

CEDAW-BASED LEGAL REVIEW OF MIGRATION AND ANTI-TRAFFICKING LAWS IN THE PHILIPPINES



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United Nations Entity for Gender Equality
and the Empowerment of Women

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EXECUTIVE SUMMARY

As part of the universal mandate to promote gender equality and the empowerment of women, UN Women actively supports the promotion and protection of the rights of women migrant workers and safe migration for women at the global, regional and country levels. Around the world, a record number of women are now migrating to seek work and better opportunities. Even though migration may provide these benefits for women, it also poses a lot of risks, including unfair treatment, exploitation, and vulnerability to different forms of violence, especially in the informal sector such as domestic and care workers. Migration policies and practices have been slow to recognize these risks and take steps to make the process safe for women. In the Southeast Asia region, the feminization of migration is most visible and usually associated with outgoing flows of women migrants, particularly from Indonesia and the Philippines, where women make up 62-75 per cent of workers who are deployed legally on an annual basis.¹

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was signed by the Philippines on 15 July 1980 and was entered into force on 03 September 1981. It has three underlying principles, namely: non-discrimination (Article 1); state obligation and due diligence (Articles 2-5); and, substantive equality (Article 4).

States Parties to the CEDAW are legally bound to put these principles and provisions into practice. In keeping with the Philippines' commitment under CEDAW, Congress passed several laws addressing discrimination against women. Among which are the Anti-Rape Law (Republic Act [RA] No. 8353), Anti-Violence Against Women Act (RA 9262), and most importantly, the Magna Carta of Women (RA 9710), a landmark law that aims to eliminate discrimination against women through the recognition and protection of the rights of Filipino women, especially those in marginalized sectors.

Among the duties of the State under RA 9710 is to ensure the protection and promotion of the rights and welfare of migrant women, regardless of their work status. The law also protects them against discrimination in wages, conditions of work, and employment opportunities in host countries, as well as access to skills training before taking on job overseas and possible retraining upon return to the country.

Pursuant to this, the CEDAW Committee has also issued two pertinent General Recommendations: General Recommendation 19 on Violence Against Women and General Recommendation 26 on Women Migrant Workers.

The Philippine law that addresses trafficking and exploitation of women is the Anti-Trafficking in Persons Act of 2003 (RA 9208), which was further amended by the Expanded Anti-Trafficking in Persons Act of 2012 (RA 10364). With regard to migration, the Philippine Congress has passed RA 8042 or Migrant Workers and Overseas Filipinos Act of 1995, which was further amended by RA 10022.

Translating gender mainstreaming into practice to protect women migrant workers requires gender-sensitive legislation on labor migration and trafficking. The review of related literature reveals that studies on Philippine laws on trafficking and migration focused on five major themes, such as: victim protection in trafficking vis-à-vis domestic laws on vagrancy, problems encountered in the implementation of the laws, the use of the Philippine experience to establish the need to strengthen state policies, migration and trafficking in the context of socio-economic implications and cross-cultural comparisons on the extent of state protection. These studies do not

adequately situate the progress of State legislation as regards its international obligations under the CEDAW and the review of the laws specifically from the gender perspective.

A CEDAW-based legal review of the Magna Carta of Migrant Workers and the Anti-Trafficking Laws in the Philippines is indispensable to give concrete recommendations in improving laws that protect women migrant workers. The CEDAW is an excellent framework for gender equality legal reviews, particularly because it sets an international norm and standard for gender equality that covers all aspects of women's lives, including civil and political rights, as well as economic, social and cultural rights. The CEDAW provides a comprehensive definition of discrimination, which includes both direct and indirect discrimination and mandates both formal and substantive equality.

This review comprised chiefly of desk research. To determine whether the Philippines has complied with its state obligations, the study used the UN-identified CEDAW indicators contained in the handbook entitled *Do Our Laws Promote Gender Equality?* The indicators on trafficking and prostitution were used in addition to other indicators that came up during consultation with stakeholders. These helped determine whether or not the Philippines is exerting adequate efforts to combat trafficking of persons. Although the CEDAW legal review publication identifies

several indicators on trafficking and prostitution, there are none on migration. To enrich the study, desk research was augmented by consultations with key stakeholders. The Multi-Stakeholder Consultations (Pre-Review and Post-Review Stage) aimed to ensure that the objectives and desired outcomes of the Legal Review/Research are achieved.

The Migrant Workers and Overseas Filipinos Act of 1995, as amended, and particular sections of RA 9208 or the Anti-Trafficking in Persons Act, as amended, were reviewed and measured against the CEDAW standards and legal indicators, to determine full, partial or no compliance.

Based on the findings from the CEDAW-based legal review, amendments in the laws are recommended in the areas of access to justice, penalties and claims, services, training programs, information and education and expanding rights' protection.

¹ UN Women (2011) *Gender, Migration and Development – Emerging Trends and Issues in East and Southeast Asia*. Bangkok: UN Women.

CEDAW-BASED LEGAL REVIEW OF MIGRATION AND ANTI-TRAFFICKING LAWS IN THE PHILIPPINES

I. Background

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

Also known as the Women’s Convention and the International Bill of Rights for Women, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations (UN) General Assembly on 18 December 1979. It was signed by the Philippines on 15 July 1980 and ratified by the Philippine Senate on 05 August 1981. As of May 2015, 189 states have ratified or acceded to the CEDAW.

The CEDAW, which entered into force on 3 September, 1981 has three underlying principles: non-discrimination (Article 1); state obligation and due diligence (Articles 2 - 5); and, substantive equality (Article 4).

The principle of non-discrimination is the first underlying theme that runs throughout the CEDAW text. “Discrimination against women” is defined in Article 1 of the CEDAW as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

- To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women.

- To establish tribunals and other public institutions to ensure the effective protection of women against discrimination.
- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

By accepting the Convention, States commit themselves to undertake a series of steps to end discrimination against women in all forms. This includes the following measures:

The principle of state obligation is the second core theme of the CEDAW. It is the principle that not only should states be obliged to pursue *de jure* gender equality, but that they must do so in practice, and in many different domains. For example, in addition to promoting women’s rights in the country broadly, state parties are obliged to seek out legislation on equality before the law regarding marriage, the right of women to vote and the right to choose a domicile and residence (CEDAW, Articles 15-17). CEDAW, in this way, differs from other conventions by providing specific areas for the fulfillment of women’s rights in practice and obliging state parties to take specific action toward them. States are required to take all appropriate measures to prevent violation of these rights and are held accountable for discriminatory actions committed, not only by the State and its agencies, but also by individuals and non-State actors.

Substantive equality is the third underlying theme of CEDAW. It requires that “women be given an equal start and that they be empowered by an enabling environment to achieve equality of results,”²

¹ The author is a Professor at the University of the Philippines (UP) College of Law and Director of the Institute of Human Rights of the UP Law Center. She obtained her Bachelor’s and law degrees from UP Diliman and her Master’s degree in Law from Harvard University. She is a staunch advocate for women’s and children’s human rights.

² CEDAW General Recommendation 25, in article 4, paragraph 1, on temporary special measure, paragraph 8. Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev. 6 at 271 (2003).

and that special measures to protect women be created in the face of existing unbalanced gender equality. The principle of substantive equality is a two-pronged approach to achieving the fulfillment of women's equality to men and that special measures to protect women be created in the face of existing unbalanced gender equality. First, state parties are obliged to take all actions as necessary to achieve equality between women and men; Second, states are obliged to take special measures to correct existing inequalities in power between men and women. Recognizing that the absoluteness of gender-neutral laws will obscure the differences between women and men, substantive equality accepts that "under certain circumstances, non-identical treatment of women and men will be required in order to address such differences."³

States Parties to the CEDAW are legally bound to put these principles and provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

An additional enforcement mechanism is the Optional Protocol to the Convention that entered into force on 22 December 2000.⁴ The entry into force of the Optional Protocol puts it at par with the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, all of which have complaints procedures.⁵ By ratifying the Optional Protocol in November 2003, the Philippines recognizes the competence of the Committee on the Elimination of Discrimination against Women, the body that monitors States compliance with the Convention, to take specific measures to remedy violations of CEDAW and to receive and consider

³ CEDAW General Recommendation 25, in article 4, paragraph 1, On temporary special measure, paragraph 8. Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev. 6 at 271 (2003).

⁴ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 6 October 1999.

complaints from individuals or groups within its jurisdiction.⁶

Considering the weight of the substantive obligations contained in Articles 1-16, it is important as well to refer to CEDAW General Recommendations that expound on specific articles or flesh out burning issues arising from these provisions. Although not binding, these General Recommendations (GR) or General Comments (GC) are authoritative statements made by the Committee on the Elimination of Discrimination Against Women on the interpretations of CEDAW provisions. To illustrate, GR 19⁷ focuses on Violence Against Women and paragraphs 13-16 and 24 thereof underscore how factors of poverty and unemployment exacerbate the vulnerability of women and this situation, in turn, requires states to pass protective measures:

"13. States Parties are required by Article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect to their rights and dignity. They put women at special risk of violence and abuse.

⁵ *United Nations Entity for Gender Equality and the Empowerment of Women, Why an Optional Protocol?* Retrieved from <http://www.un.org/womenwatch/daw/cedaw/protocol/why.htm>.

⁶ Ibid .

⁷ CEDAW General Recommendations 19. Violence Against Women (11th Session, 1992), UN Doc. A/47/38/at 1 (1993).

15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.
16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures. “

In keeping with the Philippines’ commitment under CEDAW, Congress passed several laws addressing discrimination against women. In 1997, Republic Act (RA) No. 8353 the Anti-Rape Law⁸ was enacted. It explicitly recognized marital rape and reclassified rape as a crime of violence against persons instead of a crime against chastity, as it was categorized in the Philippine Revised Penal Code of 1930. The Anti-Violence Against Women Act (RA 9262) expanded violence to include physical as well as emotional, psychological and economic abuse. In 2003, the Anti-Trafficking in Persons Act (RA 9208) was legislated and has been significant in efforts to reduce illegal recruitment of women and children for the purposes of cheap forced labor, sexual slavery and other forms of sexual exploitation. The increase in both the number of violations of RA 9208 reported as

well as the Department of Justice’s apprehensions and convictions of traffickers have been attributed to this law.

Most importantly, the Magna Carta of Women (RA 9710) passed on 14 August 2009 is a landmark law that aims to eliminate discrimination against women through the recognition and protection of the rights of Filipino women, especially those in marginalized sectors. In the definition of terms found in Section 4.d.6, these marginalized sectors include “migrant workers” which refers to Filipinos who are to be engaged, are engaged, or have been engaged in a remunerated activity on a State of which they are not legal residents, whether documented or undocumented.” Section 22 of RA 9710 stipulates “the State shall ensure the protection and promotion of the rights and welfare of migrant women regardless of their work status, and protect them against discrimination in wages, conditions of work, and employment opportunities in host countries”.⁹ RA 9710 also takes particular consideration of Women in Especially Difficult Circumstances,¹⁰ victims of trafficking, illegal recruitment, victims and survivors of physical and sexual abuse, prostitutes, those in detention, and other such circumstances.

Migration and Trafficking

The migration process in the Philippines is increasingly feminized and it is critical to consider the movement of women as distinct from that of men. The causes and consequences of migration differ between women and men and consequently,

the policy and legal implications on women migrant workers are not necessarily identical to their male counterparts. The key issue in women’s migration relates to ‘protection’ because women are more vulnerable to trafficking and exploitation

⁸ Philippines, RA 8353, An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes. (1997).

⁹ Philippines, RA 9710, Magna Carta of Women. Retrieved from http://pcw.gov.ph/sites/default/files/documents/laws/republic_act_9710.pdf (accessed 5 November 2015).

¹⁰ Ibid, Section 30.

in the workplace than men. This is due to gender considerations as well as the kind of work that women take on, which is often a reflection of their perceived role in society and in the family. Women more frequently occupy roles in the informal sector or extra jobs in addition to their formal employment, and women are disproportionately represented in vulnerable employment such as domestic work, care work, entertainment and the sex industry.”

Articles 6-16 of CEDAW discuss the Specific Substantive Areas and of these, the CEDAW obligation on trafficking is embodied in Article 6 of the Convention. It provides that: “State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” Article 6 on trafficking impacts on other substantive areas such as Article 11: Employment; Article 12: Health care and family planning; Article 13: Economic and social benefits; Article 15: Equality before the law and Article 16: Marriage and family relations.

General Recommendation 26 on Women Migrant Workers¹² draws a clear and solid connection between discrimination against women and the empowerment and agency that increasingly defines the migration process. It recognizes that with the duty of states to eliminate gender-based discrimination in access to employment comes opportunities for women to engage in decent work and help provide a better future for themselves

II. Review of Related Literature

To this date, there has been no comprehensive study on Philippine laws on migration and trafficking measured against standards embodied in CEDAW. The closest would be *A Call For Philippine*

and their families. At the same time, overseas work exposes women to sharper divisions of power between class, race and gender within their occupation and in their host society. Much of the work undertaken by migrant women, which as mentioned takes place in the informal sector, exposes them to increased risk of exploitation, abuse and potentially trafficking. According to General Recommendation 26:

“While migration presents new opportunities for women and may be a means for their economic empowerment through wider participation, it may also place their human rights and security at risk. Hence, this general recommendation aims to elaborate the circumstances that contribute to the specific vulnerability of many women migrant workers and their experiences of sex- and gender-based discrimination as a cause and consequence of the violation of their human rights.”

The Philippine laws that address trafficking and exploitation of women is the Anti-Trafficking in Persons Act of 2003 (RA 9208). This law was further amended by the Expanded Anti-Trafficking in Persons Act of 2012 (RA 10364). With regard to migration, the Philippine Congress has passed RA 8042 or the Migrant Workers and Overseas Filipinos Act of 1995, which was further amended by RA 9422 and RA 10022. These laws will be reviewed and measured against the CEDAW, relevant Optional Protocols and General Recommendations.

Implementation of Women’s Rights Under CEDAW. The author, Clara Padilla, concludes that the Anti-Trafficking in Persons Act of 2003 upholds the rights of trafficked women as protected by CEDAW by not

¹¹ Cheema, McNally, and Popovski eds. *Governance and Institutional Issues in Migration*, Cross Border Governance in Asia: Regional Issues and Mechanisms, Trends and Innovations in Governance Series, Tokyo: United Nations University Press, 2011.

¹² CEDAW General Recommendations 26, On Women Migrant Workers, UN Doc. CEDAW/C/2009/WP.1/R (2008).

penalizing the victims “for crimes directly related to the acts of trafficking or in obedience to the order made by the trafficker.”¹³

Similarly, Cheah Wuiling’s case study¹⁴ of the ASEAN region on the same issue concentrated on the victim protection aspect of the 2003 Anti-Trafficking Act and the state’s adoption of a victim-centered approach towards sex trafficking. Amparita Sta. Maria’s *Analyzing Philippine Legal and Policy Frameworks for the Protection of Women Migrant Workers from HIV/AIDS*¹⁵, laid down a broad outline of the country’s legal framework including its international obligations, and focused on the law on HIV/AIDS as one facet of the State obligation to enact policies that protect women from trafficking.

Another article worth noting is Professor Myrna Feliciano’s *Emerging Women’s Rights Issues: Review of Current Legal Remedies Related to Sex Trafficking*.¹⁶ Feliciano’s study provides a comprehensive catalogue of relevant laws relating to human trafficking and migration, which she classifies into penal laws, administrative laws that focus on “regulation of the labor export industry covering administrative liabilities for illegal recruitment”; and laws, which provide incentive schemes for workers.¹⁷ The study concentrates on problems encountered in state implementation.

The majority of the research done on trafficking and migration laws in the Philippines is made in the context of economic development. These studies

focus on factors contributing to the widespread migration and trafficking of women and the implications for such trend. The Philippine experience and the laws attempting to address these issues are merely used to establish a platform for recommending measures or approaches that would better address the issues. They neither examine the legal framework nor the implications of enforcing the laws to protect the rights of women migrant workers. Examples of these studies include Fernandez’ *Commodified Women*¹⁸, Van Impe’s *People For Sale: The Need For A Multidisciplinary Approach Towards Human Trafficking*¹⁹, the Ateneo Human Rights Center’s *The Philippine-Belgian Pilot Project Against Trafficking In Women*²⁰, and Guevarra’s *Managing ‘Vulnerabilities’ And ‘Empowering’ Migrant Filipina Workers: The Philippines’ Overseas Employment Program*²¹.

Guevarra, in her abstract, states that the essay “examines the Philippine state’s incorporation of a ‘gender-sensitive criteria’ within its overseas employment policy framework in recognition of the increasing participation of Filipinas in the global economy and their ‘vulnerabilities’ in the workplace”. However, an examination of the essay shows that

¹³ Padilla, Clara Rita A. *A Call For Philippine Implementation Of Women’s Rights Under CEDAW*. *Ateneo Law Journal* 52.4 (2008): 765-803. Academic Search Complete. Web. 19 September 2014.

¹⁴ Wuiling, Cheah. *Assessing Criminal Justice And Human Rights Models In The Fight Against Sex Trafficking: A Case Study Of The ASEAN Region*. (2006): OAlster. Web. 19 September 2014.

¹⁵ Sta. Maria, Amparita S. *Analyzing Philippine Legal and Policy Frameworks for the Protection of Women Migrant Workers from HIV/AIDS*. *Ateneo Law Journal* 50.1 (2005): 47-128. Academic Source Complete. Web. 19 September 2014.

¹⁶ Feliciano, Myrna S. *Emerging Women’s Rights Issues: Review of Current Legal Remedies Related to Sex Trafficking*. *Philippine Law Journal* 79 (2004): 596-638. Web. 19 September 2014.

¹⁷ *Supra*, p. 607.

¹⁸ Fernandez, Mary Rose. *Commodified Women*. *Peace Review* 9.3 (1997): 411. SocINDEX with Full Text. Web. 19 September 2014.

¹⁹ Van Impe, Kristof. *People For Sale: The Need For A Multidisciplinary Approach Towards Human Trafficking*. *International Migration* 38.3 (2000): 113. Academic Search Complete. Web. 19 September 2014.

²⁰ *The Philippine-Belgian Pilot Project Against Trafficking In Women / A Consolidated Report By The Ateneo De Manila University and the Women’s Education, Development, Productivity and Research Organization, Inc.* Makati City: Ateneo Human Rights Center, 1999. Rizal Library’s OPAC (Online Catalog). Web. 19 September 2014.

²¹ Guevarra, Anna Romina. *Managing ‘Vulnerabilities’ And ‘Empowering’ Migrant Filipina Workers: The Philippines’ Overseas Employment Program*. *Social Identities* 12.5 (2006): 523-541. Academic Search Complete. Web. 19 September 2014.

the author looked at the various state policies that improve protection for women and limited her discussion to the efficacy of these policies in the socio-economic level.

Another area of focus is cross-cultural comparisons between Philippine laws on migrant workers and other sending countries. Examples are an article published by the World Bank Office of Jakarta, entitled *Social Protection For Women Migrant Workers: A Comparative Study Among Sending Countries*²², and Dinita Setyawati's *Assets Or Commodities? Comparing Regulations Of Placement And Protection Of Migrant Workers In Indonesia And The Philippines*²³. The latter article seeks to answer the question: "Are Filipino migrant workers better protected than Indonesians?" These articles center on the comprehensiveness of each State's protection of

III. Objectives of the Study

The Philippines has been recognized globally for its good practices in adopting laws in support of gender equality. However, emphasis on further strengthening the legal framework for women's human rights is necessary. Exploring ways to protect and promote women's rights evolves quite logically into issues of gender, including sexuality, given that these issues are at the core of women's oppression and are crucial to women's emancipation.

Translating gender mainstreaming into practice to protect women migrant workers requires gender-sensitive legislation on labor migration and trafficking. A CEDAW-based legal review of the Magna Carta of Migrant Workers and the Anti-

certain rights or sectors of the community, rather than the effectiveness of law and policies within its own realm.

This review of related literature reveals that studies on Philippine laws on trafficking and migration have focused on five major themes—victim protection in trafficking vis-à-vis domestic laws on vagrancy, problems encountered in the implementation of the laws, the use of the Philippine experience to establish the need to strengthen state policies, migration and trafficking in the context of socio-economic implications, and cross-cultural comparisons on the extent of state protection. These studies do not adequately situate the progress of State legislation as regards its international obligations under the CEDAW and the review of the laws specifically from the gender perspective.

Trafficking Laws in the Philippines is indispensable in order to give concrete recommendations on improving laws that protect women migrant workers. This will provide the basis for capacity development activities among lawmakers, government and national oversight institutions on the integration of gender as well as identify strategic institutions and mechanisms to target capacity development support for formulation, amendment and implementation of gender-responsive and coherent migration and anti-trafficking laws.

One way by which these concerns may be addressed is by identifying the gaps in Philippine laws and recommending changes that will make our laws CEDAW compliant. A CEDAW legal review aims to

²² *Social Protection For Women Migrant Workers: A Comparative Study Among Sending Countries / Social Protection For Women Migrant Workers: A Comparative Study Among Sending Countries*.(n.d.): AGRIS. Web. 19 September 2014.

²³ Setyawati, Dinita. *Assets Or Commodities? Comparing Regulations Of Placement And Protection Of Migrant Workers In Indonesia And The Philippines*. *Austrian Journal Of South-East Asian Studies / Österreichische Zeitschrift Für Südostasienwissenschaften* 6.2 (2013): 264-280. Academic Search Complete. Web. 19 September 2014.

locate gender discrimination in laws; underscore state obligations to address existing gender discrimination in laws; identify and highlight deficiencies in Philippine laws on migration and trafficking and how they fail to comply with the CEDAW legal framework for women's human rights; identify areas for reform; and recommend ways by which CEDAW obligations can be complied with by the State.

This legal review is intended to directly complement the current work of the House of Representatives Committee on Overseas Workers Affairs (HOR COWA) particularly on the amendment of the existing laws, in light of the committee investigation report on the sexual abuse and exploitation of the Filipino migrant workers in the Middle East, particularly toward enhancing witness protection and support for prosecution process for the women migrant workers.

IV. Scope and Methodology

As earlier mentioned, the Magna Carta of Women contains provisions that protect women's right to decent work and vests in several government agencies the responsibility of "protecting the rights and promoting the welfare of women migrant workers."²⁴ Given, however, that the Magna Carta of Women is a comprehensive law that seeks to safeguard an expansive range of women's rights in contrast to the laws particular to migration and trafficking, the latter will be the focus of this CEDAW-based legal review.

In this paper, both the Migrant Workers Act and the Anti-Trafficking in Persons Act passed by the Philippine Congress are examined to determine whether the Philippines has complied with its state obligations under the CEDAW. This study will use the UN-identified CEDAW indicators contained

Ultimately, the results will contribute to the objective of the EU-funded global initiative called "*Promotion and Protection of Women Migrant Workers' Labour and Human Rights: Engaging with International, National Human Rights Mechanisms to Enhance Accountability*", which has selected the Philippines as a pilot country, along with Mexico and Moldova, to promote women migrant workers rights and protect them against exploitation and exclusion at all stages of migration. More specifically, the objectives of this initiative are to reinforce international human rights mechanisms, national human rights institutions, parliaments, governments to ensure accountability to women migrant workers at all stages; and strengthen women migrant workers organizations to effectively engage with these mechanisms and governments to ensure greater accountability at all stages.

in the handbook entitled *Do Our Laws Promote Gender Equality?* The indicators on trafficking and prostitution will be used in addition to other indicators that came up during consultation with stakeholders. These will help determine whether or not the Philippines is exerting adequate efforts to combat trafficking in persons. Although the CEDAW legal review publication identifies several indicators on trafficking and prostitution, there are none on migration.

Article 35 of the Convention on the Rights of Child (CRC)²⁵ mandates States Parties to take "all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." Although it serves as one of the bases for RA 9208 and as such, elimination of child trafficking²⁶ is within the scope of said law, the *de facto* situation of children victims of trafficking and the application of the law to them are not evaluated

²⁴ Philippines, RA 9710, IRR, Sec. 25 (D). Retrieved from http://pcw.gov.ph/sites/default/files/documents/laws/republic_act_9710.pdf.

²⁵ The CRC was adopted by the UN General Assembly on 20 November 1989. It was signed by the Philippines on 21 August 1990 and entered into force on 02 September 1990.

²⁶ Defined in Sec.3 (d) of RA 9208 as "a person below eighteen years of age or one who is over eighteen but is unable to fully take care or protect himself/herself from abuse, neglect cruelty exploitation, or discrimination because of a physical or mental disability or condition."

in this study owing to several other factors compounding the particular vulnerabilities of children that make them susceptible to trafficking.

Moreover, this study will not look into in-country migration. It is limited to cross-border migration exclusively with the Philippines as the country of origin and another nation as country of destination.

In order to enrich the study, desk research was augmented by consultations with keystakeholders. The Multi-Stakeholder Consultation (Pre-Review Stage) aimed to ensure that the objectives and

desired outcomes of the legal review are achieved. Thus, even where there are indicators identified in the CEDAW-based Legal Review booklet, there was need to localize some indicators after contemplating the *de facto* situation of women as well as the concrete challenges met by migrant and trafficked women gathered from the consultation with stakeholders. In addition, a Post-Review multi-stakeholders' consultation was undertaken. Two reviewers and key participants validated the findings and recommendations generated by the study.

V. Framework for a CEDAW Legal Review

What is a legal review?

A legal review is a survey of laws in a country that reveals whether those laws meet the standards set by the reviewer. In other words, a legal review aims to uncover and highlight gaps or deficiencies in the law as well as to underscore areas for law reform whether these be amendment, repeal or the creation of new laws.

The CEDAW is an excellent framework for gender equality legal reviews particularly because it sets an internationally acknowledged standard for gender equality that covers all aspects of women's

lives, i.e. civil, political, economic, social, cultural. The CEDAW provides a comprehensive definition of discrimination that includes both direct and indirect discrimination and mandates not just formal equality, but substantive equality, as well. Thus, States Parties "must ensure that women are 'given an equal start' (*equality of opportunity*) and are 'empowered by an enabling environment to achieve equality of results.'" Likewise important is its focus on the State obligations to ensure non-discrimination by both state and non-state actors.

The 8 Steps

The handbook *Do Our Laws Promote Gender Equality?* expounds on the steps that have to be taken for a CEDAW-based Legal Review. These 8 Steps and a brief description of each step are as follows:

1. Identify CEDAW Obligations
2. Identify Situation Issues and Concerns
3. Identify Provisions Needed in Law
4. Determine CEDAW Legal Indicators
5. List Relevant Legislation
6. Analyse Compliance
7. Draft Explanation and Comments
8. Formulate Recommendations

Brief Description

Step 1. Identify the CEDAW Obligations

The CEDAW obligations are found in the CEDAW, General Recommendations of CEDAW, specifically GR 19 and 26 and Concluding Observations.²⁷ Using these resources, the legal obligations flowing from CEDAW can be determined.

Step 2. Identify Situation, Issues and Concerns

This entails research on the *de facto* situation of women and girls on the selected specific issue of migration and trafficking. For this legal review, research is complemented by the inputs of the stakeholders during the pre-review stage.

Step 3. Identify the Provisions Needed in Law

In this step, essential points that must be in the law for it to comply with the CEDAW are established.

Step 4. Determine CEDAW Legal Indicators

The legal indicators are derived from CEDAW, the General Recommendation and Concluding Comments of the CEDAW Committee.²⁸ The points needed in an effective and CEDAW-compliant law in Step 3 are transformed into question form. They must be answerable with a “yes” or “no” to ensure that the indicators are measurable. Since this is a legal review, these questions should focus on law, not policy or problems in the implementation of the law.

Sample CEDAW-based Legal Review, Steps 1-4

STEP 1 CEDAW Obligation	STEP 2 Situation, Issues and Concerns	STEP 3 Points Needed in Law	STEP 4 CEDAW Legal Indicators
Provide information on methods and procedures for migrating to work for women who wish to migrate independently of recruitment agencies (GR 26, paragraph 24 (b)(iii)) or via informal channels (Concluding Observations, paragraph 22).	<ul style="list-style-type: none"> -Those who migrate for work abroad without going through a recruitment agency may not be aware of their rights and may not have access to relevant information such as labor laws. -The Philippine Overseas Employment Administration (POEA) has no way of monitoring those who seek employment abroad through informal channels or independent of recruitment agencies. 	Protection of direct-hires or those who avail of employment abroad without the intervention or placement by an employment agency.	Is there a mechanism for providing assistance and protection to women migrant workers who did not avail of any recruitment agency and sought employment independently or via informal channels?

²⁷ Concluding Comments of the CEDAW Committee 36th Session 7-25, August 2006.

²⁸ Ibid

Step 5. List the relevant legislation

This calls for the identification of the specific legislation relevant to the indicator. Both general and specific gender equality laws should be included, such as the Constitution and RA 9208, as amended, respectively.

Step 6. Analyze Compliance

Compliance of the laws with the CEDAW could either be full, partial and not compliant.

There is **full compliance** when the legal provisions meet the requirements of the indicator. This means that the legal provisions respond to the indicator without need of further amendments or supplemental legislation.

It is **partially compliant** when only some, but not all, aspects of the requirements are met. There are legal provisions that address the indicator but such provisions, by themselves, are inadequate. In effect, there is a need for the law to further guarantee the rights of women migrant workers and those who may fall victim to trafficking.

A domestic legislation is **non-compliant** if it does not meet the requirements of the indicator. There is a total absence of any legal guarantee in the law to meet the indicator. Legislation is also non-compliant if there are provisions that are in conflict or are diametrically opposed to the indicator.

Step 7. Draft Explanation and Comments

The comments must clarify what led the reviewer to conclude that the present law is compliant, partially compliant or non-compliant.

Step 8. Formulate Recommendations

As the last step, recommendations for law reform, including amendment or repeal of an extant discriminatory provision of law, should be made. The key features of reform of the new provision or law are required.

Due to time and other constraints, emphasis will be placed on Steps 5-8.

Sample CEDAW-based Legal Review, Steps 5-8

STEP 5 Relevant Laws (RA 8042, as Amended by RA 10022 and its Omnibus Implementing Rules and Regulations (IRR)	STEP 6 Extent of Compliance	STEP 7 Explanation and Comments	STEP 8 Recommendations
<p>Although the law covers the rights of migrant workers, the system is focused on hiring through the Philippine Overseas Employment Administration (POEA).</p> <p>IRR Rule II, Section 1(u) defines “irregular/ undocumented Filipino migrant workers” as those:</p> <ol style="list-style-type: none"> 1. Who acquired passports through fraud or misrepresentation 2. Who possess expired visas or permits to stay 3. Who have no travel documents 4. Who have valid but inappropriate visas, or 5. Whose employment contracts were not processed by the POEA or subsequently verified and registered on-site by the Philippine Overseas Labor Office (POLO) if required by law or regulation <p>IRR Rule X, Section 18(d) – The Migrant Workers and other Overseas Filipinos Resource Center shall provide for the registration of irregular/ undocumented workers to bring them within the purview of RA 8042.</p>	<p>Partial compliance</p>	<p>Recruitment is done through (1) Agency hire via licensed recruitment agencies, (2) Government placement, where a foreign government entity courses its hiring through POEA’s Government Placement Branch, or (3) Name hires, those able to secure an overseas employment opportunity with an employer without going through any placement agency.</p> <p>The IRR defines “irregular” migrant workers and articulates the need for their registration, but is silent on how they can be informed of their rights and how government can monitor their situation.</p>	<p>Amend provision.</p> <p>The law provides no mechanism for protection or monitoring women migrant workers who found jobs independently or through informal means. Services available under the law, especially the Pre-Employment Orientation Seminar (PEOS) and consular services, should likewise be available to them.</p>

VI. CEDAW-Based Legal Review of Migration Laws

The Migrant Workers and Overseas Filipinos Act of 1995, as amended, will be reviewed and measured against the CEDAW standards. Likewise relevant is the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,²⁹ which supplements the UN Convention against Transnational Organized Crime.³⁰ Known as the Palermo Protocol, it states succinctly that “effective action to prevent and combat trafficking

in persons, requires a comprehensive international approach in the countries of origin, transit and destination that include measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking”. Thus, this legal review dissects the laws in accordance with the stages of migration in order to identify whether the change necessitated is in the pre-departure, transit or destination stage(s).

On Migration of Women in General

Filipino labour migration has become gendered due to the characterization of certain types of labour as either women’s or men’s work. This is due to many factors, many of which are domestic and some of which are global in scope. In the Philippines, traditional gender roles and expectations entrench women into accepting particular jobs in the care industry, while the global demand for women to work in care industries has remained quite high for some time. Indeed, gendered expectations in the workplace are often an extension of women’s roles in the domestic sphere.

GR 26 identifies the factors influencing women’s migration. Among these are “globalization, the wish to seek new opportunities, poverty, gendered cultural practices and gender-based violence in countries of origin, natural disaster or wars or internal military conflict.”³¹ The Magna Carta of Women (RA 9710) recognizes that women have the right to decent work. This means “opportunities for work that are productive and fairly remunerative as family living wage, security in the workplace, and social protection for families, better prospects

for personal development and social integration, freedom for people to express their concerns, organize, participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.”³² It considers overseas work as temporary in nature and tasks the State to address the causes of out-migration. Regardless of their time abroad, the legal or work status, women migrant workers under the RA 9710 should be ensured protection and promotion of their rights.³³

States Parties to the CEDAW have the obligation to formulate gender-sensitive, rights-based policy on the basis of equality and non-discrimination in all aspects of migration of women.³⁴

Laws that impose sex-specific bans and discriminatory restrictions on women’s migration on the basis of age, marital status, pregnancy or maternity status should be repealed.³⁵ In General Recommendation 26(d) employers and recruiters cannot legally confiscate or destroy travel

²⁹ Signed by the Philippines on 14 December 2000 and ratified on 28 May 2002. Entered into force on 25 December 2003. Retrieved from https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12&chapter=18&lang=en (accessed 29 November 2015).

³⁰ Signed by the Philippines on 14 December 2000 and ratified on 28 May 2002. Entered into force on 25 December 2003. Retrieved from https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12&chapter=18&lang=en (accessed 29 November 2015).³¹

³¹ CEDAW General Recommendation 26, par 8.

documents of women migrant workers. This violates the right to freedom of movement of the migrant worker as well as impedes gravely her ability to access justice in cases of abuse or exploitation. It is for this same reason that The Philippine Passport Act of 1996 provides that passports issued by the Philippine government to its citizens remains at all times the property of the government, the holder being a mere possessor thereof as long as it is valid. As such, the same may not be surrendered to any person or entity other than the government or

Full Compliance

The Constitution recognizes the role of women in nation-building and ensures the “fundamental equality before the law of women and men.”³⁷ Consistent with the Constitution, the avowed State policy in the Migrant Workers Act, as amended, is to afford full protection to labor and promote full employment and equality of employment opportunities.³⁸ In Section 2(d), the State affirms the fundamental equality before the law of women and men and endeavors to apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers. These policies are reiterated in IRR Section 1(b) and (d). There is thus full compliance with CEDAW given that the law recognizes fundamental equality of women and men and compels the State to apply gender-sensitive criteria. These provisions support the prohibition on the imposition of any sex-specific bans and discriminatory restrictions on employment opportunities.

³² Philippines, RA 9710, Sec. 22 (a).

³³ Id., Sec. 22 (c).

³⁴ CEDAW General Recommendation 26, par. 23, (a).

³⁵ CEDAW General Recommendation 26, par. 24 (a).

its representative.³⁶The indicators used to test compliance with CEDAW were:

1. Does the law require the provision of a specific set of standards on migration laws policies to make it more gender-responsive?;
2. Does the law define or provide a basis for determining what an adequate gender-sensitive response is?;
3. Are women migrant workers given equal access to employment opportunities under the law?
4. Is illegal recruitment prohibited?
5. Is the definition of the law comprehensive and flexible enough to cover all forms of gender-based violence?

The CEDAW also calls for a definite set of standards incorporated in the law to make it gender-responsive. “Gender sensitivity” is defined under Section 3(b) as cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interests of the sexes. There is full compliance with CEDAW obligations, but problems persist in the implementation of the law. There are no gender-specific criteria to guide government agencies in achieving the principle of substantive equality. However, this is a matter that can be aided by a law that provides benchmarks or minimum

³⁶ Philippines, RA 8239, approved on 22 November 1996. Any person that damage its integrity and validity is a serious crime which is penalized accordingly in Section 18. There are five types of offenses which are penalized:

- (a) Offenses relating to the issuance of a passport
- (b) Offenses relating to false statements in any application
- (c) Offenses relating to improper use
- (d) Offenses relating to forgery
- (e) Offenses relating to multiple possession of

passports. Penalty is imposed by a fine of PhP60,000 to PhP150,000 and imprisonment from 6 to 15 years. For those Overseas Filipino Workers (OFWs) who do not have a passport because their employers confiscated them, they can go to the Philippine consulate who issues a travel documention order to return to the Philippines.

³⁷ Philippines, 1987 Constitution, Sec. 14.

³⁸ Philippines, RA 8042, As amended Sec. 2 (b).

standards in creating gender-sensitive criteria to help the implementing arm of government address adequately the *de facto* situation of women. The pillar in determining whether standards are gender-sensitive is the definition of non-discrimination in CEDAW, which assert the enjoyment by women of human rights and fundamental freedoms in all fields.

General Recommendation 19 paragraph 24(a) mandates States Parties to take measures to suppress all forms of gender-based violence while in General Recommendation 26, paragraph 24(c) (i) States must adopt a comprehensive definition of irregular recruitment and provide legal sanctions for breach. These obligations call for a comprehensive prohibition on illegal recruitment and its related violations.

Section 6 of RA 8042, as amended by RA 10022, defines “illegal recruitment” as:

“[A]ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines.

It also includes the following acts, whether committed by ANY person (licensed or not):

- To charge or accept any amount greater than that specified in the schedule of fees by the Department of Labor and Employment (DOLE).
- Furnish or publish false notice or information or document in relation to employment or recruitment.
- To commit any act of misrepresentation for purpose of securing license or authority.
- To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive employment terms.
- Influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency.
- To engage in recruitment or placement in jobs harmful to public health or morality or dignity of the Republic.
- To obstruct or attempt to obstruct DOLE inspection to fail to submit reports on status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, and such other matters as may be required by DOLE.
- To substitute or alter to the prejudice of the worker, employment contracts approved and verified by DOLE from actual signing up to expiration without DOLE approval.
- For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or be engaged directly or indirectly in management of travel agency.
- To withhold or deny travel documents from applicant workers for reasons other than those authorized under the Labor Code.
- Failure to deploy contracted worker without valid reason as determined by DOLE.
- Failure to reimburse expenses incurred by worker in connection with documentation and processing for purposes of deployment, in cases where deployment does not actually take place without worker’s fault.
- To allow non-Filipinos to head or manage a licensed recruitment or manning agency.
- To charge or accept any amount greater than that specified in the schedule of fees by the DOLE.
- Furnish or publish false notice or information or document in relation to employment or recruitment.
- To commit any act of misrepresentation for purpose of securing license or authority.

- To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive employment terms.
- Influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency.
- To engage in recruitment or placement in jobs harmful to public health or morality or dignity of the Republic.
- To obstruct or attempt to obstruct DOLE inspection.
- To fail to submit reports on status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, and such other matters as may be required by DOLE.
- To substitute or alter to the prejudice of the worker, employment contracts approved and verified by DOLE from actual signing up to expiration without DOLE approval.
- For an officer or agent of a recruitment or placement agency to become an officer or

member of the Board of any corporation engaged in travel agency or be engaged directly or indirectly in management of travel agency.

- To withhold or deny travel documents from applicant workers for reasons other than Those authorized under the Labor Code
- Failure to deploy contracted worker without valid reason as determined by DOLE.
- Failure to reimburse expenses incurred by worker in connection with documentation and processing for purposes of deployment, in cases where deployment does not actually take place without worker's fault.
- To allow non-Filipinos to head or manage a licensed recruitment or manning agency.

“Illegal recruitment is deemed committed by a syndicate if carried out by a group of 3 or more persons conspiring or confederating with one another.”

This amendment introduced by RA 10022 expanded the coverage of acts classified as illegal recruitment. The challenge lies in the implementation of the law and the prosecution of the offenses.

Pre-Departure

With the increase in number of overseas Filipino workers, the number of victims of illegal recruitment continues to rise. The country of origin has the responsibility of ensuring that women migrant workers have access to adequate training and reliable information on migration. It is indispensable for them to be aware of their rights and be able to recognize or early detect signs of fraud and exploitation.

The indicators used for this section were:

1. Are there programs provided by law promoting community awareness?
2. Is information on accredited recruitment agencies available to the public?

3. Does the law mandate a system for reporting and updating all relevant information needed by migrant workers?
4. Does the law provide for gender-sensitive and gender-responsive pre-departure programs?
5. Is there a mechanism for providing assistance and protection to women migrant workers who sought employment independently or via informal channels?
6. Are recruitment agencies mandated to participate in gender-sensitive programs and awareness-raising efforts?
7. Does the law ensure the availability of legal and administrative assistance to women migrant workers?

Full Compliance

The CEDAW obligates States to provide community awareness through various means including media.³⁹ Complying with obligation will directly alleviate the stigma experienced by migrant workers and the lack of support they receive in the community level.

Rule XII, Section 1 of the Omnibus Implementing Rules and Regulations of RA 8042, as amended provides that the local government units (LGUs), the Department of the Interior and Local Government (DILG), in partnership with the POEA, other concerned agencies and non-governmental organizations (NGOs) shall take a proactive stance by being primarily responsible for the dissemination of information to their constituents on all aspects of overseas employment. The LGU shall: (1) launch campaigns against illegal recruitment; (2) provide a venue for the conduct of PEOS on a regular basis; (3) establish Overseas Filipino Workers (OFWs) help desks; and (4) establish and maintain a database. This is in compliance with the role of government agencies under Section 23 of the law.

In accordance with IRR Rule VI, Section 24, the POEA shall maintain and strengthen its partnership with LGUs, other government agencies and NGOs for the purpose of dissemination of information on all aspects of overseas employment.

Partial Compliance

Despite laws that prohibit and penalize illegal recruitments, women migrant workers still fall victim to unaccredited agencies and are exposed to threats to their personal security especially from the risk of physical violence and sexual exploitation in destination countries. It is thus the obligation of the state to provide a list of reliable recruitment agencies and create a unified information system on available jobs abroad.⁴¹

³⁹ General Recommendation 26, par. 24 (b)(v) and (vi) and General Recommendation 19, par. 24(d).

The law calls for the active participation of LGUs, NGOs, and government agencies in the conduct of community awareness. The law is thus compliant since active participation of LGUs, NGOs, and government agencies in the conduct of community awareness is compulsory.

There is also full compliance with the State's duty to provide education, awareness raising and training, and engaging media to help in these efforts.⁴⁰ In accordance with Rule VI, Section 24, the POEA shall maintain and strengthen its partnership with LGUs other government agencies and NGOs for the purpose of disseminating information on all aspects of overseas employment. LGUs are identified in RA 8042, as amended by RA 10022 as primarily responsible for the dissemination of information to their constituents. Among the tasks of the LGU are launching campaigns against illegal recruitment, providing a venue for the conduct of PEOS on a regular basis, and establishing OFW help desks, which are linked to the POEA database "for its updated lists of overseas job orders and licensed recruitment agencies in good standing."

On this point, the laws comply fully with CEDAW since the active participation of LGUs, NGOs and government agencies in the conduct of community awareness is compulsory.

The main function of POEA, under Section 23(b.1) is to regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. IRR Rule VI, Section 24 states that the POEA shall provide the concerned entities namely, LGUs, NGOs, and other government agencies, with a list of licensed

⁴⁰ General Recommendation 26, par. 24 (b)(v) and (vi) and General Recommendation 19, par. 24(d).

⁴¹ General Recommendation 26, par. 24 (b)(ii).

agencies, and other information materials. A strictly enforced licensing and registration system will be able to screen and flush out recruitment agencies, which charge exploitative fees that make women even more financially indebted to family, friends and users. This system will be able to unearth and identify recruitment agencies with a history of taking legal short cuts and committing violations of migrant workers' rights. Though commendable, what is lacking in the law is the duty that should have been imposed on the POEA to maintain an up-to-date database of accredited recruitment and placement agencies. The database should be available to the public and accessible over the internet.

It should be noted however, that despite the absence of this provision in the law, there is a list of accredited agencies published online by the POEA. The POEA maintains a website that can be accessed by the public who can check on the status of the recruitment agency they are applying at. Another technological tool that the POEA has used to expand its reach is the mobile application, which can be downloaded to smartphones and through which one can verify whether agencies are licensed or not. POEA also publishes a list of agencies on a quarterly basis.

The responsibility of the country of origin to deliver free or affordable gender- and rights-based pre-departure information and training programs is found in General Recommendation

No Compliance

In General Recommendation 26, paragraph 24 (f) "the country of origin has the responsibility of ensuring availability of legal and administrative assistance in connection with migration for work." Though several provisions on legal and administrative assistance are found in RA 8042, there is no provision for free legal services in order to avert a breach of duty or violation of a right.

The provisions in RA 8042 that ensure availability of legal and administrative assistance are the following:

26, paragraph 24 (b)(1). Section 23, b.1, second paragraph, mandates the POEA, together with other law enforcement agencies, to provide a comprehensive PEOS that will discuss topics such as prevention of illegal recruitment and gender-sensitivity. One purpose for which these programs are intended, is to educate and raise the level of awareness of the prospective migrant workers on potential exploitation.

To achieve this goal, the law must be amended. The provision on the PEOS must be more specific and provide for mandatory topics to be discussed, the rights of women migrant workers, labor laws and CEDAW principles., the *de facto* situation of women, services available to them, how to respond during emergency situations, and relevant labor laws. The PEOS should be done in the following segments, each program sensitive to the needs of the group:

1. Women who plan to pursue employment abroad
2. Women undergoing the placement process,
3. Women already placed and have a scheduled date of departure

The PEOS should be made mandatory with separate programs for migrant workers and the recruitment agencies. A regular PEOS for recruitment agencies should be made a condition for the issuance of a license.

1. Section 2(e) declares that free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty
2. Section 13 mandates the establishment of a mechanism for free legal assistance for victims of illegal recruitment and the right to preferential entitlement of the victim of illegal recruitment under the Witness Protection Program.

3. Section 24 creates the Legal Assistant for Workers Affairs under the Department of Foreign Affairs (DFA), primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers in distress
4. Section 25 creates a legal assistance fund for migrant workers
5. Section 26 specifies that the legal assistance funds shall be used exclusively to provide legal services to migrant workers and overseas Filipino workers in distress.

Furthermore, the Omnibus Rules and Regulations Implementing RA 8042, as amended, creates POEA Anti-Illegal Recruitment Programs, which will, among others, provide legal assistance to “victims of illegal recruitment and related cases which are administrative or criminal in nature in the form of legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions.”⁴² Though these provisions are compatible with the Philippines’ CEDAW obligation, legal and administrative services should not be available only after a worker has been illegally recruited or when he or she is in distress. Arguably, the term “overseas Filipino in distress” is broadly defined as:

“An overseas Filipino who has a medical, psycho-social or legal assistance problem requiring treatment, hospitalization, counseling, legal representation as specified in Rule IX of these Rules or any other kind of intervention with the authorities in the country where he or she is found.”⁴³

Rule IX however states that the legal assistance funds shall be used exclusively for payment of attorney’s fees to foreign lawyers representing migrant workers facing criminal and labor cases abroad; bail bonds to secure the temporary release of workers; and of court fees and other litigation expenses.⁴⁴

⁴² Rule VI, Sec. 2. Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by RA 10022.

⁴³ *Id.*, Rule 2, Sec. 1(ii).

⁴⁴ *Id.*, Rule IX, Sec. 3.

Consider, for instance, that under Section 3, Rule II, Book V of the POEA Rules and Regulations, the POEA must undertake “periodic review of region, country and skills employment contracts for land based workers and conduct regular review of standard employment contracts (SEC) for seafarers.” This aims to insure that the employees are not placed in a disadvantageous position and that the contracts are within the minimum standards of the terms and conditions set by the POEA.⁴⁵ However, where the contracts do not fall within this category, a women migrant workers could be made to sign an employment contract negotiated by the placement agency with the employers, although she may not have understood the language and legal ramifications of the contract. The present law does not provide for free or even subsidized legal services since the migrant worker is not considered “in distress”. This should thus be amended so that the POEA and the DFA will have the main responsibility of providing contract review services that will have the effect of reducing, if not totally avoiding, disputes arising from contract interpretation and the like.

For OFWs in distress, the law is compliant with CEDAW. The law is proactive in institutionalizing the role of bar associations like the Integrated Bar of the Philippines (IBP) in providing legal assistance. This dovetails with the amendment in the Charter of the IBP on the creation of the National Commission of Legal Aid that provides free legal services.⁴⁶ Moreover, the POEA has entered into a memorandum

⁴⁵ *Seagull Maritime Corp., et al. v. Balatongan, et al.*, G.R. 82252, 23 February 1989. *Ocean East Agency Corp et al. v. NLRC*, G.R. No. 119320. 13 March 1998.

⁴⁶ Guidelines on Legal and Aid governing the Establishment and Preparation of Legal Aid Offices in all Chapters of the Integrated Bar of the Philippines. Article IV, Section 8. Functions. – The National Committee on Legal Aid shall promote the establishment and efficient maintenance of Chapter Legal Aid Offices suited to provide free legal services to those unable to pay for such services; direct and supervise all Chapter Legal Aid Offices; maintain maximum levels of coordination and cooperation with other organizations having similar objectives; receive and solicit aid and assistance from any available and suitable source or sources, provided that the independent character of the Legal Aid is not impaired; and in general, but subject to the authority of the Board of Governors, do or cause to be done all things necessary and proper for the promotion of Legal Aid activities, projects and objectives.

of agreement with the Department of Justice (DOJ) whereby “qualified overseas contract workers” may avail of legal assistance from the Public Attorney’s Office.⁴⁷

Recruitment in the Philippines may either be through the following: (1) Agency hire via licensed recruitment agencies; (2) Government placement, where a foreign government entity course its hiring through POEA’s Government Placement Branch (GPB); or (3) Name hires, those able to secure an overseas employment opportunity with an employer without going through any placement agency. General Recommendation 26 asks states to provide information on methods and procedures for migrating to work for women who wish to migrate independently of recruitment agencies.

The laws sufficiently protect women migrant workers who are agency, government or name hires. However, those who migrate for work abroad without going through a recruitment agency may not be aware of their rights and may not have access to relevant information such as labor laws and migrant workers’ rights. IRR Rule II, Section 1(u) defines irregular/undocumented Filipino migrant workers as those:

1. Who acquired passports through fraud or misrepresentation
2. Who possess expired visas or permits to stay;
3. Who have no travel documents
4. Who have valid but inappropriate visas
5. Whose employment contracts were not processed by the POEA; or subsequently verified and registered on-site by the POLO, if required by law or regulation.

⁴⁷ Persons qualified for assistance pursuant to existing Memoranda of Agreement (MOAs) and DOJ Directives, as set forth under Sec. 5, Art. II, Memorandum Circular No. 18, Series 2002, is hereby amended to read as follows: xxx 5. Qualified overseas contract workers in all cases within the original and exclusive jurisdiction of the Philippines Overseas Employment Administration

RA 8042 provides no mechanism for protection or monitoring of women migrant workers who found jobs independently of recruitment agencies⁴⁸ or via informal channels⁴⁹. Services, especially the PEOS and consular assistance, available under the law for workers hired through an agency or the GPB and name hires should likewise be available to those who sought employment through informal channels.

General Recommendation 26, paragraph 24 (b) (iv) requires recruitment agencies to participate in awareness-raising and training programs with emphasis on specific needs and problems of women. This can be achieved through the POEA, which is granted by law rule-making authority in determining the licensing requirements for those who wish to operate as a placement agency. Under Rule II of the POEA Licensing Rules, applicants who are qualified and possess none of the disqualifications must submit:

1. Certified copy of the articles of incorporation or of partnership
2. Proof of financial capacity, subject to certain criteria
3. Financial statements, corporate tax returns
4. Proof of marketing capability
5. NBI Clearance of all members of the Board, partners, proprietors
6. Verified undertaking by the applicant

To guarantee compliance with the CEDAW obligation, the law should impose an additional requirement, which is for placement agencies to undergo gender-sensitive training, aside from attending a PEOS as earlier mentioned, as a condition for accreditation or licensing.

(Memorandum of Agreement between Public Attorneys Office (PAO) DOLE, POEA, OWWA and some NGOs, dated 2 April 1993);xxx” Retrieved from <http://www.pao.gov.ph/28/Persons-Qualified-for-Legal-Assistance>.

⁴⁸ CEDAW General Recommendation 26, par. 24 (b)(iii).

⁴⁹ CEDAW Concluding Observations, par. 22.

Service of Employment Contract

The obligations of both the countries of origin and destination under this section embrace the following:

1. Undertaking measures to respect and protect the human rights of female nationals who migrate for purpose of work (General Recommendation 26, paragraph. 24)
2. Conducting and supporting research, data collection and analysis to identify problems and needs of migrant women (General Recommendation 26, paragraph 23 (c) and General Recommendation 19, paragraph 24(c))
3. Seeking the active involvement of women migrant workers and relevant NGOs in policy formulation, implementation, monitoring, and evaluation (General Recommendation 26, paragraph 23 (b))
4. Entering into bilateral and regional cooperation (General Recommendation 26, paragraph 27 and Concluding Observations of the Philippines, paragraph 21)
5. Implementation of accreditation programs for recruitment agencies (General Recommendation 26, paragraph 24 (c)(ii)).

Full Compliance

Section 4 of RA 8042 provides that the State shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected.

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

- (a) It has existing labor and social laws protecting the rights of workers, including migrant workers;
- (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and

The following indicators were used to determine Philippine compliance with these obligations:

1. Does the law establish implementing measures over illegal recruitment offenses committed within the territory of the State and those outside its territory, when committed by or against its nationals?
2. Does the law ensure that appropriate State agencies fulfill their role in protecting the rights of women migrant workers when it implements its policies and programs?
3. Does the law identify the appropriate agencies to provide support services to illegally recruited persons?
4. Does the law provide for oversight and review mechanisms to make sure that budget is properly utilized and allocated?
5. Are there measures that provide assistance to safeguard the remittances of the migrant workers?
6. Does the law mandate a comprehensive, gender-sensitive, and accessible consular and diplomatic assistance and protection?
7. Are the relevant government agencies and stakeholders mandated by law to conduct research, data collection, and analysis identifying the problems and needs of women migrant workers?

(c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers: Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof. “In the absence of a clear showing that any of the aforementioned guarantees exists in the country of destination of the migrant workers, no permit for deployment shall be issued by the Philippine Overseas Employment Administration (POEA) xxx”

This is in full compliance with the duty to engage in bilateral and regional cooperation as found in General Recommendation 26, paragraph 27 and Concluding Observations on the Philippines, paragraph 21. It is the responsibility of both the countries of origin and destination to

“formulate a gender-sensitive, rights-based policy on the basis of equality and non-discrimination.”⁵⁰

Moreover, RA 8042, as amended by RA 10022 and its IRR, detail the functions and duties of the different government agencies.⁵¹ Section 37-B creates the Congressional Oversight Committee (COC) that sets guidelines and overall framework to monitor, ensure transparency and require the submission of reports from concerned government agencies

Partial Compliance

Formal assistance and cooperation by banking or financial institutions, where women migrant workers can course through their remittances, is indispensable in protecting the rights of migrants. There is a duty imposed on States Parties to establish measures to safeguard remittances.⁵² One of the reports that licensed agencies are required to submit is the remittance of foreign exchange earnings. Failing to do this is an act of illegal recruitment.⁵³ However, reporting of foreign exchange earnings is not sufficient to safeguard the remittances of migrant workers. Provisions should be added to comply with the CEDAW obligation including financial education of women migrant workers and formal assistance and cooperation by banking or financial institutions where can course through their remittances.

This is crucial considering the limited mobility of some migrant women, where most of them have limited mobility. Irregular migrant workers do not have access to the banks because they lack necessary documents to open an account. Limited mobility is a problem even documented workers encounter when their place or work is

as well as submit periodic reports to the President of and Congress on the implementation. The COC is likewise tasked with determining weaknesses in the law and recommending the necessary remedial legislation or executive measures, among others. In Section 2(h), the State recognizes NGOs, trade unions, workers associations, stakeholders and their similar entities duly recognized as legitimate, as partners of the State in cooperation. A similar provision is found in IRR Section 1(h).

not located close to a bank or where laws in place prohibit going to public places including a bank, without a male companion.

Migrant domestic workers may experience society-wide vulnerability in destination countries. They are more vulnerable than other overseas Filipino workers because labour and social laws do not cover them. Within this context, it is the responsibility of the country of destination to ensure that their laws protect the rights of women migrant workers. Countries of destination must ascertain that women migrant workers have the ability to seek redress for violations of their rights.

It is in this light that RA 8042 provisions on diplomatic and consular protection must be in place to address the precarious conditions in the workplace, provide recourse options and legal assistance to the migrant worker upon termination of employment. Such protection should include quality support services available to women migrants, including timely provision of interpreters, medical care, counselling, legal aid and provision of shelter or safe passage home, when needed.

Specifically, one of the most common violations of RA 8042 is of Section 6, (i), which is the substitution “to the prejudice of the worker, employment contracts approved and verified by the DOLE

⁵⁰ CEDAW General Recommendation 26, par 23 (a).

⁵¹ The functions and duties of the different government agencies are found in the following:
Department of Foreign Affairs, Sec. 23 (a); Department of Labor and Employment, Sec. 23 (b);
POEA, Sec. 23 (b.1.); Overseas Workers' Welfare Administration, Sec. 23 (b.2); DOH, Sec. 23 (c) and LGUs, Sec. 23 (d).

⁵² General Recommendation 26, par. 24 (f).

⁵³ Philippines, RA 10022, Sec. 6(h).

from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the DOLE. The Department of Foreign Affairs (DFA) is “mandated to formulate and implement policies and programs to promote and protect the rights and welfare of Filipino migrants, and provide consular and legal assistance to overseas Filipinos in distress.” For the DFA to carry out its mandate effectively, there is need to increase the budgetary and human resources of consular offices in destination countries. This will enable them to monitor violations, such as contract substitution, which constitute illegal recruitment. In addition, proper training and supervision of diplomatic and consular staff is needed to ensure that they fulfil their role in protecting the rights of women migrant workers abroad.

Section 19(f) of the law establishes the Migrant Workers and Other Overseas Filipinos Resource Center under the jurisdiction of the Philippine Embassy in countries where there are large concentrations of Filipino migrant workers. This is operationalized under IRR Rule X, Section 18(g). One of the functions of the Resource Center is to provide gender-sensitive programs and activities to assist the particular needs of women migrant workers. These centers are required to be open for 24 hours daily, including weekends and holidays, to be staffed by Foreign Service personnel. This law should be amended to remove the prerequisite that there must be a large concentration of migrant workers for a Resource Centers to be established.

Instead, it should be available in all countries where there are women migrant workers. If this becomes too costly, then the Consular office should undertake the gender-specific services of these Resource Centers.

There is a need for a mechanism for easier redress of grievances through the consular offices. To protect the migrant workers, they should offer various services such as interpreters, medical care and reproductive health care. Access to adequate shelter and safe passage should also be ensured.

The law should likewise underscore that in places where there are no embassies or consulate offices, Filipino migrant workers should seek the intervention and assistance of national human rights institutions. This is important given that there are OFWs in 238 countries, but the Philippines only has around 90 embassies.

States Parties undertake the obligation to conduct and support research, data collection and analysis to identify problems and needs of migrant women.⁵⁴ Using the indicator, “Are the relevant government agencies and stakeholders mandated by law to conduct research, data collection, and analysis identifying the problems and needs of women migrant workers?” the conclusion is that only partial compliance was achieved.

IRR Rule III, Section 8, paragraph 1, calls for the dissemination, by POEA and DFA, of information on labor and employment conditions, migration realities and other facts as well as adherence of particular countries to international standards of labor, Section 20, paragraph 3, establishes the Shared Government Information System for Migration. The inter-agency committee shall convene to identify existing database shared among member agencies. Even presuming that there is no problem in the implementation of these provisions, and data are collected, the question of whether the data is readily available and accessible remains. The law should thus be amended to require the creation of a database containing all relevant information and a list of services offered by various government agencies as well as those conducted by NGOs. A law mandating the periodic publication of data gathered by government and NGOs will improve dissemination of information on the problem areas and possible solutions that these problems that expose Filipino women migrant workers to abuse and exploitation.

⁵⁴ CEDAW General Recommendation 26, par. 23 (c) and CEDAW General Recommendation 19, par. 24(c).

Return and Repatriation

General Recommendation 26, paragraph 24 (h), and General Recommendation 19, paragraph 16 require countries of origin to facilitate the return of women migrant workers free of coercion or abuse.

The legal indicators used to scrutinize compliance to the CEDAW of responsibilities specific to states of origin were as follows:

1. Does the law ensure that adequate protective mechanisms from reprisals by recruiters, employers or former spouses are available to returning migrant workers?
2. Are specific measures and procedures to be undertaken by the appropriate government agencies in place to facilitate the return of women migrant workers?
3. Does the law provide for a mechanism for the repatriation and assistance of women migrant workers in areas with armed conflict?
4. Are there clear and efficient programs in place intended to secure the proper reintegration of women migrant workers?
5. Are these programs gender-sensitive?
6. Are the reintegration programs comprehensive and rights-based?

Responsibility to Return and Repatriate Full Compliance

States parties to CEDAW should ensure that women who wish to return to their countries of origin are able to do so free of coercion.⁵⁵ The vulnerability of migrant women who wish to return home may be exacerbated by earlier violations committed by employers such as retention of their travel documents or by restrictions imposed by the host country on the ability of migrant women to move about freely or engage in social interaction within the state.

In the second paragraph of Section 15, the OWWA and other agencies are responsible for the repatriation

of workers in case of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency. IRR Rule XIII, Section 5 on emergency repatriation, operationalizes this. IRR Rule III, Section 7 requires the DFA to issue travel advisories to notify the travelling public regarding the peace and order situation in a specific destination, without prejudice to reimbursement by the responsible principal or agency within 60 days from notice. It is in this particular circumstance that the law is sufficient.

Partial Compliance

Repatriation and the expenses attendant thereto are meticulously catalogued in RA 8042. Section 15 of RA 8042 consigns to the agency that recruited or deployed the migrant worker the primary responsibility of repatriating that worker. All costs attendant to repatriation shall be charged to the recruitment agency. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not be responsible for the repatriation of the worker or his or her belongings. All costs attendant to repatriation borne by the OWWA

may be charged to the Emergency Repatriation Fund provided in the Act, without prejudice to the OWWA requiring the agency/employer/insurer or the worker to reimburse the cost of repatriation.⁵⁶ Moreover, IRR Rule XIII, Section 9 prohibits the imposition of bonds and deposits by the recruitment agency to guarantee performance under the contract or repatriation.

⁵⁵ CEDAW General Recommendation 26, par 3.

⁵⁶ IRR Rule XIII, Sec. 7 .

Despite these provisions, repatriation appears to be limited to termination of employment. There are other cases where, despite the effectivity of the employment contract, repatriation is necessary. The law should include repatriation procedures in cases where there is a violation of labor laws by the employer or where the women migrant workers is abused or is a victim of any unlawful activity. Emergency repatriation, apart from cases where there is war, epidemics, or calamities, should be provided for in the law.

Another instance of partial compliance is where mandatory repatriation is called for. The repatriation of women migrant workers is the primary responsibility of the agency that recruited the worker, per Section 15, shall shoulder the costs. If the termination of the employment is the fault of the worker, then the agency shall not be responsible for the worker's repatriation. IRR Rule XIII, Section 2, paragraph 3, further provides that: "Every contract for overseas employment shall provide for the primary responsibility of the principal or employer and agency to advance the cost of plane fare, and the obligation of the worker to refund the cost thereof in case his/her fault is determined by the Labor Arbiter." In countries where there is a need to secure an exit visa, the principal or employer shall be primarily responsible for securing the same at no cost to the worker.⁵⁷

Repatriation is mandatory under Section 16 where the migrant worker is underage. Furthermore,

Services and Enforcement Regimes

In analyzing compliance with the duty to provide services upon repatriation, the following CEDAW-based legal indicators were used:

1. Are there clear and efficient programs in place intended to secure the proper reintegration of women migrant workers?
2. Are these programs gender-sensitive?
3. Are the reintegration programs comprehensive and rights-based?
4. Are legal services available to assert money claims arising from breach of contracts and violations of migrant workers' rights?

the license of the responsible agency shall be automatically revoked and a fine of PhP500,000 to PhP1,000,000 shall be imposed on it. Mandatory repatriation and automatic revocation of the agency license should likewise extend to women migrant workers who are abused by their employers or who are victims of labor law violations in the county of destination, regardless of the women migrant workers age. The law should mandate the cooperation of the Consular services, POEA, the DFA, and the agency.

States Parties must provide comprehensive socio-economic, psychological and legal services aimed at facilitating reintegration of women.⁵⁸ Before these services can be carried out successfully, foreign service officers and other government representatives should have undergone Gender Sensitivity Training. Considering that most of the officers are men, women victims of illegal recruitment and other acts of exploitation and violence hesitate to raise their concerns and talk about their predicament and this uncertainty can be overcome when the persons providing counselling are gender-sensitive.

Proper monitoring upon return of migrant women for protection against any and all forms of exploitation is likewise required.⁵⁹ Moreover, the Magna Carta of Women mandates government to promote skills and entrepreneurship development of returning women migrant workers in order for them to avail of employment opportunities.⁶⁰

5. Are the persons who will be held liable for violations of migrant workers laws and the extent of their liability clearly identified?
6. Are there efficient enforcement mechanisms provided by law?

⁵⁷ IRR Rule XIII, Sec. 2, paragraph 2.

⁵⁸ CEDAW General Recommendation 26, par. 24 (i).

⁵⁹ Id. par. 24(h).

⁶⁰ Philippines, RA 7610, Sec 23 (c).

Full Compliance

For claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino migrant workers, RA 10022 provides that the liability of the principal/employer and the recruitment or placement agency for any and all claims shall be joint and several.⁶¹ Money claims or damages that may be awarded to the workers are charged against the performance bond that was filed by the recruitment/placement agency. In *ATCI Overseas Corporation et al. v. Echin*,⁶² the court explained that:

”In providing for the joint and solidary liability of private recruitment agencies with their foreign principals, RA 8042 precisely affords the OFWs with a recourse and assures them of immediate and sufficient payment of what they sue them.”⁶³

Under the duty to provide diplomatic and consular protection, General Recommendation 26 paragraph 24 provides that: ”Where States parties have specific obligations under customary international law or treaties such as the Vienna Convention on Consular Relations, those obligations must be carried out in full in relation to women migrant workers.” Section 22 of RA 8042 zeroes in on enforcement mechanisms under international and regional human rights

Partial Compliance

Women migrant workers must be able to realize valid money claims arising from breach of contracts and violations of their rights. In compliance with the State’s duty to ensure availability of legal and administrative assistance⁶⁶ there must be a system of liability that would ensure the satisfaction of their claims.

According to RA 8042, as amended:
”Section 10, paragraph 2 - The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable

systems. It vests in the DFA authority to assess “avenues of redress under international and regional human rights systems that are available to Filipino migrant workers who are victims of abuse and violation and... pursue the same on behalf of the victim if it is legally impossible to file individual complaints.” It shall fully apprise the Filipino migrant workers of the existence and effectiveness of such legal options.

Another area where there is full compliance with the CEDAW obligation to provide legal aid to women migrant workers for the protection of their rights, through the courts. RA 8042 identifies the venue for filing a criminal action arising from illegal recruitment with the trial court of the province or city where the offense was committed or where the offended party actually resides.⁶⁴ Furthermore, Labor Arbiters of the National Labor Relations Commission exercise the original and exclusive jurisdiction over money claims including claims for actual, moral, exemplary and other forms of damages.⁶⁵ The law in identifying the courts and quasi-judicial bodies as the proper venue and jurisdiction for these cases, facilitates the filing and prosecution of the case so that a wronged migrant worker can vindicate his or her rights.

for all money claims or damages that may be awarded to the workers. If the agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.”

⁶¹ Philippines, RA 8042, as amended by RA 10022, Sec. 10.

⁶² Philippines, General Register No. 178551, 11 October 2010.

⁶³ The law states “joint and several” liability, which is contract law, is the same as “solidary liability.” There is no such thing as a “joint and solidary” liability, which is the term the Supreme Court uses unfortunately in its decision.

⁶⁴ Philippines, RA 8042, Sec. 9. Venue.

⁶⁵ *Id.*, Sec. 10.

⁶⁶ CEDAW General Recommendation 26, par. 24 (f).

RA 8042 affords the OFWs with recourse and assures them of immediate and sufficient payment of their just claim. The problem however is in Section 10, paragraph 5, which states that:

“In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, The worker shall be entitled to full reimbursement of his placement fee and the deductions made with interest at 12% per annum, plus salaries for the unexpired portion of his employment contract for 3 months for every year of the unexpired term, whichever is less.”

In the case of *Serrano v. Gallant Maritime Services, Inc.*⁶⁷ the Supreme Court declared as unconstitutional the clause “for three months for every year of the unexpired term, whichever is less.” It was deemed to violate the equal protection clause⁶⁸ under the Constitution considering that illegally dismissed local workers are guaranteed, under the Labor Code, reinstatement with full backwages in contrast to the payment of only three months collectible backwages under Section 10. The Court concluded that: “The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.”

In the case of *Yap v Thenamaris Ship Management*,⁶⁹ the Court reiterated that “to rule otherwise would be iniquitous to petitioner and other OFWs, and would, in effect, send a wrong signal that principals/

employers and recruitment/manning agencies may violate an OFWs security of tenure which an employment contract embodies and actually profit from such violation based on an unconstitutional provision of law.” Hence, Section 10 of RA 8042 should be amended to conform to the minimum standard provided in the Labor Code.

Section 17 of RA 8042, as amended, and IRR Rule X, Section 14 establishes the National Reintegration Center for OFWs (NRCO), tasked to provide the mechanism for reintegration into Philippine society. It is a one-stop center that will address the multi-faceted needs of OFW returnees and their families. Its functions are enumerated in Section 18 and IRR Rule X, Section 15. Section 23(b.2) of the law that mandates the OWWA to formulate and implement welfare programs for OFWs and their families while they are abroad and upon their return.

Although it recognizes the “multi-faceted” needs of the repatriates, there are no gender-sensitive programs mentioned. Neither is a rights-based approach required in planning and carrying out reintegration programs. The law should be amended to include this. The NRCO should likewise have programs catered to women migrant workers like family relations, local job opportunities, counseling, and support groups. The NRCO should be given monitoring functions with respect to the effectiveness of its programs as well as the regularity of their conduct.

VII. CEDAW-Based Legal Review of Anti-Trafficking Laws

Compliance with Legal Indicators

Using the CEDAW legal indicators, particular sections of RA No. 9208, as amended by RA 10364 or “The Expanded Anti-Trafficking in Persons Act of 2012,” were assessed. In addition, RA No. 10158,⁷⁰

was referred to in the light of the RA 9208 definition of prostitution.

The indicators used for this part of the legal review were the following:

⁶⁷ Philippines, General Register No. 167614, 24 March 2009.

⁶⁸ Sec. 1, Art. III of the Constitution provides: Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

⁶⁹ Philippines, General Register No. 179532, 30 May 2011.

⁷⁰ Philippines, RA 10158, An Act Decriminalizing Vagrancy, Amending for this Purpose . Article 202 of Act No 3815, as amended, Otherwise Known as the Revised Penal Code. 27 March 2012.

1. Does the legal definition of trafficking include all forms of trafficking in women, both citizens and aliens?
2. Is the trafficking of alien women defined as a crime in the law?
3. Does the law protect the identity and privacy of trafficked persons?
4. Are trafficked persons exempt from prosecution?
5. Is the prosecution of trafficking cases effective?
6. Is a complaint on trafficking dismissed automatically if the trafficked person desists from continuing with the case?
7. Does the law establish jurisdiction over trafficking offenses committed within the territory of the State and those outside its territory, when committed by or against its nationals?
8. Are trafficked persons entitled to claim for compensation for damages suffered?
9. Does the law require for the rehabilitation or recovery and reintegration services of trafficked persons?
10. Does the law provide for economic alternatives for victims of exploitation (e.g. sustainable jobs)?
11. Does the law identify appropriate agencies to provide support?

Full Compliance

With the advancements in technology and means of transportation, trafficking in persons is as complicated as it is globalized. Thus a comprehensive definition of the term “trafficking” is necessary to embrace all forms of trafficking. RA 9208, as amended by RA 10364, prohibits trafficking and defines trafficking to include a whole range of acts.

Under Section 3(a) thereof, “Trafficking in Persons” is defined as: “...the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim’s consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as ‘trafficking in persons’ even if it does not involve any of the means set forth in the preceding.”

The acts that constitute trafficking can be a collection of these various acts or doing one act of obtaining, hiring, providing, offering, transporting, transferring, maintaining, harboring, or receiving a trafficked person. In the case of *People v Lalli*,⁷¹ the Court held that:

“Trafficking in Persons under Sections 3(a) and 4 of RA 9208 is not only limited to transportation of victims, but also includes the act of recruitment of victims for trafficking. In this case, since it has been sufficiently proven beyond reasonable doubt, as discussed in Criminal Case No. 21930, that all the three accused (Aringoy, Lalli and Relampagos) conspired and confederated with one another to illegally recruit Lolita to

⁷¹ Philippines, General Register No. 195419, 12 October 2011.

become a prostitute in Malaysia, it follows that they are also guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons committed by a syndicate under RA 9208 because the crime of recruitment for prostitution also constitutes trafficking.”

RA 9208 as amended likewise identifies all means for the commission of the crime of trafficking. Although the element of force is indicative of trafficking, the definition allows for other means including “taking advantage of the vulnerability of the person.” The law furthermore defines the purpose of trafficking to include various forms of exploitation. Hence, women who are offered to prisoners or brought to military camps as sexual commodities or recruited in evacuation sites, though externally bereft of signs of physical force, coercion or violence, do fall under the definition of trafficked persons since the crime was committed by taking advantage of their vulnerability.

Using the indicator: “Does the legal definition of trafficking include all forms of trafficking in women, both citizens and aliens?” full compliance by the law with CEDAW was determined. The definition looks at the acts, means and purpose to constitute trafficking in women as a crime and does not limit the scope of the law on the basis of nationality of the trafficked person. This broad definition is

Partial Compliance

The laws are only partially compliant with CEDAW in the areas of prosecution of trafficking cases, enforcement regimes,

Prosecution of Trafficking Cases

The purposes for which trafficking is done is clearly laid out by the law and include “exploitation or the prostitution of others and other forms of sexual

reinforced by Section 19, which permits an alien trafficked person to stay as long as necessary to effect the prosecution of offenders. It states that:

“Trafficked Persons Who are Foreign Nationals. – Subject to the guidelines issued by the Council, trafficked persons in the Philippines who are nationals of a foreign country shall also be entitled to appropriate protection, assistance and services available to trafficked persons under this Act: Provided, That they shall be permitted continued presence in the Philippines for a length of time prescribed by the Council as necessary to effect the prosecution of offenders.”

The law protects the identity and privacy of trafficked persons⁷² and provides for procedures for the protection of trafficked persons and witnesses from potential retaliation or intimidation. Since trafficking in persons is a grave felony as defined by Article 9 of the Revised Penal Code, trafficked persons who are “testifying or about to testify before any judicial or... before any investigating authority” are thus entitled to the witness protection program provided under RA 6981.⁷³ This “preferential entitlement” is one of the amendments to RA 9208 provided in Article 18 of RA 10364.

Based on the legal indicators of the CEDAW-based legal review, the above-mentioned provisions, the local laws merited full compliance with CEDAW.

compensation for damages suffered and services available to trafficked persons.

exploitation, forced labor, slavery and slavery-like practices, and removal or sale of organs.” Once a person proves that he/she is a trafficked person,

⁷² Section 7, RA 9208, As Amended, on Confidentiality.

⁷³ Philippines, RA 6981, An Act Providing for A Witness Protection, Security and Benefit Program and for Other Purposes (1991).

the law exempts him/her from prosecution. The relevant provision is Section 17 of RA 9208, as amended, which states that:

“Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking...or in obedience to the order made by the trafficker in relation thereto.”

The law further says that the consent of the victim to the criminal act is irrelevant. This is important given that under these oppressive circumstances the victim could not have exercised his/her own volition. In addition, the second paragraph of Section 17-C on Immunity from Suit, Prohibited Acts and Injunctive Remedies states that:

“The prosecution of retaliatory suits against victims of trafficking shall be held in abeyance pending final resolution and decision of criminal complaint for trafficking.”

Despite these provisions, the laws are not fully compliant with CEDAW given that the last paragraph of Section 17 says that:

“Victims of trafficking for purposes of prostitution as defined under Section 4 of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law.”

RA 10158⁷⁴ amended Article 202 of the Revised Penal Code by decriminalizing vagrancy but kept the gender-biased definition of prostitutes as “women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.” Juxtaposed with RA 9208, as amended, a category of prostituted women is created since they are not considered as trafficked persons. It should be noted that RA 10364 does not make any distinction as to the sex of the prostitute if he or she is a victim of trafficking.⁷⁵

The Inter-Agency Council Against Trafficking (IACAT), created by government to ensure recovery, rehabilitation and reintegration of trafficked persons into the mainstream of society, explains this classification as one reflecting the difference

between prostituted women and “freelance adult prostitutes”. They would not be considered women trafficked for the purpose of prostitution because no one is controlling their actions or prostituting them in any way, nor sharing in their earnings from the sexual services that they render. Hence, they are not victims of trafficking in persons since the second element is absent and are therefore, not entitled to immunity from suit under the Anti-Trafficking in Persons law. This negates the reality of constrained agency where the women’s capacity to act independently and make their own choices is limited by their economic and social situation, ethnicity, customs and other factors.

Section 8 of RA 9208, as amended, is germane to prosecution of trafficking cases:

Section 8. Initiation and Prosecution of Cases. –

- (a) Initiation of Investigation. – Law enforcement agencies are mandated to immediately initiate investigation and counter-trafficking-intelligence gathering upon receipt of statements or affidavit from victims of trafficking, migrant workers, or their families who are in possession of knowledge or information about trafficking in persons cases.
- (b) Prosecution of Cases. – Any person who has personal knowledge of the commission of any offense under this Act, such as the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking.
- (c) Affidavit of Desistance. – Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private prosecutors are directed to oppose and manifest objections to motions for dismissal.

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

⁷⁴ Philippines, RA 10158,, An Act Decriminalizing Vagrancy, Amending for this Purpose Article 202 of Act No 3815, As Amended, Otherwise Known as the Revised Penal Code (2012).

⁷⁵ Philippines, RA 10364, Sec. 3 (c), Prostitution-refers to any act, transaction,, scheme or design involving the use of a person by another, for (2013).

This provision on the initiation and prosecution of a trafficking case is laudable. However, there is no provision for courts to set up arrangements for non-face-to-face proceedings, such as video conferencing, in cases where the trafficked person's safety or health is at risk. Recourse may be had though to Section 15, Rule 119 of the Revised Rules of Criminal Procedure⁷⁶ which allows for testimonial examination of an unavailable prosecution witness. The Court however, held in *Harry Go v People and Highdone Company Ltd.*,⁷⁷ held that this had to take place before the court where the case was pending and a court which allows otherwise gravely abuses its discretion.

Where trafficked persons or their parents execute an Affidavit of Desistance, it is not sufficient that the law provides for non-dismissal of the case. There is a positive duty of government to pursue it even in the absence of victim's testimony, for as long as the elements of the crime are established. The law requires proof that the prohibited acts enumerated in Section 4⁷⁸ of RA 9208 as amended, were done for the "purpose to exploit." Since this could be difficult to establish without the victim's testimony, Courts should allow for direct or indirect or circumstantial evidence such as the traffickers' contemporaneous and extemporaneous acts, or otherwise provide a

⁷⁶ Sec. 15. Examination of witness for the prosecution. – When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

⁷⁷ CEDAW General Recommendation 185527, 7 July 2012.

⁷⁸ Sec. 4. Acts of Trafficking in Persons. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

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

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under RA No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage.

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation.

(e) To maintain or hire a person to engage in prostitution or pornography.

(f) To adopt persons by any form of consideration for exploitative purposes or to facilitate the same for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.

(g) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.

(h) To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person.

(i) To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive or adopt a child to engage in armed activities in the Philippines or abroad.

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

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

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

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

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

(2) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(3) The use, procuring or offering of a child for the production and trafficking of drugs.

(4) The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals.

(l) To organize or direct other persons to commit the offenses defined as acts of trafficking under this Act.

specific remedy in the event the victim's testimony cannot be obtained.

The Philippines is likewise partially compliant with CEDAW in the enforcement regime. The indicator that is useful here is whether the law grants domestic courts jurisdiction over trafficking offenses.

RA 9208, as amended, grants Philippine courts jurisdiction over the offense committed within the country's territory and those, committed abroad when committed by or against Filipinos. It likewise provides for the venue where an action may be filed:

“Section 9. Venue. – A criminal action arising from violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the trafficked person actually resides at the time of the commission of the offense: Provided, that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.”

Consistent with the general rule that the courts of the place where the crime is committed acquires authority to hear and try the case, Section 26-A⁷⁹ allows for the exercise of extra-territorial jurisdiction only under particular circumstances:

Section 26-A. Extra-Territorial Jurisdiction. – The State shall exercise jurisdiction over any act defined and penalized under this Act, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, the crime being a continuing offense, having

Compensation for Damages Suffered

Are trafficked persons entitled to claim compensation for damages suffered? The law provides that victims may pursue their claims for compensation and damages in a separate civil action.⁸¹ There is no specific provision for the award of damages in case of failure to reserve the right to file a separate civil action, although it may be presumed that the civil action is deemed instituted

been commenced in the Philippines and other elements having been committed in another country, if the suspect or accused:

- (a) Is a Filipino citizen; or
- (b) Is a permanent resident of the Philippines; or
- (c) Has committed the act against a citizen of the Philippines.

No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the Philippines, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Secretary of Justice.

The government may surrender or extradite persons accused of trafficking in the Philippines to the appropriate international court if any, or to another State pursuant to the applicable extradition laws and treaties.

These provisions notwithstanding, there is merely partial compliance with CEDAW since RA 10364 did not amend Article 26 of RA 9208. The law provides that the DOJ, in consultation with the DFA, shall “endeavour to include the offense of trafficking in persons among extraditable offenses.”⁸⁰ The language of the law could have been stronger to make this an obligation of results by the State and impress on it the duty to enter into the necessary extradition treaties and bilateral agreements.

with the criminal case. Likewise, when the trafficker claims that he/she has no assets, there is no remedy available in law for the trafficking victims.

Section 14 of RA 9208 provides for the confiscation and forfeiture, “in favor of the government”, of the proceeds and instruments derived from trafficking of persons. Under Section 15, these confiscated

⁷⁹ Philippines, RA 9208.⁸⁰ Id., Sec. 26

⁸¹ Id., Sec. 13.

amounts shall be placed in a trust fund under the management of the Inter-Agency Council Against Trafficking⁸² and shall be “used exclusively for programs that will prevent acts of trafficking.”

Services Available to Trafficked Persons

Does the law require for rehabilitation/recovery and reintegration services for trafficked persons? Section 23 of RA 9208 provides for compulsory services for trafficked persons to achieve these objectives. It mandates concerned government agencies to make available the following services to trafficked persons:

- (a) Emergency shelter or appropriate housing
- (b) Counseling
- (c) Free legal services which shall include information about the victims’ rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person
- (d) Medical or psychological services
- (e) Livelihood and skills training
- (f) Educational assistance to a trafficked child.

Section 24. Other Services for Trafficked Persons

- (a) Legal Assistance. – Trafficked persons shall be considered under the category “Overseas Filipino in Distress” and may avail of the legal assistance created by RA 8042, subject to the guidelines as provided by law.
- (b) Overseas Filipino Resource Centers. – The services available to overseas Filipinos as provided for by RA 8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.
- (c) The Country Team Approach. – The country team approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons insofar as the promotion of their welfare, dignity

and fundamental rights are concerned. These proceeds confiscated from the traffickers should likewise be available to satisfy claims for compensation by victims.

and fundamental rights are concerned.

Section 25. Repatriation of Trafficked Persons.

- The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.”

From these provisions, it can be seen that the laws seek to provide the whole gamut of services to trafficked persons. Though legal and medical assistance for trafficking victims are directed to be given for free, the laws should require training of judicial and law enforcement officials, prosecutors, immigration officials, social workers and health providers on anti-trafficking laws. There is an urgent need for training in the appropriate and gender-sensitive way of advising trafficked persons to ensure that they are not discriminated against. There is still discrimination especially against those trafficked for sexual exploitation and hospitals are not sufficiently oriented about the matter. Furthermore, it is not enough that the law mandates that medical or psychological services be “made available”. Instead, like it did for legal services, the law should have required that medical services be given for free, especially in public hospitals.

The laws on anti-trafficking should likewise be part of the regular curriculum of the Mandatory Continuing Legal Education for Lawyers as well as the Judicial Academy of the Philippines’ training program for judges. Law already mandates counseling services to trafficked persons but again, the quality of counseling must be guaranteed by the law.

It is laudable though that the IACAT has entered into a memorandum with the IBP where the latter agreed to provide free legal services to victims of trafficking.

As regards the duty to provide for economic alternatives for victims of exploitation, the only thing provided by the laws is for the IACAT to:

⁸² Philippines, RA 9208, Sec. 20.

“xxx

(d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;

(h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;xxx”

Likewise, rehabilitation/recovery and reintegration services require the creation of sustainable jobs. The responsibility for

reintegration might be better placed with the DOLE. Section 16 of RA 9208, as amended, limits the mandate of DOLE in ensuring the “strict implementation and compliance with the rules and guidelines relative to the employment of persons locally and overseas.” At present, reintegration is solely with the Department of Social Welfare and Development (DSWD), which shall “implement rehabilitative and protective programs for trafficked persons.” To be meaningful, rehabilitation services for the reintegration of trafficked persons, involves a realistic budget. Therefore, a PhP10,000 financial support for victims cannot be considered a strategic reintegration program.

No Compliance

The CEDAW legal indicators used to review the laws on prostitution were as follows:

1. Are women in prostitution exempt from prosecution or any form of involuntary detention?
2. Is the act of procuring persons for prostitution penalized?
3. Is the act of knowingly benefitting from the prostitution of others penalized?
4. Does the law provide for the protection of the identity and privacy of victims of exploitation of prostitution?
5. Does the law identify the appropriate agencies to provide support services to persons who are victims of prostitution?
6. Does the law require the establishment of refuges or shelters for victims of exploitation of prostitution?
7. Does the law mandate clearly the responsibilities of State agencies in addressing prostitution?

The response to all of these indicators is “No.” The conclusion reached is that the Philippine government is non-compliant with CEDAW obligation to remove all discriminatory measures pertaining to women in prostitution. Section 17 of the Anti-Trafficking Law classifies prostituted women into “victims of trafficking for purposes of prostitution” and those who are not. The law protects the identity and privacy of trafficked persons, but because it does not consider all prostituted women as trafficked,

only those who prove that they are trafficked have a right to protection of identity and privacy.

The law puts the burden of proof on the person claiming that she is a trafficked person, instead of placing the onus on the persons doing the prohibited acts. Thus if a woman files a case against the persons who trafficked her but fails to prove it, the law does not exempt her from prosecution. RA 10158, Section 1, paragraph states that:

“Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.”

The act of procuring persons is not penalized. Only the prostituted woman, not her procurers or pimps, are held liable in any way.

Because RA 10158 refers to trafficking and does not consider all prostitutes exploited in prostitution, there is no law and no comprehensible services for victims of prostitution. The law does not mandate any State agency to address violations of the rights of prostituted women or to create viable economic alternatives for them.

Recommendations

Access to Justice

Compliance with CEDAW necessitates promulgation of laws that provide legal remedies and complaints mechanisms and make resort to courts and other systems of redress within reach. This means that laws have to be repealed or amended when these pose a hindrance for women migrant workers to access justice.

1. Philippine laws should provide arrangements for non-face-to-face proceedings, such as video conferencing, in cases where the trafficked person's safety or health is at risk even in cases not involving children.
2. Prosecution of illegal recruiters and traffickers must be intensified by a law that extends the jurisdiction of Philippine courts and the application of Philippine law to crimes committed by illegal recruiters outside the Philippines if any of the acts constituting illegal recruitment occurs in another jurisdiction but involving Filipino citizens. Since a crime is an assault against the peace and order of a state and not just a violation of the rights of a particular

individual, the general rule is that the applicable law is the law of the place of the commission of the crime. However, there are exceptions to the territoriality principle. One such exception is found in Article 2 of the Revised Penal Code that applies, under specific situations, Philippine criminal law even if the crime was committed outside of the territory of the Philippines. Among these are where the offense is the forgery or counterfeiting of Philippines currency or securities issued by our government even when the forgery was done elsewhere; there were acts that took place elsewhere in connection with the introduction in the Philippines of such currency and securities; and where a crime against national security is committed. This provision should be amended to include the commission of any of the acts enumerated in Section 6 of RA 8032, as amended by RA 10022, which are an affront to the country's national interest.

Penalties and Claims

Section 14 of RA 9208 provides for the confiscation and forfeiture, "in favor of the government", of the proceeds and instruments derived from trafficking of persons. Compensation and claims for damages filed by trafficked persons, against whom the crime was committed, should likewise be charged against these amounts if the traffickers assert that they have no properties or assets other than the amounts forfeited.

Section 7 of RA 8042 imposes the penalties of imprisonment, payment of fine, automatic

revocation of the agency's license and where the culprit is an alien, deportation without further proceedings. The Migrant Workers Act should be amended to introduce a provision of confiscation and forfeiture of the proceeds of the crime of illegal recruitment. This is different from charges against the performance bond filed by the agency for money claims arising from the employer-employee relationship or claims for damages by the Filipino migrant workers.

Services

Services to trafficked persons must be improved first, by mandating legal services to be free, as the law requires for migrant workers who were illegally recruited or are in distress. In contrast, the Anti-Trafficking Law provides for free medical services but the Migrant Workers Law is silent

about medical services even for victims of abuse or exploitation, unless there is a Migrant Workers and other Overseas Filipino Resource Center established due to the large concentration of Filipino migrant workers. Medical services should be available in public hospitals under both laws.

Training Programs

The law must mandate the integration of Anti-trafficking and Migrant Workers laws in continuing legal, medical and other professional trainings. For instance, the lead government agencies identified in Article 12 of RA 9208, as amended, must spearhead and implement programs for trafficked persons, including capacity building and monitoring. In the present law, rehabilitative and protective programs for trafficked persons are lodged only with the DSWD. It is not enough that the DILG institutes “a systematic information and prevention campaign in coordination with pertinent agencies of

government,” given that the latter is quite different from training programs.

The law should also expressly state that the LGUs shall be responsible for the training of barangay personnel on the promotion of the rights of migrant workers and trafficked persons. Consequently, the DILG must also be mandated to monitor and benchmark compliance by the various local government units of these government programs, including the capacity building of barangay workers.

Information and Education

Under RA 9208, the DSWD is the sole agency tasked with conducting information campaigns in communities and schools. The Department of Education (DepEd) is not among the government agencies mandated to implement information and education programs on anti-trafficking. The IACAT established in Section 20 of RA 9208, does not include the DepEd, which can play a crucial role in developing education and information materials and subject them to regular review to ensure their

effectiveness and relevance. Neither is it part of the inter-agency committee established in Section 20 of RA 8042, as amended by RA 10022.

The responsibility to initiate and sustain a heightened nationwide multi-media-campaign to raise the level of public awareness on the protection and promotion of the rights of migrant workers and trafficked persons should be placed with the Inter-Agency Council and not solely on the DSWD.

Expanding Protection

RA 9208, as amended, provides safeguards for trafficked women, but when read together with RA 10158, these laws constructed a false distinction among persons exploited in prostitution. There have been numerous cases of criminalization, abuse, and torture of persons exploited in prostitution thus trafficked persons should include all persons in prostitution.

This is in breach of Article 6 of CEDAW and paragraph 13 of General Recommendation 19 where “States Parties are required by to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.” Moreover, paragraph 15 of General Recommendation 19 recognizes that “[p]overty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize

them. They need the equal protection of laws against rape and other forms of violence.” CEDAW and the General Recommendations do not make a distinction between or among prostituted women. The distinction in the laws between women trafficked into prostitution and prostituted women are contrived. This classification should be removed, and Article 202 of the Revised Penal Code should thus be repealed.

A less satisfactory alternative is for Congress to further amend Article 202 of the Revised Penal Code to: 1) redefine the term “prostitutes” so that what is punished is the commission of the act, which should not be dependent on the sex of the person doing the acts; and 2) penalize procurers and pimps who perform acts otherwise punished in RA 9208 by virtue of their profiting from the effects of the crime and use of trafficked persons in prostitution.

DEVELOPING CEDAW LEGAL INDICATORS				DETERMINING COMPLIANCE AND RECOMMENDATIONS			
STEP 1 CEDAW Obligations (Articles 6 and 11, CEDAW)	STEP 2 Situation, Issues and Concerns	STEP 3 Points Needed in Law	STEP 4 CEDAW Legal Indicators	STEP 5 Relevant Laws (RA 8042, As Amended by RA 10022 and its Omnibus IRR)	STEP 6 Compliance	STEP 7 Explanation and Comments	STEP 8 Recommendations
MIGRATION OF WOMEN (IN GENERAL)							
Formulation of a gender-sensitive, rights-based policy on the basis of equality and non-discrimination in all aspects of migration of women (<i>General Recommendation 26, paragraph 23(a)</i>).	There is a lack of set standards on what 'gender' is all about and how it is related to migration; human rights instruments (e.g. CEDAW General Recommendation 26); institutional capacity; and law-making in general is not gender-responsive.	A definite set of standards must be incorporated in the law to make it gender-responsive.	Does the law require for the provision of a specific set of standards on migration laws to make it more gender-responsive?	Section 2(b) on the law's declaration of state policies provides that the State shall afford full protection and equality promote full employment and equality of employment opportunities. In Section 2(d) , the State affirms the fundamental equality before the law of women and men and endeavors to apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers. These State policies are reiterated in IRR Section 1(b) and (d).	FULL Compliance	There is formal equality.	Problem is with implementation. May be amended by providing benchmarks or minimum standards to create gender-sensitive criteria in implementing the law so that the government agencies are able to address the de facto situation of women migrant workers.
The repeal of sex-specific bans and discriminatory restrictions on women's migration on the basis of age, marital status, pregnancy or maternity status (<i>General Recommendation 26, paragraph 24(a)</i>). Equal and independent access to travel documents (<i>General Recommendation 26(e)</i>).	The Filipino labor migration has become gendered based on division of labor: women migrant workers are more vulnerable. They are concentrated in domestic work, care work, sales and services.	There should be no discrimination when it comes to opportunities for employment on the basis of gender.	Are women migrant workers given equal access to employment opportunities under the law?	"Gender sensitivity" is defined under Section 3(b) as cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interests of the sexes.	FULL Compliance	The law assures fundamental equality and calls for the State to apply gender-sensitive criteria.	However, we can also provide for a more explicit language in the law by making the imposition of sex-specific bans or any discriminatory restriction on employment unlawful under the law.
Take measures to suppress all forms of gender-based violence (<i>General Recommendation 19, paragraph 24(a)</i>). Adopt a comprehensive definition of irregular recruitment and provide legal sanctions for breach (<i>General Recommendation 26, paragraph 24(c)(i)</i>).	With the increase in number of employment, the number of victims of illegal recruitment continues to rise. There is a need to provide for a comprehensive prohibition on illegal recruitment and its related violations.	The law must be comprehensive enough to cover all forms of illegal recruitment and exploitation of labor.	Is illegal recruitment prohibited? Is the definition of the law comprehensive and flexible enough to cover all forms of gender-based violence?	Section 6 of the law defines illegal recruitment as any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines It also includes the following acts, whether committed by ANY person (licensed or not): (a) To charge or accept any amount greater than that specified in the schedule of fees by the DOLE.	FULL Compliance	The definition of illegal recruitment was amended by RA 10022 which expanded the coverage of acts classified as illegal recruitment.	The definition of the law is comprehensive. The challenge lies in the implementation of the law and the prosecution of the offenses.

DEVELOPING CEDAW LEGAL INDICATORS					DETERMINING COMPLIANCE AND RECOMMENDATIONS		
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MIGRATION OF WOMEN (IN GENERAL)							
				<p>(b) Furnish or publish false notice or information to document in relation to employment or recruitment.</p> <p>(c) To commit any act of misrepresentation for purpose of securing license or authority.</p> <p>(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive employment terms.</p> <p>(e) Influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency.</p> <p>(f) To engage in recruitment or placement in jobs harmful to public health or morality or dignity of the Republic.</p> <p>(g) To obstruct or attempt to obstruct DOLE inspection.</p> <p>(h) To fail to submit report on status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, and such other matters as may be required by DOLE.</p> <p>(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by DOLE from actual signing up to expiration without DOLE approval.</p> <p>(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or be engaged directly or indirectly in management of travel agency.</p> <p>(k) To withhold or deny travel documents from applicant workers for reasons other than those authorized under the Labor Code.</p> <p>(l) Failure to deploy contracted worker without valid reason as determined by DOLE.</p> <p>(m) Failure to reimburse expenses incurred by worker in connection with documentation and processing for purposes of deployment in cases where deployment does not actually take place without worker's fault.</p> <p>(n) To allow non-Filipinos to head or manage a licensed recruitment or manning agency.</p>			

			Illegal recruitment is deemed committed by a syndicate if carried out by a group of 3 or more persons conspiring or confederating with one another						
PRE-DEPARTURE									
Provide community awareness, including the media (<i>General Recommendation 26, paragraph 24(b)(v) and (vi); also General Recommendation 19, paragraph 24(d).</i>)	The stigma experienced by women migrant workers. Lack of support in the community level.	The local government units should be tapped as information and support centers.	Are there programs provided by law promoting community awareness?	<p>IRR Rule XII, Section 1 provides that the LGUs, DILG, in partnership with the POEA, other concerned agencies and NGOs, shall take a proactive stance by being primarily responsible for the dissemination of information to their constituents on all aspects of overseas employment.</p> <p>The LGU shall: (1) launch campaigns against illegal recruitment, (2) provide a venue for the conduct of PEOS on a regular basis, (3) establish OFW help desks and, (4) establish and maintain a database</p> <p>This is in compliance with the role of government agencies under Section 23 of the law.</p> <p>IRR Rule VI, Section 24, paragraph 1 provides that the POEA shall maintain and strengthen its partnership with LGUs, other government agencies and NGOs for the purpose of dissemination of information on all aspects of overseas employment.</p>	FULL Compliance	The law calls for the active participation of LGUs, NGOs and government agencies in the conduct of community awareness.	Law is compliant. Active participation of LGUs, NGOs, and government agencies in the conduct of community awareness is COMPULSORY .		
Provide a list of authentic, reliable recruitment agencies and create a unified information system on available jobs abroad (<i>General Recommendation 26, paragraph 24(b)(ii).</i>)	Women migrant workers still fall victim to unaccredited or unlicensed agencies. Prospective employees do not know where to access relevant information.	Women migrant workers must have ready access to a list of accredited agencies and job advisories abroad. Government agency must maintain an updated database readily available and accessible by the public which would include all relevant information.	Is information on accredited recruitment agencies available to the public?	<p>The main function of POEA, under Section 23(b.1) is the regulation of private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. Also found in IRR Rule X, Section 3.</p> <p>IRR Rule VI, Section 24 provides that the POEA shall continuously provide the concerned entities (LGUs, NGOs, other government agencies) with a list of licensed agencies and entities and information materials.</p> <p>IRR Rule X, Section 4, on hiring through the POEA, a system of recruitment and placement is in place. The POEA shall employ only to countries where the Philippines has concluded bilateral agreements or arrangements.</p> <p>IRR Rule VI, Section 24 provides that the POEA shall continuously provide the concerned entities (LGUs, NGOs, other government agencies) with a list of licensed agencies and entities and information materials.</p>	PARTIAL Compliance	Access to information is necessary. There must be a strictly enforced licensing and registration system reflected in an up-to-date database.	<p>AMEND. The POEA should be mandated by law to maintain an up-to-date database of the accredited recruitment and placement agencies available to the public, preferably over the internet.</p> <p>Information such as office address, contact details, accreditations, black listed agencies, must be included.</p> <p>It should be noted however that although not mandated by the law, POEA produces a list of accredited agencies published online and in print. The POEA has a website and mobile application which can be downloaded on smartphones where one could check on the status of the recruitment and placement agency they are dealing with. POEA also publishes a list of agencies on a quarterly basis.</p>		

DEVELOPING CEDAW LEGAL INDICATORS				DETERMINING COMPLIANCE AND RECOMMENDATIONS			
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<p>Deliver or facilitate free or affordable gender- and rights-based pre-departure information and training programs (General Recommendation 26, paragraph 24 (b)(i)).</p>	<p>The Pre-Departure Orientation Seminar (PDOS) mandated by RA 8042 is not gender-sensitive.</p>	<p>Projects mandated and implemented by the law must be gender-sensitive and gender-responsive.</p>	<p>Does the law provide for a gender-sensitive and gender-responsive pre-departure programs?</p>	<p>Section 23 (b1., paragraph 2) mandates the POEA, together with other law-enforcement agencies, to provide a comprehensive Pre-Employment Orientation Seminars (PEOS) that will discuss topic such as prevention of illegal recruitment and gender-sensitivity.</p> <p>IRR Rule III, Section 8 calls for the POEA to undertake different modes of information dissemination campaigns such as the conduct of the PEOS.</p> <p>IRR Rule IV, Section 23 on the PEOS covers such as legal modes of hiring for overseas employment, rights, responsibilities and obligations of migrant workers, health issues, prevention and <i>modus operandi</i> of illegal recruitment, and gender sensitivity.</p>	<p>PARTIAL Compliance</p>	<p>Emphasis on the content: labor contracts, legal rights, entitlements, redress and grievance process, support measures, general reproductive health, health care information</p> <p>One of the topics to be discussed in the PEOS is gender-sensitivity without any definition on what this is.</p> <p>Also, PEOS is conducted before the scheduled date of departure.</p>	<p>AMEND. The provision on the PEOS must be more specific and provide for minimum mandatory topics to be discussed.</p> <p>Among these are: (1) rights of WMMWs, (2) the <i>de facto</i> situation of women, (3) services available to them, (4) how to respond during emergency situations and (5) relevant labor laws.</p> <p>The PEOS should be made mandatory with separate programs for migrant workers and the recruitment agencies. A regular PEOS for agencies should be made a condition for the issuance of a license.</p> <p>The PEOS system should be done in the following segments; each program sensitive to the needs of the groups:</p> <ol style="list-style-type: none"> 1. Women who plan to pursue employment abroad 2. Women undergoing the placement process 3. Women already placed and have a scheduled date of departure
				<p>Section 2(e) – free access to the courts and quasi-judicial bodies and adequate legal assistance shall NOT be denied to any person by reason of poverty.</p> <p>The act of substituting or altering to the prejudice of the worker, employment contracts approved and verified by DOLE from actual signing up to expiration without the approval of DOLE is an act of illegal recruitment (Section 6(f)).</p>			

<p>Ensure availability of legal and administrative assistance (General Recommendation 26 paragraph 24(f)).</p>	<p>Women migrant workers sign employment contracts without fully understanding the legal consequences of the provisions embodied in the contract.</p>	<p>The implementing government agency should be available for legal consultations.</p>	<p>Does the law ensure the availability of legal and administrative assistance to women migrant workers?</p>	<p>Section 13 provides for a mechanism for free legal assistance for victims of illegal recruitment to be established in anti-illegal branch of POEA and regional offices; also the right to preferential entitlement of the victim of illegal recruitment under the Witness Protection Program.</p> <p>Section 24 creates the Legal Assistant for Migrant Workers Affairs under the DFA, which is primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers as well as OFWs in distress. Among its functions are:</p> <ol style="list-style-type: none"> 1. Issue guidelines, procedures, criteria for legal assistance services. 2. Establish close linkages with DOLE, POEA, and OWWA, and other agencies. 3. Tap assistance of reputable law firms, IBP, other bar associations, legal experts. 4. Administer legal assistance fund for migrant workers. 5. Keep and maintain information system. <p>IRR Rule VI, Section 2 provide for free legal service to victims of illegal recruitment. The LGUs are mandated under IRR Rule XII, Section 1(a) to provide legal assistance to victims of illegal recruitment. Insofar as labor contracts are concerned, the DOLE overseas operating arm shall be the POLO (Philippine Overseas Labor Office) which verifies employment contracts and other related documents.</p> <p>Section 25 creates a legal assistance fund for migrant workers which is used exclusively to provide legal services to migrant workers and overseas Filipino workers in distress (Section 26).</p> <p>Rule II, Section 1(ii) defines an "overseas Filipino in distress" as "An overseas Filipino who has a medical, psycho-social or legal assistance problem requiring treatment, hospitalization, counseling, legal representation as specified in Rule IX of these Rules or any other kind of intervention with the authorities in the country where he or she is found."</p> <p>Rule IX, Section 3 - legal assistance funds shall be used exclusively for payment of attorney's fees to foreign lawyers representing migrant workers facing criminal and labor cases abroad; bail bonds to secure the temporary</p>	<p style="text-align: center;">NO Compliance</p>	<p>There is no provision for free legal services in order to avert a breach of duty or violation of a right. Legal and administrative services should not be available only after a worker has been illegally recruited or when she is in distress. Standard contracts are available under Section 3 Rule II Book V of POEA Rules and Regulations. No such proviso for other job placements.</p>	<p>AMEND. POEA and the DFA should have the main responsibility of providing contract review services that will have the effect of reducing, if not totally avoiding disputes arising from contract interpretation and the like.</p>
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DEVELOPING CEDAW LEGAL INDICATORS				DETERMINING COMPLIANCE AND RECOMMENDATIONS			
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Provide information on methods and procedures for migrating to work for women who wish to migrate independently of recruitment agencies ((General Recommendation 26, paragraph 24(b)(iii)) or via informal channels (Concluding Observations, paragraph 22).	Those who migrate for work abroad without going through a recruitment agency may not be aware of their rights and may not have access to relevant information such as labor laws. POEA has no way of monitoring those who seek employment abroad through informal channels or independent of recruitment agencies.	Protection of direct-hires or those who avail of employment abroad without the intervention of employment agency.	Is there a mechanism for providing assistance and protection to women migrant workers who sought employment independently or via informal channels?	release of workers; and of court fees and other litigation expenses. Although the law covers the rights of migrant workers, the system is focused on hiring through the POEA. IRR Rule II, Section 1(u) defines irregular/undocumented Filipino migrant workers as those: 1. Who acquired passports through fraud or misrepresentation 2. Who possess expired visas or permits to stay 3. Who have no travel documents but have valid 4. Who have appropriate visas, or whose employment contracts were not processed by the POEA or subsequently verified and registered on-site by the POLO, if required by law or regulation IRR Rule X, Section 18(d) – the Migrant Workers and other Overseas Filipinos Resource Center shall provide for the registration of irregular/undocumented workers to bring them within the purview of RA 8042	NO Compliance	Recruitment in the country may either be through (1) Agency hire via licensed recruitment agencies, (2) Government placement, where a foreign government entity courses its hiring through POEA's Government Placement Branch, or (3) Name hires, those able to secure an overseas employment opportunity with an employer without going through any placement agency.	AMEND. The law provides no mechanism for protection or monitoring women migrant workers who found jobs independently or through informal means. Services, especially the PEOS and consular assistance, available under the law for workers hired through an agency or GPB and name hires should likewise be available to those who sought employment through informal channels.
Require recruitment agencies to participate in awareness-raising and training programs with emphasis on specific needs and problems of women (General Recommendation 26, paragraph 24(b)(iv)).	Non-participation of agencies in seminars. Programs are not gender-sensitive.	Gender-sensitive trainings must be a condition for accreditation or licensing. Such trainings should be conducted regularly and not just during the original license application.	Are recruitment agencies mandated to participate in gender-sensitive programs and awareness-raising	The law grants the POEA rule-making authority in determining the licensing requirements for those who wish to operate as a placement agency. Under Rule II of the POEA Licensing Rules , applicants who are qualified and possess none of the disqualifications must submit: 1. Certified copy of the articles of incorporation or of partnership 2. Proof of financial capacity, subject to certain criteria 4. Proof of marketing capability 4. Proof of marketing capability 5. NBI Clearance of all members of the Board, partners, proprietors 6. Verified undertaking by the applicant	NO Compliance	There is no requirement for placement agencies to undergo gender-sensitive training. No provision under the POEA rule.	INSERT A PROVISION requiring, as a condition sine qua non for issuance of license, the placement agencies to undergo or sensitive training and promote gender-specific.

<p>Bilateral and regional cooperation (<i>General Recommendation 26, paragraph 27 and Concluding Observations of the Philippines, paragraph 21</i>).</p>	<p>The Philippines has MOUs and MOAs with other countries but some NGO data have shown that these are not observed. A lot of the migrants still fall prey to contractual migration.</p>	<p>Establish specific implementing measures which oversee compliance with MOAs and MOUs.</p>	<p>Does the law establish implementing measures over illegal recruitment offenses committed within the territory of the State and those outside its territory, when committed by or against its nationals?</p>	<p>Section 4 provides that the State shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:</p> <ol style="list-style-type: none"> 1. It has existing labor and social laws protecting the rights of workers, including migrant workers; 2. It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and 3. It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers. <p>In the absence of a clear showing that any of the aforementioned guarantees exists in the country of destination, no permit for deployment shall be issued.</p> <p>Section 22 mandates the DFA to undertake the necessary initiatives such as promotions, adherence, acceptances of countries receiving Filipino workers to multilateral convention.</p> <p>IRR Rule X, Section 4 provides that the POEA shall deploy only to countries where the Philippines has concluded bilateral agreements or arrangements; provided that such countries shall guarantee to protect the rights of Filipino migrant workers; and provided further that such countries shall observe and/or comply with the international laws and standards for migrant workers.</p>	<p>FULL Compliance</p>	<p>Execution of bilateral agreements with foreign countries remain to be a political question.</p>	<p>The labor policy is to deploy workers to areas where the Philippines maintains diplomatic relations with and where there is a showing of compliance to international labor standards. This is a prudent and necessary policy.</p>
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Undertake measures to respect and protect the human rights of female nationals who migrate for purpose of work <i>(General Recommendation 26, paragraph 24).</i>	There is no document in POEA that shows how gender and women's rights are integrated in the performance of its functions. POEA may have addressed some of the deployment issues but it still needs to incorporate women migrant workers' human rights in its policies and programs.	POEA must adopt regulations integrating gender and women's rights in its policies and programs.	Does the law ensure that appropriate state agencies fulfill their role in protecting the rights of women migrant workers when it implements and its policies and programs?	The law and its IRR provides for a detailed list of functions and duties of the different government agencies: 1. DFA, Section 23(a) 2. DOLE, Section 23(b) 3. POEA, Section 23(b.1) 4. OWWA, Section 23(b.2) 5. DOH, Section 23(c) 6. LGUs, Section 23(d)	FULL Compliance	The law is detailed enough as the functions are enumerated and calls for the cooperation of these entities.	Duties of the different government agencies are sufficiently provided for in the law. If anything, services peculiar to the needs of women migrant workers can be integrated into the law.
	The dilemma faced by POEA with its limited staff is whether to focus more on victim support and protection or interest in court proceedings. As there are only 300 officials and staff, POEA has limited capacity to address and monitor issues faced by migrant workers.	POEA is calling on Congress to provide them with more resources to hire more public servants.	Does the law identify the appropriate agencies to provide support services to illegally recruited persons?	Does the law create the Congressional Oversight Committee with the following functions: 1. Set guidelines and overall framework to monitor/ensure the proper implementation of the law. 2. Ensure transparency and require the submission of reports from concerned government agencies. 3. Approve the budget for the programs of the Oversight Committee and all disbursements therefrom including compensation of all personnel. 4. Submit periodic reports to the President of and Congress on the implementation. 5. Determine weaknesses in the law and recommend the necessary remedial legislation or executive measures. 6. Other necessary duties.	FULL Compliance	One of the functions of the Congressional Oversight is to review the reports submitted by the different government agencies in the implementation of the law.	The creation of the Congressional Oversight complies with the CEDAW obligation.
Establish measures to safeguard remittances <i>(General Recommendation 26, paragraph 24(g)).</i>	Women migrant workers are more vulnerable than others. Do government agencies assist them in their remittances?	Assistance in the process of remittance.	Are there measures that provide assistance to safeguard the remittances of the migrant workers?	One of the reports required by licensed agencies to submit includes that of remittance of foreign exchange earnings. Failing to submit is an act of illegal recruitment (Section 6(h))	Partial Compliance	The law requires licensed agencies to submit reports of foreign exchange earnings which can possibly alert government agencies to possible violations but this is not enough.	AMEND. Reporting of foreign exchange earnings is not enough to safeguard the remittances of migrant workers. Provisions should be added to comply with the CEDAW obligation. Like:

		<p>Information on possible financial machineries for remittances of their families in the Philippines.</p> <p>Projects mandated and implemented by the law must be gender-sensitive and gender-responsive. They should be informed of all available consular services.</p>	<p>Does the law mandate a comprehensive, gender-sensitive, and accessible consular and diplomatic assistance and protection?</p>	<p>The DFA is "mandated to formulate and implement policies and programs to promote and protect the rights and welfare of Filipino migrants, and provide consular and legal assistance to overseas Filipinos in distress."</p> <p>Section 19(f) of the law establishes the Migrant Workers and Other Overseas Filipinos Resource Center under the jurisdiction of the Philippine Embassy in countries where there are large concentrations of Filipino migrant workers. This is operationalized under IRR Rule X, Section 18(g).</p> <p>One of the functions of the Resource Center is to provide gender sensitive programs and activities to assist the particular needs of women migrant workers. Specifically, the Resource Center offers:</p> <ol style="list-style-type: none"> 1. Counseling and legal services 2. Welfare assistance including the procurement of medical and hospitalization services 3. Information, advisory and programs to promote social integration 4. Institute a scheme of registration of undocumented workers to bring them within the purview of the Act 5. Human resource development 6. Gender-sensitive programs and activities 7. Orientation program for returning workers and other migrants. 8. Monitoring of daily situations, circumstances and activities affecting migrant workers and other overseas Filipinos. <p>The Center shall be open for 24 hours daily including Saturdays, Sundays, and holidays to be staffed by Foreign Service personnel.</p>	<p>PARTIAL Compliance</p>	<p>The Resource Center is established only in countries where there are large concentrations of migrant workers.</p> <p>For the DFA to carry out its mandate effectively, there is need to increase the budgetary and manpower resources of consular offices in destination countries.</p>	<p>1. Financial education of women migrant workers.</p> <p>2. Formal assistance and cooperation by banking or financial institutions where women migrant workers can course through their remittances</p> <p>AMEND. Resource Centers should with available in all countries where there are women migrant workers, if the imposition of such Centers is too costly, then the gender-specific services of these Resource Centers should be undertaken by the Consular office itself.</p> <p>Proper training and supervision of our diplomatic and consular staff is needed to ensure that they fulfil their role in protecting the rights of women migrant workers abroad.</p>
<p>Conduct and support research, data collection and analysis to identify problems and needs of migrant women <i>(General Recommendation 26, paragraph 24(i)).</i></p>	<p>Migrant domestic workers are more vulnerable than others because they are not covered by labor and social laws. They are lowest paid or under paid. They have long hours of work and no rest days. They do not have social protection. They are isolated and socially excluded with limited or no access to justice.</p>	<p>The appropriate government agencies should conduct periodic research, reports, and analysis on the status of migration with portions specifically addressing the peculiar needs of women migrant workers.</p> <p>No available data.</p> <p>Analysis and reports are usually undertaken by NGOs.</p> <p>If there are studies or reports, they are not circulated widely enough.</p>	<p>Are the relevant government agencies and stakeholders mandated by law to conduct research, data collection, and analysis identifying the problems and needs of women migrant workers?</p>	<p>IRR Rule III, Section 8, paragraph 1 calls for the dissemination, by POEA and DFA, of information on labor and employment conditions, migration realities and other facts as well as adherence of particular countries to international standards of labor (labor situationer).</p> <p>Section 20, paragraph 3 establishes the Shared Government Information System for Migration. The inter-agency committee shall convene to identify existing databases which shall be declassified and shared among member agencies. These</p>	<p>PARTIAL Compliance</p>	<p>Even presuming that there is no problem in the implementation of these provisions, and data are collected, the question of whether the data is readily available and accessible remains.</p>	<p>AMEND. The law should thus be amended to require the creation of a database containing all relevant information and a list of services offered by various government agencies as well as those conducted by NGOs.</p> <p>A law mandating the periodic publication of data gathered by government and NGOs will improve dissemination of</p>

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				<p>shared databases shall initially include, but not be limited to the following:</p> <ol style="list-style-type: none"> 1. Masterlists of Filipino migrant workers/overseas Filipino classified according to occupation/job category, civil status, by country/state of destination including visa classification 2. Inventory of pending legal cases involving Filipino migrant workers and other Filipino nationals, including those serving prison terms 3. Masterlists of departing/ arriving Filipinos 4. Statistical profile on Filipino migrant workers/overseas Filipinos/tourists 5. Blacklisted foreigners/ undesirable aliens 6. Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with large numbers of Filipinos 7. List of labor and other human rights instruments where receiving countries are signatories 8. A tracking system of past and present gender disaggregated cases involving male and female migrant workers, including minors 9. Listing of overseas posts which may render assistance to overseas Filipinos, in general, and migrant workers, in particular 			<p>information on the problem areas and possible solutions that these problems that expose Filipino women migrant workers to abuse and exploitation.</p>
RETURN AND REPATRIATION							
Facilitation of the return of women migrant workers <i>(General Recommendation 26, paragraph 24(h) and General Recommendation 19, paragraph 16).</i>	Some countries of destination are plagued with armed conflict.	The law should address the need to provide assistance and repatriation of women migrant workers in countries with armed conflict.	Does the law provide a mechanism for the repatriation and assistance of women migrant workers in areas with armed conflict?	Section 15, paragraph 2 calls for the OWWA and other agencies for the repatriation of workers in case of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency. This is operationalized by IRR Rule XIII, Section 5 on emergency repatriation. IRR Rule III, Section 7 requires the DFA to issue travel advisories to notify the travelling public regarding the peace and order situation in a specific destination, without prejudice to reimbursement by the responsible principal or agency within 60 days from notice.	FULL Compliance	The law recognizes the emergency repatriation of migrant workers in areas where there is war, epidemic, disasters or calamities, whether natural or man-made.	The law is sufficient in the sense that it calls for the repatriation of women migrant workers in case of armed conflict and similar emergency situations.

<p>Ensure that women who wish to return are able to do so free of coercion and abuse (General Recommendation 26, paragraph 24(h)).</p>	<p>There are still reports of women migrant workers who wish to return but are not able to because of various circumstances such as abuse by the employer.</p>	<p>Establish measures that are more gender-responsive.</p>	<p>Does the law ensure that adequate protective mechanisms are available to returning migrant workers from reprisals by recruiters, employers or former spouses?</p>	<p>Section 15, paragraph 1 provides that the repatriation shall be the primary responsibility of the agency that recruited or deployed the worker.</p> <p>All costs attendant to repatriation shall be charged to the agency/principal. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation.</p> <p>In all cases where the principal or agency of the worker cannot be identified, cannot be located or had ceased operations, and the worker is in need and without means, the OWWA personnel at the jobsite, in coordination with the DFA, shall cause the repatriation in appropriate cases. All costs attendant to repatriation borne by the OWWA may be charged to the Emergency Repatriation Fund provided in the Act, without prejudice to the OWWA requiring the agency/ employer/insurer or the worker to reimburse the cost of repatriation (IRR Rule XIII, Section 7)</p> <p>IRR Rule XIII, Section 9 prohibits the imposition of bonds and deposits by the recruitment agency to guarantee performance under the contract or her repatriation.</p>	<p>PARTIAL Compliance</p>	<p>Provisions on repatriation appear to be limited to termination of employment. There are other cases where despite the effectivity of the employment contract, repatriation is necessary.</p>	<p>ADD PROVISIONS. The law should include repatriation procedures in cases where there is a violation of labor laws by the employer or where the woman migrant workers is abused or is a victim of any unlawful activity. Emergency repatriation, apart from cases where there is war, epidemics, or calamities, should be provided for in the law.</p>
<p>Facilitation of the return of women migrant workers (General Recommendation 26, paragraph 24(h) and General Recommendation 19, paragraph 16).</p>	<p>Reintegration is still a challenge for women migrant workers. No clear programs for reintegration. Unclear if mandatory.</p>	<p>Communication lines should always remain open for these migrant workers to express their intent to return home and the consular agency should act swiftly and accordingly.</p>	<p>Are specific measures and procedures to be undertaken by the appropriate government agencies in place to facilitate the return of migrant women workers?</p>	<p>Section 16 calls for the mandatory repatriation of underage migrant workers without delay. This responsibility fall to the officers in the foreign service who shall advise the DFA and repatriate the minor immediately. License of the responsible agency shall be automatically revoked and shall be imposed a fine of PhP500,000 to PhP1,000,000.</p> <p>The repatriation of women migrant workers is the primary responsibility of the agency which recruited her, per Section 15, which shall shoulder the costs. But if the termination of the employment is the fault of the worker, then the agency shall not be responsible for her repatriation.</p> <p>IRR Rule XIII, Section 2, paragraph 3 provides that every contract for overseas employment shall provide for the primary responsibility of the</p>	<p>PARTIAL Compliance</p>	<p>The law places it upon the agency the responsibility to shoulder the costs of repatriation. In cases where the termination is because of the fault of the employee, the agency may forward the cost subject to reimbursement. In this regard, at least, the WMMWs can return without being unduly restricted by the costs.</p>	<p>ADD PROVISIONS. Mandatory repatriation should likewise extend to WMMWs who are abused by their employers or who are victims of labor law violations in the county of destination, regardless of the women migrant workers age. Consular services should be sensitive to reports of incidents necessitating the repatriation of WMMWs. The law should mandate the cooperation of the POEA, the DFA, and the agency.</p>

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				principal or employer and agency to advance the cost of plane fare, and the obligation of the worker to refund the cost thereof in case his/her fault is determined by the Labor Arbiter. In countries where there is a need to secure an exit visa, the principal or employer shall be primarily responsible for securing the same at NO cost to the worker (IRR Rule XIII, Section 2, paragraph 2). The procedure for repatriation is detailed in Rule XIII, Section 3 .				
Provide comprehensive socio-economic, psychological and legal services aimed at facilitating reintegration of women (<i>General Recommendation 26, paragraph 24(i)</i>).	Repatriation policy is gender-blind. The repatriation process is not responsive to the recommendation of CEDAW General Recommendation 26. The Philippines still needs to own and use it.	Projects mandated and implemented by the law must be gender-sensitive and gender-responsive.	Are there clear and efficient programs in place intended to secure the proper reintegration of women migrant workers?	Section 17 and IRR Rule X, Section 14 establishes the National Reintegration Center for OFWs (NRCO) tasked to provide the mechanism for the reintegration into Philippine society. It is a one-stop center that will address the multi-faceted needs of OFW returnees and their families. Its functions are enumerated in Section 18 and IRR Rule X, Section 15 :	PARTIAL Compliance	Although it recognizes the "multi-faceted" needs of the repatriates, there are no gender-sensitive programs mentioned. Moreover, the Magna Carta of Women mandates government to promote skills and entrepreneurship development of returning women migrant workers in order for them to avail of employment opportunities (RA 7610, Section 23(c)).	AMEND. The provision should be amended by mandating that the services of the NRCO should be gender-sensitive. There should be programs catered to women migrant workers like family relations, local job opportunities, counseling, and support groups. The NRCO should be given monitoring functions with respect to the effectivity of its programs as well as the regularity of their conduct.	
		The law must provide for more comprehensive measures aimed at facilitating the reintegration of women migrant workers who have returned.	Are these programs gender-sensitive?	1. Develop and support programs and projects for livelihood for the returnees and families. 2. Coordinate with appropriate stakeholders 3. Institute computer-based information system on returning migrant workers accessible to the public. 4. Periodic study and assessment of job opportunities for returnees. 5. Develop and implement other appropriate programs to promote welfare. 6. Maintain internet-based communication system for online registration and interaction with clients. 7. Capacity-building programs for returnees. 8. Research for policy recommendations.				
Proper monitoring upon return of migrant women for protection against any and all forms of exploitation (<i>General Recommendation 26, paragraph 24(h)</i>).	No monitoring services during reintegration. Women migrant workers are not apprised of services available to them for their reintegration.	Monitor service providers to ensure that they do not take advantage of the vulnerability of women returning from abroad.	Are the reintegration programs comprehensive and rights-based?	Section 23(b.2) mandates the OWWA to formulate and implement welfare programs for OFWs and their families while they are abroad and upon their return.				

<p>Ensure availability of legal and administrative assistance (<i>General Recommendation 26, paragraph 24(f)</i>).</p>	<p>Women migrant workers must be able to realize valid money claims arising from breach of contracts and violations.</p>	<p>There must be a system of liability that would ensure the satisfaction of the claim.</p>	<p>Are legal services available to assert money claims arising from breach of contracts and violations of migrant workers' rights?</p>	<p>Section 10, paragraph 2 - The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers, if the agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.</p>	<p>PARTIAL Compliance</p>	<p>RA 8042 affords the OFWs with a recourse and assures them of immediate and sufficient payment of their just claim.</p>	<p>The solidary liability of the principal/employer and the agency greatly as well as the posting of performance bonds aid the satisfaction of money claims by women migrant workers. However, the clause awarding OFW who were unlawfully terminated only three months for every year of the unexpired term has been declared unconstitutional. The law should be amended to remove this clause.</p>
<p>Obligations of States parties under customary international law or treaties must be carried out in full in relation to women migrant workers (<i>General Recommendation 26, paragraph 24</i>).</p>	<p>Enforcement mechanisms must be available.</p>	<p>These enforcement mechanisms must also be efficient.</p>	<p>Are there efficient enforcement mechanisms provided by law?</p>	<p>Section 22 on enforcement mechanisms under international and regional human rights systems. It vests in the Department of Foreign Affairs authority to assess "avenues of redress under international and regional human rights systems that are available to Filipino migrant workers who are victims of abuse and violation and... pursue the same on behalf of the victim if it is legally impossible to file individual complaints." It shall fully apprise the Filipino migrant workers of the existence and effectiveness of such legal options.</p>	<p>FULL Compliance</p>	<p>Redress before international and regional human rights systems is available and with assistance by the government.</p>	<p>The law is compliant with the CEDAW obligation and is reinforced by the assistance given by the government agency concerned.</p>
<p>Ensure that women migrant workers have access to legal assistance and to the courts (<i>General Recommendation 26, paragraph 26 (c)(ii)</i>)</p>	<p>Women migrant workers should be able to access courts to seek redress for violations of their rights.</p>	<p>Rules of procedure should take into account the peculiar needs of the victims.</p>	<p>Are women migrant workers given access to courts for the protection of their rights?</p>	<p>Section 9 identifies the venue for filing a criminal action arising from illegal recruitment with the trial court of the province or city where the offense was committed or where the offended party actually resides. Section 10 - Labor Arbiters of the National Labor Relations Commission exercise the original and exclusive jurisdiction over money claims including claims for actual, moral, exemplary and other forms of damages.</p>	<p>FULL Compliance</p>	<p>The law provides for specific rules on cases involving the rights of women migrant workers.</p>	<p>The law in identifying our courts and quasi-judicial bodies as the proper venue and jurisdiction for these cases, facilitates the filing and prosecution of the case so that a wronged migrant worker can vindicate her rights.</p>

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TRAFFICKING							
Suppress all forms of trafficking in women and exploitation of prostitution of women (Article 6, <i>General Recommendation 19, paragraph 3</i>).	Trafficking is more complicated now because it is more globalized. Reverse trafficking especially in P. Burgos and Makati areas	The definition of trafficking should be broad enough. Criminalize trafficking of foreign women.	Does the legal definition of trafficking include all forms of trafficking in women, both citizens and aliens?	Section 3(a) defines trafficking in persons; it is likewise identifies all means for its commission. Although the element of force is indicative of trafficking, the definition allows for other means including "taking advantage of the vulnerability of the person." The law furthermore defines the purpose of trafficking to include various forms of exploitation. Section 19 which permits an alien trafficked person to stay as long as necessary to effect the prosecution of offenders Section 7 protects the identity and privacy of trafficked persons and provides for procedures for the protection of trafficked persons and witnesses from potential retaliation or intimidation. Trafficked persons who are "testifying or about to testify before any judicial or ... before any investigating authority" are thus entitled to the witness protection program Section 17 provides that once a person proves that she is a trafficked person, the law exempts her from prosecution. Consent of the victim to the criminal act is irrelevant. Section 17-C provides that prosecution of retaliatory suits against victims shall be held in abeyance pending final resolution of criminal complaint. RA 10158 amended Article 202 of the RPC by decriminalizing vagrancy but kept the gender-biased definition of prostitutes as "women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct." Section 8 provides for the initiation and prosecution of cases. Any person who has personal knowledge of the commission of any offense may file a complaint for trafficking. Cases involving trafficking in persons should not be dismissed based on the affidavit of desistance executed by the victims or their parents or legal guardians. Public and private prosecutions are directed to oppose and manifest objections to motions for dismissal.	FULL Compliance	Easter European victims were attended to.	Broad definition is CEDAW-compliant; The definition looks at the acts, means and purpose to constitute trafficking in women as a crime and does not limit the scope of the law on the basis of nationality of the trafficked person. Identity is protected; preferential treatment is one of the amendments to RA 9208. Juxtaposed with RA 9208, as amended, a category of prostituted women who are not considered as trafficked persons is created. This must be abolished. The law qualified those to be protected to those who can prove that they are "trafficked," which is against the law. Hired persons in the streets, among others are criminalized. The purpose to exploit has to be proven. The prosecutors and judges require victim's testimony which is a problem. Victims of indigenous communities are shamed or threatened, thus disallowing them to testify or pursue a case. There are cases wherein the Datu or barangay leader's are recruited.
Effective complaints procedures and remedies (<i>General Recommendation 19, paragraph 24(i)</i>).			Does the law protect the identity and privacy of trafficked persons?		FULL Compliance		
Effective complaints procedures and remedies (<i>General Recommendation 19, paragraph 24(i)</i>). Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation (<i>General Recommendation 19, paragraph 24(i)</i>).			Are trafficked persons exempt from prosecution?		PARTIAL Compliance		
Effective complaints procedures and remedies (<i>General Recommendation 19, paragraph 24(i)</i>). Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation (<i>General Recommendation 19, paragraph 24(i)</i>).	Trafficking cases filed in court are downgraded for lack of evidence on the intent of the recruitment that will facilitate prosecution. Another issue is when the victim decides to leave the country again as a migrant worker and there is nobody left in the Philippines to actively pursue the case.	Interpretation of laws must be guided by the spirit, applied evidence of direct evidence should be accepted in cases like these which can be commenced by determination of contemporaneous and extemporaneous acts Allow prosecution even with the absence of the victim's testimony or participation in the case	Is the prosecution of trafficking cases effective? Is a complaint on trafficking dismissed automatically if the trafficked person desists from continuing with the case?		PARTIAL Compliance		

<p>Effective complaints procedures and remedies (General Recommendation 19, paragraph 24(i)).</p> <p>Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation (General Recommendation 19, paragraph 24(g)).</p>			<p>Does the law establish jurisdiction over trafficking offenses committed within the territory of the State and those outside its territory, when committed by or against its nationals?</p>	<p>Philippine courts have jurisdiction over the offense committed within Philippine territory and those committed abroad when committed by or against Filipinos.</p> <p>Section 9 provides the rule on venue: Where offense was committed, or where any of its elements occurred, or where the victim actually resides at the time of the commission</p> <p>Section 24 provides that the DOJ, in consultation with the DFA, shall endeavor to include the offense of trafficking among extraditable offenses</p>	<p>PARTIAL Compliance</p>	<p>Problems arise when committed outside of the state.</p>	<p>The language of the law could have been stronger to make this an obligation of results by the State and impress on it the duty to enter into the necessary extradition treaties and bilateral agreements.</p>
<p>Effective complaints procedures and remedies (General Recommendation 19, paragraph 24(g)).</p> <p>Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation (General Recommendation 19, paragraph 24(g)).</p>			<p>Are trafficked persons entitled to claim for compensation for damages suffered?</p>	<p>Section 13 –when victim institutes a separate civil action for civil damages, she shall be exempt from the payment of filing fees</p> <p>Section 14 provides for confiscation and forfeiture, in favor of government, proceeds and instruments derived from trafficking. These shall be placed in a trust for the IACAT (Section 15)</p>	<p>PARTIAL Compliance</p>	<p>When trafficker claims no assets, the victims could not claim anything. Also no confiscation of proceeds from trafficking yet.</p> <p>In informal justice systems, compensation means withdrawal of criminal case.</p>	<p>Add provision allowing the award of damages in case of failure to reserve the right to file a separate action.</p> <p>There must be a remedy in case the trafficker claims that he has no assets.</p>
<p>Effective complaints procedures and remedies (General Recommendation 19, paragraph 24(i)).</p> <p>Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation (General Recommendation 19, paragraph 24(g)).</p>	<p>Access to justice must not be limited to legal remedies/redress.</p>	<p>Provide for rehabilitation services for victims</p>	<p>Does a law require for the rehabilitation or recovery and reintegration services of trafficked persons?</p>	<p>Section 23 provides for the compulsory services for trafficked victims which include emergency shelter, counseling, free legal services, medical or psychological services, livelihood and skills training, educational assistance to trafficked child</p> <p>Section 24 lists other services like legal assistance, access to overseas Filipino Resource Centers.</p> <p>Section 25 mandates DFA and DOLE for repatriation of trafficked persons</p>	<p>PARTIAL Compliance</p>	<p>Allocation of P100,000 for victims is not a strategic reintegration program. CSOs were not involved in formulating recovery and reintegration programs given huge budgets. No transparency in budgeting.</p>	<p>Require training of judicial and law enforcement officials, social workers, and health providers on anti-trafficking laws. Training must be gender-sensitive.</p> <p>Medical legal services must be free, especially in public hospitals.</p> <p>Lawyers associations should be identified as obligatory providers of free legal services. This should also be included in MCLC.</p>
<p>Effective complaints procedures and remedies (General Recommendation 19, paragraph 24(i)).</p> <p>Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation (General Recommendation 19, paragraph 24(g)).</p>			<p>Does the law provide for economic alternatives for victims of exploitation (e.g. sustainable jobs)?</p>	<p>Section 21(d) coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;</p> <p>(h) – formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, TESDA, CHED, LGUs and NGOs.</p>	<p>PARTIAL Compliance</p>	<p>There are no sustainable jobs from DOLE.</p>	<p>No substantial compliance as rehabilitation/recovery requires creation of sustainable jobs. This might be better placed with DOLE, not just with DSWD.</p> <p>To be meaningful, rehabilitation services involves a realistic budget.</p>

DEVELOPING CEDAW LEGAL INDICATORS				DETERMINING COMPLIANCE AND RECOMMENDATIONS			
STEP 1 CEDAW Obligations (Articles 6 and 11, CEDAW)	STEP 2 Situation, Issues, and Concerns	STEP 3 Points Needed in Law	STEP 4 CEDAW Legal Indicators	STEP 5 Relevant Laws (RA 9208 As Amended by RA 9422 and RA 10364 and its Omnibus IRR)	STEP 6 Compliance	STEP 7 Explanation and Comments	STEP 8 Recommendations
<p>Effective complaints procedures and remedies (<i>General Recommendation 19, paragraph 24(i)</i>).</p> <p>Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation (<i>General Recommendation 19, paragraph 24(g)</i>).</p>					NO Compliance	<p>The law qualified those to be protected to those who can prove that they are “trafficked”, which is against the law. Fired persons in the streets, among others are criminalized.</p> <p>For example, the DFA would tell us they have too many cases. Instead of the government CSOs are the ones that attend to these programs, together with partner organizations in other countries.</p>	<p>PhP10,000 budget is not enough. There must be transparency.</p> <p>COMMENTS OF D.R. PAJARITO:</p> <p>While admittedly, this is among the weaknesses identified in preventing re-trafficking of victims, the IACAT is however intensifying its efforts in implementing its programs and sustainable activities, and empowering the local government units to provide more opportunities for victims of trafficking in their respective area of jurisdiction. IACAT has successfully facilitated referrals to its members and partners for the reintegration of the victims of trafficking. Several victims of trafficking were provided jobs, life- skills trainings, financial assistance in addition to the Ph10,000 assistance given by the DSWD.</p>
			<p>Are women in prostitution exempt from prosecution? Their identities protected?</p> <p>Does the law identify appropriate agencies to provide support?</p>	<p>The law protects the identity and privacy of trafficked persons, but because it does not consider all prostituted women as trafficked persons, then only those who prove that they are trafficked have a right to protection of identity and privacy.</p> <p>Because RA 10158 refers to trafficking and does not consider all prostitutes exploited in prostitution, there is no law and no comprehensible services for victims of prostitution.</p>			<p>Onus must be on the persons doing the prohibited acts. Remove the discriminatory measures pertaining to women in prostitution.</p> <p>Act of procuring persons for prostitution must be penalized.</p> <p>An agency must address violations of the rights of prostituted women.</p>

REFERENCES

International Conventions and Instruments

CEDAW General Recommendations 19. Violence Against Women (1993).

CEDAW General Recommendation 25 On article 4, paragraph 1, On temporary special measures, (2004).

CEDAW General Recommendations 26, On Women Migrant Workers, (2008).

Concluding Comments of the Committee on the Elimination of Discrimination against Women, 36th Session 07-25 August 2006.

Convention against Transnational Organized Crime (2000).

Convention on the Rights of the Child (1989).

International Convention on the Elimination of All Forms of Discrimination Against Women (1979).

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (1999).

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2003).

National Laws

Philippines, 1987 Constitution.

Philippines, Act 3815, Revised Penal Code (1930) Guidelines on Legal and Aid governing the Establishment and Preparation of Legal Aid Offices in all Chapters of the Integrated Bar of the Philippines.(1974).

Philippines, Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (2010)

Philippines, Republic Act 6981, An Act Providing for a Witness Protection Security and Benefit Program and for Other Purposes (1991).

Philippines, Republic Act 8042, 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 (1995).

Philippines, Republic Act 8353, An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No 3815, as Amended, Otherwise Known as the revised Penal Code, and for Other Purposes (1997).

Philippines, Republic Act 9208, An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children Establishing the Necessary Institutional Mechanics for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations and for Other Purposes (2003).

Philippines Republic Act 9262, An Act Defining Violence Against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties therefore, and for other purposes. (2004).

Philippines, Republic Act 9422, An Act to Strengthen the Regulatory Functions of the Philippine Overseas Employment Administration (POEA), Amending for this Purpose RA 8042 Otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995 (2007).

Philippines, Republic Act 9710, Magna Carta of Women (2009).

Philippines, Republic Act 9710 Implementing Rules and Regulations (2010).

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

Philippines, Republic Act 10158, An Act Decriminalizing Vagrancy, Amending for this Purpose Article 202 of Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code”, (2012). Republic Act No. 10364, “An Act Expanding, Entitled “An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanics for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations and for Other Purposes”

Philippines, Revised Rules of Criminal Procedure (2002).

Related Literature

Cheema, McNally, and Popovski eds., *Governance and Institutional Issues in Migration*”, *Cross Border Governance in Asia: Regional Issues and Mechanisms, Trends and Innovations in Governance Series*, Tokyo: United Nations University Press, 2011.

Do Our Laws Promote Gender Equality?: A Handbook for CEDAW-based Legal Reviews, UN Women, 2013.

Feliciano, Myrna S. *Emerging Women’s Rights Issues: Review of Current Legal Remedies Related to Sex Trafficking*. *Philippine Law Journal* 79 (2004): 596-638. Web. 19 September 2014.

Fernandez, Mary Rose *Commodified Women*. *Peace Review* 9.3 (1997): 411. *SocINDEX with Full Text*. Web. 19 September 2014.

Guevarra, Anna Romina. *Managing ‘Vulnerabilities’ And ‘Empowering’ Migrant Filipina Workers: The Philippines’ Overseas Employment Program*. *Social Identities* 12.5 (2006): 523-541. Academic Search Complete. Web. 19 September 2014.

Padilla, Clara Rita A. “A Call For Philippine Implementation Of Women’s Rights Under CEDAW.” *Ateneo Law Journal* 52.4 (2008): 765-803. Academic Search Complete. Web. 19 September 2014.

Setyawati, Dinita *Assets or Commodities? Comparing Regulations of Placement and Protection of Migrant Workers In Indonesia and The Philippines*. *Austrian Journal of South-East Asian Studies / Österreichische Zeitschrift Für Südostasienwissenschaften* 6.2 (2013): 264-280. Academic Search Complete. Web. 19 September 2014.

Social Protection For Women Migrant Workers: A Comparative Study Among Sending Countries / Social Protection for women migrant workers: A Comparative Study among Sending Countries.” (n.d.): *AGRIS*. Web. 19 September 2014.

Sta. Maria, Amparita S. *Analyzing Philippine Legal and Policy Frameworks for the Protection of Women Migrant Workers from HIV/AIDS* *Ateneo Law Journal* 50.1 (2005): 47-128. Academic Source Complete. Web. 19 September 2014.

The Philippine-Belgian Pilot Project Against Trafficking In Women / A Consolidated Report By The Ateneo De Manila University And The Women’s Education, Development, Productivity And Research Organization, Inc. Makati City: Ateneo Human Rights Center, 1999., 1999. *Rizal Library’s OPAC (Online Catalog)*. Web. 19 September 2014.

Van Impe, Kristof. *People For Sale: The Need for A Multidisciplinary Approach Towards Human Trafficking*. *International Migration* 38.3 (2000): 113. Academic Search Complete. Web. 19 September 2014.

Wuiling, Cheah. *Assessing Criminal Justice And Human Rights Models In The Fight Against Sex Trafficking: A Case Study Of The ASEAN Region.*(2006): OAlster. Web. 19 September 2014.

Cases

Agency Corp et al. v NLRC, Philippines, General Register. No. 119320. 13 March 1998.

ATCI Overseas Corporation et al. v Echin, Philippines, General Register No. 178551. 11 October 2010.

Harry Go v People and Highdone Company Ltd., Philippines, General Register 185527. 07 July 2012.

Seagull Maritime Corp., et al. v. Balatongan, et al., Philippines, General Register No. 82252. 23 February 1989.

Serrano v. Gallant Maritime Services, Inc., Philippines, General Register No. 167614. 24 March 2009.

Yap v Thenamaris Ship Management, Philippines, General Register No. 179532. 30 May 2011.

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