



MIGRATION POLICY PRACTICE

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CONTENTS

- 2 Human mobility in times of major global transformations**
Marie McAuliffe, Charles Kwenin, Richa Arora and Jenna Blower-Nassiri
- 4 World Migration Report 2024: Introduction and overview**
Marie McAuliffe and Linda Oucho
- 12 Shifting perceptions on migration: insights and strategies from Latin America and the Caribbean**
Felipe Muñoz Gómez, Marta Luzes and Lucina Rodríguez
- 19 The protection of the welfare of Filipino seafarers working on foreign-flagged ships**
Jabeth Dacanay, Roderick Galam and Jean Pia
- 28 Capitalizing on the climate adaptation potential of labour migration: new institutions or continued incoherence?**
Sam Huckstep and Michael Clemens
- 35 Developing regional migration, environment and climate change policy frameworks for action: the case of the Kampala Ministerial Declaration**
Lisa Lim Ah Ken, Jyri J. Jääntti, Noora K. Makela and Rose Kobusinge
- 41 Foreign-trained doctors in Seychelles: cooperation, capacity-building and migration diplomacy**
Kendra Shields and Margaret Walton-Roberts
- 48 Surviving food deserts: migrants, refugees and urban food systems in Bloemfontein, South Africa**
Abraham R. Matamanda and Johannes I. Bhanye





The protection of the welfare of Filipino seafarers working on foreign-flagged ships

Jabeth Dacanay, Roderick Galam and Jean Pia¹

Introduction

The Philippines is seen by other countries and international organizations as a model in terms of regulating international labour migration.² Its migration policy has expanded its scope beyond labour export to adopt a comprehensive, rights-based framework that covers the entire migration process – from the regulation of recruitment agencies to the provision of pre-departure training, insurance systems, consular assistance, overseas voting rights, support for family members of migrants and programmes for the reintegration of returned migrants.³ However, the mandate of the newly created Department of Migrant Workers (DMW), which absorbed the Philippine Overseas Employment Administration (POEA), the agency that hitherto administered the country's international labour migration programme, centres on two conflicting primary functions: (a) the promotion of maximum employment of Filipinos overseas and (b) the protection of their right to fair and

equitable labour practices.⁴ This tension has had negative consequences on the provision and protection of the welfare of Filipino migrant workers, as demonstrated by the experiences of Filipino seafarers, whose welfare protection and provision has been affected by the occurrence of regulatory capture whereby private interests have come to be seen as public interests.

Globalized shipping and the challenge of protecting Filipino seafarers on foreign ships

The Philippines is the world's biggest source of seafarers, supplying at least 25 per cent of the global seafarer workforce, estimated at 1.9 million. Seafaring labour migration is an important component of the Philippine labour migration programme, contributing significantly to the national economy. In 2022, Filipino seafarers on board ocean-going vessels, who comprise about 5 per cent of the 10.2 million Filipinos living and working overseas, remitted about USD 6.71 billion.⁵ This amount was 18.56 per cent of the total overseas Filipinos' remittances of about USD 36.14 billion and accounted for 8.9 per cent

¹ Jabeth Dacanay is a founding partner of Dacanay and Magracia Law Offices, Manila, Philippines. Roderick Galam is a senior lecturer at the School of Law and Social Sciences of Oxford Brookes University, United Kingdom. Jean Ver P. Pia is the Maritime Attaché at the Embassy of the Republic of the Philippines in the United Kingdom.

² Jenina Joy Chavez and Nicola Piper, "The reluctant leader: the Philippine journey from labour export to championing a rights-based approach to overseas employment", in: *Asian Leadership in Policy and Governance* (E. Berman and M.S. Hague, eds.) (Bingley, United Kingdom, Emerald Publishers, 2015), pp. 305–344.

³ *Ibid.*, p. 309.

⁴ Aniceto C. Orbeta, Jr, Michael R. Cabalfin and Michael Ralph M. Abrigo, "Institutions serving Philippine international labour migrants", PIDS Discussion Paper Series, No. 2009-31 (Makati City, Philippines, Philippine Institute for Development Studies (PIDS), 2009); Jorge V. Tigno, "At the mercy of the market?: State-enabled, market-oriented labour migration and women migrants from the Philippines", *Philippine Political Science Journal*, 35(1):19–36 (2014).

⁵ Bangko Sentral ng Pilipinas, "Overseas Filipinos' cash remittances by country, by source", data set (accessed 30 November 2023).



and 8.4 per cent of the country's GDP and gross national income, respectively.⁶

When Filipinos leave for work overseas, they are “transported to the legal system of another country”, making the protection and welfare policies of the Philippines “not only inadequate but, in most cases, even inapplicable.”⁷ Working on board foreign-flagged ships is the equivalent of working in another country. However, unlike in the case of land-based work, where, for instance, jurisdiction and compliance to regulations governing living, working, occupational health and safety conditions could be contained and enforced within the State where employers and their workers are located, several States may simultaneously assume jurisdiction and enforcement in the shipping industry. This is because shipping is very globalized; State responsibility for matters relating to ship ownership, vessel registration and labour recruitment does not neatly overlap.⁸ The shipping industry's regulatory regime, which allows only recognized enforcement bodies to board ships, makes it extremely difficult (if not impossible) for a representative of the Government of the Philippines to check on on-board working conditions and worksites.

Finally, international seafarers' living and working conditions are governed by health and safety standards, which are developed and implemented through international rules and regulations by flag States (the ship's country of registration), port States and shipowners. The ship's flag of registration “determines the environmental, safety, labour, and taxation regulations governing the vessel and its owner in the first instance”; port States that have ratified relevant conventions of the International Labour Organization (ILO) and the International Maritime Organization exercise enforcement of regulations through the inspection of ships calling at their ports.⁹ How, then, does the Philippines extend protection to Filipino seafarers working outside of its territorial and legal jurisdictions?

Extending the Philippines' regulatory reach

As a labour-supplying State, the Philippines' primary strategy is to create legal mechanisms that give it the power and jurisdiction to protect Filipino seafarers' welfare from within its borders.

Establishing rights and liabilities through licensing and accreditation

To ensure that a foreign shipowner or principal, or its authorized manning agency, can be held liable for obligations that Filipino seafarers are due, the POEA (which is now part of the newly created DMW) imposes a number of qualification requirements for the licensing of manning agencies, accreditation of foreign principals and enrolment of ships prior to any engagement of Filipino seafarers. For instance, manning agencies,

⁶ Bangko Sentral ng Pilipinas (BSP), “Personal remittances reach a new record high in December 2022; full-year level of US\$36.1 billion highest to date”, press release (15 February 2023).

⁷ Julyn S. Ambito and Melissa Suzette L. Banzon, “Review of Philippine migration laws and regulations: gains, gaps, prospects” PIDS Discussion Paper Series, No. 2011-37 (Makati City, Philippine Institute of Development Studies (PIDS), 2011).

⁸ Helen Sampson, “Beyond borders: The regulation of the living and working conditions of international seafarers”, in *Global Labour Migration: New Directions* (E. Boris, H. Gottfried, J. Greene and J. Tham, eds.) (Urbana, Illinois, University of Illinois Press, 2023), p. 225.

⁹ Ibid.

which supply seafarers to ship operators around the world, must comply with nationality requirements for ownership and capitalization and the submission of documentary evidence to support their application for accreditation. In addition, the foreign principal or shipowner is required to execute a special power of attorney authorizing a manning agency to sign for and on its behalf – allowing itself to sue or be sued on employment contracts in the Philippines through the manning agency.

It is through manning agencies that the Government exerts pressure on foreign shipowners who are, after all, beyond the jurisdiction of the Philippine legal and migration management systems. This, in a way, benefits Filipino seafarers who would otherwise find difficulty pursuing legal claims against foreign shipowners or, in the worst cases, would be left without due recourse for the abuses and unfair treatment perpetrated on them. Philippine private manning agencies are therefore considered to be integral tools of government control, tying down not only seafarers with foreign shipowners but also foreign shipowners with the Government of the Philippines. As part of an agreement, manning agencies: (a) assume full responsibility for all claims and liabilities that may arise in connection with the use of their licence; (b) assume joint and several liabilities with the shipowner for all claims and liabilities arising out of a seafarer's employment agreement (under which either of the responsible parties can be compelled to pay the entire obligation); and (c) guarantee compliance with Philippine and flag State labour laws, as well as relevant international laws. Under this scheme, the Philippines therefore effectively shifts to private agencies its obligations as a labour-supplying State to the shipping community under internationally agreed conventions.

Extending protection by contract

The Philippines has extended its sovereign and regulatory reach to cover the employment of its seafarer nationals by stipulating that Philippine laws and administrative and judicial courts govern contracts concluded between foreign shipowners and Filipino seafarers. The Philippines accomplished this by adopting the first iteration of the POEA Standard Employment Contract (POEA-SEC), a piece of government regulation with 33 provisions designed to protect seafarers. It lists the rules and regulations governing the relationship between seafarers and shipowners, to which both parties must adhere for the duration of employment. It defines the seafarer's duties; specifies working hours and overtime; lays down the procedures for the termination of employment, filing of grievances and repatriation; and provides a schedule of benefits for injuries or illnesses suffered during employment. The schedule of benefits establishes a definable amount to compensate a seafarer in the event of an accident that results in disability. The POEA-SEC protects Filipino seafarers by providing a framework guaranteeing that a certain set of minimum standards of employment are met.¹⁰

The adoption of the POEA-SEC as a condition for seafarers' employment is significant in several ways. First, in theory, it reflects the intention of the Government to represent the interest of seafarers, who may be at a disadvantage in negotiating contracts with their employers. Second, when the manning agency signs a contract on behalf of a foreign shipping company,

¹⁰ William C. Terry, "Working on the water: on legal space and seafarer protection in the cruise industry", *Economic Geography*, 85(4):463–482 (2009).



there is assurance that the latter voluntarily subjects itself to Philippine laws and jurisdiction. Third, the POEA-SEC is concerned with public interest and is designed (supposedly) to protect and benefit Filipino international seafarers. Since there is no nationally consistent regulatory framework set out in Philippine legislation, it is the POEA-SEC that governs the welfare, health and safety of Filipino international seafarers. Fourth, the POEA-SEC has an international binding effect. It was formulated in accordance with and, in theory, adheres to international standards, including labour standards, and maritime practices.

Since its implementation in 1983, the POEA-SEC has undergone substantial changes. During its mandatory periodic review in May 2008, amendments to the POEA-SEC were renegotiated through a tripartite consultation process involving maritime unions representing seafarer worker groups (e.g. the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP-ITF), the largest of these unions and an affiliate of the International Transport Workers' Federation (ITF)), shipowners and manning agency associations, and government regulators.¹¹ A technical working group was formed to consult with various industry stakeholders. After more than two years of work, the POEA, through its Governing Board, issued a resolution on 4 October 2010 approving amendments to the POEA-SEC (thereby issued as the 2010 POEA-SEC,¹² to be

later superseded by the POEA-SEC of 2013). The amendments had prospective application, covering seafarers whose employment contracts were processed on 12 November 2010 or later.¹³

The POEA-SEC is composed of two parts. The first is the single-page "contract of employment" between the seafarer (employee) and the manning agency representing the principal or shipowner (employer), executed in triplicate.¹⁴ The second part, 40 pages long, contains the 33 sections of standard terms and conditions that govern the employment of Filipino seafarers on board ocean-going vessels. The Government of the Philippines prescribes a template for the standard employment contract to pre-empt complaints commonly lodged against contracts in general – such as fraud, the use of force or coercion, or breach of contract. The POEA requirement that every employment contract be processed and approved by the POEA is an additional measure to ensure that the contract is beneficial to persons signing it, especially the seafarer. The tripartite consultation process aims to ensure that the employment contract reflects the consensus of all stakeholders.

Extending protection but restricting Filipino seafarers' legal protection space

The Philippine provision for protection by contract restricts the legal protection space for seafarers' claims. First, due to the lobbying of the manning industry,¹⁵ the POEA-SEC stipulates that judicial and administrative bodies in the Philippines

¹¹ Ruben del Rosario, "An overview of the amendments to the POEA standard employment contract", article. Del Rosario & Del Rosario Law (11 November 2010).

¹² POEA, "Amended standard terms and conditions governing the overseas employment of Filipino seafarers on-board ocean-going ships", memorandum circular no. 10, series of 2010.

¹³ Ibid.

¹⁴ The contract of employment was revised in 2013 by virtue of POEA memorandum circular no. 04, series of 2013 ("Revision of the one-page covering employment contract").

¹⁵ Terry, 2009.

have exclusive jurisdiction over Filipino seafarers' and their families' claims for compensation for injury, disability and death. Actions for tort ("seeking redress [to] ask for damages in the form of monetary compensation")¹⁶ or negligence can no longer be pursued against a foreign shipowner once a seafarer accepts the compensation benefits that they are entitled to under the schedule of payment prescribed by the Government of the Philippines for injury, death or illness sustained while on board a ship. The express waiver in the POEA-SEC of foreign jurisdiction on cases of compensation claims for death, illness and personal injury diminishes or derogates Filipino seafarers' rights and benefits. The imposition of a blanket and all-encompassing quitclaim and release deed restricts the human right of seafarers to seek redress of grievance from appropriate foreign courts that may award Filipino seafarers more generous compensations. In view of this provision in the POEA-SEC, compensation claims by or in behalf of Filipino seafarers brought to foreign jurisdiction are now being dismissed in those courts.

The Philippines has also restricted the grounds that may be used as basis for compensation claims. Although the POEA-SEC provides extensively for the receipt of compensation benefits in the case of injury, illness or death of a seafarer, its 2010 version, as amended in 2013, shows that not all kinds of injuries or illnesses are compensable, and that certain conditions have to be met: The injury, illness or death must occur during the term of the contract; it must be work-related or arise in the course of

employment; and the conditions under Section 32-A of the POEA-SEC, among others, must be satisfied. These requirements show that the burden has been shifted to the seafarer claiming compensation, which introduces a built-in "harm factor" to the compensation system. More complicated and litigious compensation procedures, with their numerous additional conditions, tend to stigmatize workers and prevent receipt of compensation.¹⁷

Legislation on Filipino seafarers' welfare and the influence of private sector actors

As indicated in the previous section, an influential private sector – the manning industry, composed of more than 400 agencies that supply seafarers to ship operators worldwide – has played an important role in shaping the Philippines' provision of protection for seafarers' welfare. The influence of the manning industry can be seen in the following landmark legislation and court decisions.

Supreme Court decision declaring seafarers as contractual employees

On 14 March 2000, the Philippine Supreme Court ruled that Filipino seafarers were regular employees and ordered a shipowner to reinstate two Filipino seafarers who had rendered 20 years of service on successive one-year contracts. This decision prompted the Filipino Association for Mariners' Employment (FAME), an association of manning agencies, to file a motion for intervention with the Supreme Court to reconsider its

¹⁶ Legal Information Institute, "Tort", definition. Cornell Law School (2023).

¹⁷ Katherine Lippel, "The private policing of injured workers in Canada: legitimate management practices or human rights violations?", *Policy and Practice in Health and Safety*, 1(2):97–118 (2003).



ruling, citing adverse effects on the Philippine manning industry. On 29 July 2002, the Supreme Court reversed its earlier ruling and declared Filipino seafarers to be contractual, not regular, employees whose employment was terminated every time their contract of employment expired. The Supreme Court further explained that, since it was an accepted maritime industry practice for employment to be for a fixed term, Filipino seafarers were therefore an exception to the provisions of the Philippine Labour Code on regular employment.

Republic Act 10022 (amending the Migrant Workers and Overseas Filipinos Act of 1995, Republic Act 8042)

Republic Act 10022 seeks to improve standards of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress. However, the final version of the bill was watered down due to the lobbying of the Joint Manning Group (JMG), the umbrella organization of Philippine manning industry associations. The JMG emphasized to legislators the supposed negative impacts of the proposed law on the manning industry. As a result, the approved version of Republic Act 10022 decriminalizes the appointment of specific medical clinics for seafarers, as long as the cost of pre-employment medical examination is borne by the principal; decriminalizes the designation of specific training centres for seafarers, provided that the cost of training is paid for by the principal; and allows manning agencies to submit to POEA certificates or any other proof of insurance coverage (if under a foreign insurance company) as evidence to show that seafarers are provided with the minimum benefits under the law.

Republic Act 10706: The Seafarers Protection Act

This law is touted as protecting seafarers from lawyers who charge excessive sums of money in exchange for legal representation in court cases. These cases cover compensation claims arising from accident, illness or death suffered in the course of their seafaring employment. Critics, however, see Republic Act 10706 as “anti-seafarer” because this law makes it more difficult for seafarers to find willing and competent lawyers to defend them against moneyed employers. What is remarkable about the law is its provenance, with industry insiders saying it was initiated by the private sector. Specifically, so-called “protection and indemnity clubs” (the insurance providers of the shipping industry) prepared the draft of the bill and forwarded it to the Angkla Party-list congressman, who represented seafarers in the House of Representatives. It was this party-list representative who then sponsored the bill that eventually became the Seafarers’ Protection Act.

The escrow provision of the Magna Carta for Filipino Seafarers

On 27 September 2023, the Philippine Senate approved Senate Bill 2221, the “Magna Carta of Filipino Seafarers”. The House of Representatives had earlier passed, on 6 March 2023, House Bill 7235, its version of the Magna Carta. The Magna Carta is a landmark piece of legislation that seeks to:

...provide seafarers with comprehensive protection before, during and after employment, especially in the event of maritime accidents, epidemics or pandemics, or other natural or man-made crises. It codifies the rights of seafarers into a single reference law, seeks to secure their rights

to decent, just and humane conditions of employment, and set[s] a guide for their training and education, overseas employment and ultimately retirement.¹⁸

The Magna Carta represents the Philippines’ effort to adopt and transform the Maritime Labour Convention 2006 into national (domestic) legislation (see Table).

Our discussion of the Magna Carta focuses on the escrow provision (linked to the crew compensation claims covered in the Seafarers’ Protection Act, discussed previously) that was eventually defeated and excluded from the approved Senate bill. Foreign shipowners and/or employers are required by Philippine law to pay Filipino seafarers’ full compensation for injury, illness or death, even if the decision could still be later appealed. These employers see this

law as flawed, as they unfairly and unnecessarily lose money in cases where they win the appeals process but can no longer recover the money they had already paid out (because it has been spent by the seafarer claimants). Through the powerful lobby of the manning industry, this escrow proposal was introduced and would amend, through legislative fiat, Section 223 of the Philippine Labour Code. This proposed revision recognizes escrow as a mode of executing the judgement award of the National Labour Relations Commission to delay the payment of a monetary award until final judgement by the Court of Appeals or the Supreme Court. Even if the escrow provision did not make it into the final Senate version of the Magna Carta of Filipino Seafarers, its inclusion in the bill deliberated by the Senate of the Philippines demonstrates the reach of the influence of the manning industry and foreign shipowners.

Table 1 . Analysis of the regulatory framework governing Filipino seafarers’ welfare

Legislation/Regulation	Salient features or provisions
The Philippine Labour Code of 1974 (Presidential Decree No. 442)	The Labour Code provides for regulations concerning the overseas employment of workers, including the hiring and employment of seafarers, and the operations of crewing agencies; the creation of the National Seamen Board (NSB); unionism, dispute settlement, the right to collective bargaining and the right to strike; and related matters that have implications on seafarers. Further, it sets legal provisions on occupational health and safety promotion and enforcement. Article 18 of the Labour Code prohibits direct hiring, except when the hiring entity is authorized by the Secretary of Labour, as is the case with the POEA and accredited private employment/recruitment agencies.
Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act 8042)	The Act provides for the guarantee of migrant workers’ rights; deregulation or phaseout of regulatory functions of specific government agencies; stricter rules on illegal recruitment and corresponding penalties for such activities; selective deployment; repatriation of workers; and reintegration for return migrants. Republic Act 8042 likewise declares that the “State shall deploy overseas Filipino workers only in countries where the rights of Filipino workers are protected.”

¹⁸ Ina Alleco R. Silverio. “Lawyers say escrow provision in proposed magna carta of Filipino seafarers is unconstitutional”, news article. Maritime Fairtrade (12 May 2023).



Legislation/Regulation	Salient features or provisions
Act Amending the Migrant Workers and Overseas Filipinos Act (Republic Act 10022)	<p>Section 1(h) of Republic Act 10022 explicitly mentions the role of manning agencies: The State recognizes non-governmental organizations, trade unions, workers' associations, stakeholders, and their similar entities duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect. The significant contribution of recruitment and manning agencies shall form part this partnership.</p> <p>This law is also an essential source of certain legal rights of seafarers.</p>
Seafarers Protection Act of 2015 (Republic Act 10706)	<p>Republic Act 10706 criminalizes “ambulance-chasing” and punishes those found guilty with a monetary penalty or prison sentence. It imposes a 10-per-cent limit on what lawyers can claim or charge on the total compensation awarded to seafarer claimants or their heirs, thus making it much less lucrative for them to represent claimants. The Seafarer Protection Act is seen as “anti-seafarer” because it discourages seafarers from making legitimate claims for injury or illness, or families from pursuing compensation for the death of their seafarer family member, by making legal representation so much more inaccessible.</p>
POEA Memorandum Circular No. 10, (series of 2010): Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships	<p>The memorandum circular is the second most important source of seafarers' legal rights. It embodies and, in effect, codifies the whole body of ILO and IMO conventions and Philippine laws, rules and regulations. It was agreed upon by a tripartite body representing the Government, employers and seafarer representatives. It is widely seen as ameliorating the working conditions of seafarers. It contains minimum standards that can be subject to further negotiation by collective bargaining.</p>
Magna Carta for Filipino Seafarers (legislative bill)	<p>The bill seeks to protect the rights of Filipino seafarers before, throughout and even after their employment aboard internationally operating ships. It promotes rights in respect of workplace safety and security; fair employment; information and communication; organizing and assembly; legal representation; and health, welfare and medical care. It details the responsibilities of recruitment agencies, ship owners, maritime education institutions, licensing and certification bodies, and government agencies. Further, it lays down protocols for settling disputes.</p>
The Maritime Labour Convention (MLC) of 2006	<p>The MLC provides for comprehensive rights to decent conditions and protection at work for the world's seafarers, including those pertaining to minimum requirements for seafarers to work on ships and the conditions of their employment; accommodation, recreational facilities, and food and catering; medical care and health, welfare and social security protection; and for the enforcement of these rights and employers' compliance with them. More specifically, Title 2 (on conditions of employment) mandates that a seafarer must have a lawful seafarer's employment agreement that specifies the terms and conditions of employment. More specifically, Standard A2.1, (in para. 1) enumerates the basic conditions for the seafarer's employment agreement to be considered a “fair agreement”, among others. It requires both the seafarer and the shipowner, or the representative of the shipowner, to sign the agreement. It also requires that the seafarer be given the opportunity to examine and seek advice on the agreement before signing it, and that they be provided with a signed original copy of the agreement and other similar requirements. Section A.2.4 outlines the specific contents of a standard employment agreement.</p>

Note: The analysis presented in this table is the authors' own.

Conclusion

Our analysis has shown the significant role that the manning industry has played in shaping Philippine case law and legislation pertaining to the country's regulation of international labour migration, specifically the employment of Filipino seafarers. The manning industry, which represents foreign shipowners' interests, has influenced the formulation and enactment of laws and regulations to its favour, consequently shaping the country's judicial, legislative and regulatory infrastructure. Because the Philippines wishes to remain the global maritime industry's favoured source of seafaring labour, so as to keep overseas Filipinos' remittances flowing into the country, it must ensure the employability and competitiveness of its seafarers by reducing the financial risks faced by shipowners in contracting labour.¹⁹ These shipowners, which are foreign and international, are assisted by other foreign and international entities, such as protection and indemnity clubs and shipowners' associations.

Laws that are presented as protecting seafarers – indeed, legislated in their name – ultimately protect and advance the interests of foreign shipowners and the manning industry. Our analysis reveals the occurrence of regulatory capture²⁰ – “the result or process by which regulation, in law or application, is consistently or repeatedly directed away from the public

interest and toward the interests of the regulated industry, by the intent and action of the industry itself.”²¹

The Philippines has a chance to genuinely protect the welfare of its seafarers. In translating the MLC into national legislation through the Magna Carta for Filipino Seafarers, the Philippines must institute regulatory changes to incorporate provisions that are beneficial to its seafaring workforce to comply with the requirements of the Convention. Existing regulations that are inconsistent with the MLC must be repealed, including those that specifically provide for a waiver of foreign jurisdiction and filing of torts and negligence cases in the event of death, personal injury and ill-health arising from occupational health and safety risks. The ILO Model for Release and Quitclaim does not include these waivers.

¹⁹ Roderick Galam, “The Philippines and seafaring labour export: State, non-state and international actors in the assembly and employability of Filipino seafarers” *International Migration*, 2022:1–15 (2022).

²⁰ *Ibid.*

²¹ Daniel Carpenter and David A. Moss, “Introduction”, in *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (D. Carpenter and D. Moss, eds.) (Cambridge, United Kingdom, Cambridge University Press, 2014), p. 13.

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