

FOA and labour rights in the context of International Labour Migration





Session snapshot

► Session 17

- Overview of the overseas employment program of the Philippines, laying down the legal and policy framework for the governance of international labour migration as grounded in international human rights and labour standards.
- Discussion on key labour migration facts and trends, mostly based on the 2018 National Migration Survey (NMS).
- Highlight decent work and human rights issues confronting overseas Filipino workers (OFWs) before it closes the session with important points on the challenges and opportunities in exercising FOA in the migrant sector.



Session 17

- Optional discussion points on topics available about the formation of a transnational union of women migrant domestic and care workers and the role of migrant worker resource centers (MWRCs) in strengthening the right to organize. The facilitator is encouraged to utilize participatory strategies such as Q&A in the delivery of the session while it is given generally in a lecture format.



Estimated
duration:
90 minutes



Required materials:
**Usual presentation
equipment and
accessories**





Facilitator's guide points



1. Introduce Session 17 with a brief note on the international principle of FOA and the right to collective bargaining as fundamental labour rights that also apply to migrant workers regardless of legal, economic and social status. Use the Overview content as guide for further opening remarks. The participants can also be asked if they have relatives currently working overseas.



2. Share the session objectives to the participants.





3. Facilitate the rest of the session by using the Discussion Notes as a guide, with a view to introducing, adding or modifying certain contents as deemed necessary. At the minimum, however, tackle the following topics:

- The Philippine Overseas Employment Program
- Key Labour Migration Facts and Trends
- Human and Labour Rights Issues among OFWs
- Challenges and Opportunities in Exercising FOA among OFWs



Facilitator's guide points



4. Be mindful of the Key Learning Points as internal guide on messaging.



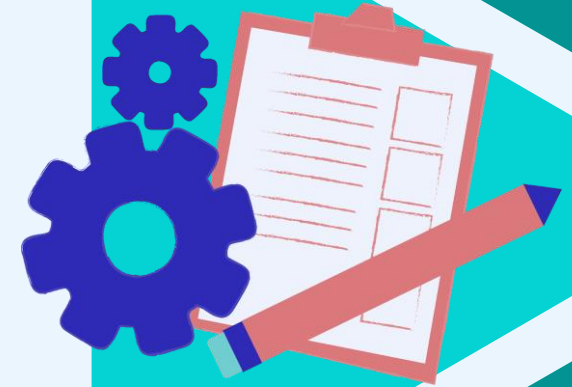
5. Deliver the optional exercise contained in the discussion point on the decent work and human rights issues and challenges.



6. Occasionally engage the participants. Checking whether they have any questions or comments is one handy method of engagement.



7. Conduct the recap exercise at the end of the session.





Learning objectives



Be familiar with the historical development, the legal-regulatory framework, and key facts and trends relative to the Philippine overseas employment



Identify the key decent work and human rights issues affecting OFWs across the migration cycle



Understand the challenges in exercising FOA and the right to collective bargaining, alongside other civil and political rights



Determine key strategies in strengthening the exercise of FOA and the right to collective bargaining among OFWs, particularly in restrictive destination countries and regions



Highlight notable case stories of organizing among Filipino migrant workers.



Key learning points



International labour migration has been a key feature of the development landscape of the Philippines.

Except for 2020–2022, when deployments dropped due to COVID-19 restrictions, annual deployments of OFWs grew exponentially after the 1974 policy framework was established. Many OFWs have worked in low-wage, high-risk jobs, such as domestic work (mainly women) and fishing on foreign vessels (mainly men).



The overseas employment program of the Philippines **expanded with the increased role and participation of the private recruitment industry in facilitating jobs offered abroad.**



However, **issues and challenges regarding the rights and welfare of OFWs have also multiplied**, leading to several reforms in the legal-regulatory infrastructure for labour migration governance from recruitment to reintegration.



Cases of maltreatment/ mistreatment, contract violations or substitutions, and abuse, **sexual harassment, rape, and other forms of violence (particularly against women migrant domestic workers)**, have been persistent, specifically in select destination countries that are rather slow or inconsistent in changing or overhauling their poor or discriminatory protection regimes involving migrant workers.



On top of the labour and human rights challenges faced by OFWs and **other migrant workers, restrictions to the exercise of civil and political rights including FOA and the right to organize** further hamper their ability to seek solutions to improve their work and living conditions overseas.



Some host countries simply limit these rights by law while others lack the effective mechanisms to operationalize the exercise of these rights in practice.

Without the opportunity to organize, it will be difficult to pursue collective actions among workers towards achieving decent work.



Definition of key terms



Access to justice

The ability of people to **seek and obtain a remedy through formal or informal institutions of justice**, and in conformity with human rights standards



Labour Migration

Movement of persons from one State to another, or within their own country of residence, for the purpose of employment

Illegal Recruitment

Any act procuring workers, and includes referring, contracting 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. *(emphases added)*



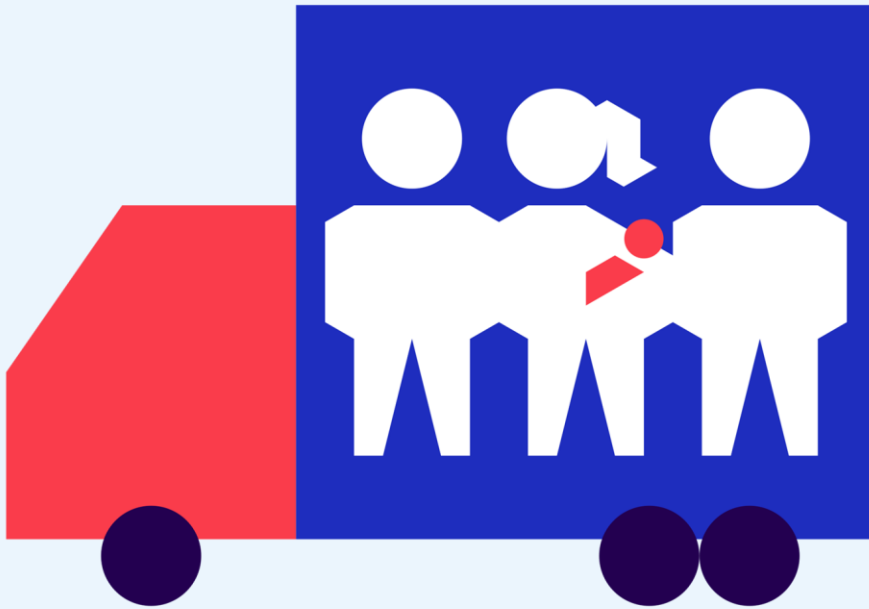


Migrant Worker

A person who **migration from one country to another with a view to being employed** otherwise than on his own account and includes any person regularly admitted as a migrant for employment

Trafficking in persons

The recruitment, transport, transfer, harboring, or receipt of people—by force, coercion, fraud, or abuse of power—for the purpose of exploitation (e.g., sexual exploitation, forced labor, slavery, or organ trade), with or without the victim's consent, across or within national borders.





Violence and harassment

In the world of work, it refers to **a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.**



Session proper

Session 17



Overview of Philippine Overseas Employment Program



Key Labour Migration Facts & Trends



Decent Work & Human Rights Issues Among OFWs

Session 17



Challenges and Opportunities in Exercising FOA and the Right to Organize among OFWs



The Pinay Care workers Transnational (PINAY): Organizing women migrant workers beyond borders

Overview of Philippine overseas employment program



Philippine Overseas Employment Program

**Spanish
Colonial Era**

**Manila-Acapulco
Galleon Trade**
during the Spanish
Colonial Era

1970s to present

Enactment of Presidential Decree (P.D.) 442 or the Philippine Labor Code of 1974.

- most systematized and organized administration of the outmigration of Filipino workers occurred
- temporary stop-gap measure partly addressing local employment challenges
- paved the way for the **increased role of the private sector in the facilitation of overseas employment for Filipino workers**

Overview of Philippine overseas employment program



Philippine Overseas Employment Program

Spanish
Colonial Era

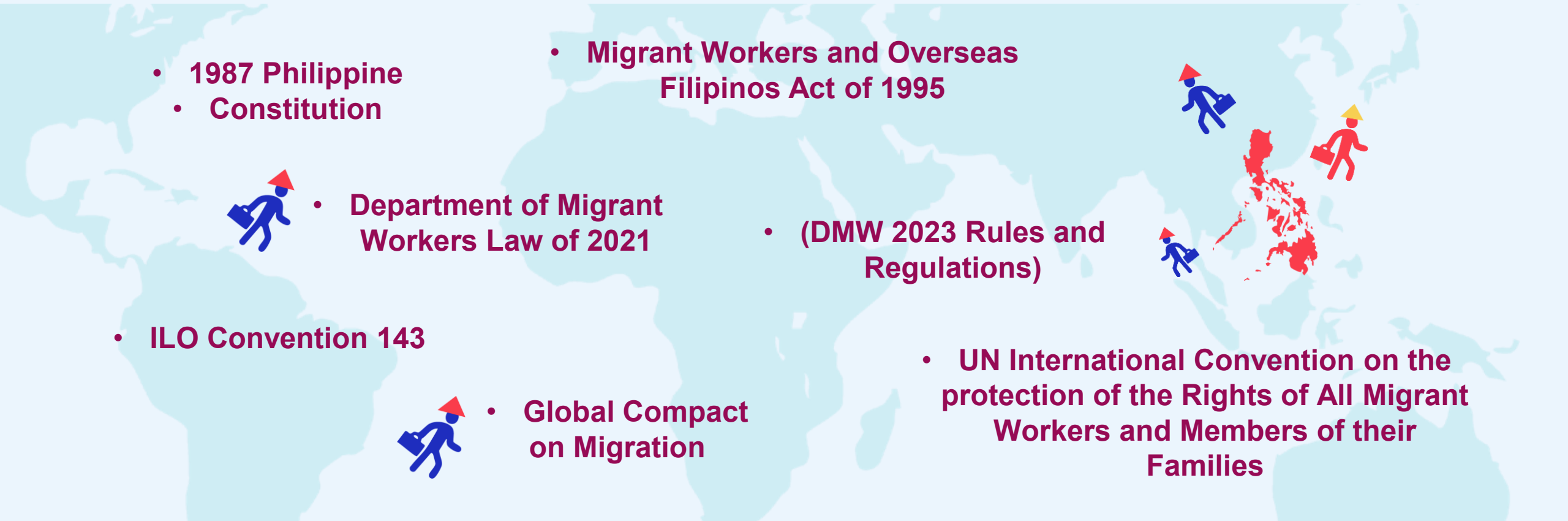
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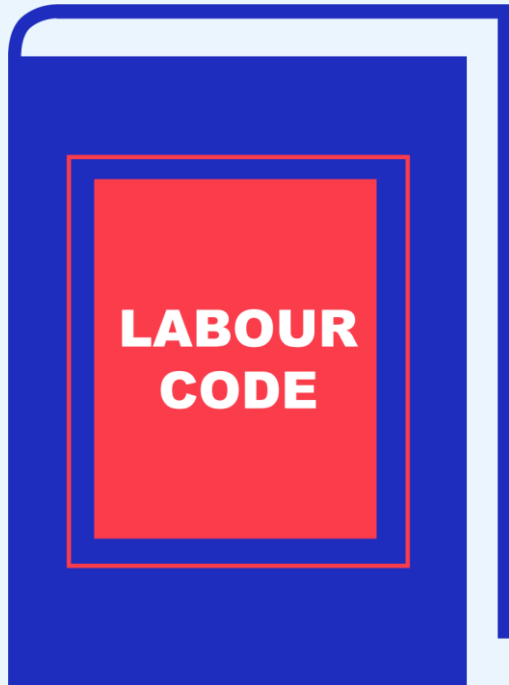
Enactment of Presidential Decree (P.D.) 442 or the Philippine Labor Code of 1974.

- most systematized and organized administration of the outmigration of Filipino workers occurred
- temporary stop-gap measure partly addressing local employment challenges
- paved the way for the **increased role of the private sector in the facilitation of overseas employment for Filipino workers**
- Bureau of Employment Services (BES), the Overseas Employment Development Board (OEDB), and the National Seamen Board (NSB)

Key legal and policy bases for the overseas employment of Filipino workers

- 
- 1987 Philippine Constitution
 - Migrant Workers and Overseas Filipinos Act of 1995
 - Department of Migrant Workers Law of 2021
 - (DMW 2023 Rules and Regulations)
 - ILO Convention 143
 - Global Compact on Migration
 - UN International Convention on the protection of the Rights of All Migrant Workers and Members of their Families

1987 Philippine Constitution



- State shall **protect labor**: local & overseas, organized & unorganized
- **Promote:**
 - Full employment
 - Equality of opportunities
 - Ensure access to social justice & economic opportunity

R.A. 8042 & amendments (R.A. 10022, 2010) Migrant Workers and Overseas Filipinos Act of 1995



- Strengthened protection and welfare
- **Salient features:**
 - Full disclosure of employment terms
 - Selective deployment
 - Legal assistance & repatriation
 - Compulsory insurance paid by employer
 - Establishment of NRCO (National Reintegration Center for OFWs)
 - Ban on excessive interest on loans

Department of Migrant Workers (DMW) – R.A. 11641 (2021)



- government institution or agency mainly responsible for all aspects of international labour migration governance in the Philippines from recruitment to reintegration. It consolidates the functions and powers of several offices under this function

Department of Migrant Workers (DMW) – R.A. 11641 (2021)

- Offices included under this:



Philippine Overseas
Employment Administration
(POEA) of DOLE



International Labor
Affairs Bureau (ILAB)
of DOLE



Office of the Undersecretary
for Migrant Workers Affairs
(OUMWA) of DFA



National Reintegration
Center for OFWs (NRCO)
of OWWA

Department of Migrant Workers (DMW) – R.A. 11641 (2021)

- Offices included under this:



Office of the Social
Welfare Attache
(OSWA) of DSWD

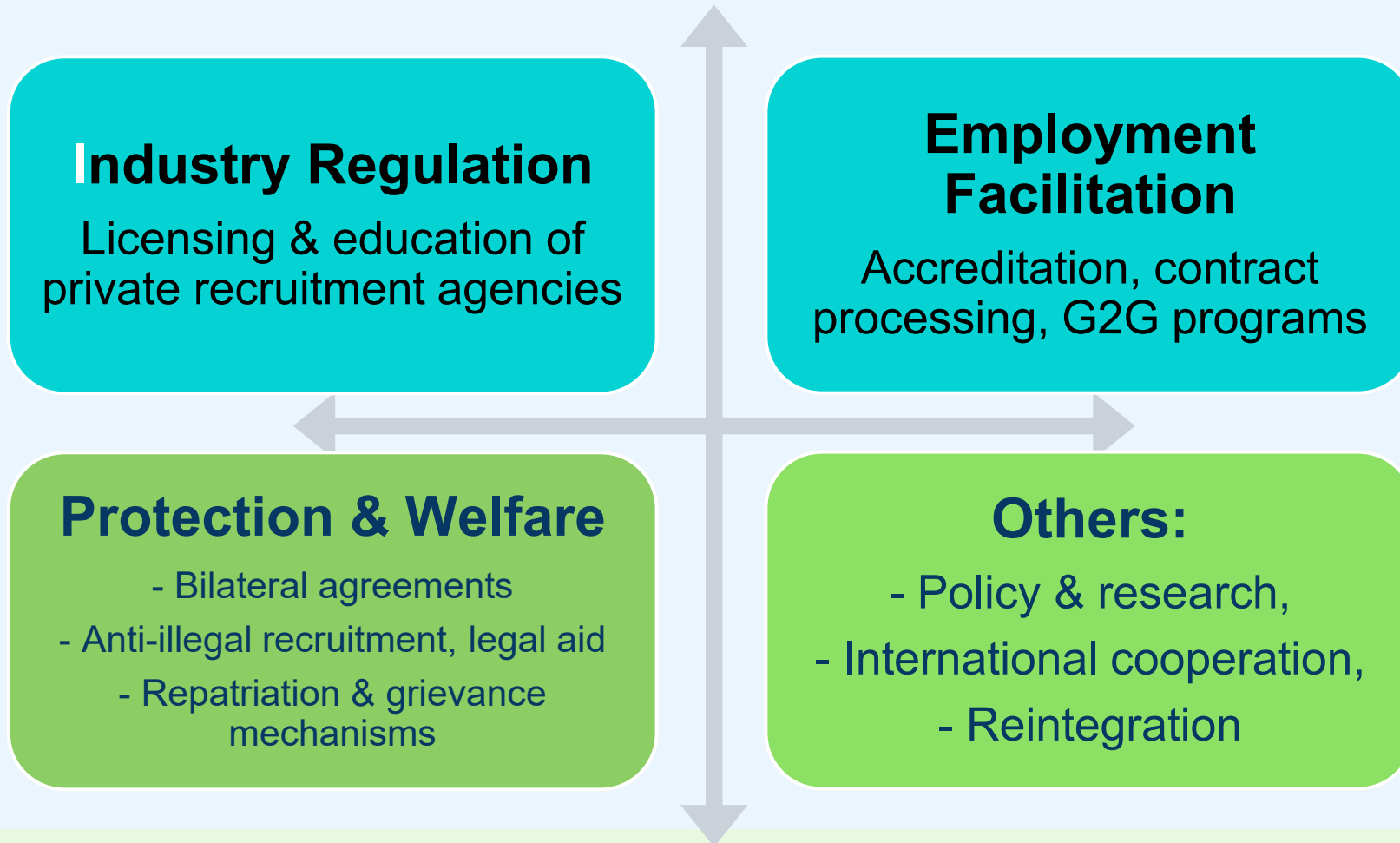


National Maritime
Polytechnic
(NMP) of DOLE



Philippine Overseas Labor
Offices (POLO) of DOLE

Key functions of DMW



DMW 2023 Rules and Regulations



- 2023 DMW Rules and Regulations in the land-based sector is a policy measure that both specifies the mechanisms and processes in the recruitment and employment of landbased OFWs and updates its counterpart 2016 POEA Rules and Regulations.
- A **key feature in the 2023 DMW Rules and Regulations is the attempt to simplify and rationalize the list of so-called “20 Mortal Sins”** or those recruitment offenses or violations considered as serious.

Offenses under DMW 2023 Rules and Regulations

- 01** Deploying a minor or a worker below the minimum age requirement (*modified and upgraded*)
- 02** Engaging in acts of gross misrepresentation for the purpose of securing a license or renewal thereof, or giving false information or fictitious documents in relation to a matter that is material to the approval of the license application or renewal (*modified*)
- 03** Engaging in an act of reprocessing workers through a job order that pertains to: (1) non-existent work; (2) positions different from the actual overseas work or for positions different from the actual visa category, except when covered by an Affidavit of Allowable Visa Usage XXX; or (3) a different principal/employer whether or not accredited with the Department

Offenses under DMW 2023 Rules and Regulations

- 04** Engaging in an act of reprocessing workers through a job order that belongs to another agency (*new*)
- 05** Engaging in the recruitment or placement of workers in jobs declared as harmful to life, public health, morality, human dignity, or the dignity of the Republic of the Philippines
- 06** Transferring or changing ownership or control of a single proprietorship licensed to engage in overseas employment
- 07** Becoming an officer or member of the Board of any corporation or partnership engaging directly or indirectly in the management of a travel agency by an of the Proponents

Offenses under DMW 2023 Rules and Regulations

- 08** Deploying workers whose employment and travel documents were not processed by the Department
- 09** Allowing a non-Filipino citizen to head or manage, directly or indirectly, a licensed recruitment agency
- 10** Allowing a foreign recruitment agency, principal, or employer to own and/or participate in the management and/or operations of a licensed Philippine recruitment agency
- 11** Deploying a worker recruited by a non-Filipino citizen (*new*)
- 12** Allowing illegal agents, non-employees, or representatives or employees not duly acknowledged by the Department, to conduct recruitment and placement activities on behalf of the agency (*upgraded*)

Offenses under DMW 2023 Rules and Regulations

- 13** Charging or collecting placement fees for deployment to countries where the prevailing system, as determined by the Department, does not allow the charging or collection of placement and recruitment fees either by law, policy or practice
- 14** Passing on to the worker the fees and costs that are solely chargeable to the principal/ employer (*upgraded*)
- 15** Refusing or unreasonably failing to act on any request for assistance leading to death, psychological impairment, sexual abuse or maltreatment of the worker (*new*)
- 16** Substituting or altering, to the prejudice of the worker, a processed employment contract without the approval of the Department

Offenses under DMW 2023 Rules and Regulations

- 17** Imposing a compulsory and exclusive arrangement whereby an OFW is required to undergo health examinations, training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities, or persons or medical clinics, as the case may be, unless the cost is shouldered by the principal or licensed recruitment agency (*upgraded*)
- 18** Imposing a compulsory and exclusive arrangement whereby an OFW is required to avail of a loan from a specifically designated institution, entity, or person (*upgraded*)
- 19** Committing all other acts constituting Trafficking in Persons as defined by R.A. Nos. 8042, 10022, and other relevant laws (*new*)
- 20** Directly or indirectly committing acts constituting graft and corrupt practices as defined by the Revised Penal Code, R.A. Nos. 3019 and 6713, and other relevant laws, involving any official, employee, or personnel of the Department (*new*)

Global Instruments

- This national legal-regulatory framework providing for the systems, mechanisms and procedures to manage international labor migration in the Philippines is anchored in and pursuant to a set of international standards and norms on migration governance.
- Chief of these global instruments are outlined below:

UN International
Convention on the
Protection of the
Rights of All
Migrant Workers
and Members of
their Families

ILO Migration for
Employment
Convention
(Revised), 1949
(no.97)

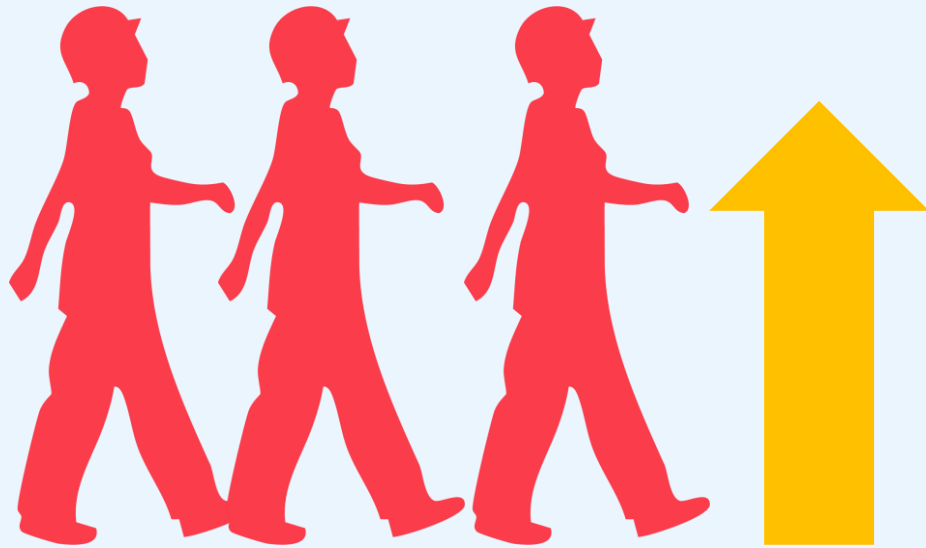
ILO Migrant
Workers
(Supplementary
Provisions)
Convention, 1975
(No. 143)a

Global Compact
for Safe, Orderly
and Regular
Migration (GCM)

Key labour migration facts & trends



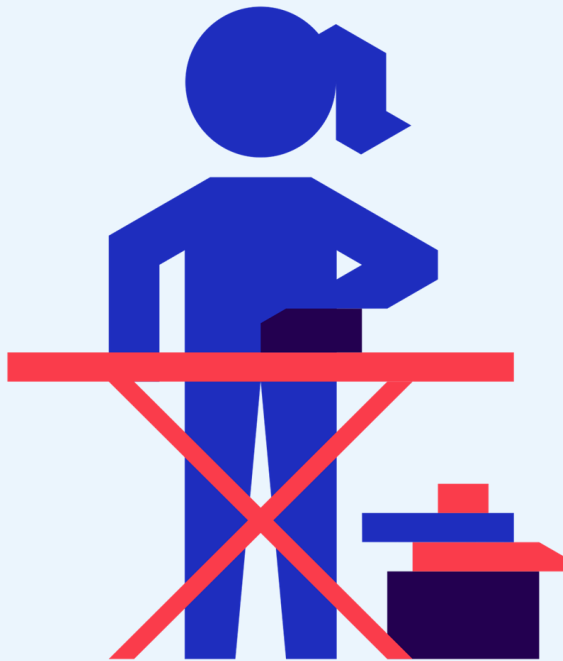
Labour Migration Facts and Trends



1 MILLION

- From 2006 to 2019, the **number of OFWs deployed and redeployed every year did not go below 1 million**, and even increased to 1.9 million on average for the period 2016-2019 (in 2019 alone, there were 2.2 million OFWs deployed).

Labour Migration Facts and Trends



- Workers in elementary occupations and sales/services (74% of total new hires in 2016) comprise the bulk of OFWs. **Domestic workers and cleaners represent the largest share in the elementary occupations segment at 77 percent** (waiters for the service workers). Meanwhile, professionals only account for 6.4 percent of the total, with nurses (54%), musicians/choreographers (14%) and engineers (11%) comprising the largest groups within the occupational sector.

Labour Migration Facts and Trends



- The **Middle East remains the top destination region across decades**, with Saudi Arabia being in the lead of host countries for OFWs. In recent years, an increasing share of OFWs has been deployed to countries and territories in East and Southeast Asia (e.g., Hong Kong, Taiwan, Singapore and Malaysia), representing a gradual but notable shift in deployment corridors for Filipino migrant workers.

Labour Migration Facts and Trends



- The **main driving factors** for the international labour migration of Filipinos **are economic**.
- Particularly, employment, job change or job relocation were reported by **89 percent of respondents in the 2018 NMS as the reasons why they moved abroad** (92.6% of males and 86.5% of females). The figure is not so different for repeat migrant workers, with 83.1 percent indicating the same reason for moving abroad in the past five years.

Labour Migration Facts and Trends



- Of first-time international migrant workers covered in the 2018 NMS, the majority (59.2%) were hired through private **recruitment agencies**. Direct hires comprised 34.2 percent of the first-time OFWs while there were only few recruited via government-to-government (G2G) arrangements.

Labour Migration Facts and Trends



- The **top five source regions among first-time migrant workers (81.3% of respondents) are NCR (17.1%), Region IV-A (16.7%), Region I (8.4%), Region VI (7.1%), and Region III (6.4%).** Interestingly, the top five migration corridors among 26.3% of surveyed international migrant workers are the following: NCR to Saudi Arabia (5%), Region IV-A to Saudi Arabia (4.6%), BARMM to Malaysia (3.2%), Region IV-A to Malaysia (2.3%), and Region IV-A to Japan (2.3%).

Decent work & human rights issues among OFWs



Persistent Migration Concerns

Trafficking in persons (TIP)

Violence and harassment

Contract violations and contract substitutions

Illegal recruitment

Poor Access to Justice or Redress

Challenges and opportunities in exercising FOA and the right to organize among OFWs



Challenges in exercising FOA and Collective Bargaining among OFWs

- The exercise of FOA and collective bargaining, is especially difficult for international migrant workers whose very **status as migrants in host countries with potentially complex laws and sociocultural norms is a risk and vulnerability factor itself.**
- The **challenge usually lies in the application in national laws, policies and practices of international and regional instruments that otherwise provide the legal framework on the exercise of FOA and CB** by workers regardless of migrant status, nationality, country of origin, and their occupational sector.
- **Low regard for human rights overall and governance regimes** indicative of authoritarianism in some countries or territories.

Concerns and obstacles on migrant workers' exercise of FOA and CB

- The ILO CEACR and the CFA have in fact received and documented several concerns on the exercise of FOA and CB primarily affecting migrant workers:
 - Insufficient legislative protections
 - Imposed trade union monopoly
 - Restrictions on trade union activity and rights to organize their own activities
 - Interference in trade union activities
 - Trade union registration requirements that obstruct registration of trade unions in practice (including high minimum numbers of workers, prohibitions and restrictions of trade unions at different levels, complicated procedures, administrative approval requirements, and so on)

Concerns and obstacles on migrant workers' exercise of FOA and CB

- The ILO CEACR and the CFA have in fact received and documented several concerns on the exercise of FOA and CB primarily affecting migrant workers:
 - Insufficient protection against anti-union discrimination by national authorities and employers (including through dismissal, demotion, transfer, and other prejudicial acts as well as intimidation, harassment and so on)
 - Anti-union violence
 - Arrests and detention
 - Restrictions and limitations on collective bargaining
 - Inadequate and ineffective sanctions and remedies for violations of FACB;
 - Restrictions on access to judicial mechanisms (ILO 2022a, as cited ILO 2023).

Concerns and obstacles on migrant workers' exercise of FOA and CB

- The restrictions on exercising FOA and CB may also be straightforward to certain groups of migrant workers in many countries and territories. These labour rights are sometimes outrightly denied to the following:

- Some or all migrant workers based on their nationality, residence, work permits or reciprocity

- Undocumented workers

- Types of informal working arrangements and insecure contracts

- Sectors where migrant workers constitute a high proportion of workers, such as domestic work and agriculture, and where labour law may not apply at all

Concerns and obstacles on migrant workers' exercise of FOA and CB

- Apart from obstacles in law, there are also some practical challenges to the exercise of FOA and CB particularly in certain countries and territories where migrant workers usually comprise a substantive portion of the labour force:

**Language,
communication
and information**

**Anti-union
reprisals**

**Nature of work
and length of
stay**

**Discrimination and
gender norms in
certain destination
countries**

Strategies to support migrant workers



- Join recruitment processes and government-led briefings; promote further training at departure and arrival stages.

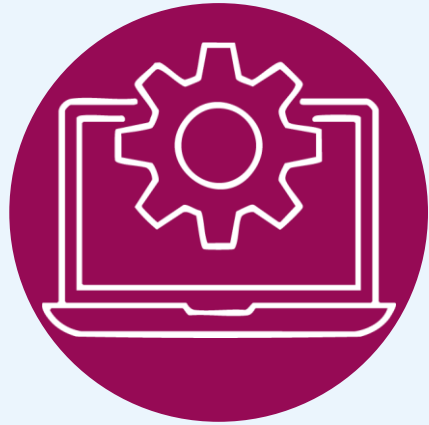


- Strengthen capacity to advocate and conduct outreach on labour rights.



- Use innovative methods to reach isolated workers (e.g., domestic workers via leaflets in public spaces).

Strategies to support migrant workers



- Employ digital tools for connection and support.



- Expand collective bargaining to cover non-unionized sectors like care and domestic work.



- Target women workers with strategies on pay equity, safety, maternity rights, and gender-based violence prevention.

Strategies to support migrant workers



- Tailor outreach to diverse identities (e.g., gender, language); collaborate with unions in countries of origin



- Translate materials into workers' native languages



- Build cross-border union networks (e.g., MOUs) for rights protection throughout the migration cycle

Strategies to support migrant workers



- Partner with civil society, especially where union membership is restricted



- Advocate effectively by understanding and representing migrant workers' needs

Box 1:

The Pinay Care workers Transnational (PINAY): Organizing women migrant workers beyond borders

PINAY Care workers

Source: <https://iufap.org/2022/12/16/founding-of-the-tnu-social-and-economic-justice/>

With domestic and care workers, a particular occupation group predominantly consisting of women and at greater risk of abuse, exploitation and violations of human and labour rights, still sharing a large chunk of annual overseas deployment, it has always been imperative for the Philippine government to pour much of its protection efforts into this migrant labour sector. However, decades of managing international labour migration have clearly shown that migrant protection that solely comes from outside will always be inadequate in the absence of protection that emanates from empowering the migrants themselves.

PINAY Care workers

Source: <https://iufap.org/2022/12/16/founding-of-the-tnu-social-and-economic-justice/>

This is why freedom of association must be upheld all the time and wherever there are workers that become more disadvantaged by default by leaving their countries and navigating complex living and working environments more often on their own.

Against a backdrop of restrictive policies in certain destination countries and the work conditions that render most migrant workers isolated from one another, a formation of women overseas Filipino workers (OFWs) in the domestic and care sectors rose in 2022.

PINAY Care workers

Source: <https://iufap.org/2022/12/16/founding-of-the-tnu-social-and-economic-justice/>

The Pinay Careworkers Transnational (PINAY) serves as a transnational labour union that offers itself “as a space of organizing the collective strength of care workers in the Philippines and many destination countries for OFWs.” The establishment of PINAY followed decades of organizing work by various trade unions and labour groups across borders, with Philippine-based *Sentro ng mga Nagkakaisa at Progresibong Manggagawa* (SENTRO) playing a particular pivotal role in the process. At present, the members of PINAY span regional migration corridors, and are mostly employed in Bahrain, Jordan, Kuwait, Hong Kong, Macau, Malaysia, Taiwan and the Philippines.

Practical ways for foreign employers (or Philippine recruitment agencies) to help promote the exercise of FOA (even among employers)

- refrain from engaging in any acts involving threats, intimidation, blacklisting, violence, or harassment towards migrant workers in an effort to discourage or prevent their making contact with existing trade unions or to discourage or prevent them from exercising any of their FACB rights.
- Share information with migrant workers about their rights at work, workplace rules, and terms and conditions of employment in a format and languages they understand.
- Recognize independent and representative trade unions formed in their workplace; negotiate with them in good faith; and engage in effective collective bargaining with them.

Practical ways for foreign employers (or Philippine recruitment agencies) to help promote the exercise of FOA (even among employers)

- Engage in social dialogue both tripartite and bipartite, to learn more about and address challenges that migrant workers are facing.
- In origin and destination countries, cooperate and play a proactive role in advocacy for the effective implementation of BLMAs to ensure good governance of labour migration processes and protection of migrant workers.
- Encourage employers in individual households and other remote sectors to join employers' organizations.



Recap exercises

1. This formalized overseas employment as a program by the Philippine government, providing the initial legal and policy basis for the protection of rights and promotion of welfare of Filipino migrant workers.

- a) Philippine Labor Code
- b) Migrant Workers Act
- c) Department of Migrant Workers Act

TRUE OR FALSE

2. In the 2018 National Migration Survey (NMS), it is found that the main driving factor for the international migration of Filipinos is family reunion.

3. Name one of the most persistent issues or challenges in international labour migration widely experienced by OFWs, especially by women.

4. All of the following affect the ability of OFWs and other migrant workers to organize and exercise their right to collective bargaining in certain destination countries based on reports received by ILO CEACR and CFA, except for one:

- a) Legal restrictions
- b) Lack of interest of workers
- c) Anti-union reprisals and violence

TRUE OR FALSE

5. Recruitment agencies can promote the exercise of FOA among their deployed workers, particularly in destination countries where labour rights and human rights are protected and promoted in law and practice.



Recap exercises

Answer keys

1. This formalized overseas employment as a program by the Philippine government, providing the initial legal and policy basis for the protection of rights and promotion of welfare of Filipino migrant workers.

a) Philippine Labor Code

- b) Migrant Workers Act
- c) Department of Migrant Workers Act

TRUE OR **FALSE (job/employment)**

2. In the 2018 National Migration Survey (NMS), it is found that the main driving factor for the international migration of Filipinos is family reunion.

3. Name one of the most persistent issues or challenges in international labour migration widely experienced by OFWs, especially by women.

Any of the following:

illegal recruitment, trafficking, contract violation/substitution, violence/abuse, maltreatment, sexual harassment, gender-based violence, etc.

4. All of the following affect the ability of OFWs and other migrant workers to organize and exercise their right to collective bargaining in certain destination countries based on reports received by ILO CEACR and CFA, except for one:

a) Legal restrictions

b) Lack of interest of workers

c) Anti-union reprisals and violence

TRUE OR FALSE

5. Recruitment agencies can promote the exercise of FOA among their deployed workers, particularly in destination countries where labour rights and human rights are protected and promoted in law and practice.