakeholders, as required by Section 14.<sup>217</sup>

In a like manner, the DMW Secretary also possesses the power of supervision over the attached agency of DMW (OWWA) for program and policy coordination, as well as the power to “[i]ssue orders, directives, rules,

212. Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, rule V, § 1.

213. Department of Migrant Workers Act, § 8 (a).

214. *Id.* § 8 (f).

215. *Id.* § 9 (b) (4) & (5).

216. *Id.* § 8 (f).

217. *Id.* § 14.

[and] regulations ... to carry out policies, plans, programs, or projects”<sup>218</sup> of the DMW, provided that there be “due consultation with stakeholders[.]”<sup>219</sup> The OFW Hospital Inter-Agency Committee, which was created by Section 3 of Executive Order No. 154,<sup>220</sup> will now be chaired by the DMW Secretary.<sup>221</sup> Additionally, the DMW Secretary is also given adjudicatory functions as Section 8 (j) empowers the DMW Secretary to render decisions, orders, and resolutions on appeal on cases decided by the DMW Regional Directors arising from recruitment violations or disciplinary actions.<sup>222</sup>

To complement the above, R.A. No. 11641 states that the DMW Secretary “shall be assisted by no more than four [ ] Undersecretaries[.]”<sup>223</sup> It also creates four main offices, each of which shall be headed by an undersecretary, viz:

DMW OFFICE	PRIMARY ROLES AND RESPONSIBILITIES
Office of the Undersecretary for Internal Management and Administration <sup>224</sup>	<ul style="list-style-type: none"> <li>• Assumes the current functions of the POEA Deputy Administrator for Management Services;<sup>225</sup> and</li> <li>• “Provide the Department with efficient, effective, and economical services relating to records management, supplies, equipment, collections, disbursements, building administration and maintenance, security, and custodial work[.]”<sup>226</sup></li> </ul>

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218. *Id.* § 8 (c).

219. Department of Migrant Workers Act, § 8 (c).

220. Office of the President, Directing the Establishment of the Overseas Filipino Workers (OFW) Hospital, Creating the Inter-Agency Committee on the OFW Hospital, and for Other Purposes, Executive Order No. 154, Series of 2021 [E.O. No. 154, s. 2021], § 3 (Dec. 7, 2021).

221. Department of Migrant Workers Act, § 8 (l).

222. *Id.* § 8 (j).

223. *Id.* § 9.

224. *Id.* § 9 (a).

225. *Id.*

226. *Id.* § 9 (a) (1).

<p>Office of the Undersecretary for Foreign Employment and Welfare Services<sup>227</sup></p>	<ul style="list-style-type: none"> <li>• Assumes the current functions of the POEA Deputy Administrator for Employment and Welfare and the Undersecretary for Migrant Workers' Affairs under the DFA;<sup>228</sup></li> <li>• “[A]ssist[s] the Secretary in the formulation of the Department’s overall long-term and short-term plans and programs an overseas employment;”<sup>229</sup></li> <li>• “Administer the AKSYON Fund[;]”<sup>230</sup></li> <li>• “Undertake program and policy coordination with the OWWA;”<sup>231</sup></li> <li>• “Provide prompt and appropriate response to global emergencies or crisis situations affecting OFWs[;]”<sup>232</sup></li> <li>• “Ensure effective coordination and cooperation with other government agencies and the Philippine Foreign Service Posts in the provision of [ ] assistance” to OFWs;<sup>233</sup></li> <li>• Manage MWOs;<sup>234</sup></li> <li>• “Develop and monitor the implementation of a full-cycle national reintegration program ... ;”<sup>235</sup> and</li> <li>• “Tap the assistance of the Integrated Bar of the Philippines, other bar associations, legal experts on labor, migration, and human rights laws, reputable law firms, civil society organizations, nongovernmental organizations, and the private</li> </ul>
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227. Department of Migrant Workers Act, § 9 (b).

228. *Id.*

229. *Id.* § 9 (b) (1).

230. *Id.* § 9 (b) (4).

231. *Id.* § 9 (b) (2).

232. *Id.* § 9 (b) (3).

233. Department of Migrant Workers Act, § 9 (b) (5).

234. *Id.* § 9 (b) (7).

235. *Id.* § 9 (b) (8).

	sector[] ... to provide legal assistance ... to OFWs[.]” <sup>236</sup>
Office of the Undersecretary for Licensing and Adjudication <sup>237</sup>	<ul style="list-style-type: none"> <li>• Assumes the current functions of the POEA Deputy Administrator for Licensing and Adjudication;<sup>238</sup></li> <li>• Supervision and control over licensing services;<sup>239</sup></li> <li>• “[F]ormulation of policies and implementation of processes and systems for the issuance, renewal, extension, and upgrading of the licenses granted to recruitment and manning agencies;”<sup>240</sup></li> <li>• “[R]egulate the operations of licensed recruitment and manning agencies and their personnel[;]”<sup>241</sup></li> <li>• “[P]romulgation and implementation of strategies, laws, rules, and regulations towards the eradication of illegal recruitment and human trafficking[;]”<sup>242</sup></li> <li>• “Establish policies and standards for the operation and coordination of all regional and overseas offices, other government agencies, and stakeholders, relevant to the implementation of the anti-illegal recruitment and anti-trafficking in persons program[;]”<sup>243</sup> and</li> <li>• “[S]upervision over all dispute resolution related services, [and] adjudication services on overseas employment related issues/concerns[.]”<sup>244</sup></li> </ul>

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236. *Id.* § 9 (b) (6).

237. *Id.* § 9 (c).

238. *Id.*

239. Department of Migrant Workers Act, § 9 (c).

240. Rules and Regulations Implementing the Department of Migrant Workers Act, rule V, § 12.

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

<p>Office of the Undersecretary for Policy International Cooperation<sup>245</sup></p>	<ul style="list-style-type: none"> <li>• Assumes the current “substantive functions of the International Labor Affairs Bureau (ILAB) under the [DOLE] with regard to labor migration;”<sup>246</sup></li> <li>• “Monitor the observance and implementation of the Philippines’ obligations and commitments to migration-related international organizations and treaties;”<sup>247</sup></li> <li>• “Coordinate and cooperate with the DFA regarding the negotiations of treaties, agreements, compacts, and other instruments that are related to labor migration;”<sup>248</sup> and</li> <li>• “[E]xecute programs and services to raise public awareness on the dangers and indicators of illegal recruitment, human trafficking, mail-order-spouse schemes, [ ] and the different government policies and programs in place that aim to address these concerns ... [.]”<sup>249</sup></li> </ul>
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In addition to the four main offices listed above, the law likewise states there shall be an “Office for Land-based OFW Concerns and an Office for Sea-based OFW Concerns under the Office of the Secretary, which will cater to the needs and concerns of land-based and sea-based Filipino workers, respectively.”<sup>250</sup> The National Maritime Polytechnic (NMP), which was established by virtue of P.D. No. 1369,<sup>251</sup> will now be placed “under the control and supervision of the Office for Sea-based OFW Concerns.”<sup>252</sup>

On another note, Section 11 of R.A. No. 11641 states that the regional, provincial, and field offices of the DMW shall “serve as one-stop shop centers to ensure and actively facilitate access to prompt, efficient, vital, and relevant

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245. Department of Migrant Workers Act, § 9 (d).

246. *Id.*

247. *Id.* § 9 (d) (1).

248. *Id.* § 9 (d) (2).

249. *Id.* § 9 (d) (3).

250. *Id.* § 9.

251. Presidential Decree No. 1369, ¶ 1.

252. Department of Migrant Workers Act, § 9.

services to OFWs and their families. ... In all cases and as far as practicable, the OWWA regional offices [should also] be located beside the regional office[s] of the [DMW].”<sup>253</sup> These regional offices will have “one-stop shop centers which [shall] be the venue for the acquisition of all relevant government clearances and permits, validation of overseas job offers, availment of reintegration services, and all pertinent seminars and workshops for all stakeholders, among others.”<sup>254</sup> However, the broad term “all relevant government clearances and permits[,]” which was employed by the law most assuredly does not mean that the DMW one-stop centers will also have the power to issue passports for OFWs. This is because Republic Act No. 8239 or the Philippine Passport Act of 1996<sup>255</sup> gives the DFA the sole authority to issue passports.<sup>256</sup>

#### VI. CONDUCT OF MIGRATION DIPLOMACY ALONGSIDE THE DFA

Ever since its establishment, the DFA has been guided by three core pillars of Philippine foreign policy, namely: “preservation and enhancement of national security[,]” “promotion and attainment of economic security[,]” and “protection of the rights and promotion of the welfare of overseas Filipinos[.]”<sup>257</sup> Since the law, however, uses the term “primary agency” under Section 5 of R.A. No. 11641 to describe the role of the DMW in promoting the welfare and protecting the rights of OFWs,<sup>258</sup> a question arises if the DFA has to take a subordinate role to the DMW when it comes to upholding the third pillar of Philippine foreign policy, such as negotiating treaties on labor migration and making representations with foreign governments on migration issues.

In answering this question, it must be remembered that the DFA remains to be the lead agency in the conduct of the country’s foreign relations.<sup>259</sup> The

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253. *Id.* § 11.

254. *Id.*

255. Philippine Passport Act of 1996, Republic Act No. 8239 (1996).

256. *Id.* § 4.

257. Albert F. del Rosario, Secretary of Foreign Affairs, Department of Foreign Affairs, *An Independent and Principled Philippine Foreign Policy for Economic Growth*, Address at the Management Association of the Philippines (MAP) 2013 General Membership Meeting (Oct. 24, 2013) (transcript available at <https://dfa.gov.ph/index.php/2013-06-27-21-50-36/dfa-releases/1110-an-independent-and-principled-philippine-foreign-policy-for-economic-growth> (last accessed July 31, 2022) [<https://perma.cc/9TS6-GZ5D>]).

258. Department of Migrant Workers Act, § 5.

259. ADMIN. CODE, bk. IV, tit. I, ch. I, §§ 2-3.

DFA's basic mandate states that it shall be the primary institution in charge of advising and assisting the President, who is the chief architect of our foreign policy, "in planning, organizing, directing, coordinating[,] and evaluating the total national effort in the field of foreign relations."<sup>260</sup> It is precisely in recognition of this principle that R.A. No. 11641 likewise specifies that the exercise by DMW of its powers and functions "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."<sup>261</sup> Corollary to this, Section 6 (g) of R.A. No. 11641 states that DMW shall be "under the guidance of the DFA [when it comes to representing the] interests [ ] [of] OFWs in bilateral, regional, and multilateral fora and international bodies."<sup>262</sup> Moreover, according to Section 6 (e) and Section 6 (f), the DMW shall play a supporting role to the DFA in the "negotiation of bilateral and multilateral agreements, initiatives[,] and programs" related to labor migration as well as 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 of ... OFWs."<sup>263</sup> Pertinently, it must also coordinate with the DFA whenever it conducts its "political and security risk assessment of the conditions in the receiving country" and formulate adequate evacuation plans.<sup>264</sup>

Careful consideration should also be given to the provisions of Executive Order No. 459, s. 1997, which states that

[i]t is hereby declared the policy of the State that the 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 in accordance with Executive Order No. 292. It is also declared the policy of the State that the composition of any Philippine negotiation panel and the designation of the chairman thereof shall be made in coordination with the Department of Foreign Affairs.<sup>265</sup>

This executive order was incorporated under Rule II, Section 3 (z) of the IRR to R.A. No. 11641, which emphasizes that the DMW must follow the

260. *Id.* § 2.

261. Department of Migrant Workers Act, § 6.

262. *Id.* § 6 (g).

263. *Id.* § 6 (e) & (f).

264. *Id.* § 6 (q).

265. 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).

guidelines set forth in E.O 459, s. 1997, when it comes to labor diplomacy.<sup>266</sup> In interpreting the provisions on the powers and mandate of the DMW under Sections 5 and 6, it would do well to remember the basic principle enunciated by the Court in *Anak Mindanao Party-List Group v. The Executive Secretary*,<sup>267</sup> wherein it said that, “[i]n enacting a statute, the legislature is presumed to have deliberated with full knowledge of all existing laws and jurisprudence on the subject. ... In establishing an executive department, bureau[,] or office, the legislature necessarily ordains an executive agency’s position in the scheme of administrative structure.”<sup>268</sup>

Consequently, a proper understanding of the DMW’s role in the field of migration diplomacy vis-à-vis the DFA entails harmonizing the various provisions of R.A. No. 11641 with each other as well as with the relevant laws on the subject.

#### VII. LEGAL CONTROVERSY ON THE TRANSITION PERIOD

R.A. No. 11641 sets a straightforward timeline for important milestones in its implementation:

Effectivity of R.A. No. 11641 (Section 31)	15 days after its complete publication in the Official Gazette and in at least two newspapers of general circulation. <sup>269</sup>
Issuance by the DMW Secretary of guidelines for the use AKSYON Fund (Section 14)	Within 30 days from the promulgation of R.A. No. 11641. <sup>270</sup>

266. Rules and Regulations Implementing the Department of Migrant Workers Act, rule II, § 3 (z).

267. *Anak Mindanao Party-List Group v. The Executive Secretary*, G.R. No. 166052, 531 SCRA 583 (2007).

268. *Id.* at 596 (citing *Didipio Earth-Savers’ Multipurpose Association, Incorporated (DESAMA) v. Gozun*, G.R. No. 157882, 485 SCRA 586, 618 (2006)).

269. Department of Migrant Workers Act, § 31 (emphasis omitted).

270. *Id.* § 14.

Formulation of the IRR by the Transition Committee (Section 23)	Within 60 days after effectivity of R.A. No. 11641. <sup>271</sup>
Publication of the IRR by the Transition Committee (Section 23)	Within 75 days after effectivity of R.A. No. 11641. <sup>272</sup>
Creation of the Staffing Pattern by the Transition Committee (Section 23)	Within 120 days after effectivity of R.A. No. 11641. <sup>273</sup>
Complete and Full Operation of the DMW (Section 23)	Not later than two years after the effectivity of R.A. No. 11641. <sup>274</sup>
Establishment of Migrant Workers Office (MWO) at all Foreign Service Posts (FSPs)	Within three years after effectivity of R.A. No. 11641 and as far as practicable. <sup>275</sup>
Reorganization Commission “conducts systematic evaluation of the accomplishments and impact of [R.A. No. 11641], as well as the performance and organizational structure of its implementing agencies, for	Five years after the effectivity of R.A. or as the need arises and every five years thereafter. <sup>277</sup>

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271. *Id.* § 23 (a).

272. *Id.* § 23 (b).

273. *Id.* § 23 (c).

274. *Id.* § 23.

275. Department of Migrant Workers Act, § 15.

277. *Id.*

purposes of determining remedial legislation.” <sup>276</sup>	
Reorganization Commission may “recommend the reorganization, consolidation, or abolition of the [DMW] should circumstances prove that there is no more need for its existence.” <sup>278</sup>	Five years from the creation of the DMW. <sup>279</sup>

In order to facilitate an orderly transition, the law created a Transition Committee which shall be composed of the

Department of Migrant Workers Secretary, the Undersecretary for the Office of Migrant Workers Affairs of the DFA, the Administrator of the POEA, the Director of the ILAB of DOLE, the Director of the NRCO [ ], the Director of the [NMP] [ ] [ ], and] the Director of the Office of the Social Welfare Attaché of the DSWD.<sup>280</sup>

The Transition Committee shall be responsible for facilitating the complete operation of the new department, crafting the implementing rules and regulations of R.A. No. 11641, creation of the staffing pattern of the new department, and submission of the new department’s proposed budget to the DBM.<sup>281</sup>

In describing the work of the Transition Committee, however, the legislature also inserted a provision that is seemingly simple yet significant enough to create a legal controversy. In the last sentence of Section 23 of R.A. No. 11641, it states that there are three conditions before the new department shall be deemed to have been constituted.<sup>282</sup> These three conditions are budget appropriation for the new department, staffing pattern, and an effective

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<sup>276.</sup> *Id.* § 27.

<sup>278.</sup> *Id.*

<sup>279.</sup> *Id.*

<sup>280.</sup> *Id.* § 23.

<sup>281.</sup> Department of Migrant Workers Act § 23, (a) - (d).

<sup>282.</sup> *Id.* § 23.

IRR.<sup>283</sup> To wit: “[t]he Department shall not be constituted without an appropriation in the 2023 General Appropriations Act; an effective implementing rules and regulations; and a staffing pattern.”<sup>284</sup>

The legal controversy started when on 9 March 2022, Mr. Abdullah Derupong Mama-o was appointed as the first Secretary of DMW.<sup>285</sup> Despite the absence of the three conditions required for the constitution of the DMW, Secretary Mama-o immediately proceeded to exercise his powers by issuing administrative orders, department orders, and advisories.<sup>286</sup> In Administrative Order No. 04, Series of 2022,<sup>287</sup> Secretary Mama-o ordered the POEA Administrator to immediately cease exercising his powers and to turn over all documents, records, and communications under the POEA Administrator’s possession and control.<sup>288</sup> Then, in Administrative Order No. 05, Series of 2022,<sup>289</sup> DMW Secretary Mama-o instructed all Philippine Overseas Labor Offices to “disregard and refuse compliance with all orders and instructions [coming] from the [DOLE, as well as] to abide only by the orders and instructions of the [DMW Secretary].”<sup>290</sup>

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283. *Id.*

284. *Id.*

285. Sofia Tomacruz, *Duterte Picks Abdullah Mاماo to Lead New Department of Migrant Workers*, RAPPLER, Mar. 9, 2022, available at <https://www.rappler.com/nation/overseas-filipinos/duterte-picks-abdullah-mamao-lead-department-migrant-workers> (last accessed July 31, 2022) [<https://perma.cc/A6NB-C6K7>] & Argyll Cyrus Geducos, *Duterte Names Mاما-O as Secretary of Department of Migrant Workers, Fills Two Other Posts*, MANILA BULL., Mar. 9, 2022, available at <https://mb.com.ph/2022/03/09/duterte-names-mama-o-as-secretary-of-department-of-migrant-workers-fills-two-other-posts/> (last accessed July 31, 2022) [<https://perma.cc/Q9P8-WCNK>].

286. Michelle Abad, *Mاماo Gives Orders as Secretary, but Migrant Workers’ Agency yet to Be Set Up*, RAPPLER, Apr. 8, 2022, available at <https://www.rappler.com/newsbreak/inside-track/abdullah-mamao-gives-orders-secretary-department-migrant-workers-yet-be-constituted> (last accessed July 31, 2022) [<https://perma.cc/733P-DL6L>].

287. Department of Migrant Workers, Assumption of Powers and Functions of POEA Administrator, Administrative Order No. 04, Series of 2022 [A.O. No. 04, s. 2022] (Apr. 4, 2022).

288. *Id.* § 1.

289. Department of Migrant Workers, Administrative Order No. 05, Series of 2022 [A.O. No. 05, s. 2022] (Apr. 5, 2022).

290. *Id.* ¶ 3 (emphasis omitted).

Meanwhile, in Administrative Order No. 56, Secretary Mama-o ordered the reassignment of POEA officials to new positions.<sup>291</sup> The Secretary of Labor and Employment immediately countered this by issuing his own memorandum arguing that the POEA remains under the direct supervision and control of the DOLE Secretary pending the constitution of the DMW.<sup>292</sup> Even more controversial, however, is the issuance of Department Order No. 04, Series of 2022,<sup>293</sup> wherein DMW Secretary Mama-o lifted the deployment ban on newly hired workers to Saudi Arabia.<sup>294</sup> This matter was further highlighted when DOLE Secretary Bello fired back at the said issuance, stating that DMW Secretary Mama-o has no power to issue such orders since his department does not legally exist yet, pending the completion of the three conditions for its constitution.<sup>295</sup> For this reason, according to the Secretary Bello, Secretary Mama-o has committed an *ultra vires* act.<sup>296</sup>

Thereafter, further contentions arose when on 4 April 2022, Secretary Mama-o presented to the public his own version of the IRR.<sup>297</sup> The other members of the Transition Committee immediately denied that they had any

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291. Department of Labor and Employment, Bello Reiterates DMW Cannot Reassign POEA Personnel, *available at* <https://www.dole.gov.ph/news/bello-reiterates-dmw-cannot-reassign-poea-personnel> (last accessed July 31, 2022) [<https://perma.cc/6H5L-YHFV>].

292. Zacarian Sarao, *Bello Blocks DMW Order to Reassign POEA Officers*, PHIL. DAILY INQ., May 25, 2022, *available at* <https://newsinfo.inquirer.net/1602534/bello-blocks-dmw-order-to-reassign-poea-officers> (last accessed July 31, 2022) [<https://perma.cc/6DE2-QLL3>].

293. Department of Migrant Workers, Lifting of the Ban on Deployment Against Saudi Arabia, Department Order No. 04, Series of 2022 [D.O. No. 04, s. 2022] (Apr. 25, 2022).

294. *Id.*

295. Christia Marie Ramos, *Dole: Ban on Saudi Deployments Stays*, PHIL. DAILY INQ., Apr. 29, 2022, *available at* <https://globalnation.inquirer.net/203830/dole-ban-on-saudi-deployments-stays> (last accessed July 31, 2022) [<https://perma.cc/H3ST-XDFR>].

296. *Id.* & Vito Barcelo, *DOLE: Ban Stays on New OFWs to Saudi Arabia*, MANILA STAND., Apr. 29, 2022, *available at* <https://manilastandard.net/news/314224893/dole-ban-stays-on-new-ofws-to-saudi-arabia.html> (last accessed July 31, 2022) [<https://perma.cc/DF4B-9JM4>].

297. Mayen Jaymalin, *DMW Panel Questions Mama-O's 'Irregular' IRR*, PHIL. STAR, Apr. 13, 2022, *available at* <https://www.philstar.com/nation/2022/04/13/2174155/dmw-panel-questions-mama-os-irregular-irr> (last accessed July 31, 2022) [<https://perma.cc/9HGX-YAEW>].

participation in Secretary Mama-o's version of the IRR and "released a memorandum dated [4 April 2022] asking President Rodrigo Roa Duterte to nullify the IRR issued by DMW Secretary Abdullah Mama-o."<sup>298</sup> The other members of the Transition Committee then released their own version of the IRR, which was later cleared for publication by the Office of the President.<sup>299</sup>

In DMW Advisory No. 02,<sup>300</sup> Secretary Mama-o argues that his position is correct and legal.<sup>301</sup> He cites Sections 4 and 19, claiming that its use of the term "are constituted" should prevail over Section 23, which uses the term "shall not be constituted".<sup>302</sup> Secretary Mama-o explains that this is because "peremptory prescriptions" that are stated in the present tense under Sections 4 and 19, prevails over the "general negative conditional future prescription in Section 23[.]"<sup>303</sup> Moreover, he confusingly argues that Sections 4 and 19 are life-giving provisions, therefore it must prevail over Section 23 which kills.<sup>304</sup> He adds —

Congress cannot commit logical fallacy. Logical fallacy relates to the law of contradiction, which is a principle in logic stating that 'a thing cannot at the same time both be and not be of a specified kind (as a table and not a table) or in a specified manner (as red or not red)' ... 'There are three laws of logic: (1) the law of contradiction, (2) the law of excluded middle (or third), and (3) the principle of identity. The three laws can be stated symbolically as follows: For all propositions *p*, it is impossible for both *p* and not *p* to be true.[']

'The requirement that law, understood as a system of norms[:] has to be consistent, that is to say it must lack contradictions, seems to be [ ] stronger

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298. Azer Parrocha, OES Reviewing IRR for Dept. of Migrant Workers: Andanar, available at <https://www.pna.gov.ph/articles/1172049> (last accessed July 31, 2022) [<https://perma.cc/GSZ4-FPHE>].

299. Job Manahan, *Duterte Approves Dept. of Migrant Workers IRR Drafted by Transition Committee*, ABS-CBN NEWS, Apr. 21, 2022, available at <https://news.abs-cbn.com/news/04/21/22/duterte-approves-department-of-migrant-workers-irr> (last accessed July 31, 2022) [<https://perma.cc/J4F8-BGX4>] & Tristan Nodalo, *Duterte Approves IRR from Dept. of Migrant Workers' Transition Committee*, CNN PHIL., Apr. 20, 2022, available at <https://www.cnnphilippines.com/news/2022/4/20/Duterte-IRR-transition-committee-Dept-of-Migrant-Workers.html> (last accessed July 31, 2022) [<https://perma.cc/6K3C-2GYP>].

300. Department of Migrant Workers, *DMW Has Been Duly Constituted and Is Now on Initial Implementation*, DMW Advisory No. 2, Series of 2022 (Apr. 11, 2022).

301. *Id.*

302. *Id.* at 3-4.

303. *Id.* at 1 (emphasis omitted).

304. *Id.*

than the requisite of completeness. The requirement shows two directions: on the one hand, it is frequently asserted that a conflict between norms issued by a rational legislator is logically impossible, since it contradicts the premise of rationality. On the other hand, it is admitted as a postulate of legal science, that the system of norms must lack contradictions. Consequently, its ‘interpretations’ must be based on that principle.’

The ‘shall-not-be constituted’ phrase of the last paragraph of Section 23 (Transition Period) cannot be interpreted as having rendered ineffective the indispensable provisions of Section 4 (Creation) and [ ] Section 19 (Consolidation and Merger of Agencies and Functions) for the realization of the law’s purpose which is creation and establishment of the DMW. Section 23 merely acknowledges the need for some time to effect the smooth transition and merger of the seven agencies, for which certain tasks were mandated to be completed within a time period [of] not later than two years.<sup>305</sup>

Looking at the above-mentioned arguments made by Secretary Mama-o, however, even if he supports it by what he cites as laws of logic and the rules of contradiction and logical fallacy, it is clear that his interpretation actually makes the provisions of the statute conflict with one another. By doing so, the basic and elementary rules of statutory construction are ignored. Case law specifies that statutes “are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intentions in the same statute are never to be supposed or so regarded[.]”<sup>306</sup> It also decrees that statutes must be interpreted to be consistent with itself,<sup>307</sup> and that one should always “lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.”<sup>308</sup> This is in accord with the legal maxim *ut magis valeat quam pereat*, which, according to the case of *Phil. Health Care Providers, Inc. v. Commissioner of*

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305. *Id.* at 2-3 (emphasis supplied & omitted).

306. *People v. Garcia*, 85 Phil. 651, 654-55 (1950).

307. *Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation*, G.R. No. 188866, 659 SCRA 756, 764 (2011) (citing *Honasan II v. The Panel of the Investigating Prosecutors of the Department of Justice*, G.R. No. 159747, 427 SCRA 46, 70 (2004) (citing *Natividad v. Felix*, G.R. No. 111616, 229 SCRA 680, 687 (1994))).

308. *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, 194 SCRA 317, 331 (1991) (citing THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 58 (1868) (citing *Attorney-General v. Detroit and Erin Plank Road Co.*, 2 Mich. 138, 142 (1851) (U.S.); *People v. Burns*, 5 Mich. 114, 117 (1858) (U.S.); & *District Township v. City of Dubuque*, 7 Iowa 262, 285 (1858) (U.S.))).

*Internal Revenue*,<sup>309</sup> mandates that an interpretation should be chosen wherein every word of a statute is made operative.<sup>310</sup> In this case, Secretary Mama-o's understanding of the statute is problematic as it would run contrary to the aforementioned rules of statutory construction. His interpretation would mean that the last sentence of Section 23, stating that the Department is not constituted without fulfillment of the three conditions, would be disregarded and rendered idle rather than given effect.

Thus, following the hornbook rule of statutory construction that “[t]he whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole[.]”<sup>311</sup> Section 23 should be interpreted to allow the appointment of a DMW Secretary only for the purposes of having him or her participate in the Transition Committee, but not to exercise any other power since the DMW is still legally non-existent without the three previously mentioned conditions. In this regard, Secretary Mama-o's foray into mental and philosophical acrobatics should give way to the jurisprudential guidelines established by the Supreme Court on statutory construction.

Corollary, in arguing that his version of the IRR is valid and legitimate, Secretary Mama-o argues that the Transition Committee is not a collegial body.<sup>312</sup> Rather, he argues that it is “a mere [t]ask [f]orce under the command of the DMW Secretary, their highest-ranking member[.]”<sup>313</sup> Secretary Mama-o expounds on his position by claiming that

[e]xtant literature on collegial body shows that for any group to be deemed collegial, the members thereof must be of equal power and authority[,] and the law or rule creating the body must indicate that it has to operate as a collegial body.

Both elements are absent in Section 23. Instead the [S]ection specifies the ranks and positions of the members[,] thus emphasizing the utter non-parity

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309. *Phil. Health Care Providers, Inc. v. Commissioner of Internal Revenue*, 616 Phil. 387 (2009).

310. *Id.* at 402 (citing *Inding v. Sandiganbayan*, G.R. No. 143047, 434 SCRA 388, 403 (2004) (citing RUBEN E. AGPALO, *STATUTORY CONSTRUCTION* 199 (3d ed. 1995))).

311. *Blay v. Baña*, G.R. No. 232189, 858 SCRA 137, 143 (2018) (citing *Chavez v. Judicial and Bar Council*, G.R. No. 202242, 676 SCRA 579, 599 (2012)).

312. Department of Migrant Workers, *The One True and Valid IRR of the DMW*, available at <https://www.dmw.gov.ph/resources/dmw/OSEC-DMW-COMM-IRR.pdf> (last accessed July 31, 2022) [<https://perma.cc/4YWY-C6QJ>].

313. *Id.*

of their powers and functions. They are not peers. And there is no mention whatsoever about majority rules or quorums.

Thus, at best, the Transition Committee (TC) can qualify as a Task Force under the command of the DMW Secretary, their highest-ranking member, and Alter Ego of the President in regard to RA 11641.<sup>314</sup>

Nonetheless, if we are to evaluate the above justifications by DMW Secretary Mama-o, it cannot be ignored that by issuing his own version of the IRR without the participation of the other members of the Transition Committee, Secretary Mama-o may have contravened the mandated legal procedure for the crafting of the IRR under Section 23 of R.A. No. 11641. To wit —

*The Transition Committee shall be tasked with the following:*

- (a) *Formulate the necessary implementing rules and regulations of the Department within sixty (60) days after the effectivity of this Act;*
- (b) *Publish the implementing rules and regulations of the Department within seventy-five (75) days after the effectivity of this Act;*
- (c) *Create a staffing pattern of the Department, in consultation with the DBM, within one hundred twenty (120) days after the effectivity of this Act;*
- (d) *Submit to the DBM the Department’s budget for fiscal year 2023; and*
- (e) *Implement the training of the personnel of the Department.*<sup>315</sup>

From the above cited section, it can be seen that Section 23 requires that the IRR must be formulated by the Transition Committee as a whole rather than by a single member only.<sup>316</sup> It is worth remembering that Section 23 of the law used the word “shall” in delineating these functions of the Transition Committee.<sup>317</sup> According to jurisprudence, the word “shall” underscores the mandatory character of a provision.<sup>318</sup> This was further emphasized in the case of *Enriquez v. Enriquez*,<sup>319</sup> wherein the Court said that, “[t]he term ‘shall’ is a

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<sup>314</sup> *Id.*

<sup>315</sup> Department of Migrant Workers Act, § 23 (emphases supplied).

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> *Lacson v. San Jose-Lacson*, G.R. No. L-23482, 24 SCRA 837, 848 (1968) (citing *People v. O’Rourke*, 124 Cal. App. 752, 758 (Cal. Ct. App. 1932) (U.S.)).

<sup>319</sup> *Enriquez v. Enriquez*, G.R. No. 139303, 468 SCRA 77 (2005).

word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.”<sup>320</sup>

By violating the mandatory dictum of Section 23, it can be concluded that Secretary Mama-o’s version of the IRR is null and void, despite his assertions to the contrary. This is because Article 5 of the Civil Code states that “[a]cts executed against the provisions of mandatory [ ] laws shall be void, except when the law itself authorizes their validity.”<sup>321</sup>

In the same vein, Secretary Mama-o’s arguments as to the nature of the Transition Committee as a task force rather than a collegial body would probably not pass muster as well. Indeed, it is a basic rule in statutory construction that “words [are to] be construed in their ordinary and usual meaning.”<sup>322</sup> Hence, if the legislature had intended for the Transition Committee to become a mere task force, the legislature would have undoubtedly done so in plain language. Furthermore, contrary to the legal position of Secretary Mama-o, jurisprudence has shown that it is not necessary for a body to have members with equal power, rank, and authority before it can be considered as a collegial body. In *GMCR, Inc. v. Bell Telecommunication Philippines, Inc.*,<sup>323</sup> the Court upheld the Court of Appeals when it declared that the NTC is a collegial body despite the fact that the NTC, is composed of members with unequal ranks.<sup>324</sup> In its ruling, the Supreme Court quoted with approval the following disquisition from the Court of Appeals on the issue of NTC’s collegiality —

*In interpreting a statute, every part thereof should be given effect on the theory that it was enacted as an integrated law and not as a combination of dissonant provisions. As the aphorism goes, ‘that the thing may rather have effect than be destroyed’ [...]. If it was the intention of President Marcos to constitute merely a single entity, a one-man governmental body, instead of a commission or a three-man collegial body, he would not have constituted a commission and would not have specifically decreed that the Commission is composed of, not the commissioner alone, but of the commissioner and the two (2) deputy commissioners. Irrefragably, then, the NTC is a commission composed not only of Kintanar, but Perez and Dumlao as well, acting together in the performance of their adjudicatory or quasi-*

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320. *Id.* at 84 (citing *Lacson*, 24 SCRA at 848).

321. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 5 (1949).

322. *Romualdez v. Sandiganbayan*, G.R. No. 152259, 435 SCRA 371, 387 (2004).

323. *GMCR, Inc. v. Bell Telecommunications Philippines, Inc.*, G.R. No. 126496, 271 SCRA 790 (1997).

324. *Id.* at 804.

judicial functions, conformably with the Rules of Procedure and Practice promulgated by the BOC and applicable to the NTC.

*The barefaced fact that [...] of Executive Order 546 used the word ‘deputy’ to designate the two (2) other members of the Commission does not militate against the collegiality of the NTC. [...] The collegiality of the NTC cannot be disparaged by the mere nominal designation of the membership thereof. Indeed, [w]e are convinced that such nominal designations are without functional implications and are designed merely for the purpose of administrative structure or hierarchy of the personnel of the NTC.*<sup>325</sup>

Hence, following the logical precedent of the quoted ruling above, if the legislature had intended the Transition Committee to be a one-man governmental task force whereby the DMW Secretary, as the highest ranking member, can act on his own and formulate the IRR even without the participation of the other members of the Transition Committee, then it would not have specifically decreed that the Transition Committee should be composed of its six members. Moreover, the collegiality of the Transition Committee will not be disparaged by the unequal ranks between its members (i.e., Secretary, Undersecretary, and Director) as they are mere nominal designation without functional implications.

It is also worth mentioning that in his issuances, Secretary Mama-o frequently invoked the alter ego doctrine to justify his position that in the absence of any law prohibiting it, he is already able to exercise his powers and execute the provisions of R.A. No. 11641 despite the fact that the three conditions enumerated under Section 23 have not yet been complied with.<sup>326</sup> However, it must be noted that the alter ego doctrine is inapplicable if the actions of a department secretary is disapproved or reprobated by the Chief Executive.<sup>327</sup> This was also aptly stated in an opinion issued by the former Chief Justice Manuel V. Moran, who said that, “when a department secretary acts in his own name and not by order or authority of the President, he is presumed to be so acting in pursuance of a power conferred upon him by law, and *when the power is not thus conferred, his act is null and void.*”<sup>328</sup>

In this case, the Office of the President, through Executive Secretary Salvador C. Medialdea, released a memorandum disapproving Secretary

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325. *Id.* at 808 (emphases supplied).

326. *See, e.g.*, The One True and Valid IRR of the DMW, *supra* note 312.

327. *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines (TIDCORP)*, G.R. No. 168613, 692 SCRA 359, 374 (2013) (citing *Runkle v. United States*, 122 U.S. 543, 558 (1887)).

328. *Villena v. Secretary of the Interior*, 67 Phil. 451, 472 (1939) (J. Moran, concurring opinion) (emphasis supplied).

Mama-o's actions.<sup>329</sup> In one memorandum, the Executive stated that since "the DMW has not been constituted yet, the DMW Secretary may not impose any policy on the government entities/agencies enumerated in Section 19 of [R.A.] No. 11641, since the said entities/agencies continue to exist separately until the DMW is constituted."<sup>330</sup> The same position was reiterated by the Executive Secretary when it upheld the DOLE Secretary on the issue of the lifting of the deployment to Saudi Arabia by the DMW Secretary.

<sup>331</sup> Moreover, it is the IRR version promulgated by the other members of the Transition Committee rather than the version that was released by Secretary Mama-o that was cleared for publication by the Office of the President. Needless to say, in *Extensive Enterprises Corp. v. Sarbro & Co., Inc.*,<sup>332</sup> the Court had ruled that the "Executive Secretary who acts for and in behalf and by authority of the President has an undisputed jurisdiction to affirm, modify, or even reverse" actions and orders issued by another department secretary.<sup>333</sup> It would therefore be improper for Secretary Mama-o to continue invoking the alter-ego doctrine in spite of these pronouncements from the Office of the Executive Secretary.

Meanwhile, Senator Franklin M. Drilon and Senator Emmanuel Joel J. Villanueva, who were both instrumental in the crafting of the law, concurred with the Office of the Executive Secretary that the DMW has not been constituted yet.<sup>334</sup> In addition, Senator Drilon answered the legal conundrum of why the law allows a DMW Secretary to be appointed even if the

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329. Department of Labor and Employment, *Mama-o Gets Fresh Rebuke*, available at <https://www.dole.gov.ph/news/mama-o-gets-fresh-rebuke> (last accessed July 31, 2022) [<https://perma.cc/2NAK-3XZA>].

330. Vito Barcelo, *Deployment Ban to Saudi Still in Effect*, MANILA STAND., May 12, 2022, available at <https://manilastandard.net/news/national/314228062/deployment-ban-to-saudi-still-in-effect.html> (last accessed July 31, 2022) [<https://perma.cc/L6U2-JYF7>].

331. Department of Labor and Employment, *Mama-o Gets Fresh Rebuke*, *supra* note 329.

332. *Extensive Enterprises Corp. v. Sarbro & Co., Inc.*, G.R. Nos. L-22383 & L-22386, 17 SCRA 41 (1966).

333. *Id.* at 49.

334. Abad, *supra* note 286 & Neil Arwin Mercado, *Villanueva: DMW Must Refrain from Issuing Directives Until Fully Constituted*, PHIL. DAILY INQ., Apr. 29, 2022, available at <https://newsinfo.inquirer.net/1589932/villanueva-dmw-must-refrain-from-issuing-directives-until-fully-constituted> (last accessed July 31, 2022) [<https://perma.cc/G3M7-SBF6>].

department itself does not exist yet.<sup>335</sup> According to Senator Drilon, the intent was merely to have the DMW Secretary sitting as a member of the Transition Committee.<sup>336</sup> He expounds further by stating “[t]hat is the only justification why he was appointed to the position. He can only exercise limited powers under the transition committee, with other officers from the different departments[.] ... He is a king without a kingdom. He has no department to lead[.]”<sup>337</sup>

Senator Drilon added that Secretary Mama-o can be held liable for usurpation of authority or official functions under Article 177 of the Revised Penal Code<sup>338</sup> if he continues to exercise the functions of the DMW even if the department is yet to be constituted.<sup>339</sup> Moreover, he states that it is not possible for the DMW to become operational by the year 2022 since Section 23 clearly requires an appropriation under 2023 General Appropriations Act as one of its conditions for the constitution of the new department.<sup>340</sup> To wit, “I proposed that amendment in Section 23. I should know the legislative intent. There is no way to satisfy the first condition because we are only in the 2022 Budget. The deliberations for the 2023 budget will not take place until later this year[.]”<sup>341</sup>

Although the Supreme Court has already ruled that individual statements made by Senators, even those uttered on the floor of the Senate during consideration of the proposed measure, are not necessarily reflective of the views of the Senate as a whole, much less to indicate the intent of the House of Representatives,<sup>342</sup> and that such is deemed to be merely a personal opinion

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335. Press Release by the Senate of the Philippines, 19th Congress, *Drilon Backs Bello on Saudi Deployment Ban, Calls on Duterte to Resolve Confusion Caused by Mama-o’s Appointment* (Apr. 28, 2022) (on file with the Senate of the Philippines).

336. *Id.*

337. Press Release by the Senate of the Philippines, 19th Congress, ‘*A King Without a Kingdom?*’: *Drilon Lambasts Newly-Appointed Migrant Workers Secretary Mama-O* (Apr. 7, 2022) (on file with the Senate of the Philippines).

338. An Act Revising the Penal Code and Other Penal Laws [REV. PENAL CODE], Act No. 3815, § 177 (1930).

339. Senate of the Philippines, 19th Congress, *supra* note 337.

340. *Id.*

341. *Id.*

342. *Casco Philippine Chemical Co., Inc. v. Gimenez*, G.R. No. L-17931, 7 SCRA 347, 350 (1963) (citing *Song Kiat Chocolate Factory v. Central Bank of the Phil., et al.*, 102 Phil. 477, 480-81 (1957); *Mayon Motors, Inc. v. Acting Commissioner of Internal Revenue*, G.R. No. L-15000, 1 SCRA 918, 924 (1961); & *Manila*

of the legislator,<sup>343</sup> it may well be considered that such statements can still be useful as extrinsic aids in ascertaining legislative intent.

### VIII. CONCLUSION

While the passage of R.A. No. 11641 is a watershed moment for the millions of OFWs throughout the globe and to all Filipinos in general, many challenges still remain, waiting to confront the new department during the transition and upon its constitution. For one, the legal controversy surrounding the transition period must be resolved. Improper implementation of the transition provisions of R.A. No. 11641 will not only cause disruption in government services, but it can also bring about confusion and chaos to this country's migration governance so as to negatively impact the livelihood of OFWs and our country's foreign relations with transit and receiving States. Likewise, the lack of awareness among the broader overseas Filipino diaspora about the functions of the new department, as well as the new changes introduced in R.A. No. 11641, such as the exclusions from the definition of an "OFW," should be addressed properly.<sup>344</sup> Along this line, the expectations of all OFWs must be managed adequately, especially during the transition period. It cannot be emphasized enough that creating a new department is not to be considered as a magic pill that will solve all migration-related issues and problems for our OFWs overnight.

Second, even before the creation of the DMW, it is no secret that difficulties abound with regard to the effective implementation of the One-Country Team Approach at the level of FSPs, and the whole-of-government approach among various branches of government in resolving labor migration issues. Turfing issues and verbal tussles between department heads have certainly done more harm than good. The DMW must ensure that it can maintain good coordination with other branches of government and that its MWOs can work efficiently with the embassies and consulates abroad. The goal of protecting migrant workers should be at the heart of intra-agency and inter-agency cooperation.

Lastly, it cannot be ignored that the traditional migration issues are still ever-present. Concerns such as combatting human trafficking and providing adequate reintegration assistance will still have to be faced by the new department, in addition to the challenges brought about by emerging factors such as the threat of climate change, the rise of social media, and the

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Jockey Club, Inc. vs. Games and Amusement Board et al., 107 Phil. 151, 157-58 (1960)).

343. *Mayon Motors, Inc.*, 1 SCRA at 924.

344. See Department of Migrant Workers Act, § 3 (g).

emergence of artificial intelligence.<sup>345</sup> The ability of the Philippine government as whole, and the new department in particular to face all these challenges will certainly play a big factor if the Philippines will attain the long-cherished goal of making migration a choice, not a necessity.

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345. *See generally* Guevarra, *supra* note 57, at 126; The White House, Report on the Impact of Climate Change on Migration, *available at* <https://reliefweb.int/report/world/report-impact-climate-change-migration-october-2021> (last accessed July 31, 2022) [<https://perma.cc/8DDE-2QG6>]; Rianne Dekker and Godfried Engbersen, How Social Media Transform Migrant Networks and Facilitate Migration (IMI Working Papers Series 2012, No. 64), *available at* <https://www.migrationinstitute.org/publications/wp-64-12> (last accessed July 31, 2022) [<https://perma.cc/B9TT-XM25>]; & Carnegie Council for Ethics in International Affairs, Ethics & Artificial Intelligence: Migration Model International Mobility Convention, *available at* <https://www.carnegiecouncil.org/media/article/ethics-artificial-intelligence-migration> (last accessed July 31, 2022) [<https://perma.cc/29VD-M59W>].