

SEEKING JUSTICE



DEVELOPING
IMPROVED
OFW FEEDBACK
AND COMPLAINTS
MECHANISMS



This research was funded in full by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF TABLES IV

LIST OF ABBREVIATIONS V

GLOSSARY VII

1 EXECUTIVE SUMMARY

RISKS AND VULNERABILITIES OF OFWs	1
NATIONAL COMMITMENT TO INTERNATIONAL NORMS AND APPLICATION IN NATIONAL LAW	2
THE NATIONAL OPERATIONAL MECHANISMS	2
4 ■ Comparison of DOLE Internal Monitoring Systems, Case Profiles and Online Presence	
4 ■ The Private Recruitment Agencies	
BARRIERS IN ACCESSING JUSTICE AND THE CONTRIBUTION OF CIVIL SOCIETY ORGANIZATIONS	6
7 ■ Pursuing Cases in Countries of Destination	
8 ■ Pursuing Cases in the Philippines	
THE CIVIL SOCIETY ORGANIZATIONS	9
THE FRAMEWORK	10
10 ■ Multiple Access Points	
10 ■ A Hub for Accountability	
11 ■ Tracks for Cases and Complaints	

- 12 ■ Data for Policy Making and Public Reporting
- 12 ■ A Unified Communications Program
- 13 ■ Staff Training
- 13 ■ Investment in Digital Infrastructure
- 13 ■ Partnerships with Business and Civil Society Organizations

14 CHAPTER 1

- INTRODUCTION 14
- 1.1 STRUCTURE AND CONTENT OF THE REPORT 15
- 1.2 ACKNOWLEDGEMENTS 16

17 CHAPTER 2

- 2.1 THE RISKS OF WORKING IN A FOREIGN COUNTRY 17
 - 19 ■ Comparison of Benefits Received by International Migrant Workers in their First and Last Countries of Destination
- 2.2 RECRUITMENT PROBLEMS AND VIOLATIONS 20
 - 20 ■ Pre-Employment: In Country of Origin
 - 24 ■ Employment in Countries of Destination

32 CHAPTER 3

- 3.1 PHILIPPINE LAW RELATED TO OE, THE OFS AND OFWS 32
- 3.2 INTERNATIONAL HUMAN RIGHTS CONVENTIONS AND INTERNATIONAL LABOR STANDARDS 29 36
 - 37 ■ International Labor Standards

3.3 THE JOINT AND SEVERAL LIABILITY OF RECRUITMENT AND PLACEMENT AGENCIES WITH THE PRINCIPAL/EMPLOYER UNDER PHILIPPINE LAW	39
--	----

42 CHAPTER 4

4.1 A HISTORY OF CHANGING ACCOUNTABILITY	43
4.2 THE INTRODUCTION OF THE SINGLE ENTRY APPROACH (SEnA)	45
4.3 THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION	46
46 ■ Legal Aid and Assistance	
49 ■ Conciliation	
50 ■ Adjudication	
51 ■ Action on Anti-Illegal Recruitment	
4.4 OVERSEAS WORKERS' WELFARE ADMINISTRATION (OWWA)	51
53 ■ Duration	
4.5 THE PHILIPPINE OVERSEAS EMPLOYMENT OFFICE (POLO) AND THE INTERNATIONAL LABOR AFFAIRS OFFICE	53
4.6 THE NATIONAL LABOR RELATIONS COMMISSION (NLRC)	57
4.7 COMPARISONS OF SYSTEMS WITHIN THE DOLE	59
59 ■ Comparison of Internal Monitoring Systems within the DOLE	
61 ■ Comparison of the Online Presence and Media Outreach of the DOLE	
62 ■ Comparison of Complaints, Cases and Grievances Submitted to DOLE Offices	
4.8 THE DEPARTMENT OF FOREIGN AFFAIRS AND THE OFFICE OF THE UNDERSECRETARY FOR MIGRANT WORKER AFFAIRS (OUMWA)	63
64 ■ Profile of DFA Cases	
4.9 OTHER GOVERNMENT OFFICES	65

66 CHAPTER 5

5.1 INDUSTRY SIZE	66
5.2 THE DEMAND FOR ETHICAL RECRUITMENT	67
5.3 MANDATORY SELF-REPORTING BY PRAs ON OFWS COMPLAINTS AND CASES	71
71 ■ Responses to the OWMS	
5.4 MANDATORY OFW INSURANCE	73
73 ■ Challenges in Program Implementation	
5.5 DUE DILIGENCE IN ETHICAL RECRUITMENT	75
76 ■ Statement of Purpose	
76 ■ Choice of Employers and Workers	
76 ■ Regular Communication and Access	
77 ■ Staff Training	
78 ■ Partnerships with In-Country Civil Society Organizations	

79 CHAPTER 6

6.1 HELP-SEEKING BEHAVIOUR OF INTERNATIONAL MIGRANTS	79
81 ■ Reasons for NOT Seeking Help	
6.2 BARRIERS TO ACCESS TO JUSTICE OF OFWS	82
82 ■ Pursuing Cases in Countries of Destination	
84 ■ Decision Outcomes	
85 ■ The Experience in the GCC	
86 ■ Pursuing Cases in the Philippines	
91 ■ Civil Society Organizations: Facilitating Assistance	
6.3 CONTRIBUTIONS OF THE CSOS IN WORKERS' SEARCH FOR JUSTICE	92
92 ■ In the Philippines	
96 ■ In the Destination Country	
98 ■ The Move to Provide Services Digitally	

99

CHAPTER 7

7.1 MULTIPLE ACCESS POINTS	100
7.2 A CENTRAL HUB FOR ACCOUNTABILITY	101
7.3 TRACKS FOR CLUSTERED CASES	102
7.4 DATA FOR POLICY MAKING AND PUBLIC REPORTING	103
7.5 A UNIFIED COMMUNICATIONS PROGRAM	104
7.6 PARTNERSHIPS WITH BUSINESS AND CIVIL SOCIETY ORGANIZATIONS	105
7.7 STAFF TRAINING	106
7.8 INVESTMENT IN DIGITAL INFRASTRUCTURE	106

109 ■ OFW Watch

111

ANNEX A. POEA ORGANIZATIONAL CHART

112

BIBLIOGRAPHY – CITATIONS (APA)

121

PERSONAL INTERVIEWS – CITATIONS (APA)

LIST OF FIGURES

Figure 1.	Deployed Overseas Filipino Land-based and Sea-based Workers, 2006 to 2017	<u>17</u>
Figure 2.	Types of cases reported to OWWA, based on gender, 2020	<u>25</u>
Figure 3.	Distribution of migrant workers experienced and never experienced involuntary work arrangements	<u>29</u>
Figure 4.	Word cloud – Involuntary work arrangements experienced by international migrants	<u>30</u>
Figure 5.	Timeline of the enactment of relevant national laws, the ratification of international conventions, and the milestones related to the Joint and Solidary Liability (JSL) mechanisms	<u>39</u>
Figure 6.	Status of complaints/ cases received by OWWA, 2020	<u>52</u>
Figure 7.	Licensed Private Recruitment and Manning Agencies, By category of license, 1982-2021	<u>67</u>
Figure 8.	Help-seeking behaviour of those experiencing involuntary work arrangements, based on gender	<u>80</u>
Figure 9.	International migrant's engagement in migrant associations	<u>92</u>
Figure 10.	Improved framework on complaints mechanisms for OFWs	<u>99</u>
Figure 11.	Image gallery of agencies' online portals for access of migrant workers	<u>105</u>

LIST OF TABLES

TABLE 1.	Comparison of job benefits of international migrants in the first and last countries of destination, age 15 and over	<u>19</u>
TABLE 2.	Prosecution of illegal recruiters, 2014 to 2020.	<u>22</u>
TABLE 3.	Surveillance and special operations, 2014 to 2020.	<u>22</u>
TABLE 4.	Filipino Migrant Workers in Qatar/KSA – On employment contract	<u>23</u>
TABLE 5.	Types of Cases Reported to the Philippine Overseas Labor Offices (POLO), 2018.	<u>24</u>
TABLE 6.	Filipino Migrant Workers in Qatar/ KSA – On getting paid regularly.	<u>26</u>
TABLE 7.	Filipino Migrant Workers in Qatar/KSA – On rights violations.	<u>28</u>
TABLE 8.	Filipino Migrant Workers in Qatar/KSA – Types of rights violations.	<u>29</u>
TABLE 9.	Number of individuals assisted by POEA LAD, January-November 2020.	<u>48</u>
TABLE 10.	Ranking of GCC POLO posts in number of reported cases to the POLOs, 2018.	<u>56</u>
TABLE 11.	Ranking of GCC posts in terms of cases/OFW population, 2018.	<u>56</u>
TABLE 12.	Performance Indicators of the NLRC comparison of targets and actual performance, 2017.	<u>58</u>
TABLE 13.	Number of cases received and disposed (2015-2020)	<u>58</u>
TABLE 14.	Amount of money claims awarded to land-based and sea-based OFWs (2015-2020)	<u>59</u>

TABLE 15.	Licensed Private Recruitment and Manning Agencies, By category of license, 1982-2015.	67
TABLE 16.	Comparison of insurance coverage of international migrants in the first and last countries of destination, age 15 and over.	74
TABLE 17.	Reasons for not seeking help, in percent	81
TABLE 18.	Top 15 categories of cases, CMA.	93

LIST OF ABBREVIATIONS

<u>ASEAN</u>	Association of Southeast Asian Nations
<u>ATN</u>	Assistance to Nationals
<u>BFO</u>	Blas F. Ople Policy Center and Training Institute
<u>BI</u>	Bureau of Immigration
<u>CEDAW</u>	Convention on the Elimination of All Forms of Discrimination Against Women
<u>CFO</u>	Commission on Filipinos Overseas
<u>CHR</u>	Commission on Human Rights Philippines
<u>CMA</u>	Center for Migrant Advocacy
<u>CMW</u>	Committee on Migrant Workers (UN Office of the High Commissioner for Human Rights)
<u>CSO</u>	Civil Society Organization
<u>DAWN</u>	Development Action for Women Network
<u>DepEd</u>	Department of Education
<u>DFA</u>	Department of Foreign Affairs
<u>DOH</u>	Department of Health
<u>DOJ</u>	Department of Justice
<u>DOLE</u>	Department of Labor and Employment
<u>DOT</u>	Department of Tourism
<u>DSWD</u>	Department of Social Welfare and Development
<u>FLOIS</u>	Foreign Labor Operations Information System
<u>FRA</u>	Foreign Recruitment Agency
<u>GCC</u>	Gulf Cooperation Council
<u>GPB</u>	Government Placement Branch
<u>HSW</u>	Household Service Worker

<u>IACAT</u>	Inter-Agency Council Against Trafficking
<u>ICT</u>	Information and Communication Technology (Branch)
<u>ILAB</u>	International Labor Affairs Bureau
<u>ILO</u>	International Labour Organization
<u>IOM</u>	International Organization for Migration
<u>IPAMS</u>	Industrial Personnel and Management Services Inc.
<u>ISL</u>	Joint and Several Liability / Joint and Solidary Liability
<u>KSA</u>	Kingdom of Saudi Arabia
<u>LGU</u>	Local Government Unit
<u>MFA</u>	Migrant Forum in Asia
<u>MOM</u>	Ministry of Manpower (Singapore)
<u>NBI</u>	National Bureau of Investigation
<u>NGO</u>	Non-Government Organization
<u>NLRC</u>	National Labor Relations Commission
<u>NMS</u>	National Migration Survey
<u>NSO</u>	National Statistics Office
<u>OE</u>	Overseas employment
<u>OEC</u>	Overseas Employment Certificate
<u>OF</u>	Overseas Filipino
<u>OFW</u>	Overseas Filipino Worker
<u>OUMWA</u>	Office of the Undersecretary for Migrant Worker Affairs
<u>OWMS</u>	OFW Welfare Monitoring System
<u>OWWA</u>	Overseas Workers Welfare Administration
<u>PAOS</u>	Post-Arrival Orientation Seminar
<u>PASEI</u>	Philippine Association of Service Exporters Inc.

<u>PDOS</u>	Pre-Departure Orientation Seminar
<u>PEOS</u>	Pre-Employment Orientation Seminar
<u>PhilHealth</u>	Philippine Health Insurance Corporation
<u>POEA</u>	Philippine Overseas Employment Administration
<u>POLO</u>	Philippine Overseas Labor Office
<u>PRA</u>	Philippine Recruitment Agency
<u>SEA</u>	Southeast Asia
<u>SEnA</u>	Single-Entry Approach
<u>SSS</u>	Social Security System
<u>TESDA</u>	Technical and Skills Development Authority
<u>TIP</u>	Trafficking in Persons
<u>UN</u>	United Nations
<u>UP-CIFAL</u>	University of the Philippines - International Training Centre for Authorities and Leaders (French: Centre international de formation des autorités et leaders)

GLOSSARY

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.” (United Nations Development Programme, Programming for Justice: Access for All: A Practitioner’s Guide to Human Rights-Based Approach to Access to Justice, 2005).

Adjudication

“The legal process of resolving a dispute. The formal giving or pronouncing of a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved. The equivalent of a determination. It indicates that the claims of all the parties thereto have been considered and set at rest.” (adjudication. (n.d.). West’s Encyclopedia of American Law, edition 2. (2008). Retrieved June 15, 2021, from <https://legal-dictionary.thefreedictionary.com/adjudication>)

Agency-hired worker

“An OFW is agency-hired if he/she availed of the services of a recruitment/manning agency duly authorized by the Department of Labor and Employment (DOLE) through the Philippine Overseas Employment Administration (POEA).” (Department of Finance; Insurance Commission. (2017). Agency-Hired OFW Compulsory Insurance: Frequently Asked Questions (FAQs). <https://www.insurance.gov.ph/static/OFW/downloads/OFW%20FAQs%20-%20English.pdf.2017.06.08.pdf>)

Bilateral labor migration agreements

Formal mechanisms concluded between States, which are essentially legally binding commitments concerned with inter-State cooperation on labor migration. The term is also used to describe less formal arrangements regulating the movement of workers between countries entered into by States, as well as a range of other actors, including individual ministries and employer organizations.

Case

“A general term for any action, [Cause of Action](#), lawsuit, or controversy. All the evidence and testimony compiled and organized by one party in a lawsuit to prove that party's version of the controversy at a trial in court.” (case. (n.d.) West's Encyclopedia of American Law, edition 2. (2008). Retrieved May 12, 2021, from <https://legal-dictionary.thefreedictionary.com/case>). This is in relation to a complaint, defined in legal terms as “a formal statement initiating a lawsuit by specifying the facts and legal grounds for the relief sought.” (complaint. (n.d.) American Heritage Dictionary of the English Language, Fifth Edition. (2011). Retrieved June 15, 2021, from <https://www.thefreedictionary.com/complaint>)

Conciliation / Conciliation-mediation

“Conciliation-mediation is a mode of dispute settlement that brings together two disputing parties to negotiate and settle their differences. It is a process of rational and orderly discussion of differences between the parties to a dispute under the guidance of a Conciliator-Mediator,” (Department of Labor and Employment, n.d.).

Contractual labor

Labor supplied for a specific purpose over a fixed period of time by a contractor.

Detention

The deprivation of liberty for migration-related reasons. This entails “the act of retaining a person or property, and preventing the removal of such person or property.” (detention. (n.d.) A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. (1856). Retrieved June 15, 2021, from <https://legal-dictionary.thefreedictionary.com/detention>), such as being detained in jail.

Direct hire worker

Also referred to as name hires, the Department of Foreign Affairs refers to this as “Filipino workers who are able to secure an overseas employment opportunity with an employer without the assistance or participation of any agency. They may have been directly contacted by a foreign employer by referral or have directly applied to their company.”

Displacement

A forced removal of a person from his/her home or country, often due to armed conflict or natural disasters.

Documented migrant worker

A migrant worker or members of his/her family authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

Emigration

The act of departing or exiting from one State, with a view to settle in another. International human rights norms provide that all persons should be free to leave any country, including their own, and that only in very limited circumstances may States impose restrictions on the individual's right to leave its territory.

Ethical recruitment

According to the IRIS Ethical Recruitment Standards, ethical recruitment is defined as “hiring workers lawfully, and in a fair and transparent manner that respects and protects their dignity and human rights.” (International Organization for Migration. (2019). The IRIS Standard.). The IRIS Standard outlines seven basic principles that constitute ethical recruitment, and these are: respect for laws, fundamental principles and rights at work, respect for ethical and professional conduct, prohibition of recruitment fees to jobseekers, respect for freedom of movement, respect for transparency of terms and conditions of employment, respect for confidentiality and data protection, and lastly, respect for access to remedy.

Foreigner / Non-national

A person belonging to, or owing an allegiance to, another State.

Grievance

“A wrong considered as grounds for complaint”, additionally, a “complaint or resentment, as against an unjust act.” (grievance. (n.d.) Random House Kernerman Webster’s College Dictionary. (2010). Retrieved June 15, 2021, from <https://www.thefreedictionary.com/grievance>)

Hazard

A process, phenomenon or human activity that may cause loss of life, injury or other health impacts, property damage, social and economic disruption or environmental degradation.

Illegal recruitment

Taking the definition from the Migrant Workers Act of 1995 or R.A. 8042, “...illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contact services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license 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.” (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, Rep. Act No. 8042, § 6 (1995), O.G. (Phil.))

Immigration

A process in which non-nationals move into a country for the purpose of settlement.

Injury

“Any harm done to a person by the acts or omissions of another. Injury may include physical hurt as well as damage to reputation or dignity, loss of a legal right, or breach of contract. If the party causing the injury was either willful (intentionally causing harm) or negligent then he/she is responsible (liable) for payment of damages for the harm caused. Theoretically, potential or continuing injury may be prevented by an order of the court upon a petition for an injunction.” (injury. (n.d.) The People's Law Dictionary. (1981-2005). Retrieved May 12, 2021, from <https://legal-dictionary.thefreedictionary.com/Injury>)

Involuntary work arrangements

Refers to the “experience of negative work conditions that are not of the workers’ own making and that they, in all likelihood, neither expected nor acceded to voluntarily,” (National Migration Survey, 2018).

Irregular migrant / Irregular status

A person who, owing to unauthorised entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. The definition covers inter alia those persons who have entered a transit or host country lawfully but have stayed.

Joint and solidary liability

“‘Joint and solidary liability’ in this context means that both the private recruitment/ placement agency and the foreign principal/employer can be held individually liable for the entire amount of claim or obligation due to the overseas Filipino worker.” (Migrant Forum in Asia, 2014).

Low-skilled migrant worker

There is no internationally agreed definition of a less- or low-skilled migrant worker. A low-skilled worker is considered to be a person who has received little training or, having not received any training, has acquired his/her competence on the job.

Migrant worker

A person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he/she is not a national. (Art. 2 (1), International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

National

A person who, either by birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil and political rights and protection; a member of the State, entitled to all its privileges; a person enjoying the nationality of a given State.

Post-arrival / Onsite

The period in the migration journey when the worker arrives and starts work at the country of his/her employment.

Pre-departure

The period in the migration journey when the worker has entered into a foreign employment contract and is preparing to leave for the worksite.

Pre-employment

The period in the migration journey when a person is considering foreign employment, but has not applied for a job opening.

Receiving country / Country of destination / State of destination

The country that is a destination for migratory flows.

Remedy

The legal processes aimed at redressing the violation of a right, as well as the substantive outcome of such a process.

Remittances

Monies earned or acquired by non-nationals that are transferred back to their country of origin.

Repatriation

The personal right of a prisoner of war, civil detainee, refugee, or of a civilian to return to his or her country of nationality under specific conditions laid down in various international instruments.

Return

The personal right of a prisoner of war, civil detainee, refugee, or of a civilian to return to his or her country of nationality under specific conditions laid down in various international instruments.

Return and Reintegration

The period in the migration journey when a worker prepares to return or is newly resettled in the home country.

Risk

The possibility of loss or injury (risk. 2011. In Merriam-Webster.com. Retrieved May 12, 2021, from <https://www.merriam-webster.com/dictionary/risk>)

Seafarer

In the migration context, the term refers to a migrant worker employed on board a vessel registered in a State, of which he/she is not a national (includes persons on shipping vessels). (Article 2.2, International Convention on the Protection of the Rights of All Migrant Workers and members of Their Families, 1990).

Sending country / Country of origin / State of origin

The country that is a source of migratory flows.

Skilled migrant / Skilled worker

A migrant worker who, because of his/her skills or acquired professional experience, is usually granted preferential treatment regarding admission to a host country (and is, therefore, subject to fewer restrictions regarding length of stay, change of employment, and family reunification).

Trafficking in Persons

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve consent of a person having control over another person, for the purpose of exploitation. (Art. 1(a), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime). Trafficking in persons can take place within the borders of one State or may have a transnational transfer.

Treaty

“An international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” (Art 2.1 (a) Vienna Convention on the Law of Treaties, 1969).

Undocumented migrant / Undocumented worker

A non-national who enters or stays in a country without the appropriate documentation. This includes, among others: a person (a) who has no legal documentation to enter a country but manages to enter clandestinely, (b) who enters or stays using fraudulent documentation, (c) who, after entering using legal documentation, has stayed beyond the time authorized or otherwise violate the terms of entry and remained without authorization.

Violence against women

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” (Art. 1, Declaration on the Elimination of Violence against Women, 1993).

Vulnerability

Within a migration context, vulnerability is the limited capacity to avoid, resist, cope with, or recover from harm. This limited capacity is the result of the unique interaction of individual, household, community, and structural characteristics and conditions.

SOURCES

Association of Southeast Asian Nations (ASEAN). (2017). Terminologies Used Throughout the Compendium: In Compendium on Migrant Workers' Education and Safe Migration Programmes. ASEAN.

International Organization for Migration. (2004). Glossary on migration. United Nations Publications.

International Organization for Migration & Scalabrini Migration Center. (2013). Country Migration Report: The Philippines 2013.

United Nations Development Programme. (2005). Introduction to Access to Justice. In Programming Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice.



EXECUTIVE SUMMARY

Seeking Justice: Developing Improved OFW Feedback and Complaints Mechanisms is a research report organized under the “Aligning Lenses Towards Ethical Recruitment” (ALTER) project, a joint endeavour of the International Organization for Migration (IOM) and the Blas F. Ople Policy Center and Training Institute, Inc. ALTER’s aim is to reduce the prevalence of human trafficking and labor exploitation among Overseas Filipino Workers (OFWs) through increased access to ethical recruitment channels. The research report contributes to a key ALTER outcome – that the Government of the Philippines, the private recruitment agencies and the civil society organizations are able to capture and effectively address more worker grievances through a streamlined and improved worker feedback mechanism and case management capabilities.

In preparing this report, the research team undertook an extensive desk review and conducted personal interviews with over 40 migration experts from different stakeholders in government, the private sector, and civil society organizations (CSOs) in the Philippines and the Gulf Cooperation Council (GCC) (January to March 2021). Seeking Justice’s preliminary findings were shared in three validation workshops involving over a hundred participants: one with the Philippine Overseas Employment Administration (POEA) and government officials, a second with the Private Recruitment Agency (PRA) sector, and a third with academics and CSOs. It is unfortunate that the actual number of Filipino OFWs directly interviewed for this report are only a few; it is our hope that the interviews with the migrant associations compensate for and provide the voices of affected migrants.

A key challenge in undertaking this study has been the lockdown and limited mobility resulting from the COVID-19 pandemic. Arranging interviews and the follow-ups proved difficult where the government’s work-from-home arrangements were in place. Obtaining data reports and samples of overseas employment forms was especially challenging. Comparing data and information from different sources was not possible with the lack of standardization of definitions and classification of cases.

RISKS AND VULNERABILITIES OF OFWS

Each year, over a million Filipinos choose to work abroad, either in first-time employment or in a renewal or extension of an overseas work contract. This choice, by and large, is voluntary and decided on many factors, including the availability and quality of local employment opportunities, as well as family considerations. For many workers, overseas employment has upgraded the quality of life of their families. Filipino households with overseas workers consistently show a larger satisfaction in their current life and express greater optimism for the future than non-OFW households.

Still, the decision to have/continue with overseas employment has its risks, whether these are environmental (such as the general levels of treatment and discrimination faced by migrants in their new countries of employment) and specifically, where the foreign countries’ laws and processes relating to employment and working conditions are inconsistent or incompatible with Filipino standards and

practice. Workers' occupations matter. It is likely that professionals and highly technical workers have better terms and conditions of work than the lower-skilled workers such as cleaners and construction workers. Gender matters. Women migrants experience situations of gender-based discrimination and violence distinct from male migrants. There are also personal and familial risks involved for all overseas workers, as long periods of separation from the homeland present risks of losing affection and ties with families and social networks.

The profile of OFWs in recent years reveals increased vulnerability, especially of its newly-hired (first-time) workers for lower-skilled jobs from regions farther away from city centres. In 2018/2019, the POEA registered over 300,000 workers with first-time contracts. Seventy percent (70%) of those engaged in these contracts were women, hired as household domestic workers, mainly destined for the Middle East. The women were recruited in the Visayas and Mindanao, much farther away from the Manila urban centre. As first-time workers, many of the new hires are unfamiliar with the working environments of the countries of destination and are less able to negotiate the terms and conditions of work.

NATIONAL COMMITMENT TO INTERNATIONAL NORMS AND APPLICATION IN NATIONAL LAW

Philippine law and jurisprudence has established a strong foundation for government migration policy, institutions and programs. The protection of the country's overseas workers is enshrined in the 1987 Philippine Constitution and the long-standing migration jurisprudence. The country has also positioned itself as a global advocate in promoting migrant workers' rights and OFW interests. The country has ratified international standards that include global human rights conventions and international labor standards.

Perhaps unique globally, the Philippines established the provision on joint and solidary liability (JSL) applied in the licensing of private recruitment, which means that both the private recruitment/placement agency and the foreign principal/employer can be held individually liable for the entire amount of claim or obligation due to the OFWs. The JSL, now embedded in legislation and Supreme Court decisions, is controversial among different stakeholders. It is, however, the lynchpin of the Philippine redress mechanisms. Without it, the Philippines would have limited jurisdiction of cases when the violations may be occurring in a foreign country.

THE NATIONAL OPERATIONAL MECHANISMS

The Department of Labor and Employment (DOLE) and its specialized agencies are the lead organizations hosting the complaints and grievance mechanisms for OFWs, providing legal assistance,

conciliation services and adjudication to resolve and achieve just and fair outcomes. The Department of Labor and Employment's International Labor Bureau (ILAB) and the international labor corps, and the specialized agencies, the Philippine Overseas Employment Administration, the Overseas Workers' Welfare Administration (OWWA) and the National Labor Relations Commission (NLRC), serve as the front-liners in addressing the legal needs of Filipino migrant workers, primarily those legally hired through private recruitment agencies. The recourse of OFWs hired through the government placement bureau and those directly hired is ambiguous. The OWWA, especially during emergency repatriations and in situations of severe distress, is also able to attend to the concerns of all OFWs regardless of status.

Today (2021), the NLRC retains this original and exclusive jurisdiction. The cases that are brought to the NLRC are mostly cases involving agency-hired workers, covering workers whose contracts were processed as new hires at the POEA. Still excluded are case violations of government-to-government hires, direct hires and undocumented workers, as well as those who are considered as rehires in the overseas employment program. The POEA retains jurisdiction over "disciplinary cases; and all pre-employment cases which are administrative in character involving or arising out of violation of recruitment laws, rules and regulations including money claims arising therefrom, or violation of the conditions for issuance of license or authority to recruit workers", as provided in Executive Order No. 247.

While the jurisdiction of overseas employment cases lies with the POEA and NLRC, all overseas cases form part of the DOLE's administrative dispute resolution mechanisms and are covered by the Single Entry Approach (SEnA). First introduced through DOLE's Department Order 107-10 and later institutionalized with the passage of RA 10396 in 2013, the SEnA is an administrative approach to provide a speedy, impartial, inexpensive and accessible settlement procedure of all labor issues or conflicts to prevent them from developing into full-blown disputes or actual labor cases. The SEnA aims to obtain the amicable settlement of the dispute among the differing parties wherein a neutral party, the SEnA Desk Officer (SEADO), assists the parties by giving advice or offering solutions and alternatives to the problems. SEnA action desks have been set up at DOLE regional offices, the National Conciliation and Mediation Board (NCMB), the NLRC, the POEA and the OWWA. The Philippine Overseas Labor Offices (POLOs) in the OFWs' countries of destination are also considered as SEADOs.

In the Department of Foreign Affairs (DFA), the Philippine Embassy provides a safe haven for many Filipinos in times of need and crisis. In 1993, the Philippine Government mandated that a country team approach be adopted by all foreign service posts in the conduct of development diplomacy. The measure intended to ensure the efficient and effective delivery of services to overseas Filipinos, according to RA 8042 as amended by RA 10022. All officers, representatives and personnel of the Philippine Government posted abroad regardless of their mother agencies shall, on a per country basis, act as one mission under the leadership of the Ambassador. In the DFA hierarchy, the Office of the Undersecretary for Migrant Workers Affairs (OUMWA) serves as the pivotal office in the DFA in monitoring Filipino migrant workers' welfare. To effect a cohesive and effective delivery of government services to overseas Filipinos, particularly those in distress, the DFA with the DOLE, the Department of Health (DOH), the Department of Social Welfare and Development (DSWD) and also the Department of Education (DepEd) jointly prepared a Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas.

The DFA administers the Legal Assistance Fund. The fund is used to pay for legal services of migrant workers and overseas Filipino in distress, specifically for fees for foreign lawyers, bail bonds, court fees and charges, and other litigation expenses.

COMPARISON OF DOLE INTERNAL MONITORING SYSTEMS, CASE PROFILES AND ONLINE PRESENCE

Three DOLE offices – the POEA, OWWA and ILAB – and the NLRC have internal tracking systems to monitor the performance of their individual units that are associated with complaints mechanisms. These systems are not fully operational in each of the offices, and because of differences in systems and technology, the monitoring systems are not able to link to nor communicate with each other.

The overseas employment offices (POEA, OWWA and ILAB/POLO) have been updating and upgrading their online presence for some time now to improve workers' reporting of complaints and concerns. The POEA and OWWA both established hotlines in 2009. Currently, there is no information on the extent of use of these hotlines. There has been no prior analysis of the queries, concerns and complaints sent through the telephone hotline numbers, in particular, whether these were simple information queries or those requiring urgent action.

The pandemic lockdown “forced” a greater reliance on digital platforms such as Facebook. The use of the Facebook pages has emerged as an important entry point for workers' complaints and grievances. The use of these applications greatly improved workers' ability to connect with government institutions regarding their complaints and grievances.

Based on interviews conducted for this research, the actual number of cases/complaints received and acted upon by the DOLE is difficult to compare because of different data constructs and where available, the data involve different years. The POEA reported a total of nearly 8,000 legal assistance requests in 2020, the comparable figure from the OWWA is 4,663. The Adjudication Office claims that their cases average 5,000 to 8,000 a year. The NLRC figures date to 2017, as the Commission reported 57,000 cases but did not separate local from overseas employment figures.

The most frequent concerns of all DOLE offices involve overseas worker contract violations, primarily the non-payment of wages and benefits, and maltreatment being the second main type of cases brought to the DOLE. The POEA's Adjudication Office reports cases against agencies consisting mainly of recruitment violations from misrepresentation relating to breaches of the employment contract, such as non-payment or delay in wages and failure to give end-of-contract benefits, vacation leaves, bonuses, etc.

THE PRIVATE RECRUITMENT AGENCIES

PRIVATE RECRUITMENT AGENCIES

The expansion of the Philippine overseas employment program is attributable to the positively strong reputation of the overseas Filipino workforce and the drive and energy of the country's private business sector. The Philippine recruitment industry in 2019 consisted of, at its core, the 800 or so private placement agencies and manning companies facilitating employment for land-based and seafaring workers.

In addition to the Philippine private recruitment agencies, this international trade of employment services counts on thousands of diverse firms providing pre-departure orientation services and

medical testing or supplying insurance coverage. There are also many trade and testing centres dedicated to supporting the overseas employment program in skills certification, training and testing for thousands of aspiring overseas workers. Many private travel agencies also benefit from overseas employment recruitment and placement.

The movement for fair and ethical recruitment of migrant workers has expanded in recent years. For the business sector, there are reputational and financial incentives for engaging in ethical recruitment, beyond the fundamental respect of human rights. It is the belief that the cost of ethical recruitment is nominal or marginal to the overall project cost; it can actually be more cost-effective for employers to practice responsible recruitment. For example, companies' reputational risks are extremely high when migrant workers are seen to work under substandard work contracts. The costs of delays, dismissals and replacement of poorly trained or inexperienced workers are also quite high when workers have been selected on the basis of their willingness to pay excessive fees rather than on their personal merit.

Among Philippine recruitment agencies, the negative financial impact of the JSL has been considerable, not only in terms of the responsibility for workers' money claims but also in terms of the opportunity costs caused by suspension of business processing and other distractions. As a result, different-sized agencies now pay greater attention to due diligence approaches in their recruitment operations. Their operational goal is to identify affected workers quickly and seek an early settlement of the disputes. Achieving that requires communication and access to the placed workers to avoid formal and extended disputes.

Regardless of size, sector, operational context, ownership and structure, private recruitment companies have the means to undertake ethical recruitment and assume the responsibility for the redress of workers' grievances. However, the scale and complexity of the means used by the business sector may vary according to their size and other factors.

Among the measures adopted by the PRAs include: a company statement of purpose, the careful choice of employers and workers, staff training, and partnerships with CSOs. The important measure has been the practice of establishing clear communication channels that encourage workers to report violations or issues of concern. In several recruitment companies, the OFWs access a Facebook page (usually the same one they used when workers' applied) or a company email. Among agencies with a large number of placements, the companies have developed internal reporting systems that allow the early identification and resolution of complaints in both the Philippines and in the countries of destination.

The POEA now requires private recruitment agencies to participate in the OFW Welfare Monitoring System (OWMS). It is a web-based system developed and introduced by the POEA in 2018 as a tool to assist agencies in reporting the status of workers they have placed in foreign assignments. The Workers' Education and Welfare Monitoring Division (WEWMD) is the unit in charge of implementing the OWMS and the evaluation and analysis of its reports. The OWMS is currently operational, with 95% of PRAs reporting on the situation of their workers.

The WEWMD monitors two types of reports: (a) the regular quarterly reports on workers' status, and (b) special reports indicating significant events, submitted no more than five days after the event. Regular reports are accomplished for cases that fall under normal or good working conditions with no serious incident. Significant onsite events may include: deaths, injury, detention, accidents, runaway workers, missing workers, desertion, emergency disembarkation for medical attention, disembarkation, repatriation, and sea piracy, among others. The Philippine recruitment agencies have had serious difficulty in complying to the reporting requirements of the POEA for its deployed workers, especially when the responsibility can run over two years of placements.

Through an amendment of the 1995 The Migrant Workers and Overseas Filipinos Act (RA No. 10022, 2010), all OFWs hired through private recruitment agencies are required to have an OFW Mandatory Insurance Coverage. Offered by only seven designated Philippine insurance providers, the compulsory insurance policy is effective for the duration of the migrant worker's employment contract. It shall cover, at the minimum, accidental death, natural death, permanent total disablement, repatriation cost, subsistence allowance, money claims, compassionate visit, medical evacuation, and medical repatriation. The costs of the mandatory insurance policy are to be borne by the employer or his/her agent.

The protection of migrant workers through a well-implemented insurance program offers increased protection against the personal and contractual risks of overseas employment. On the personal level, insurance covers the OFW against the risks of accident, illness and death. Insurance can also protect the OFW against the risks of contract violations, including the non-payment and delayed wages, unjustified contract terminations, among others. This insurance protection also serves the PRA as a useful buffer to absorb the costs of the JSL decisions against an employer/PRA.

However, the extent to which the OFW mandatory insurance scheme has been successful is not known. Under RA 10022 of 2010, the OFW mandatory insurance program was expected to have an assessment and evaluation after the first three years of program implementation. In addition, the DOLE and the Insurance Commission were required to publish annual reports on the extent of beneficiaries' claims and payouts. Information on the evaluation and subsequent publication of the reports is not available. There is a need for greater clarity, transparency and accountability surrounding the mandatory insurance program.

BARRIERS IN ACCESSING JUSTICE AND THE CONTRIBUTION OF CIVIL SOCIETY ORGANIZATIONS

Access to justice or access to redress is a basic human right across all the core international human rights treaties and forms an integral part of Philippine legislation for the protection of migrant workers. Access to justice means that citizens are able to use justice institutions to obtain solutions to their common justice problems. For access to justice to exist, justice institutions must function effectively to provide fair solutions to citizen justice problems.

In this context, the 2018 National Migration Survey (NMS) data on the help-seeking behaviour of

international migrants is not surprising. Among the respondents who have experienced involuntary work arrangements that include some of the worst forms of migrant abuse, only a third (28.6%) sought help. The percentages of men and women seeking help are similar; however, men and women sought help from different sources. And among those who did seek help, an even smaller number filed a complaint or a case against the employer. There many reasons for not seeking help, of which fear and intimidation are quite important. There is the disturbing sense of helplessness and resignation among the respondents, an acceptance that taking action would not result in significant positive change.

In migration, enforcement of contractual rights is particularly relevant to migrant workers who enter into private contracts with employers and foreign and local recruitment agents. By ensuring enforcement and compliance, the State strengthens the rule of law by increasing the accountability of private and government actors.

PURSUIING CASES IN COUNTRIES OF DESTINATION

There are important differences in the ways that foreign migrant workers are treated in different countries of destination. As OFWs seek work in many different countries, individual workers need to have a good understanding of how the workers' rights are respected by all stakeholders: governments, private recruitment agencies and CSOs in these countries of destination. For example, it would be fair enough to say that Southeast Asian countries have different systems of migration governance from those of the GCC. Nevertheless, there are still problems experienced by OFWs in Southeast Asian countries in pursuing their complaints and grievances in these countries.

The Hong Kong Federation of Asian Domestic Workers Unions (FADWU)'s "Price of Justice" research and publication (2019) looked into the migrant workers' hesitation to access Hong Kong's redress mechanisms. The study identified the practical and procedural problems of the migrant workers in accessing remedy. The primary barrier that workers faced was the risk of losing their foreign employment. Migrant domestic workers in Hong Kong who make a complaint against their employers might lose their employment and with this loss, they also might not have a place to stay and thus be responsible for their own living expenses. This is due to Hong Kong's mandatory live-in requirement that compels all migrant domestic workers to reside in their employer's residence. With an average of 58 days to prosecute claims, the prospect of paying their living costs for weeks and months while not being able work makes the process extremely expensive.

Migrant workers with complaints would file a case at the Hong Kong Labor Tribunal, described as a "quick, informal and inexpensive way of settling monetary disputes between employees and employers" in which parties "are encouraged to explore settlement as a means of resolving their dispute". Further, the research shows that on average, workers obtain just 40% of what they claimed. The migrant worker complainants accepted even sub-standard settlements for several reasons. The complainants urgently needed the money, they could not afford to stay longer in Hong Kong without any guarantee that they could recoup the money. Others needed to work again so that they could provide for their family. In 2018, 72% of the claims involving migrant domestic workers were settled at the conciliation stage.

Migrant workers in the GCC face nearly insurmountable barriers in pursuing their cases and complaints in the GCC countries. In pursuing complaints against their employers, there is a serious imbalance of power favouring the employer under the GCC employer sponsorship

system, better known as the kafala. Under the kafala, employers govern the workers' entry into the country, the renewal of residence permits, the termination of employment, the transfer to different employers, and the exit from the country. Unlike in Hong Kong, terminated workers do not have the option to transfer employers without the consent of the current employer and in this situation, they only seek their repatriation to the Philippines.

CSOs are not consistently accepted in the GCC, with some organizations closely monitored for security reasons. The Catholic Church has taken up the provision of much of the resources through church missions to provide short term assistance to workers – food, temporary shelter, and maybe even some part-time work.

Seeking justice in the destination country's hardly understood institutions and fragmented laws and policies is often considered untenable, especially when the workers are confronted with unfriendly immigration and work permit processes. The opportunity to pursue the case in the Philippines is often the only option.

PURSUIING CASES IN THE PHILIPPINES

OFWs pursuing cases in the Philippines are likely those who have already been returned or repatriated to the Philippines. JSL, now institutionalized by law and reaffirmed by the Supreme Court, is a powerful tool when claimants to justice are denied the opportunity in the host countries. Though the Philippine State may not be able to call employers to testify or seize assets as part of compensation, the State via the POEA can compel the recruitment agencies to answer and seize cash and surety deposits for these obligations. In practice, private recruitment agencies advance the costs of repatriation and arrange compromise agreements, with the expectation that the mandatory insurance coverage of OFWs can reimburse most, if not all, of these costs. Recourse to the JSL is limited to those OFWs who are hired through licensed recruitment agencies.

The financial pressure on OFWs are not any less demanding. An early return home would mean unpaid debts and the loss of savings and the ability to support family consumption, including education. The pressure to find new employment, preferably another overseas assignment, would be relentless.

There are also significant costs involved in pursuing cases and grievances. In addition to the opportunity cost – as filing and following up on cases take time away from a job search or starting a new job – the OFW would need financial and time resources for getting professional services for legal assistance, especially if the cases are presented at the NLRC or as the cases enter the formal judicial system. There are also expenses for documentation, such as providing proof of the non-granting of leaves or non-payment wages, as well as for travel and related expenses in the many days it requires to pursue a complaint. There are estimates that cases can be completed quickly. Compromise settlements are possible within 30 days. Longer adjudication lasts from as fast as five months to a possible five years if the case reaches the Supreme Court.

Within the current redress mechanisms, there is a strong internal pressure to settle. At the POEA, the OWWA, the NLRC and even at the POLOs in the different countries, the current procedures have built-in opportunities to settle, with many calls for several conferences or conciliation. There are many reasons why a settlement between the parties is desired: it shortens the time needed for the claimant to receive immediate compensation, both parties agree on the sum thus making it theoretically fair, and the claimant can be sure to receive some amount rather than none at all. The desire for speed, however, can also lead to lopsided results. Though the

worker is back in the home country, the OFW is still negotiating from a position of weakness against the employer's or agency's position of strength.

THE CIVIL SOCIETY ORGANIZATIONS

In the Philippines, very few CSOs are directly engaged in legal assistance services. OFWs repatriated to the Philippines approach the CSO for advice on their complaints and on available processes. Family members seek help with the Philippine-based CSOs to draw attention to OFWs in dire situations at the country of destination. The CSO is able to pressure the PRA or a government institution help repatriate their distressed relative back to the Philippines.

The CSOs say that their client OFWs do not feel empowered to avail of the POEA/OWWA services as a matter of right. When OFWs visit government offices, many are so poorly treated whether by office and security staff of different offices. In some cases, staff treat workers in an abrasive or aloof manner, security staff raise their voices, refusing to let workers enter premises of an office without any explanation or reason. Workers also underestimate the time frame of how long it takes to prosecute a case. Some OFWs mistake case filing with an office like OWWA, for example, as a “one stop shop”, believing that the process would be finished in a day.

A few CSOs have informal partnership agreements with those in the destination countries. The intention is to provide a continuity of information and systematize action between and among the organizations.

CSOs in the country of destination are usually composed of long-time Filipino residents there who volunteer to provide guidance to newcomers and information and other services to Philippine Government offices and recruitment agencies. These long-term residents have also volunteered to host pre-employment orientation seminars (PEOS) for selected employers, in addition to those regularly arranged by the Philippine Embassy. These CSOs consider themselves as “field workers” for the government as they provide workers' assistance and services. Their volunteers assist in the overseas migrant centres to counsel distressed OFWs, to serve as a listening ear and reassure workers that despite their problems and living far from their families, there are other OFWs like them who are available and willing to listen to and help with their problems. Some CSOs are able to provide newly arrived OFWs with knowledge and information on pertinent labor laws, the culture of the citizens of the destination country, their rights as OFWs, benefits to being OWWA members, and any other important rights and benefits they are entitled to as OFWs.

A few Philippine private recruitment agencies are entering into informal partnerships with some CSOs at the country of destination. These CSOs are able to assist the PRAs with a range of services in finding solutions for OFWs in distress – such as, whenever possible, intervening for the PRA with the counterpart foreign recruitment agency or employer, surrogate for a visit to the OFWs in detention or, in a more active fashion, facilitate the transfer of a worker's employment sponsorship to a replacement employer. The partnership provides the PRA with an immediate and quick response to issues raised by its hired workers rather than waiting or being dependent on when a hearing can be scheduled at the POLO.

THE FRAMEWORK

Improving the current complaints and grievances mechanisms requires consideration of the following:

MULTIPLE ACCESS POINTS

The State-sponsored grievance mechanisms for OFWs, covering major complaints of contractual and recruitment violations including possible cases of forced labor and trafficking, fall within the mandates of the NLRC and the POEA. The entry points into these grievance mechanisms, however, include all the DOLE, NLRC and POEA regional operations, while the NCMB, the OWWA and the ILAB/POLOs all participate as gateways. Private recruitment agents, by submitting regular reports on significant events of their hired workers, can also contribute their reports of significant events as part of the multiple access points.

A HUB FOR ACCOUNTABILITY

While access at central and local levels allows OFWs much greater access to the grievance mechanisms and reduces their costs in pursuing their complaints, a convergent hub strengthens the operations of the grievance mechanisms. By establishing clear accountability, the hub is expected to provide oversight, facilitate access, develop systems, pursue efficiencies, monitor fair outcomes, and report on worker protection to those affected, the mechanisms' stakeholders and the general public.

The hub is currently non-existent and its creation will bring a sense of order to the current operations of the complaints mechanisms. There may not be a need to create a new office nor a new position. It may be as simple as designating a lead agency. But it is essential to establish a core group that will own up to the responsibility of ensuring that OFWs have access to the mechanisms and also, more importantly, that they have a fair chance at good outcomes. This will also help clarify to and encourage OFWs to use the grievance channels to claim their entitlements. It is also likely to reduce "forum-shopping" caused by a lack of clarity on the grievance mechanisms and also, partially, a clear distrust of the current processes. The hub needs to be funded, especially if it is reliant on digital operations.

It would be necessary, as a major change, to open the grievance mechanisms to all work-related problems and complaints, regardless of whether the complainant is a documented worker going through a licensed agency or the Government Placement Branch (GPB), or the worker is directly hired or on an extended contract.

In determining which government agency has the primary responsibility in overseeing the operations of grievance/complaints mechanisms, the Philippine Overseas Employment Administration (POEA) is the natural historical and likely lead. The Administration has the mandate for the supervision of the licensing and sanctioning of recruitment agencies, the fight against illegal recruitment, and the processing of contracts of all overseas workers. The Administration is also likely to be the technical secretariat for the negotiation and maintenance of the bilateral agreements on the hiring and placement of Filipino overseas workers. More importantly, the POEA and its adjudicators have a firmer and deeper grasp of the nuances and peculiarities of overseas employment. The POEA promulgates, through its Governing Board and Administrator, the policies, rules and regulations on the recruitment, placement, hiring, processing, deployment, welfare and repatriation of OFWs. It issues advisories on the laws, rules and regulations of the various countries of destination, including those on onsite dispute

settlement/resolution, as well as international conventions and bilateral labor agreements involving migrant workers. It accredits and registers foreign principals and employers, approves their job orders and processes employment contracts for use and implementation. It conducts overseas missions and visits to host countries to validate labor market reports. With its direct hands-on experience and broader knowledge, the POEA is in a strategic position to take on this role of oversight.

On the other hand, being the institution primarily responsible for the welfare of OFWs, the Overseas Workers' Welfare Administration (OWWA) is dedicated to monitoring the welfare of workers who have suffered contract violations and other welfare concerns. The OWWA is well-placed to provide its services, such as emergency shelter and quick repatriations, with its network of international and regional operations. With its Charter, the OWWA has much greater independence and the financial resources provided by the hired workers and their employers. In addition, unlike the POEA, the OWWA's protective mantle covers all overseas workers, including those who are undocumented and irregular. It is also the OWWA, at this time, that seems to have the better operational systems in place to monitor cases.

Alternatively, an independent third-party mechanism could also be considered. The Committee on Migrant Workers (CMW) has long suggested that States designate an Ombudsperson to facilitate migrant workers', particularly domestic workers', access to redress mechanisms. Another inspiration is the Netherlands' National Rapporteur who, while reporting to the Dutch government, nevertheless remains independent. The Dutch National Rapporteur has published multiple reports on human trafficking, child pornography and sexual violence against children.

TRACKS FOR CASES AND COMPLAINTS

At the hub, the complaints and cases are tracked into five channels, clustering complaints with similar management processes. A single case may represent different types of complaints; it would be important to provide the category that represents the most egregious complaint. These five tracks are recruitment regulation; contract related violations; forced labor and trafficking in persons; medical, health and death services; and workers in conflict with the law. Pandemic shutdowns or displacement by war involving mass repatriations are handled as extraordinary events and are treated separately.

The POEA, the OWWA, the ILAB/POLOs and the NLRC have different internal monitoring systems for the performance of their operational units. Linking their systems would be a longer-term project, as these systems are likely to have different operating systems. Nevertheless, in the interim, producing commonly designed reports would enable comparability and afford a comprehensive view of the operations of the complaints mechanisms.

Standardized intake forms will allow the creation of common databases with comparable demographic and occupational variables – age, gender, occupation, work location, among others – and more detailed presentation of the complaints data for the better classification of cases.

Simplifying procedures should lead to shorter and low-cost processes. As all participating agencies are expected to exchange information freely, it would be possible to reduce repetitive processes and repeat submissions of documents. Public information on processes and procedures would need to detail required documentation and possibly information on the possible length of time to pursue cases, based on prior experiences.

DATA FOR POLICY MAKING AND PUBLIC REPORTING

The Migrant Workers Act of 1995 highlighted the value of consolidated and integrated data for government to quickly and immediately respond to our overseas migrant workers' needs and requests for protection. The Act required data sharing with connectivity among key stakeholders as a matter of priority, namely the databases of the DFA, the Commission on Filipinos Overseas (CFO), the DOLE, the POEA, the OWWA, the Department of Tourism (DOT), the Department of Justice (DOJ), the Bureau of Immigration (BI), the National Bureau of Investigation (NBI) and the National Statistics Office (NSO).

Improvements in technology combined with political will may make this legal provision a reality. The government organizations managing or facilitating complaints mechanisms need to produce and publish summary reports on the operations of its grievance mechanisms. These combined reports (or at the start, individual reports) should highlight the cases of OFWs, disaggregated with the following demographic and employment characteristics: land-based vs. sea-based; male vs. female; country of destination or flag (for seafarers); occupation, esp. domestic workers; and cause of action.

Regular information to the stakeholders and the public builds the legitimacy and transparency of the mechanisms. Periodic analysis of the frequency, patterns and causes of grievances can enable the POEA/OWWA to identify policies, procedures and practices that prove effective and sustainable in the long term. Sharing the results to a wider audience provides an opportunity for the active participation and ongoing feedback about the performance of the grievance mechanism. This provides a continuous source of learning to identify lessons for improving the mechanism and preventing future grievances.

A UNIFIED COMMUNICATIONS PROGRAM

Any worker seeking information on taking a complaint forward to a docketed case and a grievance will have to consider different information sources – government websites, CSO help centres, and even information stalls in the airport. These websites and information sources post different telephone numbers, email addresses and resources to assist the worker. Information received online would usually not be harmonized with the mandatory pre-departure orientation programs required of departing overseas workers.

As the information is from government sources, it would be helpful to develop common instructions and useful information on posters, flyers and programs relating to complaints mechanisms. Synchronizing this information with business, civil society organizations, and pre-departure and pre-employment orientation programs will strengthen the impact of this messaging.

STAFF TRAINING

Staff training and capacity building emerged in many interviews and workshops as a major step forward in improving the workers' complaints mechanisms. Staff training needs to initially focus on the overall operations of the complaints mechanisms, in the identifying and categorizing of cases, in the mechanics of the legal procedures and in the closing of the cases. More specialized focus can be given to conciliation, negotiations for settlements, and compromise agreements and adjudication. With the higher proportion of women raising complaints and filing cases, there may be a need to offer gender-sensitivity training. This would also address the complaint raised by some OFWs that welfare officers need to be more empathetic to the worker-complainants, in particular the female complainants.

INVESTMENT IN DIGITAL INFRASTRUCTURE

Many of the challenges in improving the operations of the complaints mechanisms require upgrades in the DOLE's obsolete digital infrastructure, in particular for the POEA. While there is in-house capacity at the POEA to develop their own applications, the POEA's systems cannot be improved or updated without the improvement of the overall digital infrastructure. The POEA servers were acquired during the 2013-2017 period. Many of the applications/programs of the POEA were developed in the 1990's under sub-contracts with technical support.

PARTNERSHIPS WITH BUSINESS AND CIVIL SOCIETY ORGANIZATIONS

The design of any enhanced framework requires the engagement of the private recruitment agencies and the civil society organizations. All parties in the grievance mechanisms should believe that different stakeholders – employers, workers and recruiters – have a fair chance in obtaining an equitable outcome.

The success of grievance mechanisms depends on the trust of its stakeholders in the integrity and impartiality of these mechanisms. For now, there are both positive and negative perceptions on the effectiveness of the systems, whether these are sufficiently impartial and whether the aggrieved parties have reasonable access to sources of information, advice and expertise. There are allegations of corruption and favouritism, trigger happy complainants, and forum-shopping. There is little research on the outcomes of legal decisions, whether these are equitable or compatible with international human rights. To accomplish this, managers of the mechanisms need to commit to opening their systems to scrutiny.

The overseas employment program is an important pillar in the national employment strategy and is expected to continue in years to come. For the national policies and programs to remain relevant, constant innovation and learning need to be sustained.

CHAPTER 1

INTRODUCTION

Seeking Justice: Developing Improved OFW Feedback and Complaints Mechanisms is a research report organized under the “Aligning Lenses Towards Ethical Recruitment” (ALTER) project, a joint endeavour of the International Organization for Migration (IOM) and the Blas F. Ople Policy Center and Training Institute, Inc. ALTER’s aim is to reduce the prevalence of human trafficking and labor exploitation among Overseas Filipino Workers (OFWs) through increased access to ethical recruitment channels.

The research report contributes to a key ALTER outcome – that the Government of the Philippines, the private recruitment agencies and the civil society organizations are able to capture and effectively address more worker grievances through a streamlined and improved worker feedback mechanism and case management capabilities.

In preparing this report, the research team undertook an extensive desk review and conducted personal interviews with over 40 migration experts and practitioners from different stakeholders in government, the private sector, and civil society organizations in the Philippines and the Gulf Cooperation Council (GCC) (January to March 2021). Seeking Justice’s preliminary findings were shared in three validation workshops involving over a hundred participants: one with the Philippine Overseas Employment Administration (POEA) and government officials, a second with the Private Recruitment Agency (PRA) sector, and a third with academics and civil society organizations. It is unfortunate that the actual number of Filipino OFWs directly interviewed for this report are only a few; it is our hope that the interviews with the migrant associations compensate for and provide the voices of affected migrants.

A key challenge in undertaking this study has been the lockdown and limited mobility resulting from the COVID-19 pandemic. Arranging interviews and the follow-ups proved difficult where the government’s work-from-home arrangements were in place. Obtaining data reports and samples of overseas employment forms was especially challenging. Comparing data and information from different sources was not possible with the lack of standardization of definitions and classification of cases.

The research project was designed with built-in limitations. The attention would centre on land-based OFWs in the GCC countries with a primary emphasis on the operational mechanisms relating to contract and recruitment regulations and therefore, with the Department of Labor and Employment (DOLE). The report nevertheless briefly covers the vulnerability of Filipino workers to illegal migration, especially as violations of immigration rules and work permits rank as the third highest in the number of cases reported in Philippine Overseas Labor Offices (POLOs).

1.1 STRUCTURE AND CONTENT OF THE REPORT

This completed report examines, among others, the Filipino overseas workers' continued risks and vulnerabilities in their migration journeys. The report substantively explains the Philippine Government's normative and operational efforts to better ensure workers' access to the complaints mechanisms, and the extent to which these mechanisms were able to provide services to the affected OFWs. The report also looks at how private recruitment agencies and civil society organizations have contributed to the governmental commitment for better OFW protection. The report concludes with the design of an improved framework and a set of recommendations to strengthen workers' access to complaints mechanisms and also achieve fair outcomes.

- Chapter 1 introduces the report, outlining its objectives and expected outcomes.
- Chapter 2 provides an overview of workplace risks and the OFW vulnerabilities to recruitment irregularities and contractual and workplace violations in the OFW migration journey. These irregularities and violations are experienced at different stages of the process – pre-employment, onsite, and upon the workers' return. The chapter also analyses the different categories of cases that are reported to the Philippine authorities.
- Chapter 3 provides an overview of the comprehensive normative framework underlying the Philippine State's efforts to ensure the protection of its overseas workforce. The framework combines national law and the country's ratification of key international human rights and labor standards directly related to external migration. The chapter also spotlights attention on the country's Joint Solidary Liability (JSL) provisions in Philippine legislation, a feature unique in the world and a lightning rod for international praise and criticism.
- Chapter 4 presents the Philippine complaints/grievance mechanisms and their mandates, details the processes, and identifies their challenges. The POEA, the Overseas Workers' Welfare Administration (OWWA), the National Labor Relations Commission (NLRC), and finally, the POLOs are at the forefront of responding to workers experiencing problems in the countries of destination. There are also brief discussions on the protection of undocumented workers whose concerns are handled by the Department of Foreign Affairs (DFA).
- Chapter 5 looks at the contribution of the Philippine private recruitment sector both in facilitating the overseas employment of many Filipinos as well as in pursuing ethical recruitment and ensuring the protection of OFWs in their foreign employment. Government policies, such as the JSL, the OFW Welfare Monitoring System (OWMS) mandatory reporting and OFW compulsory insurance coverage, have inevitably shaped the private agencies' management and handling of overseas workers' complaints and cases. The chapter also looks at the due diligence measures increasingly implemented by the private recruitment agencies to better prevent OFW complaints and cases.
- Chapter 6 looks at the extent to which OFWs are aware and are able to access the legal OFW complaints mechanisms to enforce the compliance of their contracts. Many obstacles and deterrents confront the OFWs as they pursue their complaints and cases whether in the Philippines or in the country of destination. These deterrents also help explain why many OFWs do not, even right at the start, seek to pursue these complaints and grievances. A section in this report also considers how civil society organizations serve to facilitate the OFWs' access to remedy and redress.

Chapter 7 completes the earlier discussions of the risks and vulnerabilities of the OFWs, the country's commitments to OFW protection and their access to justice, and the Philippine feedback mechanisms organized to support the OFWs' efforts to rectify contract and recruitment violations. The chapter considers an improved/enhanced framework for overseas workers' complaints. While this framework is broad in its scope, it seeks to respond to the key criticisms to perceived gaps and offers specific recommendations to improve the efficiency and relevance of the country's complaints mechanisms for OFWs.

1.2 ACKNOWLEDGEMENTS

Identifying relevant research studies and other data sources, providing historical background on the evolution of policy, and pooling together information from different periods have been critical tasks of the research team – special thanks go to Ms. Carla Magalona, Ms. Sophie del Prado and Ms. Tina de Guzman. The graphic designs and presentations of this report are due to the contribution of Ms. Bijo Robis.

Research interviewees and workshop participants contributed insights and provided nuances that deepened the research understanding of the complexity of complaints and cases of OFWs. All these contributions have allowed a more comprehensive report on the state of complaints mechanisms of the Philippine Government. The responsibility for information and opinions expressed in this report rests solely, however, on the author.

CHAPTER 2

THE OFW MIGRATION JOURNEY: RISKS AND VULNERABILITIES; RECRUITMENT AND CONTRACTUAL VIOLATIONS

2.1 THE RISKS OF WORKING IN A FOREIGN COUNTRY

Each year,¹ over a million Filipinos choose to work abroad, either in first-time employment or in a renewal or extension of an overseas work contract. This choice, by and large, is voluntary and decided on many factors, including the availability and quality of local employment opportunities, as well as family considerations.² For many workers, overseas employment has upgraded the quality of life of their families. Filipino households with overseas workers consistently show a larger satisfaction in their current life and express greater optimism for the future than non-OFW households.³

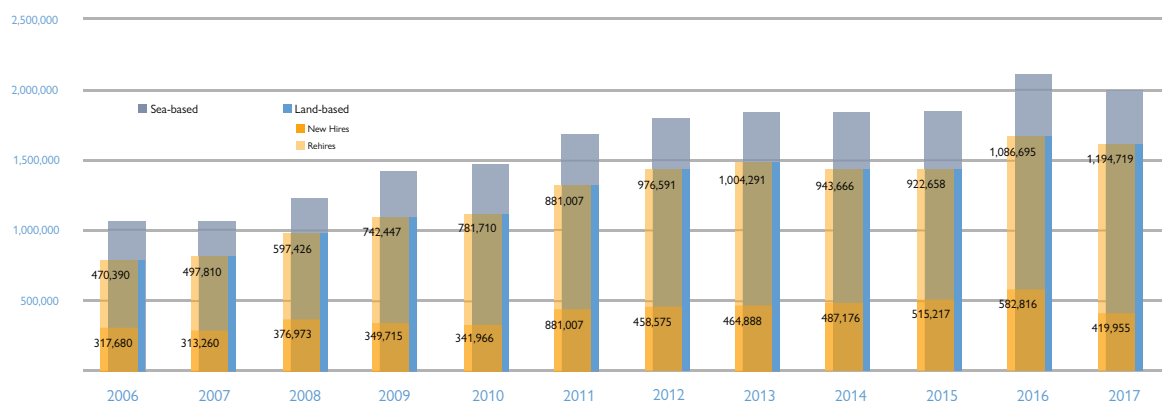


Figure 1. Deployed Overseas Filipino Land-based and Sea-based Workers, 2006 to 2017

Source: Overseas Employment Statistics, Philippine Overseas Employment Administration

Still, the decision to have/continue with overseas employment has its risks,⁴ whether these are environmental (such as the general levels of treatment and discrimination faced by migrants in their new countries of employment) and specifically, where the foreign countries' laws and processes relating to

¹ Pre-pandemic figures, found in Philippine Overseas Employment Administration: Social Weather Stations (SWS) (2017). SWS Scoping Study on International Migration in the Philippines: "Making the Case for More and Better Data for Policy-Making and Program Services" [PowerPoint Presentation]. Quezon City, Philippines.

² The Pinoy OFW. (n.d.). [12 Reasons Why Filipinos Want to Work Abroad](#).

³ See citation 1: SWS Scoping Study on International Migration in the Philippines.

⁴ Defined as "possibility of loss or injury" (refer to glossary for definitions).

employment and working conditions are inconsistent or incompatible with Filipino standards and practice. Workers' occupations matter. It is likely that professionals and highly technical workers have better terms and conditions of work than the lower-skilled workers such as cleaners and construction workers. Gender matters. Women migrants experience situations of gender-based discrimination and violence distinct from male migrants.⁵ There are also personal and familial risks involved for all overseas workers, as long periods of separation from the homeland present risks of losing affection and ties with families and social networks.⁶

The profile of OFWs in recent years reveals increased vulnerability, especially of its newly-hired (first-time) workers for lower-skilled jobs from regions farther away from city centres. In 2018/2019, the POEA registered over 300,000 workers with first-time contracts. Seventy percent (70%) of those engaged in these contracts were women,⁷ hired as household domestic workers,⁸ mainly destined for the Middle East. The women were recruited in the Visayas and Mindanao, much farther away from the Manila urban centre.⁹ As first-time workers, many of the new hires are unfamiliar with the working environments of the countries of destination and are less able to negotiate the terms and conditions of work.

NATIONAL MIGRATION SURVEY 2018 (NMS 2018)

The first nationwide survey on migration in the Philippines, the 2018 National Migration Survey (NMS 2018), provides information on the mobility of the Philippine population. Jointly implemented by the Philippine Statistics Authority (PSA) and the University of the Philippines through the Population Institute (UPPI), the survey with its sample size of 45,000 households intended to assist policymakers and program managers in evaluating and designing national and local strategies for improving services and assistance to people moving internationally (going abroad) or moving internally (within the country). As the first of its kind, the NMS gives important baseline information on international and inter-regional migration flows, types and characteristics of the migrants. Some of the most important subjects in the NMS refer to the work experiences of migrant workers in destination countries.

⁵ Hennebry, J., Grass, W., & McLaughlin, J. (2017). Women migrant workers' journey through the margins: Labour, migration and trafficking. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). 978-1-63214-062-3

⁶ International Organization for Migration (IOM), & Scalabrini Migration Center. (2013). Country Migration Report: The Philippines 2013. International Organization for Migration (IOM)

⁷ Philippine Overseas Employment Administration

⁸ Social Weather Stations (SWS) (2017). SWS Scoping Study on International Migration in the Philippines: "Making the Case for More and Better Data for Policy-Making and Program Services" [PowerPoint Presentation]. Quezon City, Philippines.

⁹ Mangahas, A. (2020). Protecting Women Migrant Workers Amidst the Pandemic and Beyond: A Contribution to the Zonta Campaign on Violence Against Women and Girls [PowerPoint Presentation]. 16 Days of Activism, Manila, Philippines.

COMPARISON OF BENEFITS RECEIVED BY INTERNATIONAL MIGRANT WORKERS IN THEIR FIRST AND LAST COUNTRIES OF DESTINATION

The National Migration Survey (NMS) of 2018 asked international migrants about the range of benefits they had received from their foreign employers during their first foreign work assignments and again during their last foreign work assignments.

Table 1 considers the varied employment benefits enjoyed by OFWs in their first assignments, juxtaposed with the benefits provided to the workers in their last (most recent) assignments. On their first assignments, the most widely provided benefits to workers are housing and lodging (76%) and the provision of food (70.4%). The third most widely available benefit is health insurance (53.2%).

On the average, the OFWs in their first terms of employment are likely to enjoy only approximately 60% of the benefits normally expected in a foreign employment contract, with the exception of rice or food allowance (70.4%). These proportions improve with time, and in comparison, there are higher percentages of benefits during the last assignments abroad. In later assignments, housing and food allowances remain the most widely available benefits; health insurance and payment of overtime also rise above 50%.

Table 1. Comparison of job benefits of international migrants in the first and last countries of destination, age 15 and over

BENEFITS PROVIDED BY THE EMPLOYER	FIRST COUNTRY OF DESTINATION in percentage (%)	LAST COUNTRY OF DESTINATION in percentage (%)
Health Insurance/Medical Allowance	53.2	63.1
Paid Sick Leave	39.4	48.7
Retirement Pension*	12.3	18
Separation Pay	30.4	32.8
Paid leave/vacation	36.6	40.9
Payment for Overtime Work	49.5	56.1
Maternity/Paternity Leave*	14.7	22.5
Housing and Lodging	76	73
Rice/ food allowance or other consumer goods	70.4	70.3
Holiday Bonus and other bonuses*	47	45.2

* Not part of the standard employment contract for an OFW; Philippine social pension and security plans are voluntary on the part of the workers

Source: National Migration Survey, 2018

2.2 RECRUITMENT PROBLEMS AND VIOLATIONS

Recruitment problems and violations occur in all stages of the migration journey. Potential and recruited migrant workers experience these problems at different stages and in varying degrees. The extent of grievance that workers experience will determine whether a worker requests for assistance (RFAs) at first, submits a complaint or, at the most serious, files a case against the perpetrator, which may be an individual and/or a firm.

PRE-EMPLOYMENT: IN COUNTRY OF ORIGIN

In the best of employment worlds, the search for an overseas job would start with looking at various job openings posted by recruitment agencies, determining the legitimacy of the recruiter, and finding ways to complete the application requirements for available job openings. However, the reality is that the interest in a foreign job is often sparked by new information of a possible job opening offered through informal brokers in the neighbourhood. The following are recruitment issues at the pre-employment stage:

HIGH (UNAUTHORIZED) COSTS OF RECRUITMENT AND PLACEMENT

The current Philippine regulation states that workers should pay the maximum costs of (a) recruitment fees of not more than the migrant worker's one month's wages and (b) other related costs including passport, training, medical clearances and others.¹⁰ As high costs of recruitment often result in the severe indebtedness of migrant workers, migration authorities in different parts of the world struggle to ensure that migrant worker applicants do not pay excessive recruitment fees and related costs, which are defined as amounts beyond the government-determined maximum costs. In 2017, Migrant Forum in Asia (MFA) published a policy brief on the recruitment fees that OFWs pay in a year. The published matrix shows recruitment fees and related costs ranging anywhere from \$551 (₱28,211) to \$7,000 (₱358,400), depending on the country of destination. A low of \$551.80 (₱28,252) in approximate fees was observed for OFWs headed for South Korea, whereas approximate fees for OFWs bound for Taiwan ranged from \$1,400 (₱71,680) for a domestic worker to \$3,200 (₱163,840) for a factory worker. The highest fees of \$7,000 (₱358,400) were observed for OFWs with food processing jobs in Canada. The biggest determinant of the amount workers would have to pay to secure a job placement is the anticipated wage abroad.¹¹

Rules and regulations on the maximum amount of recruitment fees and related costs that are charged to a worker are very difficult to enforce, especially since these fees and costs are not paid as a lump sum but in installments instead. The wide variations in amounts are

¹⁰ Philippine Overseas Employment Administration. (2016). [Revised POEA Rules and Regulations governing the recruitment and employment of Land-based Overseas Filipino Workers of 2016](#).

¹¹ Migrant Forum in Asia & the Global Coalition on Migration (n.d.). [Recruitment Fees & Migrants Rights Violations \(Policy Brief #1\)](#).

due to differences in professional/skill levels, the willingness of the employer to pay fees, and the laws and regulations of the destination country, among other reasons. For the migrant workers, their willingness to pay recruitment fees and related costs depends on the security of the job offer, the wage offer, the desirability of the job location, and their own ability to pay.^{12 13 14} Once the worker has agreed to the recruitment fees and related costs, there are usually no complaints regarding these large amounts unless other issues emerge, such as a cancelled departure or an eventual contractual breach (for example, delayed payments of salaries, contract substitution, disregard for overtime pay, and the like).

“ A common misconception is that recruitment fees and related costs cover only payments given upfront, prior to the departure. Recruitment fees and related costs, internationally defined by the ILO definition of recruitment fees and related costs, refer to “any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.”¹⁵

¹² Reasons on willingness to pay is drawn from several research studies, including, among others: Santos, A. P. (2016, August 22). How recruitment agencies deceive Philippine workers. DW.COM. <https://www.dw.com/en/how-recruitment-agencies-deceive-philippine-workers/a-19492133>

¹³ Tomacruz, S., & Hapal, D. K. (2017, October 4). How much does it cost to work abroad? Rappler. <https://www.rappler.com/newsbreak/iq/ofw-tips-cost-work-abroad>

¹⁴ Tomacruz, S., & Santos, A. P. (2017, September 10). Are zero placement fees for OFWs scam or solution? Rappler. <https://www.rappler.com/newsbreak/iq/ofw-placement-fees-scam-solution>

¹⁵ International Labour Organization (ILO). (2019, March 28). [The ILO governing body approves the publication and dissemination of the definition of recruitment fees and related costs, to be read in conjunction with the general principles & operational guidelines for fair recruitment](#). International Labour Organization. (Employment contracts can also be formalized by “mega” recruitment agencies, accredited by the Kingdom of Saudi Arabia’s Ministry of Labor to recruit and deploy workers in large numbers. These agencies can place workers in both the private and public sectors and guarantee payment of salaries and the workers’ entire financial benefits until their return to their country of origin.)

ILLEGAL RECRUITMENT

Republic Act (RA) 8042 or the Migrant Workers' Act 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 a non-licensee or non-holder of authority.¹⁶ However, license holders can also be guilty of prohibited practices that can be considered as illegal recruitment. Examples of illegal recruitment practices are excessive charging of fees and related costs beyond those set by law; recruitment into jobs that are harmful to the public health, morality and dignity of the Republic of the Philippines; and other acts of misrepresentation.¹⁷ Based on the data below, the complaints and cases filed for illegal recruitment have declined for the 22 prohibited practices undertaken by both licensed and non-licensed agencies. Seen from the data below, the number of complaints on illegal recruitment received at the POEA are few, with convictions hovering to less than 10 a year.

Table 2. Prosecution of illegal recruiters, 2014 to 2020

PROSECUTION OF ILLEGAL RECRUITERS	2014	2015	2016	2017	2018	2019	2020
No. of cases received from LAD	66	132	125	119	60	n/a	n/a
Endorsed for preliminary investigation	136	130	91	93	49	n/a	n/a
No. of new cases handled for preliminary investigation	60	67	60	81	46	62	8
No. of victims assisted during preliminary investigation	119	152	84	128	125	149	84
Conviction	3	6	4	6	11	2	8

Source: Philippine Overseas Employment Administration, 2021

Table 3. Surveillance and special operations, 2014 to 2020

SURVEILLANCE ACTIVITIES	2014	2015	2016	2017	2018	2019
Total no. of surveillance operations conducted	163	190	204	159	124	162
Surveillance conducted on suspended and cancelled/unlicensed agencies	95	65	63	153	97	n/a
Surveillance conducted on licensed agencies	68	125	141	6	27	n/a
Entrapment and service of warrants	n/a	5	10	-	-	n/a
Closed Firms	12	12	10	5	3	4

Source: Anti-Illegal Recruitment Branch, Philippine Overseas Employment Administration, 2021

¹⁶ 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, Rep. Act No. 8042, § 1-43 (1995), O.G., (Phil).

¹⁷ Philippine Overseas Employment Administration. (2016). Revised POEA Rules and Regulations

CONTRACT AND VISA MISREPRESENTATION

Critical to the recruitment process is the offer of employment. The employment contract, typically negotiated by the foreign employer and the OFW,¹⁸ is the legal statement of record on the key terms and conditions mutually agreed by the employer and employees, with provisions that cover salary, benefits, vacation rights, sickness, termination, confidentiality requirements, notice period and other important employment conditions. These international employment contracts are subject to the laws and regulations of the specific country of employment. More importantly, however, the employment contract is the definitive guide in the unfortunate event of a dispute between a foreign employer and an OFW.¹⁹ Contracts should preferably also indicate the manner and form of arbitration in the event of disputes.

In 2016 and 2017, the World Bank's Global Knowledge Partnership on Migration and Development (KNOMAD) in partnership with the International Labour Organization (ILO) implemented several surveys to pilot test a methodology on measuring recruitment costs incurred by workers pursuing low-skilled positions. The surveys were implemented in several migration corridors, including the Philippines and Qatar in 2016 and the Philippines and Saudi Arabia in 2017.²⁰ These small surveys also incorporated several questions relating to contractual violations.

Among its findings, the 2016 and 2017 surveys show that significant numbers of OFWs leave for the country of destination without signing a foreign contract (8% for Qatar and 6% for Saudi Arabia). Of those who did sign a contract, the conditions would have changed within the contract period (14% for Qatar and 5% for Saudi Arabia).

Table 4. Filipino Migrant Workers in Qatar/KSA – On employment contract

SURVEY QUESTION	QATAR (2016)		SAUDI (2017)		
	Yes	No	Yes	No	No response
1. Did you sign a contract before departing for this job?	91.6%	8.4%	92.3%	5.8%	1.9%
2. For those who signed a contract, are you working under the same contract that you received before departure?	85.6%	14.4%	90.8%	5.2%	4.0%

Source: ILO Global Knowledge Partnership on Migration and Development (KNOMAD) Survey, 2016/2017

In the case of migrant domestic workers, contracts are most likely signed between the recruitment agency (and not the foreign employer) and the overseas workers; there is a

¹⁸ In recent years, mega-recruitment agencies have the authority to enter into contracts with migrant workers and they are responsible for placing these workers with suitable employers. These recruitment agencies also enter into separate contracts with the employers.

¹⁹ Galvin, J. (2018, February). Five-point guide- Why international employment contracts are important. Global Payroll Management Institute.

²⁰ World Bank. 2017. "KNOMAD-ILO Migration Costs Surveys 2016". Global Knowledge Partnership on Migration and Development (KNOMAD). Ref: WLD_2016_KNOMAD-ILO-MCS_v01_M. Downloaded from [The World Bank Microdata Library](#) on June 7, 2021.

separate parallel contract between the foreign recruitment agency and the employer for the hiring of the worker. In some countries, such as the Kingdom of Saudi Arabia (KSA), mega-recruitment agencies are allowed to sub-contract workers for eventual employment with a household employer. For all intents and purposes, the mega-recruitment agency acts as the employer, guaranteeing the workers' wages and their terms and benefits at work from hiring until return to the home country. When workers complain to the POLOs, the first response is often to call the mega-recruitment agency to resolve the complaints. Given the multiple contracts that are at play, there are likely inconsistent contract provisions and eventual disputes. As more and more recruitment processes shift online, there are also many more ways to circumvent traditional contract accreditation and approval of contracts required by the POEA.²¹

There are many occasions when, because of urgent requirements of the employer, agencies use visas issued under occupational categories different from the worker's own skill level. In some instances, the visa misrepresentation, no matter how good the intention for quick deployment is, creates contract difficulties in the country of employment. There are also occasions when the contracts and other documentation are not provided or, if so, provided late to the worker. This does not allow the worker enough time to review and fully understand the terms and conditions of employment nor does he/she have the opportunity to ask questions. This is aggravated especially when international contracts are written only in English or Arabic and almost never in Filipino or any of the local languages.

EMPLOYMENT IN COUNTRIES OF DESTINATION

Philippine overseas employment contracts are tested in their implementation in the country of employment and destination. The following table, provided by the International Labor Affairs Bureau, shows the number of cases in 2018 reported to the POLOs in the Gulf countries. The data is one of only two statistical tables from the DOLE that show the classification and categorization of workers' complaints from these countries.

Table 5. Types of Cases Reported to the Philippine Overseas Labor Offices (POLO), 2018

POST	TOTAL	MALTREATMENT/ MISTREATMENT	CONTRACT VIOLATION/ S	CONTRACT SUBSTITUTION/ S	HEALTH PROBLEM	PERSONAL PROBLEMS	IMMIGRATION/ DOCUMENT PROBLEM/ S	SEXUAL ABUSE/ S/ HARASSMENT/ S	RAPE	OTHERS
BAHRAIN	931	35	288	79	25	41	239	3	-	221
AL KHOBAR	20,640	-	-	-	-	-	-	-	-	-
JEDDAH	8,983	-	-	-	-	-	-	-	-	-
RIYADH/CRO	8,822	-	-	-	-	-	-	-	-	-
OMAN	1,674	186	717	-	203	155	-	154	23	236
QATAR	4,833	1,092	2,654	7	286	237	221	137	38	161
ABU DHABI	9,526	1,814	2,112	291	371	931	918	95	27	2,967
DUBAI	4,875	454	1,079	27	167	68	946	7	-	2,127
KUWAIT	6,831	1,601	3,295	17	253	132	255	283	60	935
Sub-Total: Countries w/ Disaggregated Data*	28,670	5,182	10,145	421	1,726	1,564	2,579	679	148	6,647
OVERALL TOTAL	67,112									
	100%	18.1%	36.4%	1.5%	6.02%	5.5%	8.9%	2.4%	0.5%	23.2%

* Total does not include the figures from KSA

Source: International Labor Affairs Bureau, 2018, as reported in UP CIFAL

²¹ Alcantara, J. (2021). Personal communication [Personal interview].

The POLOs in the GCC reported a total of 67,112 cases. Except for the POLOs in the KSA, the POLOs of other GCC countries were able to provide information on the types of cases presented to them. For the 28,670 cases classified according to the type of complaint, the largest percentage of the cases involved contract violations (36.4%), maltreatment (18.1%), immigration and documentation complaints (8.9%), health problems (6%), and personal and family problems (5.5%). Sexual abuse and harassment represented a significantly smaller percentage (2.9%) but these cases are considered very serious violations of workers' and women's rights. The highest number of cases fell in the large category of "Others".

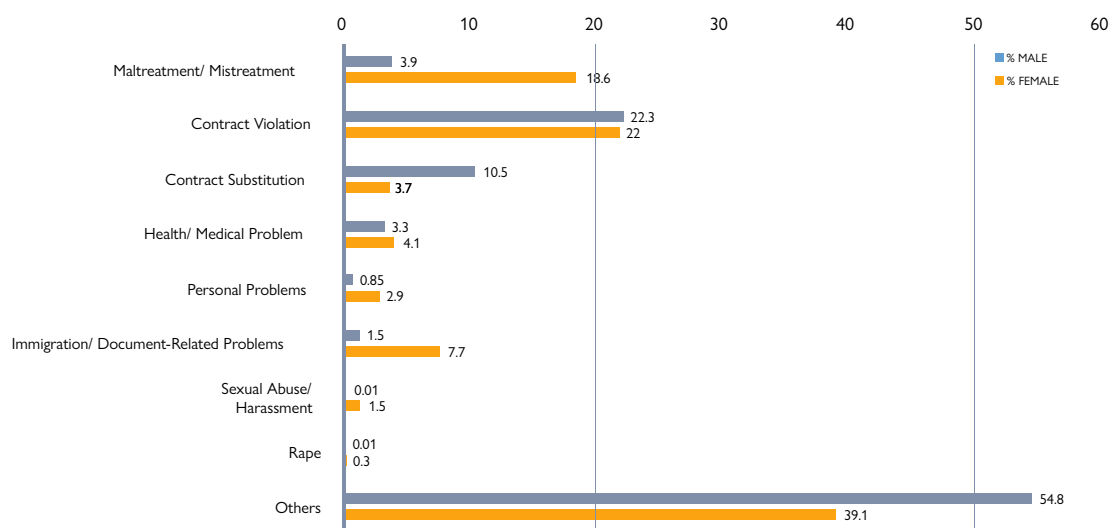


Figure 2. Types of cases reported to OWWA, based on gender, 2020

Source: Overseas Workers' Welfare Administration, 2020

The OWWA provided a separate table showing the same categories of cases reported to the office in 2020, presumably by the OFWs repatriated to the Philippines. While it is not clear whether these cases are from the GCC, the dataset shows how men and women experience different kinds of contract violations or issues while abroad.

According to rank, contract violations ranked first in prevalence, followed by maltreatment and then by immigration violations. While both men and women had similar percentages of contract violations, women had higher percentages of maltreatment cases (18.6%/3.9%) and immigration violations (7.7%/1.5%) compared to men. In both datasets, the category of "Others" represented nearly half of all cases.

Below is an overview of the different complaints and cases raised by OFWs in countries of destination:

CONTRACT VIOLATIONS

Most of the issues raised by workers in the countries of employment consist of violations of the employment contract. In both the OWWA and the POLO datasets, contract violations ranked first among workers' complaints and grievances.

These violations are associated primarily with the payment of wages, whether these are delayed or even unpaid for many months. This category includes complaints over lower salaries due to unauthorized or unexplained salary deductions. In the KNOMAD surveys, 7% of the workers surveyed in the KSA and 4% of the workers surveyed in Qatar were not paid regularly.

Table 6. Filipino Migrant Workers in Qatar/ KSA – On getting paid regularly

SURVEY QUESTION	QATAR (2016)		SAUDI (2017)	
	Yes	No	Yes	No
3. Were you paid regularly?	95.5%	4.5%	93.2%	6.8%

Source: ILO Global Knowledge Partnership on Migration and Development (KNOMAD) Survey, 2016/2017

Contract violations also involve excessive working hours, especially if these additional hours are unpaid overtime. Excessive working hours, together with non-provision of rest days, are common in household domestic work. The lack of decent working hours and rest days has been cited by 67% of workers surveyed by KNOMAD in Saudi Arabia as a major violation of their rights. Prematurely terminated employment contracts can be unjustified, making employers responsible for the remaining portions of the worker's uncompleted contract. In many cases of premature termination, the affected worker may lose his/her promised end-of-contract benefits. Other end-of-contract benefits such as the return flight home and incentive bonuses are also suspended. During the pandemic, the shutdown of enterprises in the countries of destination jeopardized end-of-contract benefits, leading to a civil society campaign against wage theft²³ covering workers' entitlements upon termination of the contract (e.g., separation pay or indemnification for the unexpired portion of the contract). Contract substitution can be classified under pre-employment recruitment violations. The replacement of a Philippine approved contract with a new employment contract signed in the country of employment often results in lower wage rates due to salary deductions and reduced work benefits.

MALTREATMENT

Maltreatment is considered as abuse, or "everything that is contrary to good order established by usage".²³ It is cruel behaviour against a fellow human being, such as physical or mental maltreatment, misuse and deception, as well as neglect in the case of children. According to the OWWA, maltreatment covers the following behaviours: physical abuse (biting, slapping, kicking, head knocking, severe beatings, torture), verbal abuse (nagging, harassment, use of derogatory terms, and foul language), threats/intimidation, false allegations of theft or destruction of property, forced medical check-up and pregnancy test, forced testing for HIV/AIDS and other diseases, forced abortion, confiscation of personal belongings, and lack of respect for cultural/religious beliefs and practices.²⁴ Sexual abuse, harassment and rape are considered as separate offences. Maltreatment complaints represented the second highest number of grievances in both the POLO and OWWA reports, affecting more women than men (Figure 2).

²³ [Justice for Wage Theft](#). (n.d.). Call for an Urgent Justice Mechanism for Repatriated Migrant Workers. Justice for Wage Theft Campaign.

²⁴ Collins Dictionary

IMMIGRATION VIOLATIONS AND IMPRISONMENT FOR VARIOUS REASONS

Many OFWs are detained in jail for various offences. Some reasons may be contract-related – as in the situation of workers who have run away, prematurely terminating their contracts. The runaways or the “absconded” workers are almost always accused of theft and sent to the police stations for arrest and detention. Some workers get into work or travel accidents and especially when these accidents cause fatalities, the workers are jailed.

Some workers are found guilty of violating entry, immigration and residency rules. These workers may be overstaying, with expired visas and work permits. Others may have transferred from one employer to another without proper release papers. There are also workers who do not possess the proper iqama, or residence permits. Some “missing” Filipinos include those who have left the host country for a new country of employment without informing family members in the Philippines. Immigration violations ranked the third highest among the categories of cases reported to the POLOs or OWWA. A large number of these immigration violations are not primarily attributable to illegal entry to the destination countries in the GCC but to cases of expired visas or work permit violations due to unauthorized transfer of employers or the like.

There are OFWs involved in more serious criminal offences such as drug trafficking, homicide and murder. The number of OFWs in jail appears to be a very small percentage of the overall worker population, however, each case takes up so much of the Philippine Embassy’s time and attention, especially when the case has attracted national attention. These offences are most likely committed by workers with an irregular status trying to make a living in the country of destination. In some GCC countries, these irregular workers appear to make up the majority of OFWs housed in the Philippine Embassy shelters.²⁵

PERSONAL PROBLEMS INCLUDING MEDICAL AND HEALTH ISSUES

Experiencing loneliness and mental and emotional distress caused by separation from family, the migrant worker can be overwhelmed by the realities of a new working and living environment. In addition, the constant pressure for financial support from the family left behind, typically for settling unpaid debts and credit card excesses, continues to burden the OFW. Other personal problems may involve new romantic relationships, accusations of immorality, unwanted pregnancies, the use of drugs, and other disruptive behaviours. There are also arguments among co-workers and other Filipino friends. While these personal problems are usually not sufficient to cause a premature termination of a worker’s contract, these may provide enough distraction to affect the worker’s performance and result in an early repatriation to the Philippines.

With the Filipino workforce also aging, medical and health issues of OFWs have been more pronounced. These health issues include those that are directly related to their work, such as industrial accidents and injury. Other illnesses, such as psychological instability and

²⁵ Obtained from interviews in third ALTER Validation Workshop (CSOs, Academe, and Migration Experts).

insanity, are attributable to the workers' sense of isolation and alienation and the lack of personal, emotional and social support systems. Some illnesses are related to lifestyle and genetics – cancer and diabetes, among others.

SEXUAL ABUSE AND HARASSMENT

Given the seriousness of these offences, sexual abuse and harassment against Filipino migrant workers are given priority attention by the Philippine authorities. These require the immediate removal of the victims from their current housing, as well as accommodation in the OFW shelters and immediate repatriation. Cases of sexual abuse and harassment include molestation and other forms of sexual advances such as making a pass, kissing, fondling, embracing, and displaying and exhibiting private parts. Cases of rape are treated with utmost urgency and care. The POLO and OWWA data (Figure 2) show that women are three times more likely to suffer from sexual abuse and harassment compared to men.

THE WITHHOLDING OF PASSPORTS AND OTHER DOCUMENTATION, RESTRICTIONS ON MOVEMENT, INVOLUNTARY WORK ARRANGEMENTS

Many migrant workers experience the confiscation of their passports by the employer or the employer's agents upon arrival. Often thought of as a customary practice in many countries, the withholding of passports or any other vital documentation can be construed as a broad indicator of forced labor. Typically, employers explain that they hold the worker's passport to prevent "absconding" or "running away", especially since the worker's permit is contingent on employer sponsorship and responsibility. In addition, many workers are concerned about close monitoring and scrutiny by the employer. It may mean restrictions in movement, in going in and out of the house, and in enjoying rest days. The combination of the employers' holding of the passport, together with restrictions on movement, the use of verbal threats and bodily harm (considered as maltreatment in the last section), can all be construed as forced labor with elements of the crime of human trafficking.

The KNOMAD surveys of 2016/2017 looked at the numbers and percentages of workers expressing the violation of their rights at work. Nearly 30% of workers in the KSA and 16% in Qatar agreed that they were deprived of their rights while in employment in these countries. Among the violations listed by workers, the withholding of travel documents ranked first in the rights being violated, in both the KSA (38%) and Qatar (26%), followed by the inability to speak freely (KSA: 17%, Qatar: 24%), and the inability to communicate with people outside of the job sites (KSA: 7%, Qatar: 14%). In Saudi Arabia, lack of decent work hours and rest days were also reported as commonplace violations. The reference to decent work hours, rest days and employment insurance benefits was only added in the 2017 Saudi Arabia survey.

Table 7 Filipino Migrant Workers in Qatar/KSA – On rights violations

SURVEY QUESTION	QATAR (2016)			SAUDI (2017)	
	Yes	No	Don't know	Yes	No
4. Have you been deprived of any rights?	16.3%	82.9%	0.8%	28.2%	71.8%

Source: ILO Global Knowledge Partnership on Migration and Development (KNOMAD) Survey, 2016/2017

Table 8 Filipino Migrant Workers in Qatar/KSA – Types of rights violations

QATAR (2016)		SAUDI (2017)	
Types of Rights Violations	% of respondents	Types of Rights Violations	% of respondents
1. Not entitled to the same wages as native workers	25.9%	1. Decent work hours/ rest day	67.2%
2. Travel documents withheld by employers	25.9%	2. Travel documents withheld by employers	38.1%
3. Unable to express views freely	24.1%	3. Unable to express views freely	17.2%
4. No job security	15.5%	4. Unable to communicate with people outside the job sites	6.7%
5. Unable to join or organize a trade union	13.8%	5. Cannot practice own religion	6.7%
6. Unable to communicate with people outside the job sites	13.8%	6. Not entitled to the same wages as native workers	5.2%
7. Restricted from remitting earnings	10.3%	7. Restricted from remitting earnings	5.2%
8. Unable to change employers	6.9%	8. Excluded from social security	3.7%
9. Unable to engage in industrial action such as going on strike or collective bargaining power	5.2%	9. Leave benefits	3.7%
10. Excluded from social security	5.2%	10. Employment insurance benefits	2.2%
11. Cannot practice own religion	5.2%	11. No job security	0.7%

Source: ILO Global Knowledge Partnership on Migration and Development (KNOMAD) Survey, 2016/2017

The NMS 2018 defines involuntary work arrangements as those negative experiences of work conditions that were not of the workers' own making and that they in all likelihood did not expect nor accede to voluntarily.²⁶ The survey included a module on these difficult work situations and outlined 14 possible situations of involuntariness, ranging from possible misrepresentation to coercion and intimidation.

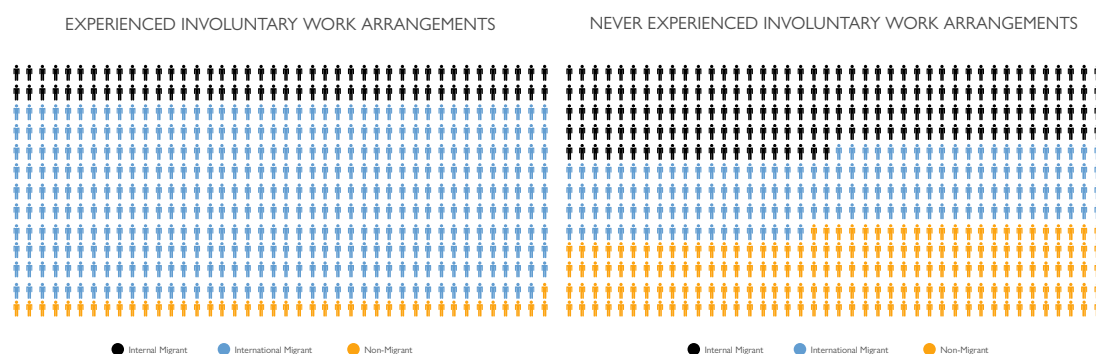


Figure 3. Distribution of migrant workers experienced and never experienced involuntary work arrangements

²⁶ Philippine Statistics Authority and University of the Philippines Population Institute. (2019). 2018 National Migration Survey. Philippines.

While involuntary work arrangements are not prevalent overall with only 4% of respondents (consisting of Filipino internal migrants, international migrants and non-migrant workers), the experience of involuntary work arrangements is markedly higher among international migrants (14.5%) than internal migrants (2.9%) and non-migrants (1.5%).

Across all the clusters, the nature of involuntariness refers to taking on employment not in accordance with the provisions of the work contract or the agreed terms and being pressured or forced to engage in any activity that is against the workers' will.

Among the Philippine-based workers, involuntary work arrangements include being pressured or forced to engage in any work that is against their will, being pressured or forced to sign a contract that was not understood, and being pressured or forced to sign a contract that was understood but that they did not want to sign.

Among international and internal migrants, the common ground lies in the use of threats and physical punishment (slaps, kicks) and restrictions in movement in the workplace.

Among international migrants, the key violations are the holding of identification documents to keep workers from leaving (55%) and the restrictions in/monitoring of communication with family or friends (33.4%).

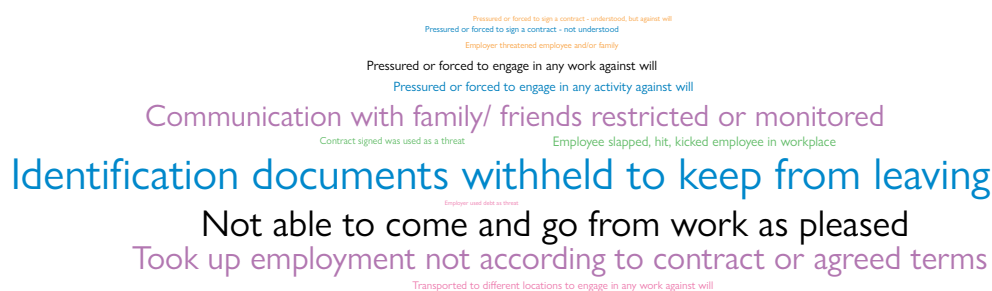


Figure 4. Word cloud – Involuntary work arrangements experienced by international migrants

LARGE-SIZED REPATRIATIONS AND EXTRAORDINARY EVENTS

In the long years of the OFW program, there have been major extraordinary events that have resulted in the relatively large repatriation of overseas Filipinos. The COVID-19 pandemic has caused the largest scale of Filipino repatriations. The crisis hit globally, affecting overseas workers and seafarers all over the world; recent figures show that over

700,000 OFWs have returned home. Other unexpected returns include the numbers displaced as a result of wars, with returns coming from specific countries in the GCC and other Middle Eastern countries. The most notable evacuations were those from Kuwait (24,000), Lebanon, Libya and Iraq, among others,²⁷ as well as those triggered by the economic slowdown due to the Asian financial crisis of 2008.

CHAPTER 3

²⁷ Battistella, G., & Liao, K. A. (2013). Youth migration from the Philippines: Brain drain and brain waste. UNICEF & Scalabrini Migration Center.

CHAPTER 3

THE NATIONAL COMMITMENT TO PROTECTION AND JUSTICE

The Philippines' commitment to the protection of its citizens working in foreign countries is deep and long-standing. This draws from the substantial in-country political support for OFWs, which recognizes the overseas employment program's important contributions to the Philippine economy in terms of employment and foreign exchange remittances. In addition, the growing number of OFWs is becoming a potential voting force in Philippine elections, as nearly 10% of all Philippine households have an OFW working abroad.²⁸

This chapter provides an overview of the comprehensive normative framework underlying the Philippine State's efforts to ensure the protection of its overseas workforce. The framework combines national law and the country's ratification of key international human rights and labor standards directly related to external migration. The chapter also spotlights attention on the country's Joint Solidary Liability provisions in Philippine legislation, a feature unique in the world and a lightning rod for international praise and criticism.²⁹

3.1 PHILIPPINE LAW RELATED TO OE, THE OFs AND OFWs

The Philippine Labor Code (1974),³⁰ PD No. 442. Article 12 declared the State's policy to, among others, protect every citizen desiring to work locally or overseas by securing for him/her the best possible terms and conditions of employment. The Presidential Decree institutionalized the participation of the government in overseas employment. It created the Overseas Employment Development Board (OEDB) and the National Seamen Board (NSB). These two Boards were mandated to undertake a systematic program for overseas employment, focusing on market development, recruitment and placement of Filipino workers. All succeeding legislation on overseas employment will refer back to this foundational law.

Letter of Instruction No. 537 (1977) established the Welfare Fund for Overseas Workers (Welfare Fund). The Welfare Fund was established to provide social and welfare services to Filipino overseas workers, to provide skills and career development services to Filipino overseas workers, to undertake studies and research for the enhancement of their social, economic and cultural well-being, and to develop, support and finance specific projects for the benefit of Filipino overseas workers. This Letter of Instruction provided a way for the government to collect and administer the mandatory and other

²⁸ Social Weather Stations (SWS) (2017). SWS Scoping Study on International Migration in the Philippines: "Making the Case for More and Better Data for Policy-Making and Program Services" [PowerPoint Presentation]. Quezon City, Philippines.

²⁹ The listing of laws here come from many different sources: PIDS, Migration Laws, Notes from interviews etc.

³⁰ Labor Code, Book 1, art. 12 (Phil.).

contributions of foreign employers and overseas workers to support the proposed Fund activities.

Presidential Decree 1412 (1978) further amended certain provisions of Book I, Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines. This decree formalized the country's policy shift from a 1974 phase-out of private recruitment agencies to the participation of the private sector in overseas recruitment activities.

Executive Order No. 797 (1982) created the Philippine Overseas Employment Administration (POEA). The POEA took over the functions of the OEDB and NSB. It was also given jurisdiction to take cognizance of and resolve cases involving overseas contract workers. This 1982 Executive Order gave the POEA the original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relations arising out of and by virtue of any law or contract involving Filipino workers for overseas employment, including seamen.”³¹

The 1987 Philippine Constitution (Section 3, Article XIII)³² enshrined the country's commitment with the mandate that the “State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all” – a clear endorsement of the State's responsibility for all Filipinos, regardless of where they may be employed. The 1972 Constitution did not carry this provision.

Executive Order No. 247 reorganized the POEA and a section of this law provided for expanded powers and functions to include all disciplinary cases, and all pre-employment cases that are administrative in character, involving or arising out of violation of recruitment laws, rules and regulations, including money claims arising therefrom or violations of the conditions for the issuance of the license or authority to recruit workers. This expanded responsibility remains with the POEA, even after the jurisdiction of all cases involving money claims was later transferred to the NLRC in 1995.

The Philippine Migrant Workers' Act (PMWA) of 1995, RA 8042, presented the first major policy redirection of the country's overseas employment program. The PMWA was informed by the Philippine legislature's response to the Gancayco Commission,³³ which investigated the circumstances surrounding the 1994/1995 arrest, trial, conviction and eventual execution of Flor Contemplacion in Singapore.

The PMWA stated unequivocally that the purpose of the Philippine State interventions would be to safeguard the dignity and fundamental human rights and freedoms of Filipino citizens and not, as originally envisioned, as a means to sustain economic growth and achieve national development. The Act called for preserving the dignity of Filipino migrant workers as citizens and that they be provided with sufficient and relevant social, economic and legal services. The Act encouraged the participation of non-governmental organizations (NGOs) as partners in defending the rights and welfare of Filipino migrant workers.³⁴ An important change brought by RA 8042 is the transfer to the NLRC of the original and exclusive jurisdiction to hear and decide the claims arising out of an employer-employee relationship by virtue of law or contract involving Filipino workers for overseas deployment, including claims for actual, moral, exemplary and other forms of damages.

The PMWA also provided wide-ranging programs and services for the benefit of migrant workers that envisioned a coordinated effort between various agencies of the government. These include, among others, the issuance of travel advisories or dissemination of information on labor and employment conditions and migration realities and other facts to adequately prepare would-be migrant workers to make informed and intelligent decisions about overseas employment, the establishment of the Migrant

³¹ Notes of Mr. Francisco de Guzman, Legal Consultant, LBS

³² CONST. (1987), art. XIII, § 3 (Phil.).

³³ Creating the Presidential Fact-Finding and Policy Advisory Commission on the Protection of Overseas Filipinos, Exec. Ord. No. 231, O.G. (March 20, 1995) (Phil.).

Workers and Other Overseas Filipinos Resource Centers, and the establishment of the 24-hour information and assistance centres in countries with large concentrations of Filipino migrant workers.

The Act also asked for a Shared Government Information System for Migration (Sec. 20) involving many government agencies for the sharing of existing databases that would include: a master list of Filipino migrant workers with pertinent demographic information, an inventory of pending legal cases of Filipino migrant workers, master lists of departing and arriving Filipinos, and a statistical profile on Filipino migrant workers/overseas Filipinos/tourists. It also required basic data on legal systems, immigration policies, managed law, civil and criminal codes in receiving countries (particularly those with large numbers of Filipinos), and a tracking system of past and present disaggregated cases involving male and female migrant workers. It further envisioned the linking of computer facilities to allow data exchanges among agencies.

Additional resources were provided for the repatriation of workers in cases of war, epidemics, disasters or calamities (natural or man-made) and other similar events. In cases of repatriation of workers wherein the principal recruitment agency cannot be identified, a Legal Assistance Fund (Sections 25, 26) was provided under the DFA, which will be used to pay for legal services of migrant workers and overseas Filipinos in distress, and specifically allocated for the fees for foreign lawyers, bail bonds, court fees and charges, and other litigation expenses.

RA 9189 (2003) Overseas Absentee Voting Act of 2003. This law paved the way for overseas Filipinos to participate in Philippine national elections. Thus, in May 2004, some overseas Filipinos exercised their right of suffrage.

RA 9208 (2003) Anti-Trafficking in Persons Act of 2003. This law was regarded as one of the most comprehensive and progressive anti-trafficking laws passed. This act adopted the UN definition of trafficking in persons.

RA 9422 (1997) Strengthening the Regulatory Functions of the POEA (amending RA 8042). This law amended Section 23 (par.b.1) of RA 8042. Under the amended law, the POEA shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. It also repealed Section 29 and 30 of the same law (RA 8042).

RA 9225 (2003) Citizenship Retention and Re-acquisition Act of 2003 (Dual Citizenship Law). By virtue of this law, natural-born Filipinos who became naturalized citizens of other countries are deemed not to have lost their Philippine citizenship. They can re-acquire their Filipino citizenship, while at the same time not losing their other citizenship. To date, more than 6,000 former Filipinos have re-acquired their citizenship after the implementation of the law.

RA 10022 (2010) An Act Amending RA 8042, 2010. Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995. As Amended. This law introduced the following significant reforms: (1) mandating the government to monitor international conventions and ratify those that ensure protection of Filipino workers abroad, as well as forge bilateral agreements with receiving countries, (2) members of the governing board of the POEA are now made accountable in the deployment of migrant workers, (3) state officials who facilitate the deployment of OFWs to countries that do not guarantee or follow international labor standards face dismissal from public service or disqualification from government

³⁴ Ofreneo, R., & Samonte, I. (2005). [Empowering Filipino migrant workers: policy issues and challenges. International Labour Organization.](#)

appointments for five years, and (4) provision of the OFW mandatory insurance scheme to agency-hired overseas workers.

Section 37-A of RA 8042, as amended by RA 10022, states that each migrant worker, including seafarers, deployed by a recruitment agency shall be covered by a compulsory insurance policy which shall be secured at no cost to the said worker, which shall remain valid during the duration of the employment and shall cover: (1) accidental death, (2) natural death, (3) permanent total disablement, (4) repatriation cost, (5) subsistence allowance, (6) money claims, (7) compassionate visit, (8) medical evacuation, and (9) medical repatriation.

In RA 10361 (2013) or the Kasambahay Law (2013),³⁵ the State moved to recognize the national need to protect the rights of domestic workers against abuse, harassment, violence, economic exploitation, and performance of work that is hazardous to their physical and mental health. While the law itself explicitly provides protection of local domestic work, the State reaffirmed its role in protecting domestic workers and recognizing their special needs to ensure safe and healthful working conditions.

The OWWA Charter (2016) declared the state policy as being able to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all. In particular, the law clearly placed the OWWA's function as to protect the interest and promote the welfare of member-OFWs in all phases of overseas employment, in recognition of their valuable contribution to the overall national development effort.

³⁵ An act instituting policies for the protection and welfare of domestic workers, Rep. Act No. 10361, § 1-45 (2013), O.G., (Phil.).

3.2 INTERNATIONAL HUMAN RIGHTS CONVENTIONS AND INTERNATIONAL LABOR STANDARDS

The Philippine State has also enhanced its position in the global community with its ratification of key international human rights conventions and labor standards. International human rights law imposes on states the obligations to respect, protect and fulfill the human rights of all persons within their jurisdiction. In meeting these obligations, the Philippines as a country of origin has opened itself to scrutiny as it seeks to implement affirmative measures at the outset to protect the rights of migrant workers. For the human rights treaties, scrutiny is undertaken by established Committees of Experts to monitor the implementation of the treaty provisions by its States Parties.

The Philippines ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1981. Known as the “International Bill of Rights for Women”, CEDAW remains one of the most highly ratified UN Conventions. Governments who commit to CEDAW are legally bound to eliminate discrimination against women, including women migrant workers. Covering measures to address all forms of discrimination against women, the Convention is supplemented by General Recommendation 26 on Women Migrant Workers, noting that women experience human rights violations during all stages of migration. Like other core human rights treaties, CEDAW has a committee that acts as an accountability mechanism to hold Member States to their obligations.

The Philippines ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1995. This UN Convention provides guidance on the applicability of existing human rights treaty provisions to migrant workers. It identifies specific obligations of both origin and destination countries in protecting and promoting the free and equal enjoyment of rights and dignity. In addition to the specific obligation to ensure access to redress, origin countries have relevant obligations regarding the provision of information and documentation to migrant workers relating to emigration and immigration. A State Party to the Convention has an affirmative obligation to guard against migrants being placed in positions in which their terms and conditions of work differ significantly from what they had been promised at the time of their recruitment.

The Convention reaffirms the right of workers and members of their families to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. In the case of project-tied workers,³⁶ in the situation where the terms of his or her work contract have been violated by his or her employer, he/she shall have the right to address his or her case to the competent authorities of the State, which has jurisdiction over that employer. States are also asked to undertake appropriate measures against the dissemination of misleading information relating to emigration and immigration. The CMW has a provision for an individual complaint to be raised to the Committee; unfortunately, however, this provision has not been activated.³⁷

The Philippines ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2002. The Protocol provides for the protection of the victims of human trafficking, who oftentimes are migrants. The Protocol has various prescriptions on access to justice that

³⁶ United Nations. (2009). [United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families \(Ninth and Tenth Session\)](#). United Nations Office.

³⁷ Obtained from interviews in third ALTER Validation Workshop (CSOs, Academe, and Migration Experts).

must be provided to victims, prescribing that the legal proceedings be confidential and that the victims be provided assistance to enable their views to be presented and considered in relevant proceedings. The Protocol also requires the provision of services such as counselling and the option to obtain compensation for damage suffered.

INTERNATIONAL LABOR STANDARDS

International labor conventions drawn up by the ILO constituents (governments, employers and workers) set out basic principles and rights at work. Called either Conventions (or Protocols), these are legally binding international treaties that may be ratified by Member States. Recommendations serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e., not linked to a convention.³⁸

The Philippines, by virtue of its ILO membership, is expected to adhere to eight core international conventions. Fundamental Conventions are considered to be core principles and rights at work. These are the following: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation. The Philippines has ratified all eight fundamental conventions.

In addition, the Philippines has ratified specific international labor standards for the governance of labor migration and protection of migrant workers. The country ratified the two migration conventions, the Migration for Employment Convention, 1949 (No. 97) in 2009 and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) in 2006. Convention (No. 143) is also known as the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. The Convention underscores the respect for the basic human rights of all migrant workers and is the very first to refer to the trafficking of persons. These two conventions are accompanied by non-binding recommendations: the Migration for Employment Recommendation (Revised), 1949 (No. 86) and the Migrant Workers Recommendation, 1975 (No. 151).

The Philippines ratified the Domestic Workers Convention, 2011 in 2012. While this Convention addresses the needs of all domestic workers, male and female, in different skills categories, there are separate distinct provisions on the protection of migrant workers, including provisions for non-discrimination and equal protection.

Interestingly, the Philippines has not ratified the ILO Convention on Private Employment Agencies, 1987, (No. 181),³⁹ which recognizes the contribution of private employment agencies to well-functioning labor markets and sets standards on their operations. Article 7 of this Convention has set a strict standard of non-fee charging by private employment agencies, with exceptions given only after consultations with the appropriate tripartite groups. The Philippines

³⁸ International Labour Organization (ILO). (n.d.). [Introduction to International Labour Standards](#).

³⁹ Private Employment Agencies Convention, C181, International Labour Organization: Bureau for Workers' Activities, 85th Session, 1997.

has also not ratified the Protocol to the Forced Labor Convention 1930, in 2014. The Protocol is a new, legally binding instrument that requires States to take measures regarding prevention, protection and remedy following the obligation to suppress forced labor. The Protocol also reaffirms the 1930 definition of forced or compulsory labor and encourages specific action against trafficking in persons for the purposes of forced or compulsory labor.

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), the independent body of experts that monitors implementation of the CMW, consistently examines the reports of the States Parties on the implementation of the Convention by States Parties.

In its comments to the most recent report of the Philippines,⁴⁰ the Committee noted with concern that, despite the State Party's efforts to protect the rights of Filipino migrant workers abroad, abuse and exploitation continue, especially of women migrants and that these are underreported. The Committee further suggested that the Philippines:

ensure that “consular services respond effectively to the need for protection of Filipino migrant workers and members of their families;

take measures to ensure that its embassy and consulate staff abroad are knowledgeable about the laws and procedures of the countries of employment of Filipino foreign workers, especially in those countries categorized as “highly problematic” by the DFA and the DOLE.”

increase dissemination channels to increase awareness among migrant workers, especially women in domestic service, of the available mechanisms for bringing complaints against employers and so that all abuses, including ill-treatment, be investigated and punished.

⁴⁰ United Nations. (2009). United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Ninth and Tenth Session). United Nations Office.

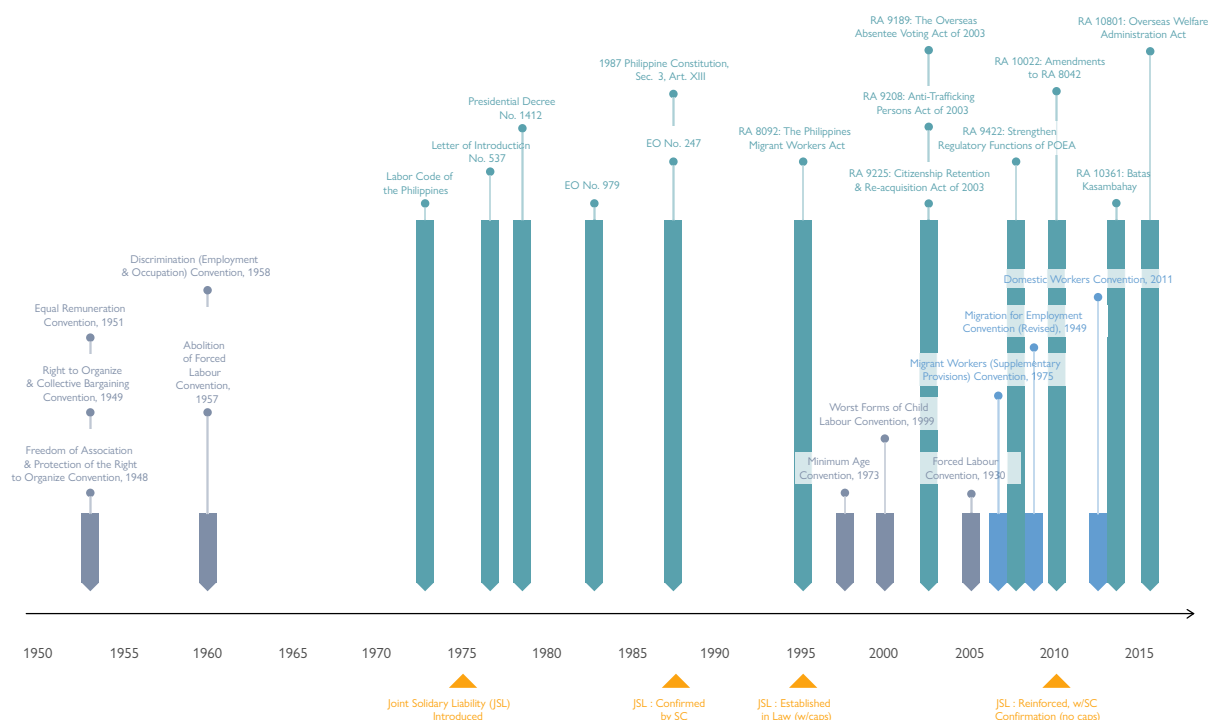


Figure 5. Timeline of the enactment of relevant national laws, the ratification of international conventions, and the milestones related to the Joint and Solidary Liability (JSL) mechanisms

3.3 THE JOINT AND SEVERAL LIABILITY OF RECRUITMENT AND PLACEMENT AGENCIES WITH THE PRINCIPAL/EMPLOYER UNDER PHILIPPINE LAW⁴¹

As international migration from the Philippines is predominantly channeled through private recruitment agencies, the Philippine Government adopted the “Joint Solidary Liability (JSL)” provisions in the licensing of private recruitment agencies. The Migrant Workers and Overseas Filipinos Act 1995 (RA 8042)⁴² formalized the JSL in law, providing for the liability of the principal/employer and the recruitment/ placement agency for any and all claims arising out of an employer-employee relationship. This joint liability also extends to claims raised, by virtue of any law or contract, for actual, moral, exemplary and other forms of damage. In its intention, RA 8042 grants the OFWs an in-country recourse, assuring

⁴¹ Ambito, J. S., & Banzon, M. L. (2011). [Review of Philippine migration laws and regulations: Gains, gaps, prospects. Philippine Institute of Development Studies.](#)

⁴² Prior to the enactment of RA 8042, the concept of JSL was already established in the Philippine law on obligations and contracts, under Article 1207 of the Civil Code (as related with Title X of the same law, on Agency). JSL as enshrined in our laws on labor migration is the specific application of this legal concept to the principal-agent relationship between the foreign employer and the PRA.

them of immediate and sufficient payment of expected incomes and benefits due to them in their employment contracts. Through the JSL, the Philippine Government is able to compel the private recruitment agencies to answer for non-fulfilment of the workers' contracts, especially in situations where the channels for redress in the foreign country are blocked or are limited.

RA 10022 of 2010 reaffirmed the provision of the JSL by requiring this provision to be part of the worker's employment contract as a condition for approval.⁴³ The performance bond filed by the recruitment/placement agency can be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers, directors and partners, as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for these claims and damages. Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.⁴⁴

Both RA 8042 and RA 10022 provide that the worker shall be entitled to the full reimbursement of his or her placement fee and the deductions made, with interest at 12% per annum, plus his or her salaries for the unexpired portion of his or her employment contract or for three (3) months for every year of the unexpired term, whichever is less. RA 10022, in addition, requires a mandatory insurance for agency-hired workers that covers nine areas of protection, including for money claims. These liabilities are valid during the entire duration of the employment contract, typically in practice, for a period of two years.

The Philippine Supreme Court validated the provisions on JSL in two 1988 cases: *Ambraque International Placement and Services v. NLRC*, G.R. No. 77970, January 28, 1988, 157 SCRA 431 and *Catan v. NLRC*, G.R. No. 77279, April 15, 1988, 160 SCRA 691. It is also worth pointing out that the Supreme Court, in the case of *Antonio M. Serrano v. Gallant Maritime Services, Inc., et al.*, March 24, 2008, declared unconstitutional the subject clause "or for three (3) months for every year of the unexpired term, whichever is less" in the fifth paragraph of Section 10 of RA 8042. The court concluded that the subject clause contained a suspect classification in that, in the computation of the monetary benefits of employees who are illegally discharged, it imposes a three-month cap on the claims of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The Supreme Court saw this clause as violative of the workers' right to equal protection and also their right to substantive due process.

The JSL has always been controversial. Many civil society organization (CSO) advocates continue to uphold the value of the JSL as a key measure of ensuring workers' protection. However, the JSL has provided a way for some foreign employers to abrogate their responsibility by transferring the accountability over contracts instead to Philippine-based PRAs. Further, JSL only addresses the civil aspect of a wrongful act or harm done to a worker, but the lack of criminal prosecution of employers, particularly in cases of severe abuse being done to a worker, is a clear gap in the protection of migrant workers' rights in the countries of destination. U.P. CIFAL⁴⁵ argues that when the OFW files cases for abuses and costs incurred during their employment, instead of the employer paying for the damages that they had caused, the liability falls on the private recruitment agency that may not have been party to the issues involved. In this sense, there is no real access to justice for the worker as the liable employer was not sanctioned accordingly. It has also created the situation wherein, given the difficulties in obtaining justice in countries of destination, Philippine labor and civil society representatives may actively encourage workers to return home and pursue their cases in the Philippines. The JSL would also likely

⁴³ Center for Migrant Advocacy (CMA), & AWO International. (2018). [Migrant Domestic Workers' Access to Justice. Center for Migrant Advocacy.](#)

⁴⁴ See above citation: Ambito & Banzon.

⁴⁵ U.P. CIFAL. (2021). Research Study on Mapping the Recruitment Policies, Processes and Practices for Labour Migration from the Philippines to the Gulf Cooperation Council (GCC) Countries. CIFAL Philippines.

have an effect on the costs of recruitment. As the PRA bears the cost, this risk would form part of an agency's overhead costs, either in meeting the possibility of a conviction or in expenses to avoid any such claims.⁴⁶

CHAPTER 4

⁴⁶ Capistrano, M. (2021, January 18). Personal communication [Personal interview].

CHAPTER 4

NATIONAL COMPLAINTS MECHANISMS

The governance of labor migration here in the Philippines has often been considered as the “gold standard” in administration globally. Its long history; the early establishment of institutions; the ratification and adoption into national law of international conventions, recommendations and guidelines; and the rhetoric/display of commitment to service in national and local programs – all these have clearly built an institutional force that unequivocally propels the protection of migrant workers forward. Yet, despite these milestones, there are persistent large gaps in providing protection for Philippine migrant workers. Some of these gaps were clearly evident during the COVID-19 pandemic, when foreign migrant workers suffered substantially in their overseas work destinations. The sudden and immediate lockdown deprived many migrant workers of their employment, health and social protection.

Given the high priority that Philippine law and policy places on the protection of its overseas workers, its impact and effectiveness rest less on the jobs created or foreign earnings remitted but on the extent that the government (or the State) is able to reduce risks and vulnerability of the OFWs, and in the event of contractual and recruitment violations, the extent that the State is able to provide workers the access to mechanisms for redress.

This chapter presents the Philippine complaints/grievance mechanisms and their mandates, illustrates the processes and identifies its challenges. The mechanisms to be discussed here include: the POEA, the OWWA, the NLRC and finally, the POLOs, which are at the forefront of responding to workers experiencing problems at the countries of destination. There are also brief discussions on the protection of undocumented workers, whose concerns are handled by the DFA.

4.1 A HISTORY OF CHANGING ACCOUNTABILITY⁴⁷

The jurisdiction over overseas employment cases involving employer-employee relations arising out of and by virtue of any law or contract involving Filipino workers rests on two offices of the DOLE: the POEA (1982-1995) and the NLRC (1995-2021). Responsibility over these cases alternated between these two institutions in time.

In 1982, Executive Order No. 797 established the POEA and vested the new office with exclusive jurisdiction over all cases, including money claims.

“

The Administration shall formulate and undertake, in coordination where necessary with the appropriate entities concerned, a systematic program for promoting and monitoring the overseas employment of Filipino workers taking into consideration domestic manpower requirements, and to protect their rights to fair and equitable employment practices. It shall have the original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relations arising out of or by virtue of any law or contract involving Filipino workers for overseas employment, including seamen. This adjudicatory function shall be undertaken in appropriate circumstances in consultation with the Construction Industry Authority of the Philippines. The governing Board of the Administration as hereinunder provided, shall promulgate the necessary rules and regulations to govern the exercise of the adjudicatory function of the Administration.

”

⁴⁷ De Guzman, F. (2021, January 20). Personal communication [Personal interview].

In 1987, Executive Order No. 247 reorganized the POEA and strengthened its powers and functions by including the POEA's jurisdiction over all pre-employment cases that are administrative in character.

“

Exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including the disciplinary cases; and all pre-employment cases which are administrative in character involving or arising out of violation of recruitment laws, rules and regulations including money claims arising therefrom, or violation of the conditions for issuance of license or authority to recruit workers.

”

RA 8042 (1995), later reaffirmed by RA 10022 (2010), radically shifted the jurisdiction to hear and decide the claims arising out of overseas employment, including claims for actual, moral, exemplary and other forms of damages. The main difference with the 1982 provision is the call for a decision within ninety calendar days of filing the complaint. The main reason for the radical shift was the perception that the POEA took so long in the resolution of cases; the NLRC had promised to accelerate their decision-making process.⁴⁸

“

Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after filing of the complaint, the claims arising out of an

⁴⁸ Bitonio, B. (2021). Personal communication [Personal interview].

employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage.

”

4.2 THE INTRODUCTION OF THE SINGLE ENTRY APPROACH (SEnA)

While the jurisdiction over overseas employment cases lies with the POEA and NLRC, all overseas cases form part of the DOLE's administrative dispute resolution mechanisms and are covered by the Single Entry Approach (SEnA). First introduced through DOLE's Department Order 107-10 and later institutionalized with the passage of RA 10396 in 2013, the SEnA is an administrative approach to provide a speedy, impartial, inexpensive and accessible settlement procedure of all labor issues or conflicts to prevent them from developing into full-blown disputes or actual labor cases. The SEnA aims to obtain the amicable settlement of the dispute among the differing parties wherein a neutral party, the SEnA Desk Officer (SEADO), assists the parties by giving advice or offering solutions and alternatives to the problems. SEnA action desks have been set up at DOLE regional offices, the National Conciliation and Mediation Board (NCMB), the NLRC, the POEA and the OWWA. The POLOs in the OFWs' countries of destination are also considered as SEADOs.

OFW cases join many other categories of Philippine labor cases that may be settled through SenA, such as: termination or suspension of employment; claims for any sum of money, regardless of amount; intra-union and inter-union issues, after exhaustion of administrative remedies; unfair labor practices; closures, retrenchments, redundancies, and temporary lay-offs; and any other claims or issues arising from an employer-employee relationship (except for occupational safety and health standards involving imminent danger situations, dangerous occurrences and/or disabling injury, and/or absence of personal protective equipment).⁴⁹ Cases involving physical and sexual abuse and rape that are criminal in nature are never conciliated but are subject to criminal procedures of the country of destination.⁵⁰

SEnA sets a period of 30 calendar days for conciliation-mediation. Settlement agreements reached are final and immediately executory. It is binding on all DOLE offices and attached agencies, except when these agreements are found to be contrary to law, morals, public order and public policy. If the case is resolved through an agreement of the parties, such agreement will then preclude the filing of a subsequent case based on the same cause.⁵¹

If there is no agreement within the mandatory period, the parties may choose to elevate the Request for Assistance (RFA) to the POEA or the NLRC especially when: 1) no settlement is reached within the

⁴⁹ Department of Labor and Employment (DOLE). (2021). [Single Entry Approach \(SEnA\)](#).

⁵⁰ Obtained from interviews in first ALTER Validation Workshop (Government).

⁵¹ From interview with Bobot Bitonio, former Usec of DOLE: There have been cases wherein the NLRC has reviewed a settlement under these conditions.

30-day timeframe, or 2) when either party is found to be not complying with the stipulations of the agreement reached. At the POEA, the case/complaint moves to its Adjudication Office. In serious cases of non-compliance, the Adjudication Office can immediately call for the PRA's suspension of contracts processing.

A major contentious discussion among the different SEnA providers is the finality of compromise agreements negotiated and settled by the SEnA desk officers. The NLRC, the POEA and the OWWA have reserved the right for repatriated OFWs to raise questions about their compromise agreements, especially where the compromises are clearly, though subjectively, considered substandard. All agencies engaged in negotiating settlements need to understand and agree jointly on determining whether these compromises are “substandard.”⁵²

With online operations becoming more important due to the COVID-19 pandemic, the DOLE has introduced the online portal of the e-SEnA, where a worker/group of workers/employer may submit a request for assistance through the portal. The portal aims to be easily accessible to any worker with a cellphone or access to a computer and internet.

4.3 THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION

Established in 1982, the Philippine Overseas Employment Administration is the lead government agency in “facilitating the generation and preservation of decent jobs for Filipino migrant workers, promoting their protection and advocating for their smooth reintegration into Philippine society”.⁵³ Its core functions include: (a) industry regulation, (b) employment facilitation, and (c) workers’ protection (Annex A. POEA organizational chart). In actual practice, the POEA’s primary function has increasingly focused on recruitment regulation. Action on industry regulation includes issuing licenses, as well as hearing and arbitrating complaints and cases filed against recruitment and manning agencies, foreign principals and employers, and overseas workers for reported violations of POEA rules and regulations, except for money claims. The POEA also takes action against illegal recruiters, working with other government agencies to meet its obligations.

LEGAL AID AND ASSISTANCE

The POEA’s Legal Assistance Division (LAD) assists distressed workers, mainly repatriated OFWs, by providing information about the workers’ rights and options for the redress of their grievances. The LAD’s services include counselling, the preparation and filing of complaints for illegal recruitment and recruitment violations, and disciplinary action cases against PRAs and workers.

⁵³ Philippine Overseas Employment Administration. (n.d.). [About POEA](#). POEA - Philippine Overseas Employment Administration.

PROCEDURES FOR HANDLING/RESOLVING PROCESSES

- 1 Prospective migrant worker/family member (“complainant”) submits a request in person or through an online process to the relevant government agency (i.e., POEA, NLRC, OWWA, ILAB in country of destination) and completes a complaint form.
- 2 On receipt of a request, the LAD staff sort the most immediate and priority concerns. For requests involving rescue and repatriation concerns, the request is immediately endorsed to the Repatriations Liaison. Another immediate action is for those seeking the release of passports and identity documents that have been withheld by their employers. In these situations, LAD staff immediately and directly contact the Filipino private recruitment agencies involved in order to facilitate the immediate return of these documents. Once problems have been addressed, the cases are referred back to the LAD to address the legal issues within a case. In this sense, the LAD acts as a clearing house.
- 3 Document the complaint and research the complainants’ personal documents and other related documents in support of the complaint (passport, contract of employment, agreements with the agency, medical report)
- 4 Verify the type and character of the case to determine the appropriate person to handle the case
- 5 Schedule a conciliation session to resolve any case arising from overseas placement, including money claims
- 6 If the case involves money claims, urge and guide the complainants to file the case with the relevant authorities
- 7 Prepare a summary of a concluded case, including the notes of the agreement

8 Endorse to conciliation and mediation

With the current state of public health emergency brought about by the COVID-19 pandemic and various levels of community quarantine still observed in the country, the POEA issued Memorandum Circular No. 12 (series of 2020) outlining the guidelines for an intensified offering of legal assistance during the lockdown. Aiming to ensure the timely and effective delivery of legal services, the LAD re-introduced more proactively the POEA Legal Assistance Online platform and paid more attention to queries and complaints raised via the POEA's email and Facebook portals. The Facebook page, originally meant to be a public information service for OFWs, has since become an accessible platform for many workers, primarily useful as a "first aid" type of response.

Table 9 shows that in the early days of the pandemic in 2020, the LAD handled approximately 850 cases a month, 67% involving female OFWs and 33% concerning male OFWs. In the June 2020 to November 2020 period, the numbers rose by 2.6 times to nearly 3,000 cases per month. The workers' preferred access is through email, though there is also a rising number of requests registered in the LAD Facebook account. Despite the pandemic, however, the office continued to receive walk-in clients, not just OFWs but also their family members. During the pandemic, a substantial number of requests were related to the extension of the DOLE's emergency assistance program for the OFWs.

Table 9. Number of individuals assisted by POEA LAD, January-November 2020

ACCESS CHANNELS	OVERALL TOTAL (JAN-NOV 2020)	JAN-MAR			MAR-MAY	JUN-NOV		
		Total	M	F		Total	M	F
Walk-in	4,083	2,478	827	1,651	-	1,605	-	-
Legal Assistance Portal	2,375	-	-	-	529	1,846	-	-
Legal Assistance Email	5,149	-	-	-	316	4,833	-	-
Facebook	711	-	-	-	-	711	-	-
TOTAL	12,318	827	827	1,651	845	8,995	248	463
Percentage		100%	33.4%	66.6%	-	-		

Source: Philippine Overseas Employment Administration

Women are seeking assistance at a higher percentage than men. In addition to reports on contract violations, women also raise issues of maltreatment such as physical and sexual harassment, abuse and rape. The LAD has an internal target to assist overseas workers within 24 hours. This includes the review of and counselling on the filing of cases. Pre-pandemic, this process could take place within one working day, but with the pandemic, the process can stretch to additional days to build a case. There is still quite a large number of workers who use online technology such as emails or digital applications, especially in scanning and submitting relevant documents online.⁵⁴

⁵⁴ De Guzman, K. (2021). Personal communication [Personal interview].

CONCILIATION

The POEA's rules require that all workers' grievances are conciliated in order to settle claims⁵⁵ under the supervision of the POEA's Conciliation Unit. In conciliation, the POEA officers arrange one or more hearings with the OFW-complainant and the PRA to consider compromise agreements or settlements. "Successful" conciliation leads to settlements between the workers and the foreign employers/recruiters. These are in the form of quitclaims that employers/recruiters and workers jointly undertake.⁵⁶

The Conciliation Unit does not yet have its own online platform, and online hearings have proven to be challenging. This has resulted in a significant backlog of pending cases for conciliation.⁵⁷ Another major concern in conciliation is the difficulty in tracking OFW cases within and among the different DOLE offices, particularly in responding to workers' and media requests on the status of cases, especially if these were not originally conciliated in the POEA.⁵⁸

CONCILIATION PROCESS

This conciliation process can take place within 2-4 weeks and will involve 2-3 hearings, depending on the nature of the cases.

1

The Conciliator (He/She) meets up with the complainant and the PRA rep explains the process and the benefits of negotiating the dispute directly.

2

He/She must encourage the parties to explore their individual interests and to find a solution that is best for both parties.

3

He/She gives the parties a negotiation period (30 days) and must explain the process to both parties.

4

He/She informs either party that they may be accompanied by an attorney if they so wish.

⁵⁵ Philippine Overseas Employment Administration. (2016). [Revised POEA Rules and Regulations governing the recruitment and employment of Landbased Overseas Filipino Workers of 2016](#).

⁵⁶ Obtained from first ALTER Validation Workshop (Government).

⁵⁷ See above citation: ALTER Validation Workshop.

⁵⁸ See above citation.

5 The final agreement or disagreement is stated in the minutes of the meeting, signed by both parties.

6 In the event that a recruitment agency does not fulfill its obligations, the POEA can suspend the processing of its ongoing contract approvals or impose a sanction in line with the law.

7 If the parties fail to reach an agreement, any information or admission made by the other party during the mediation cannot be used as evidence in a court of law.

8 Any of the parties may decide to continue the case by bringing it to either the POEA Adjudication Office or the NLRC.

ADJUDICATION

The POEA has the exclusive jurisdiction to “hear and decide all cases which are administrative in character, involving or arising out of violations of recruitment rules and regulations, including refund of fees collected from Overseas Filipino Workers and any violation of the conditions for the issuance of the license to recruit Overseas Filipino Workers”,⁵⁹ the Administration shall likewise exercise original and exclusive jurisdiction to hear and decide disciplinary action cases against Overseas Filipino Workers and principals/employers that are administrative in character, excluding money claims.

The Adjudication Office is also the final step for the POEA to issue judgments against recruitment violations of licensed recruitment agencies. These violations of recruitment agencies cover 22 prohibited practices found in the POEA Rules and Regulations 2016. The list includes serious offenses such as recruitment of workers to jobs harmful to public health, morality or to the dignity of the Republic of the Philippines; the payment of excessive fees beyond what is allowed by POEA rules and regulations; as well as those referring to non-compliance to administrative rules of the POEA such as submission of reports.⁶⁰

Submission to the Adjudication Office (AO) of the POEA places the case/complaint in a more

⁵⁹ See above citation: Revised POEA Rules and Regulations governing the recruitment and employment of Landbased Overseas Filipino Workers of 2016.

⁶⁰ Philippine Overseas Employment Administration. (2016). [Revised POEA Rules and Regulations governing the recruitment and employment of Landbased Overseas Filipino Workers of 2016](#).

formal setting. The Office has the power to summon private recruitment agencies for various hearings during the investigative processes. They are able to impose sanctions such as the temporary suspension of documentary processing, considered the lifeblood income of recruitment agencies. While the AO's target is to resolve all the cases the office received during the calendar year within the same year, achieving this goal has been a challenge. The extended duration of cases is often due to the repeated postponement of cases with the failure of one or both parties to appear for hearings; there is also a significant number of cases that are archived because of the disinterest or withdrawal of the parties.

ACTION ON ANTI-ILLEGAL RECRUITMENT

The POEA's Anti-Illegal Recruitment Branch provides assistance to victims of illegal recruitment in filing/pursuing administrative or criminal cases, initiates the prosecution of illegal recruiters in collaboration with the Department of Justice prosecutors, conducts special operations such as surveillance and closure of establishments, and engages an information and education campaign.⁶¹

Available data on illegal recruitment (2014-2020) (Table 2) show a declining number of complaints and a relatively low number of complainants. Conviction rates also seem to be surprisingly low. The number of surveillance and special operations rose in 2020 (Table 3), though it is unclear whether the surveillance focused on non-licensed agencies without permits to operate or on prohibited practices undertaken by licensed agencies.

4.4 OVERSEAS WORKERS' WELFARE ADMINISTRATION (OWWA)

The Overseas Workers' Welfare Administration is one of the most important avenues for workers to directly report and seek solutions to their grievances and concerns. The OWWA views itself as the frontliner in addressing problems of OFWs, with its mandate fully established by law in RA 10022, an amendment to the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042). An important distinction from the POEA is that the OWWA addresses complaints of all Filipino overseas workers, regardless of whether workers were recruited or hired through agency hiring, government-to-government arrangements, name-hired channels, or informal and irregular channels. Many complaints are brought by workers to the authorities' attention by walking-in and registering complaints at the OFW Help Desk posts, including several at the international airports. The OWWA also has both an international and national presence, with its welfare officers in 32 international offices and 15 regional offices in the Philippines. The OWWA's welfare officers are part of the Philippine Embassy's POLO and together they present the overseas operations as part of the Embassy's one country team approach.

The OWWA Administration also supervises and controls an Emergency Repatriation Fund consisting of an allocation of OWWA funds and additional funds appropriated from the annual General

⁶¹ Taken from the 2021 POEA AIR Briefer (Unpublished briefer).

Appropriations Act for the repatriation of workers in cases of war, epidemics, disasters or calamities (natural or man-made) and other similar events, and in cases of repatriation of workers wherein the principal recruitment agency cannot be identified. While OWWA funds are sourced as contributions of worker and employer members, the OWWA is authorized to disburse these contributions to support the needs of those who have not contributed to the funds. In practice, the Office of the Undersecretary for Migrant Worker Affairs (OUMWA) of the DFA advances the costs of repatriation in emergency situations from its assistance to nationals (ATN) Fund, which is eventually reimbursed by the OWWA.

The OWWA reports that the numbers of complaints received are on an upward trend, rising from 25,305 (2016), 34,464 (2017) and 42,682 (2018). The top two categories of complaints are unpaid salaries and benefits followed by maltreatment. Pre-pandemic, the majority of the complainants were female household workers from the Middle East. OWWA international shelters now house an equal number of male and female workers.⁶²

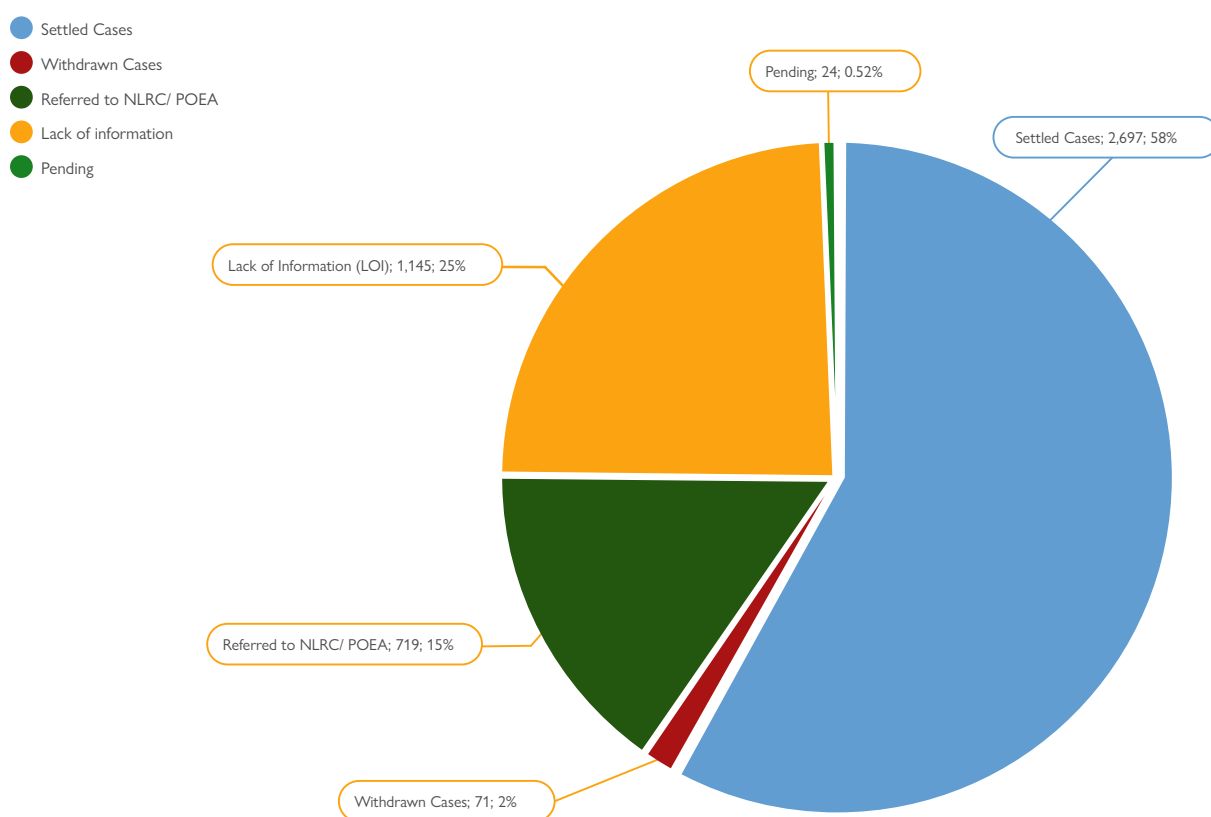


Figure 6. Status of complaints/ cases received by OWWA, 2020

Source: Overseas Workers Welfare Administration, 2021

As a designated SEnA action desk, the OWWA received a total of 4,663 cases in 2020, settling 58% of these cases, while 25% were effectively withdrawn and only 15.6% moved on for further adjudication.

⁶² Hapal, J. (2021, January 6). Personal communication [Personal interview].

DURATION

The OWWA seeks the quick resolution of cases, especially those brought to their overseas offices, given the constraints of expiring visas and the high costs of lodging and accommodations in the countries of destination. The timeframe provided for in SEnA (30 days) may be too long for distressed workers with no living accommodations. There are, however, cases that cannot be resolved onsite. These cases include maltreatment, sexual abuse and sexual harassment. In these situations, the OWWA's intervention is to summon the Foreign Recruitment Agencies (FRAs) onsite and Philippine recruitment agencies to immediately remove workers from perilous situations. The OFWs then have the choice of pursuing legal action or repatriation to the Philippines.

4.5 THE PHILIPPINE OVERSEAS EMPLOYMENT OFFICE (POLO) AND THE INTERNATIONAL LABOR AFFAIRS OFFICE

The Philippine Overseas Labor Office is the international arm of the DOLE and is responsible for the administration and enforcement of its policies and programs applicable to OFWs. There are 34 POLOs around the world – 11 of which are in Asia, 13 in the Middle East, seven in Europe, and three in the Americas.

A labor attaché leads a staff of at least five personnel at the POLO. He/she manages the operations of the Filipino Workers' Resource Center (FWRC). A key officer of the POLO is an OWWA welfare officer who is responsible for receiving complaints and concerns of the OFWs. The POLO operates under the One-Country Team Approach (OCTA), wherein all officers, representatives and personnel of the Philippine Government posted abroad shall, in each host country, act as a one-country team with a mission under the leadership of the ambassador, who shall act as team leader. In Manila, the International Labor Affairs Bureau (ILAB) provides administrative support to the POLO.⁶³

PROCESSES FOR A DOMESTIC WORKER (DW) AT SITE

⁶³ Visperas, A. (2021, January 13). Personal communication [Personal interview].

PROCESSES FOR A DOMESTIC WORKER (DW) AT SITE⁶⁴

**For Categories other than Skilled Professionals and Technicians

- 1 The DW can approach the employer with a copy of the signed contract and identify the violation.
- 2 The DW has a choice to call the office of the foreign recruitment agency or their Manila recruitment agency, which would then opt to directly negotiate with the employer (or the FRA) to find acceptable solutions or alternatives.
- 3 When faced with slow or no response, the DW submits a complaint to the POLO. The DW's family member may also contact the POLO via a report to the POEA and OWWA. Ideally, the DW's family has the name of the worker, the name of the Philippine agency, and a copy of the approved contract to facilitate identification.
- 4 The DW is encouraged to stay in current housing unless conditions are untenable (relevant in cases of sexual abuse, harassment, rape).
- 5 The POLO calls the Philippine Embassy, the DW and the FRA to mediate and find solutions. The welfare officer first discusses the grievance with the DW and takes a statement or a report from him/her. In receiving the complaint, the officer seeks a conciliation or mediation, calling the employer or their representatives, usually the foreign recruitment agency.⁶⁵
- 6 In the case of no agreement, the Embassy may:
 - Report the case to the relevant authority;

⁶⁴ Those workers classified as skilled or technical often work in companies with established HR systems and embedded complaints mechanisms.

⁶⁵ Conciliating the positions of the workers and employers takes on different practices in different regions.

6

- Provide safe shelter; OR
- Request the POEA to ask that the FRA repatriate the worker.

7

Upon repatriation, the other SEnA processes are followed.

The successful outcomes of conciliation depend on the seriousness of the cases and the freedom of movement provided to migrant workers by labor laws of the country. For example, in Kuwait, when a domestic worker leaves a household for more than 24 hours, the worker will be charged with absconding and possibly theft. It is essential for the welfare officer to immediately inform the employer and the Ministry of Manpower of the whereabouts of the worker. In Hong Kong, workers are allowed to terminate their contracts and have 14 days allowable stay after their contract termination.

Typically, when cases or complaints are brought to the POLO, it is likely that the employer/worker relationships have deteriorated significantly and there is very limited leeway for conciliation or negotiation. As an example, in Singapore, on the receipt of a complaint, the POLO calls the foreign placement agency to seek a resolution of the case in Singapore. It may involve facilitating the worker's transfer out of a current contract to a new employer or arranging for a repatriation. In cases involving repatriation, the POLO coordinates with the OWWA and POEA for support. Once the workers have been repatriated, they are likely to pursue their cases against the local Philippine agent using the standard POEA/NLRC procedures.

Attached to the Philippine Labor Office are Overseas Filipinos Resource Centers, mandated by the 1995 Migrant Workers and Overseas Filipinos Act. Under this legislation, Philippine Embassies / Consulates with other government agencies are asked to establish a 24-hour information and assistance centre in countries with large concentrations of Filipino migrant workers. Among the services provided by the centre are (a) counselling and legal services; (b) welfare assistance including procurement of medical and hospitalization services; (c) information programs to promote social integration settlement and community networking; (d) training and skills upgrading; and (e) gender-sensitive activities to assist specific needs of women migrant workers.

The ILAB reports the top numbers of cases reported to the POLOs. Table 10 ranks the posts in terms of the numbers of cases and shows that the GCC countries post the highest number of complaints/cases. Table 11 ranks these same countries in terms of cases over the resident OFW population. Al-Khobar in the KSA ranks first in both lists. There is no additional information on the number of Philippine resource centres, their distribution and use by OFWs.⁶⁶

⁶⁶ Ofreneo, R., & Samonte, I. (2005). [Empowering Filipino migrant workers: policy issues and challenges](#). International Labour Organization.

Table 10. Ranking of GCC POLO posts in number of reported cases to the POLOs, 2018

RANK	POLO	NO. OF WELFARE CASES (2018)	% OF TOTAL CASES
1	Al Khobar, KSA	20,640	25%
2	Abu Dhabi, UAE	9,526	12%
3	Jeddah, KSA	8,983	11%
4	Riyadh/CRO, KSA	8,822	11%
5	Kuwait	6,831	8%
6	Dubai	4,875	6%
7	Qatar	4,833	6%
8	Malaysia	2,854	4%
9	Taichung	2,351	3%
10	Taipei	1,769	2%
11	Oman	1,674	2%
12	Lebanon	1,598	2%
13	Jordan	1,368	2%
14	Bahrain	931	1%
15	Macau	793	1%

Source: Source: International Labor Affairs Bureau, Department of Labor and Employment, as reported in UP CIFAL

Table 11. Ranking of GCC posts in terms of cases/OFW population, 2018

Rank	POLO	No. of OFWs	No. of cases received (2018)	*% of claimants against population
1	Alkhobar, KSA	197,557	20,640	10%
2/3	Jeddah, KSA	218,633	8,983	4%
2/3	Oman	47,537	1,674	4%
4/5/6	Riyadh and Unaizah, KSA	286,782	8,822	3%
4/5/6	Abu Dhabi, UAE	297,592	9,526	3%
4/5/6	Kuwait	248,354	6,831	3%
7/8	Bahrain	47,957	931	2%
7/8	Qatar	241,009	4,833	2%
9	Dubai, UAE	421,686	4,875	1%

Source: Source: International Labor Affairs Bureau, Department of Labor and Employment, as reported in UP CIFAL

4.6 THE NATIONAL LABOR RELATIONS COMMISSION (NLRC)

The National Labor Relations Commission (NLRC) is a quasi-judicial agency attached to the DOLE. The NLRC is mandated to adjudicate labor and management disputes involving both local and overseas workers through compulsory arbitration and alternative modes of dispute resolution. Not part of the judiciary, the NLRC is an administrative body in the executive department. While it hears and decides cases like regular courts, its rules of procedure are different from those of regular courts.⁶⁷ Appeals of the NLRC's judgments are filed at the Court of Appeals and, if still pursued thereafter, submitted to the Philippine Supreme Court. OFW cases that go through the whole gamut of the appeals can, in some cases, have a duration of 10 years.⁶⁸

As part of the major reforms brought about by the Migrant Workers' and Overseas Filipinos Act, the jurisdiction of cases involving money claims was transferred out of the POEA to the NLRC. The primary explanation of the transfer was that the POEA did not have the resident technical expertise to adjudicate. Further, the transfer to the NLRC was also expected to ensure more transparent adjudication processes.⁶⁹ However, the downside also meant an additional 15%-20% caseload burden on the NLRC and, given its quasi-judicial nature, a greater use of adversarial and litigious processes. The OFW cases in the NLRC largely involve claims of seafarers for disability claims and death benefits. The complaints and cases of land-based workers are fewer and are largely claims for unpaid salaries, contract violations and illegal termination.⁷⁰

The NLRC has received criticism for many years on the backlog of cases and lengthy periods of waiting prior to judgment. There is additional criticism on corruption at both the POEA and the NLRC and the re-energizing of "ambulance chasers" seeking quick returns for facilitating cases.⁷¹ There are complaints of the lack of transparency in assigning cases to the arbiters. Specifically, there is a perception that ambulance chasers zero in on sea-based workers in particular as settlements, and their lawyers' commissions, are much higher. Table 12 shows the NLRC's concern to show its quick disposition of cases. The NLRC has been overshooting its targets (as seen in Table 12), including the strong performance of the regional arbitration branches. Conciliation and mediation are desired outcomes in most of these cases, with 73% decided on the basis of conciliation and mediation. Another performance indicator was the proportion of cases resolved within three months, which is indeed a high 73%.

⁶⁷ De Guzman, F. (2021, January 20). Personal communication [Personal interview].

⁶⁸ Bitonio, B. (2021). Personal communication [Personal interview].

⁶⁹ Interview with NLRC source, prefers to be anonymous.

⁷⁰ Obtained from first ALTER Validation Workshop (Government).

⁷¹ Hernandez, A. (2021, January 19). Personal communication [Personal interview].

Table 12. Performance Indicators of the NLRC comparison of targets and actual performance, 2017

PERFORMANCE INDICATORS	TARGET	ACTUAL	% – Actual/ Target
* Regional Arbitration Branches:	40,000	47,791	119%
(a) Settled by SEADO (SEnA)		14,944	
(b) Settled by Labor Arbiter (CA)		19,886	
(c) Decided by Labor Arbiter (CA)		12,961	
* Commission Proper:			
(a) Decided by Commissioner (Appeal)	10,500	10,423	99%
Quality: Percentage increase in cases resolved through conciliation-mediation:			
* Regional Arbitration Branches:	60%	73%	121%
(a) Settled thru con-med by SEADO (SenA)		14,944	
(b) Settled thru con-med by Labor Arbiter (CA)		19,886	
Timeless: Percentage of cases resolved within three (3) months from filing/receipt:			
* Regional Arbitration Branches	65%	74%	115%
* Commission Proper	65%	93%	141%
		9,575	

Source: National Labor Relations Commission

The pace of the resolution of labor disputes, including OFW/OE-related cases, by labor arbiters has improved throughout the past 25 years. This is attributed to a combination of factors, including but not limited to: (a) the increase in the number of labor arbiters, motivated by the increased salary for such position, which was made equivalent to that of Regional Trial Court (RTC) judges; (b) the appointment of younger and more energetic labor arbiters; and (c) the adoption of procedural rules designed to minimize delays in the disposition of cases, e.g., prohibited pleadings, no extensions/postponements, no motions for reconsideration, shorter 10-day period for appeal, etc.; the use of information and communications technology, which has made filings, requests and follow-ups possible through email instead of personal appearances, and research and decision-making faster through an increase in the number of appellate divisions from five to eight.⁷²

Table 13. Number of cases received and disposed (2015-2020)

Year	DISPOSITION OF CASES		
	Total number* of cases received	Total number** of cases disposed	Disposition rate
2015	42,279	41,882	99.06%
2016	50,563	41,701	82%
2017	45,228	43,270	96%
2018	50,353	48,770	97%
2019	53,097	53,292	100.3%
2020	26,696	28,016	105%

Source: National Labor Relations Commission

*Total number of cases received pertains to those received both at the Regional Arbitration Branches (RABs) and the Commission Proper levels for that year.

**Total number of cases disposed pertains to disposition of cases both at the Regional Arbitration Branches (RABs) and the Commission Proper levels. Disposed cases may also include those pending from previous years.

⁷² See above citation: Interview with Atty. Francisco De Guzman, LBS Recruitment.

The NLRC has its own internal case monitoring and case management system. The NLRC has an option/feature in their website where complainants can check the status of their cases. The Commission has also launched its Electronic Case Tracking System (ECTS), an online portal where the filing of the request for assistance could be done.⁷³ The NLRC Data management system could be further improved to provide information on OFWs. It would be critical to have separate OFW tables showing overall financial awards, whether through SEnA or through compulsory arbitration. Additional information on the categories of cases, the profile of beneficiaries (land-based and sea-based workers, male or female) and workplace locations. The NLRC publishes reports only on the monetary value of its decisions favouring OFWs and performance indicators on the disposition of cases at the NLRC.

Table 14. Number of cases received and disposed (2015-2020)

Year	Land-based OFWs	Sea-based OFWs**
	Amount awarded	
2015	309,908,534.40	652,086,504.60
2016	379,476,674.16	3,297,108,850.64
2017	381,224,621.68	2,576,587,805.89
2018	626,747,882.09	3,626,527,516.25
2019	667,415,145.86	3,279,516,935.30
2020*	428,635,626.38	1,423,326,835.11
TOTAL	2,793,408,484.57	14,855,154,447.79

Source: National Labor Relations Commission (*as of September 2020)
 **Based off figures of overall settlements (settled and decided) with subtracted land-based OFW settlements

4.7 COMPARISONS OF SYSTEMS WITHIN THE DOLE

COMPARISON OF INTERNAL MONITORING SYSTEMS WITHIN THE DOLE

Three DOLE offices – the POEA, OWWA and ILAB – and the NLRC have internal tracking systems to monitor the performance of their individual units that are associated with complaints mechanisms. These systems are not fully operational in each of the offices, and because of differences in systems and technology, the monitoring systems are not able to link to nor communicate with each other.

The Information and Communication Technology Division of the Philippine Overseas Employment Administration (POEA-ICT) is primarily focused on issues surrounding the deployment of a worker, such as numbers leaving for foreign employment, employment contracts

⁷³ See above citation: First ALTER Validation Workshop (Government).

processed, features of deployment such as gender, location of work, status of contracts (new and rehiring), among others. The main application of ICT in worker welfare monitoring is the OFW Welfare Monitoring System (OWMS), designed to accommodate quarterly status reports of private recruitment agencies and their exceptional reports of significant events. The OWMS is detailed in Chapter 5 as a PRA reporting requirement. The ICT Division intends to expand access to the OWMS to all the stakeholders: private agencies, liaison officers, and even directly by the OFWs themselves.

The POEA-ICT has developed around 10 to 15 internal systems for different units to use. These are based on functioning manual systems that were eventually automated. Managers of the business processes (e.g., OWMS) provided insights on innovating the system and increasing its efficiency. For now, these systems within the POEA do not communicate or connect with each other due to difficulties with the POEA's digital infrastructure.

The OWWA hosts an internal digital monitoring system called ECARES. This system is capable of tracking OFW cases, including those coursed through the DOLE's electronic e-SEnA system. The OWWA is connected to the e-SEnA, hence the agency's complaints or reports are manually encoded and tagged with Request for Assistance (RFA) in the e-SEnA. With this information on hand, the POLO or the OWWA welfare officers abroad can immediately inform the FRA and the PRA that a complaint has been filed and tagged with an alert for action. Complaints are therefore received and updated in real time, ensuring immediate access to all connected units. Unfortunately, at present, there is a backlog in ECARES because case managers are unable to update the status of cases on time – due to heavy workload, delays related to doing fieldwork in remote locations, access issues while working from home during the pandemic, among others. As a result, the number of resolved cases reflected in the system still remains lower than the actual total. Currently, ECARES is being updated to allow OFWs to directly access and view the most recent status of their complaint.

The ILAB developed the Foreign Labor Operations Information System (FLOIS) in 2013. FLOIS is an interactive database designed to facilitate a more efficient monitoring and reporting system of the POLO, covering administrative and financial reporting, as well as labor and welfare cases (including repatriation), security and safety of OFWs. The system additionally keeps track of employment contracts that have been processed through the POLOs along with Overseas Employment Certificates. FLOIS also keeps a record of blacklisted employers and agencies.

The NLRC has an internal case monitoring and management system. Information from this system is not systematically shared with the public, however, the OFWs and the PRAs can check the NLRC website for the status of their cases. The NLRC also posts data releases on its website.

COMPARISON OF THE ONLINE PRESENCE AND MEDIA OUTREACH OF THE DOLE

The overseas employment offices (POEA, OWWA and ILAB/POLO) have been updating and upgrading their online presence for some time now to improve workers' reporting of complaints and concerns. The POEA and OWWA both established hotlines in 2009. Currently, there is no information on the extent of use of these hotlines. There has been no prior analysis of the queries, concerns and complaints sent through the telephone hotline numbers, in particular, whether these were simple information queries or those requiring urgent action.

The pandemic lockdown “forced” a greater reliance on digital platforms such as Facebook. The use of the Facebook pages has emerged as an important entry point for workers' complaints and grievances. The use of these applications greatly improved workers' ability to connect with government institutions regarding their complaints and grievances.

In Table 9 shared earlier, legal assistance by the POEA/LAD during the 2020 pandemic covered an estimated 850 walk-in cases a month, 67% involving female OFWs and 33% concerning male OFWs. In the June to November period, the numbers rose by 2.6 times to nearly 3,000 cases per month. The workers' preferred access was through email, with significant numbers registered through the legal assistance portal and Facebook.

With greater use of the Facebook pages and emails rather than the traditional walk-ins, the POEA established new protocols of assigning staff to an established “screening process” for messages. Any emails or message referrals are sorted through by the end of the day and sent directly to the attorneys on duty. To strengthen its legal assistance efforts, the POEA's Legal Assistance Division has digitized its forms and has allowed the use of e-signatures in submitting complaints. Follow-up personal calls to complainants verified identities and provided the opportunity to personally gather more information and begin the documentation of the cases.

At the OWWA, even prior to the pandemic, their online presence consists of their official email and website. All OWWA applications were developed in-house and operational prior to the pandemic breakout. The OWWA projects itself as a “frontline” service, as they entertain grievances and complaints from as many channels as possible – including call-ins from media reporters and referrals from legislators and LGU officials. There are also queries and concerns raised via the OFW Help Desk – particularly the OWWA Hotline (1348), its mobile number hotlines, the OWWA email address, and its Facebook pages.

Upon messaging the OWWA Facebook page, an automated message is immediately sent in response. It explains that due to the high volume of Facebook messages received daily, response time may be slower (after 48 hours). Additionally, it provides the OWWA Hotline for any immediate or urgent concerns a sender may have. Another digital platform the OWWA has access to is the e-SEnA system of the DOLE, where workers may also lodge complaints via the DOLE e-SEnA online portal. The DOLE-ILAB Facebook page does not enable messaging and it is likely that the operations are more active at the individual POLO levels.

The NLRC has also launched the Electronic Case Tracking System (ECTS), where the OFW can file a request for assistance.⁷⁴

COMPARISON OF COMPLAINTS, CASES AND GRIEVANCES SUBMITTED TO DOLE OFFICES

Based on interviews conducted for this research, the actual number of cases/complaints received and acted upon by the DOLE is difficult to compare because of different data constructs and where available, the data involve different years. The POEA reported a total of nearly 8,000 legal assistance requests in 2020, while the comparable figure from the OWWA is 4,663. The Adjudication Office of the POEA claims that their cases average 5,000 to 8,000 a year. The NLRC figures date to 2017, as the Commission reported 57,000 cases but did not separate local from overseas employment figures.

The POEA and the NLRC data do not consistently provide demographic profiles – how many men, how many women, nor the categories of cases (in illegal recruitment? contract violations?). The OWWA and the POLO have better demographic profiles related to the data; their datasets have information on the types of cases for 2020. They also use similar clusters of cases and seem to use the same data definitions.

Based on interviews, the most frequent concerns of all DOLE offices involve overseas worker contract violations, primarily the non-payment of wages and benefits, and maltreatment being the second main type of cases brought to the DOLE. The POEA's Adjudication Office reports cases against agencies consisting mainly of recruitment violations from misrepresentation relating to breaches of the employment contract, such as non-payment or delay in wages and failure to give end-of-contract benefits, vacation leaves, bonuses, etc. Two of the most common recruitment violations involve the failure of the agency or employer to monitor the welfare of the workers, in particular, in their general failure to report significant incidents such as missing workers, deaths, rapes, grave abuses, etc. Complainants are mostly female, especially those in the household service occupations. The AO also considers the cases of interceptions by the Bureau of Immigration of underaged workers as a measure to prevent possible human trafficking. The OFW cases in the NLRC have higher numbers for sea-based employment relating to disability claims or death benefits. The fewer land-based workers file complaints for salaries and wages due to contract violations and illegal termination.⁷⁵

In Singapore, the majority of issues raised with the POLO concern the unauthorized salary deductions in the hiring of Filipino domestic workers. With the no placement fee policy imposed by the Philippine Government for household domestic workers hired through

⁷⁴ Obtained from first ALTER Validation Workshop (Government).

⁷⁵ See above citation.

Filipino private recruitment agencies, the recruitment and placement fees have been borne by overseas workers through a salary deduction scheme. The payment of these higher fees (two months of wages) is acceptable in Singapore. Regarding complaints to the Ministry of Manpower (MOM) by OFWs, the foreign placement agencies based in Singapore claim that most of the costs are charges of the Filipino recruitment agency based in Manila. Further, the Philippine recruitment agencies are also able to charge indirect placement fees through charges on related costs, such as training costs.⁷⁶

4.8 THE DEPARTMENT OF FOREIGN AFFAIRS AND THE OFFICE OF THE UNDERSECRETARY FOR MIGRANT WORKER AFFAIRS (OUMWA)

The Philippine Embassy provides a safe haven for many Filipinos in times of need and crisis. In 1993, the Philippine Government mandated that a country team approach be adopted by all foreign service posts in the conduct of development diplomacy. The measure intended to ensure the efficient and effective delivery of services to overseas Filipinos, according to RA 8042 as amended by RA 10022.

Under Section 27 of the said law, “the country team approach, as enunciated under Executive Order No. 74, series of 1993, shall be the mode under which Philippine embassies or their personnel will operate in the protection of the Filipino migrant workers as well as in the promotion of their welfare. The protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino citizen abroad, in general, shall be the highest priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service Posts.” Section 28 also states that “under the country team approach, all officers, representatives and personnel of the Philippine Government posted abroad regardless of their mother agencies shall, on a per country basis, act as one country-team with a mission under the leadership of the ambassador.”

In the DFA hierarchy, the OUMWA serves as the pivotal office in the DFA in monitoring Filipino migrant workers' welfare. To effect a cohesive and effective delivery of government services to overseas Filipinos, particularly those in distress, the DFA with the DOLE, the DOH, the DSWD and also the DepEd jointly prepared a Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas. The manual outlines the roles and responsibilities of the different government agencies and overseas offices in serving overseas Filipinos, particularly those in distress, who require prompt and proper help at all times.⁷⁷

While the DOLE's POLO provides mechanisms for all Filipino workers legitimately recruited in the Philippines, the DFA's Assistance to Nationals (ATN) section responds to problems of irregular workers

⁷⁶ de Vries, S. & Reyes, Z. (2020, December 2). Personal communication [Personal interview].

⁷⁷ Philippine Overseas Employment Administration. (2015). [Joint Manual of Operations in providing assistance to Migrant Workers and other Filipinos overseas](#).

without legal status in the country of destination. In addition, this embassy section coordinates consular efforts in responding to urgent requests for assistance made by Filipino individuals or groups, mainly involving the police, immigration and judicial authorities. Actions taken by the ATN section include, but are not limited to: monitoring of cases in court; prison visitation; representations with authorities; facilitating repatriation; and coordination with next-of-kin or relatives on police and immigration cases.

The DFA also administers the Legal Assistance Fund. As provided for in the Migrants Act of 1995, the fund is used to pay for legal services of migrant workers and overseas Filipino in distress, specifically for fees for foreign lawyers, bail bonds, court fees and charges, and other litigation expenses. The fund, invested with an amount of ₱100 million, was initially drawn from the President's Contingency and Social Funds and the OWWA.

In 2019, the DFA-OUMWA launched a Facebook page⁷⁸ called [OFW Help](#). At the advent of the pandemic, the OFW Help became an important source of information on the repatriation of OFWs and other overseas Filipinos. The OFW Help continues to provide an opportunity for workers to raise their complaints and concerns.

PROFILE OF DFA CASES

With its attention on irregular workers, the DFA provides legal and other assistance services to Filipino migrant workers who typically entered legally but violated the terms of their stay by, for example, not departing when required. Also, most of these Filipinos seek to work in regular jobs though they do not possess the authorized work permits. Some reside legally in a country and become irregular workers because their visas allow residence but not employment, as with those Filipinos who violate tourist visas by going to work.

Whether with irregular immigration status or engaged in unauthorized work, these migrant workers are employed outside the formal employment system and are not covered by minimum wages, social security and other work-related benefits. Employers may prefer to hire irregular workers to pay them lower wages and to avoid paying taxes that support work-related benefit programs.

There is no publicly available data on the profile of cases accepted under the ATN. It is likely that when irregular workers are “reported” or are caught, the workers’ lack of an immigration or work permit immediately takes precedence and they are detained in prison. The DFA is also responsible for assistance when documented or legal workers are suspected of or are involved in criminal activities (theft, violence as examples) and are imprisoned.

⁷⁸ Rocamora, Joyce Ann L. (2019). [DFA launches Facebook page to help distressed OFWs](#). Philippine News Agency (PNA). 17 September 2019.

4.9 OTHER GOVERNMENT OFFICES

The Department of Social Welfare and Development (DSWD) is at this time only marginally involved in OFW cases, though it has established social welfare officers posted in Philippine embassies with large numbers of OFWs. The DSWD has a central email address, a website and a Facebook page for victims of trafficking to request assistance.

The Commission on Human Rights of the Philippines (CHR) is an independent constitutional office created under the 1987 Constitution of the Philippines. Its primary function is to investigate any form of human rights violations, particularly those involving civil and political rights. The CHR maintains an active Facebook page with all contact details listed – including mobile hotline numbers and email addresses for their “E-Lawyering” services available to those who may have questions regarding human rights, government policy, reporting of incidents of abuse, and the giving of free legal advice. More specifically, in the case of OFWs, the CHR has the OFW and Migrant Complaint Portal (advertised on their Facebook page), which contains the portal link to the OFW Case Intake Google Form, as well as the central email and mobile hotlines. Workers may report cases or incidents wherein they or another person they know are victims of abuse (physical/verbal/sexual), non-payment or delay of payment of wages, contract violations, contract substitution, illegal recruitment, trafficking in persons, confiscation of passport, payment of illegal fees, and others. The CHR has additionally established the Migrants Rights Observatory, a database that houses Supreme Court cases from 1996 to the present day that concern labor migration. This was established in order to develop tools and resources to continuously monitor the compliance of the Philippine Government in relation to international human rights mechanisms, including those governing the rights of OFWs.

The CHR Facebook page enables users to message the office via the Facebook messaging platform. However, they do not have an automated messaging system in place. A test call demonstrated that CHR responded within a 48-hour period asking for additional personal information.

The Inter-Agency Council Against Trafficking (IACAT) is a body composed of the different heads of multiple government and non-government agencies and offices under the Department of Justice (DOJ) tasked with monitoring, coordinating and addressing all trafficking in persons (TIP) violations. Projects conducted by the IACAT are geared towards the elimination of human trafficking in the Philippines, its prevention, the protection and rehabilitation of victims, and the conviction of their perpetrators. An important contribution of the IACAT is the Internal Case Management System (ICMS) that tracks human trafficking cases from first contact until case completion.

Like other government agencies or offices that deal with workers that may be in potentially dire situations, the IACAT utilizes a Philippine hotline (1343). It also has a hotline for those outside the Philippines, as well as trunk lines for their offices.

The IACAT has a Facebook page that enables users to send a message to page administrators. An automated message is sent immediately; however, it is simply an acknowledgement receipt message with no further information on their nationwide hotlines or email addresses. It is worth noting, though, that their general landline number is listed on the homepage of their Facebook page. No further personal response was received within a 48-hour period, therefore it is possible that their national hotline is more widely used by reporters of incidents of trafficking and abuse, as opposed to Facebook messenger, as a mode of communication.

CHAPTER 5

KEY STAKEHOLDERS: PRIVATE RECRUITMENT AGENCIES AND CIVIL SOCIETY ORGANIZATIONS

The expansion of the Philippine overseas employment program is attributable to the positively strong reputation of the overseas Filipino workforce and the drive and energy of the country's private business sector. The Philippine recruitment industry in 2019 consisted of, at its core, the 800 or so private placement agencies and manning companies facilitating employment for land-based and seafaring workers. In addition to the Philippine private recruitment agencies, this international trade of employment services counts on thousands of diverse firms providing pre-departure orientation services and medical testing or supplying insurance coverage. There are also many trade and testing centres dedicated to supporting the overseas employment program in skills certification, training and testing for thousands of aspiring overseas workers. Many private travel agencies also benefit from overseas employment recruitment and placement.

This chapter looks at the role and contribution of the Philippine private recruitment sector not only in terms of facilitating the overseas employment of many Filipinos but also in pursuing ethical recruitment and ensuring the protection of OFWs in their foreign employment. Government policies, such as the JSL and various OWMS mandatory reporting and OFW compulsory insurance coverage, have inevitably shaped the private agencies' management and handling of overseas workers' complaints and cases. The chapter looks at the due diligence measures increasingly implemented by the private recruitment agencies to better prevent OFW complaints and cases and, in the event that these happen, immediately initiate mitigation efforts to arrive at compromise settlements. The chapter will highlight the emerging effective practices of the private recruitment sector to provide their hired workers with access to remedy, including the use of internet and dedicated digital applications for OFWs to immediately report workplace violations and file legal cases to claim their dues and benefits from their private employment contracts.

5.1 INDUSTRY SIZE

Philippine Recruitment Agencies (PRAs) are responsible for recruiting and placing around 90% of "new hire" overseas workers annually, with private land-based agencies responsible for 60% and manning companies responsible for 30%. An additional 5% of all new hires secure their foreign placements through the government placement channel (5%) while others are direct/name hires, consisting of another 5%. In 2015, the 800 land-based agencies placed an average of 200 workers and this figure, by all accounts, would not provide sufficient earnings to meet the minimum overhead costs of running a PRA.⁷⁹ Even after the impact of the COVID-19 pandemic and the slowdown of placements, the number of PRAs has remained the same as in 2015, raising questions on whether the persistent presence of the PRAs is reflective of overseas labor market demand or other reasons.⁸⁰

⁷⁹ Obtained from third ALTER Validation Workshop (CSOs, Academe, and Migration Experts).

⁸⁰ See above citation.

Table 15. Licensed Private Recruitment and Manning Agencies, By category of license, 1982-2015

CATEGORIES	1982	1990	1995	2005	2010	2015	2021*
Total	538	638	900	1,363	1,278	1,186	1,190
Land-based recruitment agencies	269	303	610	1,028	896	803	823
Manning agencies	-	234	290	335	382	383	367
Service contractors ¹	35	66	-	-	-	-	-
Construction contractors ²	234	35	-	-	-	-	-

Source: Philippine Overseas Employment Administration, as presented in the SWS Scoping Study on the International Migration in the Philippines; *As shared during the validation session —POEA presentation at 2021 Senate Hearing

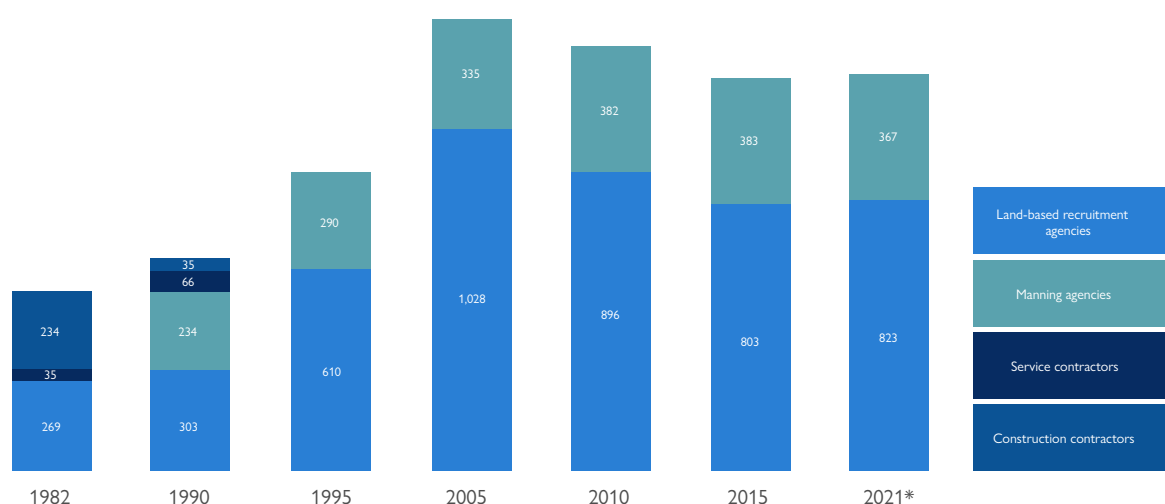


Figure 7. Licensed Private Recruitment and Manning Agencies, By category of license, 1982-2021

Source: Philippine Overseas Employment Administration, as presented in the SWS Scoping Study on the International Migration in the Philippines; *As shared during the validation session —POEA presentation at 2021 Senate Hearing

5.2 THE DEMAND FOR ETHICAL RECRUITMENT

The movement for fair and ethical recruitment of migrant workers has expanded in recent years.⁸³ For the business sector, there are reputational and financial incentives for engaging in ethical recruitment, beyond the fundamental respect of human rights. It is the belief that the cost of ethical recruitment is

⁸³ This is reflected in campaigns, voluntary guidelines and other initiatives promoted by the UN and international organizations such as the IRIS standards of the IOM, the ILO's Fair Recruitment Initiative, Guiding Principles for Fair Recruitment, the UN's Dhaka Principles, among others.

nominal or marginal to the overall project cost; it can actually be more cost-effective for employers to practice responsible recruitment.⁸⁴ For example, companies' reputational risks are extremely high when migrant workers are seen to work under substandard work contracts.⁸⁵ The costs of delays, dismissals and replacement of poorly trained or inexperienced workers are also quite high when workers have been selected on the basis of their willingness to pay excessive fees rather than on their personal merit.⁸⁶ Worker retention is also much higher when recruitment fees and costs were fully shouldered by their employers, with a rise in worker retention from an average of 3.2 to 4.2 years.⁸⁷

Philippine recruitment companies have responded to the calls of ethical recruitment, especially when their client employers have also adopted ethical recruitment principles. In addition, there are Philippine Government incentives for top-performing recruitment agencies, using criteria of employment generation, few (if at all) violations of recruitment regulations and their record of resolving workers' complaints and grievances. Recruitment agencies and employers are also sensitive to spiraling overhead costs in a competitive market. Among Philippine recruitment agencies, the negative financial impact of the Joint and Solidary Liability has been considerable, not only in terms of the responsibility for workers' money claims but also in terms of the opportunity costs caused by suspension of business processing and other distractions. As a result, different-sized agencies now pay greater attention to due diligence approaches in their recruitment operations. Their operational goal is to identify affected workers quickly and seek an early settlement of the disputes. Achieving that requires communication and access to the placed workers to avoid formal and extended disputes.

Regardless of size, sector, operational context, ownership and structure, private recruitment companies have the means to undertake ethical recruitment and assume the responsibility for the redress of workers' grievances. However, the scale and complexity of the means used by the business sector may vary according to their size and other factors.⁸⁸

Recruitment agencies see an inevitability of workers' complaints in certain destinations, though they estimate that only about 5% of their placed workers file complaints.⁸⁹ The most contentious issues raised by affected hired workers involve mainly non-payment of overtime, delayed salaries, and difficult or unacceptable accommodations, as well as claims for compensation due to work-related accidents or injury and for coverage of health and medical insurance in case of emergency or illnesses. Workplace conflicts can start with simple disputes that, if unattended to, escalate into more serious misunderstandings between employers and workers. The COVID-19 pandemic and lockdown also brought to fore the abrupt and premature termination of jobs, instances of stranding, and subsequent loss of food allowances and accommodations of OFWs in employer-provided housing and dorms.⁹⁰ The scale and types of complaints reported by the OFWs differ depending on worker occupations. The payment of wages – whether in terms of unauthorized deductions or delays in payment – is an issue that primarily affects household service workers. Skilled workers and professionals have complained about accommodations, quality of food and the application of overtime pay. Working relationships with co-workers, especially those of different nationalities, have also posed difficulties, although cases of physical

⁸⁴ United Nations Human Rights Office of the High Commissioner. (2011). [Guiding Principles on Business and Human Rights \(HR/PUB/11/04\)](#). OHCHR.

⁸⁵ Verité: Help Wanted. (n.d.). Evaluating the effectiveness of grievance mechanisms. Verite.org. <https://helpwanted.verite.org/node/736/lightbox2>

⁸⁶ Christiane Kuptsch. (2006, January 24). [Merchants of Labour](#). International Labour Organization (ILO).

⁸⁷ See above citation: Verite: Help Wanted.

⁸⁸ Bracero, R. (2021, January 21). Personal communication [Personal interview].

⁸⁹ Capistrano, M. (2021, January 18). Personal communication [Personal interview].

⁹⁰ Concha, B. (2021, March 4). Personal communication [Personal interview].

altercations are few and far between. Recruitment agencies also decry what they consider as “trigger-happy” or “nuisance” workers. These workers encounter minor problems at their work and immediately file a case for repatriation, and often PRAs have no recourse but to respond to such requests so that their other ongoing projects are not suspended.⁹¹

Among the private recruitment agencies interviewed for this research, the option for pursuing cases using the administrative or judicial mechanisms in the GCC countries was rarely considered. There are serious barriers to overcome, of which the loss of residence and work permits is primary. When a case is elevated to the Ministries of Labor or Immigration in the receiving countries, employers are immediately stopped from having transactions with the affected employee, such as applying for an exit visa or the renewal of iqama (residence permit). Nor are complainants able to obtain other employment as the case progresses. Chapter 6 extensively discusses these barriers to justice.

DEFINED PROTOCOLS FOR HANDLING WORKERS' GRIEVANCES ⁹²

Recruitment agencies have different protocols for handling workers' grievances, depending on the nature of the employer (corporate client, recruitment agent or household employer) and the country of destination.

For those employed by large, corporate enterprises, the workers should:

- 1 Report to their HR managers or designated office representatives who manage in-house complaints and grievance procedures.
- 2 Report and Inform their PRA simultaneously. The PRA may call the HR depending on the gravity of the recruitment offense to their HR managers or designated office representatives who manage in-house complaints and grievance procedures.

⁹¹ Hernandez, A. (2021, January 19). Personal communication [Personal interview].

⁹² Obtained from one-on-one interview with PRAs.

3 The grievance procedure usually gives a timeframe for response and the conciliation process to start.

4 File a complaint using the in-house grievance mechanism of the employer (at this instance, the PRA should be contacted to discuss with the company representative). Immediate contact with the employer is important to prevent escalation of issues.

5 The PRA makes a judgment call if there is a need to alert the POLO for extraordinary intervention.

6 The POLO contacts the company and/or representative for immediate hearing and action.

For those employed in households, the workers should:

1 Inform their PRA or the FRA. The PRA may directly call the FRA depending on the gravity of the recruitment offence.

2 Give the FRA the time to discuss the dispute with the employer. The goal is to clarify any misunderstanding and rectify and remedy the situation.

3 If dispute is not settled, workers are usually advised to stay in the place of work until the FRA is able to arrange substitute employment.

4 The PRA makes a judgment call if there is a need to alert the POLO for extraordinary intervention. In cases of physical harm, harassment or abuse, the POLO is asked to arrange for a place in the Philippine Embassy shelter.

5 The POLO arranges for repatriation.

5.3 MANDATORY SELF-REPORTING BY PRAs ON OFWs COMPLAINTS

The OFW Welfare Monitoring System (OWMS) is a web-based system, developed and introduced by the POEA in 2018 as a tool to assist agencies in reporting the status of workers they have placed in foreign assignments. The Workers' Education and Welfare Monitoring Division (WEWMD) is the unit in charge of implementing the OWMS and the evaluation and analysis of its reports. The WEWMD monitors two types of reports: (a) the regular quarterly reports on workers' status, and (b) special reports indicating significant events, submitted no more than five days after the event. Regular reports are accomplished for cases that fall under normal or good working conditions with no serious incident. Significant onsite events may include: deaths, injury, detention, accidents, runaway workers, missing workers, desertion, emergency disembarkation for medical attention, disembarkation, repatriation, and sea piracy, among others. Upon receiving a special report of a significant event, the OWMS administrator endorses the information to the appropriate office for follow-up action.⁹³ The endorsement could go to the repatriation unit (for requests for repatriation and emergency disembarkation), the POLOs (for missing and runaway workers) or the OWWA (for situations like sea piracy).

Tracking of workers' welfare by the PRA is required during the first term of the contract. During these first years, the PRAs are required to report on the OFW's well-being with regard to the implementation of his/her contract. For contract renewals, however, the expectation is that the worker took this decision to renew solely on his/her own and therefore waives the liability of the Philippine recruitment agency. It does mean that the worker is unable to sue his/her employer through the judicial system in the Philippines, which lacks jurisdiction over such cases.⁹⁴

The submission of the reports is now a condition or requirement for license renewal among recruitment agencies. The percentage of compliance among the PRAs has increased from 10%-11% at the start to 61% in April 2021.⁹⁵ Since the COVID-19 pandemic lockdowns, the POEA has introduced system updates allowing for digital uploading of the OWMS reports.

RESPONSES TO THE OWMS

The Philippine recruitment agencies have had serious difficulty in complying to the reporting requirements of the POEA for its deployed workers, especially when the responsibility can run over two years of placements. While some recruitment agencies may have included the requirement of monitoring workers in their recruitment agreements with their employers, the agencies are not able to compel their clients to provide additional information on the status of workers. In large corporate organizations or in government-hiring programs, the foreign employers are unable to prepare separate reports on specific nationalities and their situations. Monitoring HSWs is also quite difficult since these recruitments are undertaken via foreign recruitment agencies that are not organized to provide information about individual OFWs collected from their household employers.

⁹³ Obtained from first ALTER Validation Workshop (Government).

⁹⁴ Delos Santos, T. (2020). Personal communication [Personal interview].

⁹⁵ See above citation: First ALTER Validation Workshop (Government).

The pandemic further heightened serious gaps in workers' welfare monitoring. With widespread company shutdowns, agencies could not communicate with the workers' employers to check on workers' living and working conditions. As part of this realization, several recruitment agencies are developing their own ways of maintaining direct contact with their hired workers. Their intention, in addition to fulfilling their OWMS report requirements, is to make sure that in the face of problems, workers immediately contact their agencies before appearing before the POLOs and the CSOs. This allows the PRA some leeway to investigate, conciliate and settle complaints before these develop into more serious grievances/cases.

OWMS FLOW

- 1 The recruitment agency logs on to the OWMS through www.apps.poea.gov.ph
- 2 Under the Workers Welfare Tab, the recruitment agency opens the overview of their deployed workers.
- 3 When choosing to file a report, the agency may choose either to give a worker "same status", meaning their condition is unchanged, or to "update status" under actions taken.
- 4 For updating the status of a worker, the agency will fill out a report update and provide the category of a report: "unremarkable" or "significant and critical", as well as the type of incident. The PRA will then provide further incident details and attach any pertinent files relating to the incident (photos, videos, etc.), if necessary.
- 5 After updating and submission, the Worker Welfare Report Details will reflect the change in status.
- 6 The Workers Welfare Report Details will then receive this report on their back-end system, which segregates reports into their respective categories (critical and significant, unread critical and significant, delayed reports, etc.)

7

The Workers Education and Welfare Monitoring Division (WEWMD)/ Welfare and Employment Office (WEO) can then endorse or forward the report to the relevant office or unit – an example of this is endorsing reports that involve workers requesting repatriation to the Repatriation Unit (which is connected to the OWMS). Critical and significant reports, depending on their nature, can be forwarded to offices that offer legal assistance, such as the LAD.

5.4 MANDATORY OFW INSURANCE

Among the amendments to the 1995 Migrant Workers and Overseas Filipinos Act (RA 8042) under RA No. 10022 of 2010 is the imposition of a mandatory insurance coverage on all OFWs hired through private recruitment agencies. The costs of the mandatory insurance policy are to be borne by the employer or his/her agent. The compulsory insurance policy is effective for the duration of the migrant worker's employment contract and shall cover, at the minimum: accidental death, natural death, permanent total disablement, repatriation cost, subsistence allowance, money claims, compassionate visit, medical evacuation, and medical repatriation.⁹⁶

The Insurance Commission has oversight of all private insurers in this scheme, setting criteria for insurance agency participation and, more importantly, arbitrating cases between insurance companies and PRAs in disputes concerning claims. Seven private insurance companies have been certified and pre-qualified to participate in OFW mandatory insurance. In 2010, the Insurance Commission and the POEA issued joint guidelines on the implementation of the OFW mandatory insurance program.⁹⁷ As part of its implementation, the private agencies give annual reports to the Insurance Commission, detailing more specifically their OFW insurance claims and payouts. It has been suggested that the POEA also receive a copy of the insurance agencies' report on OFWs.

CHALLENGES IN PROGRAM IMPLEMENTATION

The protection of migrant workers through a well-implemented insurance program offers increased protection against the personal and contractual risks of overseas employment. On the

⁹⁶ Insurance Commission. (2017). [Agency-Hired OFW Compulsory Insurance: Frequently Asked Questions \(FAQs\)](#).

⁹⁷ Philippine Overseas Employment Administration. (2010). Insurance Guidelines of the Omnibus Rules and Regulations Implementing Republic Act 8042 (The Migrant Workers and Overseas Filipinos Act of 1995), as Amended by Republic Act 10022 Relative to Compulsory Insurance Coverage for Agency-Hired Overseas Filipinos Workers.

personal level, insurance covers the OFW against the risks of accident, illness and death. Insurance can also protect the OFW against the risks of contract violations, including the non-payment and delayed wages, unjustified contract terminations, among others. This insurance protection also serves the PRA as a useful buffer to absorb the costs of the JSL decisions against an employer/PRA.

The extent to which the OFW mandatory insurance scheme has been successful is not known. Under RA 10022 of 2010, the OFW mandatory insurance program was expected to have an assessment and evaluation after the first three years of program implementation. In addition, the DOLE and the Insurance Commission (Regulation, Enforcement and Prosecution Division) were required to publish annual reports on the extent of beneficiaries' claims and payouts. Information on the evaluation and subsequent publication of the reports is not publicly available. There is a need for greater clarity, transparency and accountability surrounding the mandatory insurance program. The following are among the specific issues raised during this research project's validation workshop with the academic sector and the CSOs:

There seems to be little awareness and understanding by the OFWs of the benefits of the OFW mandatory private insurance program. Using the National Migration Survey of 2018, only 2.8%-5% of international migrant workers claimed they were covered by private insurance. Also, overseas migrant workers are unlikely to have personal copies of the mandatory insurance's master contract, a copy of which is submitted to the POEA during the processing of workers' contracts.

Table 16. Comparison of insurance coverage of international migrants in the first and last countries of destination, age 15 and over

BENEFITS PROVIDED BY THE EMPLOYER	FIRST COUNTRY OF DESTINATION in percentage (%)	LAST COUNTRY OF DESTINATION in percentage (%)
INSURANCE COVERAGE		
PhilHealth paying member**	39.5	60.4
PhilHealth dependent	5.6	5.6
Health Maintenance Organization (HMO)**	1	1.1
Other Health Insurance dependent	1.7	1.3
No/None	52.5	32.5
SOCIAL PENSION/SECURITY PLANS		
SSS**	48.3	58.8
GSIS**	1.8	1.6
Private insurance/ pre-need insurance plans**	2.9	5.2
No/ None	49.6	38.5
* Not part of the standard employment contract for an OFW; Philippine social pension and security plans are voluntary on the part of the workers		

Source: National Migration Survey, 2018

There are serious exclusions in insurance coverage. Though repatriation due to illness or unjustified premature contract is an important benefit, repatriation due to pandemic lockdowns or war is not covered. It is unclear whether mistreatment (the second largest type of cases) is covered in the insurance. Physical assault, rape and torture are not considered as insurable. These exclusions are actually in line with the standard coverage of most insurance policies, so an

amendment to the Insurance Code to address these specific needs of OFWs would probably be needed.

The money claims benefit reportedly has the highest number of claims⁹⁸ and seems primarily intended to protect the private recruitment agencies from their joint and solidary liabilities on cases decided in favour of the overseas workers by the NLRC. The payments of the money claims are given to the OFW through his/her recruitment or manning agency. The insurance benefit is limited to three months for every year of the OFW's contract with a maximum of \$1,000 per month. In case the amount of insurance coverage is not enough to cover the amount as determined by the NLRC or the settlement amount, the recruitment or manning agency has to pay the difference. This can also be drawn from the PRA's cash and surety bonds deposited with the POEA. By pegging the cases to settlement compromises and adjudged cases of the NLRC, response time on money claims will take as long as the cases are handled in the NLRC.

Subsistence allowances are paid to workers currently pursuing cases abroad; the extent to which this benefit is enjoyed is not clear as more likely, OFWs are encouraged to pursue their cases in the Philippines. These monthly subsistence allowances of \$100 per month for six months do not apply to cases filed in the Philippines. Private recruitment agencies typically advance the costs of repatriation and these one-way travel costs are reimbursed directly to the PRAs. The insurance coverage is only for an initial contract period of two years. Insurance providers have significant discretion in interpreting government regulations on payments or in replacing the documentary requirements required to claim benefits. This discretion tends to be ad-hoc and are justified depending on earnings flows of individual insurance providers.⁹⁹

5.5 DUE DILIGENCE IN ETHICAL RECRUITMENT

In order to meet their responsibility to respect human rights and adhere to standards of ethical recruitment, business enterprises need to put in place a set of policies and processes that starts with examining their business risks in the face of contract violations and other negative impacts of workers' grievances. They will also need to consider measures in both prevention to ensure more harmonious working relationships or remediation when employer-employee working relationships deteriorate.

Due diligence is this ongoing risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts. Among the due diligence efforts implemented by PRAs are the following:¹⁰⁰

⁹⁸ Buendia, AA. (2021). Personal communication [Personal interview].

⁹⁹ See above citation.

¹⁰⁰ Obtained from one-on-one interview with PRAs.

STATEMENT OF PURPOSE

This is typically a statement on the company's commitment regarding ethical recruitment and as a pillar of that, the company's commitment to ensure workers' access to remedy. The written policy should state a commitment to provide a venue for workers to be heard, for complaints to be acted upon and for management to provide feedback on the status of complaints. It should include assurance of non-reprisal and confidentiality, and an appeal system for unfavourably resolved complaints or disciplinary actions.

CHOICE OF EMPLOYERS AND WORKERS

Recruitment agencies are tightening the background checks on their prospective employers, especially in actually checking the corporate financial and management capabilities of their prospective employer-clients. Prior to even approaching the POLOs for the accreditation of prospective employers, these companies give priority to offering their services to large publicly listed companies with established reputations. In addition, some agencies rely on a network of "informants" or prior contacts in the destination country, who can give some publicly available information on the reputation of possible employers ("social intelligence"). Finally, the POLOs are able to advise regarding the positive and negative feedback on prospective employers by the current Filipino workforce in the country of employment.

Several agencies shy away from the recruitment and placement of household domestic workers, given the higher risks of exploitation in domestic work. Undertaking this form of recruitment has meant establishing more stringent selection protocols for both employers and workers.

Selecting the most suitable workers requires looking closely at the suitability of qualifications and credentials of the workers, considering prior work experiences and references of previous employers. In certain cases, more attention is given to matching employers' needs with the workers' abilities such as language facility, childcare and elderly care requirements, among others.

REGULAR COMMUNICATION AND ACCESS

An important, perhaps the most important, attribute of demonstrating the PRAs' commitment to ensuring the protection of workers' rights is establishing clear communication channels that encourage workers to report violations or issues of concern. These communication channels are preferably written and PRA personnel are tasked to immediately respond, and where possible, respond with action. In several recruitment companies, the OFWs access them via a Facebook page (usually the same one they used when they applied) or through a company email.¹⁰²

¹⁰¹ Lister, J. (n.d.). [Statements of purpose for businesses](#). Chron.

¹⁰² Interviews with PRAs, all of them talked of email, Facebook.

Among agencies with a large number of placements, the companies have developed internal systems that allow the early identification and resolution of complaints in both the Philippines and in the countries of destination. Whether it is one person under alternating work assignments or the creation of a dedicated business unit, such as an Employee Relations Department, the designated staff member handles all worker complaints whether they are filed locally or at the country of destination. Hired workers are encouraged to send messages to share both good and bad news, for example, feedback on their housing, food facilities, working conditions, board, etc. at the very start of their posting. In some situations, family members of the OFWs may bring updated news of the worker's situation and are encouraged to do so. Company officials are also granted full access to these messages in order for them to keep abreast of developments in the working and living situation of their hired workers.¹⁰³

Given the developments in technology, there is a benefit, depending on scale, to adopt technology to develop digital applications installed in the hired OFWs' smart devices before departure. These applications have features that enable OFWs to report on their situations upon their arrival and afterwards. In one particular example,¹⁰⁴ hired workers are asked to input their status within the first 48 hours from the day of the departure, and subsequent notification requests are sent within three, six, nine and 12 months. Families of the workers also gain access to this and receive regular notifications on the status of workers. If no other significant events are reported during these times, another notification will be sent to the worker within the last three months of their contract to notify them that the end of their contract is nearing. Additional notices are sent via email and text.

STAFF TRAINING

Whether formally and informally, the companies implement orientation and training of its supervisors and managers on company policies and processes on handling workers' grievances. This may be a responsibility delegated to specific company officers. During staff training, the company is also able to communicate its grievance policy and procedures to all workers and highlight the importance of follow-up actions.

To ensure success, the culture of care is important. The interviewed agencies are reinforcing the importance of having close working relationships with their worker-applicants that reinforce the value of workers' loyalty. This loyalty is nurtured – the intention is providing an environment that is welcoming and that no matter where the OFW is, he/she will always be made to feel comfortable in sharing both good and bad news. One recruiter also spoke about providing workers information from their home provinces, whether these are on livelihood opportunities for their provinces' short- and long-term development plans on infrastructure, housing, and the like.¹⁰⁵

This close relationship with the workers and their families also allows for members to take an active interest in giving feedback on complaints and allows recruitment agencies the opportunity to address these issues before these complaints escalate into full-blown disputes at the POEA or the NLRC.

¹⁰⁵ See above citation.

PARTNERSHIPS WITH IN-COUNTRY CIVIL SOCIETY ORGANIZATIONS

A few Philippine private recruitment agencies are entering into informal partnerships with some civil society organizations at the country of destination. These CSOs are able to assist the PRAs with a range of services in finding solutions for OFWs in distress – such as, whenever possible, intervening for the PRA with the counterpart foreign recruitment agency or employer, surrogate for a visit to the OFWs in detention or, in a more active fashion, facilitate the transfer of a worker's employment sponsorship to a replacement employer. The partnership provides the PRA with an immediate and quick response to issues raised by its hired workers rather than waiting or being dependent on when a hearing can be scheduled at the POLO. By then, the employer-employee relationship would have already deteriorated to a possibly unresolvable situation.

CSOs in the country of destination are usually composed of long-time Filipino residents there who volunteer to provide guidance to newcomers and information and other services to Philippine Government offices and recruitment agencies. These long-term residents have also volunteered to host pre-employment orientation seminars (PEOS) for selected employers, in addition to those regularly arranged by the Philippine Embassy.¹⁰⁶

¹⁰⁶ Concha, B. (2021, March 4). Personal communication [Personal interview].

CHAPTER 6

BARRIERS TO ACCESSING JUSTICE

Access to justice or access to redress is a basic human right across all the core international human rights treaties and forms an integral part of Philippine legislation for the protection of migrant workers. Access to justice means that citizens are able to use justice institutions to obtain solutions to their common justice problems. For access to justice to exist, justice institutions must function effectively to provide fair solutions to citizen justice problems.¹⁰⁷

Within a migration framework, access to justice has a special meaning. As the migrant worker moves from the country of origin to the country of destination, multiple legal frameworks are present and pose challenges for implementation. The enforcement of contractual rights is particularly relevant to migrant workers who enter into private contracts with employers and foreign and local recruitment agents. A written and signed employment contract between the employer in a country of destination and an overseas worker in a country of origin has its value tested when violations of the contract are reported and challenged, either in the country of destination or the country of origin. Access to redress strengthens the rule of law by increasing transparency and ensuring accountability of private and government actors.¹⁰⁸ It can also encourage future good behaviour by state and private actors and increase individuals' faith and participation in public life and institutions.

This chapter looks at the extent to which OFWs are aware of and are able to access the legal OFW complaints mechanisms to enforce the compliance of their contracts. Many obstacles and deterrents confront the OFWs as they pursue their complaints and cases whether in the Philippines or in the country of destination. These deterrents also help explain why many OFWs do not, even right at the start, seek to pursue these complaints and grievances.

6.1 HELP-SEEKING BEHAVIOUR OF INTERNATIONAL MIGRANTS

Having access to justice is not a given in many parts of the world, including the Philippines. The World Justice Project 2018 Survey¹⁰⁹ included the Philippines in its national surveys and the results point to the wide gap in legal services for its citizenry. Only 20% of Filipinos were able to access legal help, leaving 80% of Filipinos without legal assistance. Of that 20%, 72% of them sought legal help from friends and families while 15% sought lawyers' help and the rest from institutions.¹¹⁰ Reasons for not accessing legal services are (a) costs, (b) inconvenience, (c) no previous contact/access to lawyers, and (d) lack of time, among others. The inadequate number of lawyers likewise contributed to these complications, since for

¹⁰⁷ Center for Migrant Advocacy (CMA), & AWO International. (2018). [Migrant Domestic Workers' Access to Justice](#). Center for Migrant Advocacy.

¹⁰⁸ Paoletti, S., Farbenblum, B., Taylor-Nicholson, E., & Sijapati, B. (2014). Migrant Workers' Access to Justice at Home: Nepal. Open Society Foundations.

¹⁰⁹ The World Justice Project® (WJP) is an independent, multidisciplinary organization working to create knowledge, build awareness, and stimulate action to advance the rule of law worldwide.

¹¹⁰ UNDP, Access to Justice, World Justice Survey Project, 2018

every 2,200 Filipino citizens, there is only one Filipino lawyer to provide them with legal services. This is way below the optimum number of lawyers required in a society under the Magee Rule Curve, which is one lawyer for every 250 citizens.¹¹¹

In this context, the 2018 National Migration Survey (NMS) data on the help-seeking behaviour of international migrants is not surprising. Among the respondents who have experienced involuntary work arrangements that include some of the worst forms of migrant abuse, only a third (28.6%) sought help. The percentages of men and women seeking help are similar; however, men and women sought help from different sources. More women (42.9%) sought assistance from family members and friends than men (39.3%). A higher percentage of men, compared to women, is likely to seek help from a government office and representative (30.3%), lawyers (6.6%), and social service organizations (4.6%). A higher percentage of women however, compared to men, sought help from the police (2.1%) and the Philippine Embassy (13.2%). A higher proportion of men (12.3%) compared to women filed a complaint regarding their involuntary arrangements. More women than men received emotional support (16.2%). A slightly higher percentage of men (34.2%) felt ignored compared to women (31.8%).

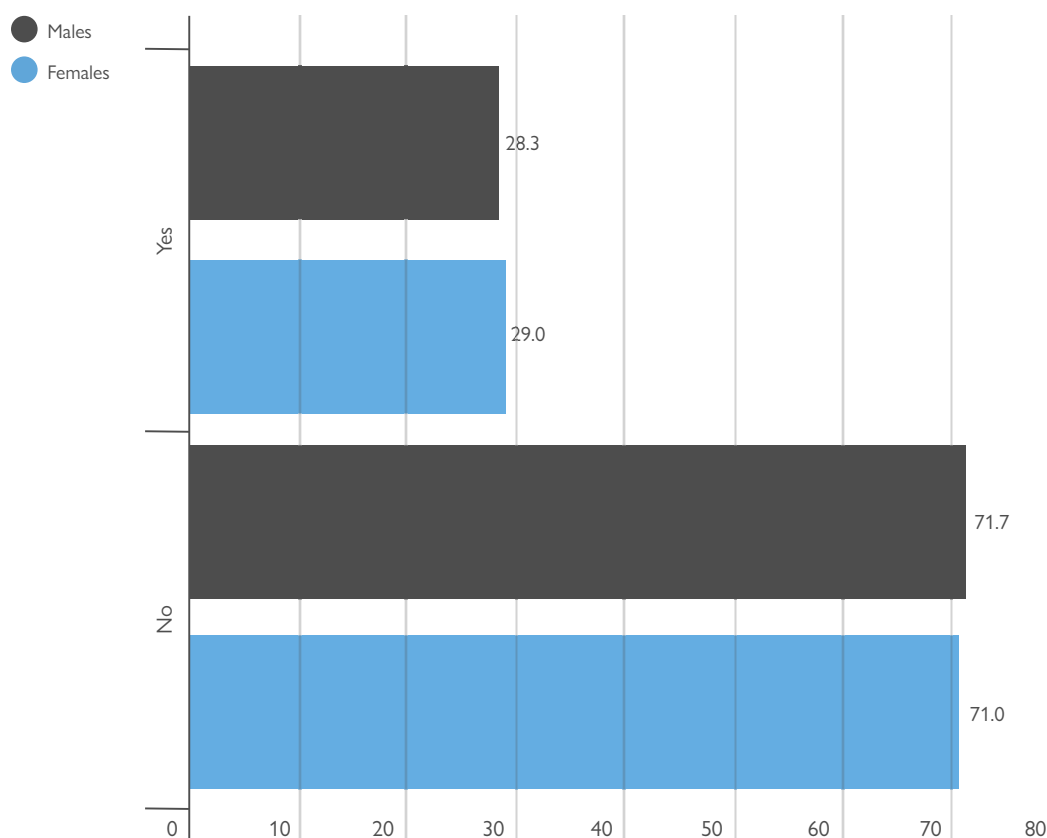


Figure 8. Help-seeking behaviour of those experiencing involuntary work arrangements, based on gender

¹¹¹ See above reference.

Table 17. Reasons for not seeking help, in percent

REASON FOR NOT SEEKING HELP	MALES	FEMALES	BOTH
Threat, Fear and Shame	21.6	32.0	27.1
Threatened	4.2	3.8	4.0
Afraid	11.6	22.9	17.6
Embarrassed/Ashamed	5.8	5.3	5.5
Resignation/Acceptance	56.3	36.9	53.4
Can still manage/not a big deal/didn't bother to seek help	17.5	13.3	15.3
No contact with the employer anymore	7.6	13.3	10.6
Believes its normal/part of work contract	9.3	10.3	9.9
Thinks no one would listen/believe	21.9	13.8	17.6
Costs			
No financial support	5.8	3.9	4.8
Others	19.9	21.0	20.4
Employer is good so did not feel she/he was abused	3.4	4.7	4.0
Others	16.5	16.3	16.4

Source: National Migration Survey 2018

REASONS FOR NOT SEEKING HELP

Among the international migrants experiencing involuntary work arrangements, over 70% did not seek help. The proportions are nearly the same for both men and women but the reasons why they did not seek help are somewhat different.

A higher percentage of women (32%) compared to the men (21.6%) are deterred by personal threats, fear and shame. On the other hand, a higher percentage of men (56%) compared to women (36.9%) are likely to be more accepting of violations. The men believe that their narratives would not be believed or are resigned that these violations are common in the overseas employment experience. Costs are a minor but real concern. The reasons for not seeking help show a lack of awareness and confidence in their personal abilities to claim redress for their complaints.

What is striking in the 2018 NMS results compared to the national findings on justice for all Filipinos is the high proportions of those who are resigned to or accepted the overseas work situation (56.3% in general, 53.4% for women, 36.9% for men). In addition to discouraged workers, many are fearful, ashamed and scared, affecting more men (32%) than women (27%).

6.2 BARRIERS TO ACCESS TO JUSTICE OF OFWS

Signing a contract in a country that is implemented in another provides opportunities for international disputes. And as in many other types of international disputes, the international dimension, due mostly to conflicts of laws, further aggravates the already complicated, lengthy and costly process of contract dispute resolution. Because there is no definitive international law to govern transnational relationships between individuals, there are only domestic laws of nations that attempt to balance national sovereignty with international agreement.

The effect of one country's laws on another country depends on whether one country recognizes the power of the other country's laws. If one country's statute fails to recognize the foreign law, the latter has no power. If both countries are silent, how do the courts decide which of the conflicting laws takes precedence? The answer to this question depends on many factors that do not point to one common rule. When dealing with the conflict of laws, doubt must exist as to which country's law takes precedence. When there is doubt, the deciding court will choose its own laws over the foreign country's laws.¹¹² To counter this, it would be necessary to include a more robust dispute resolution clause with a choice-of-law provision.

From the point of view of the OFW, the decision-making process is difficult. Workers are usually not in a position to make this choice. There is little information to guide his/her decision-making process on whether to seek remedy in the destination country or opt to pursue cases and complaints in the Philippines. Seeking justice in the destination country's hardly understood institutions and fragmented laws and policies is often considered untenable, especially when the workers are confronted with unfriendly immigration and work permit processes. The opportunity to pursue the case in the Philippines is often the only option.

PURSUING CASES IN COUNTRIES OF DESTINATION

As OFWs seek work in many different countries, individual workers need to have a good understanding of how the workers' rights are respected by all stakeholders: governments, private recruitment agencies and CSOs in these countries of destination. There are important differences in the ways that foreign migrant workers are treated in different countries of destination. For example, it would be fair enough to say that Southeast Asian countries have different systems of migration governance from those of the GCC.¹¹³ Nevertheless, there are still problems experienced by OFWs in Southeast Asian countries in pursuing their complaints and grievances in these countries.

A case in point is Hong Kong. It has the benefits of an established minimum wage for migrant domestic workers, a set standard contract, a system of food provision and allowances, and other terms and conditions of work. The Hong Kong government has a good reputation of being one

¹¹² Galvin, J. (2018, February). [Five-point guide- Why international employment contracts are important](#). Global Payroll Management Institute.

¹¹³ Farbenblum, B., Taylor-Nicholson, E., & Paoletti, S. (2013). Migrant Workers' Access to Justice at Home: Indonesia. Open Society Foundations.

of very few in the region providing channels for migrant domestic workers to bring forward their complaints, including a system of conciliation. The Hong Kong Department of Labor has developed a guide providing all employers and workers information on pursuing and responding to complaints and problems. All documents include English, Tagalog and even Bahasa translations for workers to be able to read and understand them. These guides have been well documented and widely circulated.¹¹⁴

Still, problems remain. The Hong Kong Federation of Asian Domestic Workers carried out an in-depth research in 2019 documenting a range of problems that migrant domestic workers in Hong Kong face in the recruitment process and in the workplace.¹¹⁵ Their prior 2016 report already documented exploitative working conditions, with the majority of the 66 interviewees stating that: they did not receive a full day of rest each week (60 of 65), they were not free to leave the employer's home during their time off (35 out of 66), their working conditions were extremely bad (38 out of 66), and they had been threatened or punished by a member of the household (37 out of 66). Despite documented evidence of widespread violations of contracts, very few of the migrant workers even attempt to seek justice. In Hong Kong, less than 0.3% of the total migrant worker population filed an employment complaint in the Hong Kong Labor Department.¹¹⁶

FADWU's "Price of Justice" research and publication (2019) looked into the migrant workers' hesitation to access Hong Kong's redress mechanisms. The study identified the practical and procedural problems of the migrant workers in accessing remedy. The primary barrier that workers faced was the risk of losing their foreign employment. Migrant domestic workers in Hong Kong who make a complaint against their employers might lose their employment and with this loss, they also might not have a place to stay and thus be responsible for their own living expenses. This is due to Hong Kong's mandatory live-in requirement that compels all migrant domestic workers to reside in their employer's residence. With an average of 58 days to prosecute claims, the prospect of paying their living costs for weeks and months while not being able to work makes the process extremely expensive.

Migrant worker-complainants also face the burden of the costs of filing and sustaining a claim. Those who wish to file a claim will need to pay a filing fee and, in addition, the costs of a visa extension. Usually, the workers would need two visa extensions given the length of time to prosecute a case successfully. Additional expenses involve mailing fees, costs of translation, certifications of translations, obtaining copies of Labor Tribunal documents or issuing and serving subpoenas.¹¹⁷ In addition to the costs and the time requirements of pursuing their cases, migrant worker-complainants experience difficulty in securing legal representation, in providing documentation to support their complaints, and in overcoming language difficulties, though translation services may have been available on request.

In navigating the Hong Kong redress mechanisms, most migrant workers relied on organizations and individuals who had supported them in their claims. The assistance and support came from civil society organizations, trade unions, shelters, religious organizations and individuals.¹¹⁸

¹¹⁴ Minor Employment Claims Adjudication Board. (2016). [A Simple Guide to Minor Employment Claims Adjudication Board](#). Labour Department: Hong Kong Special Administrative Region.

¹¹⁵ Hong Kong Federation of Asian Domestic Workers Unions (FADWU), & Progressive Labor Union of Domestic Workers Hong Kong (PLU). (2019). *The Price of Justice - Migrant domestic workers' experience of trying to resolve labour disputes in Hong Kong*. International Domestic Workers Federation.

¹¹⁶ See above citation: Price of Justice.

¹¹⁷ See above citation.

¹¹⁸ See above citation.

“

I lacked the information needed to file a claim properly. I also didn't have any support from the Labor Department or Tribunal, they favoured the employer. What's worse, I could not work while my case was ongoing. This put a lot of pressure for me to settle because I didn't have money.¹¹⁹

”

DECISION OUTCOMES

Migrant workers with complaints can file a case at the Hong Kong Labor Tribunal, described as a “quick, informal and inexpensive way of settling monetary disputes between employees and employers” in which parties “are encouraged to explore settlement as a means of resolving their dispute”.¹²⁰

In their research, the FADWU showed that an average of just 40% of the workers' claims were settled. The migrant worker complainants accepted even sub-standard settlements for several reasons. The complainants urgently needed the money, they could not afford to stay longer in Hong Kong without any guarantee that they could recoup the money. Others needed to work again¹²¹ so that they could provide for their family. In 2018, 72% of the claims involving migrant domestic workers were settled at the conciliation stage.

“

If I refuse the offer then I would have to remain in Hong Kong. It will be a long process and I don't think I will get the money from my employer. I didn't want to stay any longer also because I have to work for my family, especially for my children's education.”¹²²

¹¹⁹ See above citation.

¹²⁰ See above citation.

¹²¹ There is a general prohibition to working while pursuing a complaint.

¹²² See above citation: The Price of Justice.

In Singapore for example, which has the same economic profile as the United Arab Emirates, all domestic workers go through a settling-in program organized by the Ministry of Manpower, Singapore that includes a briefing on ways to address issues in the workplace. MOM Singapore also has an e-service for registering complaints/concerns. The MOM is also subsidizing the work of large Singaporean NGOs on receiving complaints of workers and providing emergency shelter for distressed household workers. In these environments, the POLO contribute[s] only by offering counseling services or housing distressed workers under exceptional circumstances.

”

THE EXPERIENCE IN THE GCC

Migrant workers in the GCC face nearly insurmountable barriers in pursuing their cases and complaints in the GCC countries. In pursuing complaints against their employers, there is a serious imbalance of power favouring the employer under the GCC employer sponsorship system, better known as the kafala. Under the kafala, employers govern the workers' entry into the country, the renewal of residence permits, the termination of employment, the transfer to different employers, and the exit from the country.¹²³ Unlike in Hong Kong, terminated workers do not have the option to transfer employers without the consent of the current employer and in this situation, they only seek their repatriation to the Philippines.

This sponsorship system then effectively discourages the worker from raising complaints or filing cases. The primary problem revolves around the loss of employment, as filing a complaint often means that the employer or the worker have already terminated their contractual relationship. At the end of their contracts, even in premature terminations, the overseas workers lose their accommodations and living support. Workers are likely to be forced out by employers or they “run away” from their place of work. As workers need to be present in-country to file and pursue a case, the loss of income and accommodations is the biggest hurdle they face in pursuing a case.¹²⁴ Workers who file cases will often have very little funds left and a near-expiring visa. Those workers who eventually succeed in their cases often have family already in the destination country and would therefore be less vulnerable as they do not run the risk of losing accommodations and other means to survive.¹²⁵

¹²³ International Labour Organization Regional Office for Arab States. (2017, May 4). Employer-migrant worker relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration. International Labour Organization.

¹²⁴ Malit Jr., F. (2021, January 20). Personal communication [Personal interview].

¹²⁵ See above citation.

Using the GCC redress channels can be extremely difficult and requires local knowledge of laws and systems, contracts and visa types to navigate the systems. The painful truth is that the Philippines' diplomatic missions have little clout in labor law administration or for that matter, the criminal court systems, in these destination countries. The function of the missions can only be to provide support in counseling, guiding, translating legal documents, and providing logistical help in booking and arranging transportation for court appearances. The Philippine Embassies in the GCC have their migrant resource centres; the OFWs are able to access these centres in difficult situations. The OFW shelters in the GCC house an average of 200 workers and are often crowded. With the pandemic, the numbers of OFWs being sheltered are breaching the maximum limit, with some OFWs having stayed for as long as two years.¹²⁶

The need for better representation in court for an OFW continues to be problematic. As court documents and proceedings are in Arabic, OFWs need to be supported with interpreters or translators. Unlike other receiving countries in Southeast Asia, the GCC countries are not known for providing services to migrant worker-complainants who pursue cases using their channels of redress. Civil society organizations are not consistently accepted in the GCC, with some organizations closely monitored for security reasons. The Catholic Church has taken up the provision of much of the resources through church missions to provide short term assistance to workers – food, temporary shelter, and maybe even some part-time work.¹²⁷

Given the hostile immigration and work issues, the only option for the workers would be to join the grey economy. “Running away” or “absconding” are considered illegal in several GCC countries and as they lose their regular employment, OFWs pursue these part-time work arrangements. Staying with friends or at the Philippine welfare centres, irregular workers then wait for the granting of amnesties, usually given around Ramadan.¹²⁸

Alternatively, the worker can flee to the POLO and request help from their recruitment agency to provide the fare for a flight home. Frequently, when this happens, the OFW would be asked to sign a waiver or a quitclaim. This prevents the OFW from pursuing money claims for the compensation they are entitled to and from filing an administrative case against the agency at the POEA or NLRC. However, there have been instances when the NLRC and the POEA have allowed the renegotiation of this arrangement when the terms are clearly disadvantageous to the workers.

PURSUING CASES IN THE PHILIPPINES

OFWs pursuing cases in the Philippines are likely those who have already been returned or repatriated to the Philippines. JSL, now institutionalized by law and reaffirmed by the Supreme Court, is a powerful tool when claimants to justice are denied the opportunity in the host countries. Though the Philippine State may not be able to call employers to testify or seize assets as part of compensation, the State via the POEA can compel the recruitment agencies to answer

¹²⁶ Concha, B. (2021, March 4). Personal communication [Personal interview].

¹²⁷ See citation: Malit Jr., F.

¹²⁸ Migrant Forum in Asia, & Justice for Wage Theft. (2021). Crying Out for Justice: Wage Theft Against Migrant Workers during COVID-19 (Volume 1).

and seize cash and surety deposits for these obligations. In practice, private recruitment agencies advance the costs of repatriation and arrange compromise agreements, with the expectation that the mandatory insurance coverage of OFWs can reimburse most, if not all, of these costs.¹²⁹ Recourse to the JSL is limited to those OFWs who are hired through licensed recruitment agencies and only for those in the first two or three years of their contract.

The introduction of SEnA in 2010 broadened OFW access nationwide, with workers being provided legal assistance in the filing of their cases, and as needed, to compel conciliation between the affected worker and the employer/private recruitment agency. Nationwide, the worker-complainant (or family member) can be in touch with any of the DOLE regional offices along with the POEA and the NLRC offices. The introduction of the mandatory OFW insurance increases the chances of securing benefits from the actual filing of complaints. Despite these gains, for many workers, pursuing cases can also be torturous, with barriers to access quite similar to the obstacles and hurdles OFWs experience in the destination countries.

“

Yung paghingi ng tulong, doon po nagkakaroon ng pagkakaiba. Kung paano sila lalapit para makahingi ng tulong, mas madali para po sa mga skilled workers, dahil nasa labas na sila. Unlike sa mga kasambahay po natin, nasa bahay lang po sila at walang access para makahingi ng tulong, kundi yung pamilya po nila sa Pilipinas. Pinakamahirap noong mga panahon na nagsisimula lang kami ay yung talagang wala pong access, dahil wala pang cellphone at the time - walang Facebook. Kaya maraming problema.

(It's in asking for help that we see the difference. It's easier for skilled workers to seek help since they are “outside”. But for live-in domestic workers, they are restricted to the home, with no way to seek help except through their families at home. It was especially difficult when we were just starting out because we didn't have cellphones and Facebook then.)

”

¹²⁹ Capistrano, follow-up

“

Mas [kilala] nila ang OWWA. From the airport, meron kasing OWWA desk diyan tayo. Pag napick up ng OWWA officer sa airport, naadvise na sila. Meron kaming mga cases na hindi sila sa POEA nag SEnA, kundi sa OWWA kasi meron ding SEnA ang OWWA.

(They are more familiar with OWWA. We have an OWWA desk at the airport. When the OWWA officers pick up [the workers] from the airport, they are already given advice. We had cases of workers going directly to OWWA instead of POEA because OWWA also has SEnA.)

”

“

I always advise the workers – kahit saan po – sa COD, saang bansa, hindi po namin sila ina-advise na tumakas ‘pag may problema. They have to go through the proper na proseso para makahingi ng tamang tulong. Pero hindi po natin masisi ng mga kasambahay na ‘pag hindi na kaya talaga. Kaya hindi namin pinipigilan ‘pag ganoon na. Ang ginagawa ko po agad [kapag may tumakas] is gini-guide ko sila para makapunta ng ating mga Philippine Overseas Labor Office (POLO).

(I always advise the workers, whether at the country of destination or any other country, we don't advise them to escape. They have to go through the proper processes to seek help. But we can't blame the workers, especially the domestic workers, if they can't take it anymore, in which case, we don't stop them. If a domestic worker escapes from the employer's house, I tell them to go right away to the POLO.)

”

LACK OF AWARENESS AND INFORMATION

When experiencing a grievance, many OFWs are quite unaware of the complaints mechanisms and the processes involved in pursuing complaints and cases. They are intimidated by the costs and duration of pursuing cases. When workers file cases, a significant number would not have the financial resources to skip work (if any), travel to Manila and bear the expenses of food and accommodations.¹³⁰

“

Yun po yung sasamahan namin sila. Kasi nung una, referral [centre] lang din po kami. Pero nung nakita namin na maganda 'yung sinasamahan sila mismo sa opisina ng POEA 'man 'yan, or NLRC, nakikita rin namin...kasi minsan, kapag OFW lang yung pupunta, hindi sila ganun ka confident...para masasabi ano yung kanilang mga reklamo. Pag pumunta na sila sa opisina namin, bibigyan na namin sila kung ano ang mga karapatan [nila], ilan yung pwedeng sweldo na kailangan habulin. Minsan, hindi po nila alam.

(We do accompany them. We only functioned as a referral centre at the start, but we saw the benefit of accompanying them to the POEA or NLRC offices. Usually, the OFW is not so confident about lodging their complaints at those offices by themselves. They are usually unaware of their rights or how much they can claim so we give them advice.)

”

FINANCIAL PRESSURE

The financial pressure on OFWs are not any less demanding. An early return home would mean unpaid debts and the loss of savings and the ability to support family consumption, including education. The pressure to find new employment, preferably another overseas assignment, would be relentless.

¹³⁰ Obtained from third ALTER Validation Workshop (CSOs, Academe, and Migrant Experts).

“

Sa totoo lang po, isa sa mga complaints ng mga may experience, tagal po ng proseso dito sa COD and other parts of the Middle East when it comes to sa pagfi-file po ng case sa korte dito. As per my experiences, ‘yung pong mga nag-set ng schedule ng hearing, ang hearing po dito ay hindi yung immediate – minsan po, it takes a month or two bago mag [hearing]. Kaya nagtatagal ang kaso. Kaya ‘pag maliit lang po ang hinahabol ng worker, sinasabihan lang namin na ‘wag muna ituloy ‘yan, kasi kung hihintayin mo pa against the expenses, problema po ‘yan.

(One of the biggest complaints is the long-drawn-out legal process here in the country of destination and other parts of the Middle East. In my experience, it takes a month or two before hearings can be scheduled, which is why it takes so long to complete a case. If the worker is claiming only a small amount of money, I usually advise them against pursuing a case because given the lengthy process and the costs involved, they might be spending more than the amount they are claiming.)

”

There are also significant costs involved in pursuing cases and grievances. In addition to the opportunity cost – as filing and following up on cases take time away from a job search or starting a new job – the OFW would need financial and time resources for getting professional services for legal assistance, especially if the cases are filed at the NLRC or as the cases enter the formal judicial system. There are also expenses for documentation, such as providing proof of the non-granting of leaves or non-payment of wages, as well as for travel and related expenses in the many days it requires to pursue a complaint. There are estimates that cases can be completed quickly. Compromise settlements are possible within 30 days.¹³¹ Longer adjudication lasts from as fast as five months to a possible five years if the case reaches the Supreme Court.¹³² The strategic filing of appeals by agencies against decided cases of money claims gives agencies an opportunity to evade the responsibility of paying the worker. Other common maneuvers are frequent incidences of non-appearance of respondents (employers' agency representatives and complainants themselves), which causes delays in the proceedings.¹³³

¹³¹ Capistrano, M. (2021, June 9). Personal communication [Personal interview].

¹³² De Guzman, K. (2021). Personal communication [Personal interview].

¹³³ Bitonio, B. (2021). Personal communication [Personal interview].

PRESSURE BY THE SYSTEM TO SETTLE

Within the current redress mechanisms, there is a strong internal pressure to settle. At the POEA, the OWWA, the NLRC and even at the POLOs in the different countries, the current procedures have built-in opportunities to settle, with many calls for several conferences or conciliation. There are many reasons why a settlement between the parties is desired: it shortens the time needed for the claimant to receive immediate compensation, both parties agree on the sum thus making it theoretically fair, and the claimant can be sure to receive some amount rather than none at all.¹³⁴

The desire for speed, however, can lead to lopsided results. Though the worker is back in the home country, the OFW is still negotiating from a position of weakness against the employer's or agency's position of strength. The OFWs are likely to settle for sums far lower than those they deserve, as the agency representatives offer settlements even if they "didn't harm you; the employer did", which deceives the OFW into believing that the agency cannot be held liable.¹³⁵

With the incomplete documentation of the outcomes of cases filed in the POEA and the NLRC, it is difficult to assess whether the OFWs are able to successfully obtain fair resolution of their cases. Some victories are only "on paper", since the OFW may not be able to secure the proper compensation for their claims. There are also caps on the insurance payouts. When the compensation required is higher than the insurance cap, it is unsure if the PRA would have the financial capacity to settle the case and if the cash and surety bonds are able to adequately cover the compensation for the workers.

CIVIL SOCIETY ORGANIZATIONS: FACILITATING ASSISTANCE

Civil society organizations have significantly contributed to the greater well-being of migrant workers, especially in Asia, for many years. Though CSOs are not membership organizations, their services benefit from donations and can include a wide variety of activities. The 2018 National Migration Survey also provides information that shows that while only 2.9% of the OFWs are members of a migrant organization, many OFWs have nevertheless participated in the activities of the association. These activities include social and cultural activities (71.6%), legal assistance (38%), money transfers (10.9%) and development projects and investment in the Philippines (3.9%).

¹³⁴ Center for Migrant Advocacy (CMA), & AWO International. (2018). Migrant Domestic Workers' Access to Justice. Center for Migrant Advocacy.

¹³⁵ See above citation: Center for Migrant Advocacy, Access to Justice.

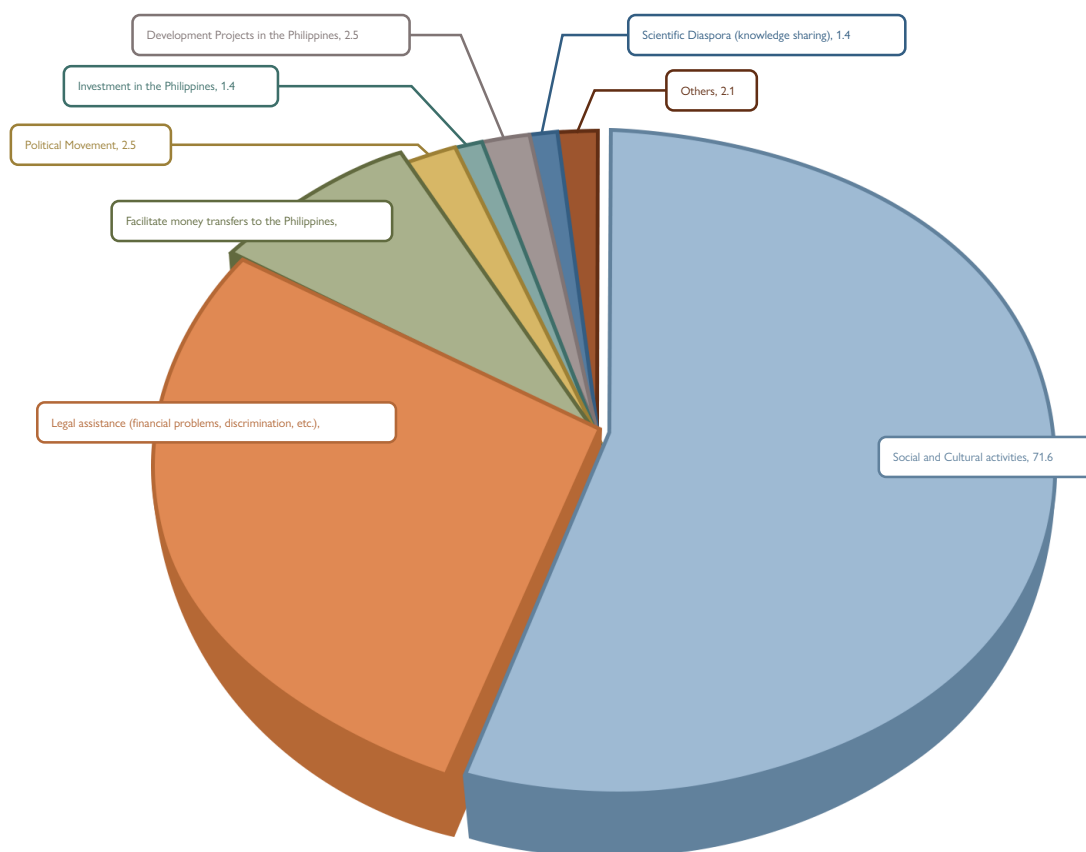


Figure 9. International migrant's engagement in migrant associations

Source: National Migration Survey 2018

6.3 CONTRIBUTIONS OF THE CSOS IN WORKERS' SEARCH FOR JUSTICE

While the primary aim of CSOs centred on migration in the Philippines is advocacy and research to influence public policy and peoples' attention to the needs of overseas migrant workers, CSOs based in-country or in countries of destination have provided counseling and direct services to many distressed and displaced migrant workers. A few Philippines-based CSOs have informal partnership agreements with those in the destination countries in order to provide continuity of information and systematize action between and among the organizations.

IN THE PHILIPPINES

Very few CSOs are directly and consistently engaged in providing help to distressed migrant workers. The CSOs accept walk-in clients, either returned workers referred by partner organizations in the country of destination or family members of OFWs in the Philippines. OFWs approach the CSOs for advice on the possibilities of filing complaints and for more information on available mechanisms. Family members also seek help to rescue OFWs in dire situations at the country of destination, to search for a missing OFW or to lobby the PRA or the OWWA or the POEA to repatriate their distressed relative back to the Philippines. In effect, these requests are for assistance to lobby the OWWA or their recruitment agencies to provide funding for immediate repatriation.

The Center for Migrant Advocacy (CMA), a major Philippine NGO engaged in policy advocacy, information dissemination and direct assistance to migrant workers, has provided long-term data on complaints and cases of OFWs in the time period from 2004 to 2017. The CMA assisted 2,317 repatriated Filipinos on issues involving non-payment of wages and salary deductions, maltreatment, and detention for crimes and other offences. The five top ranking cases consisted of delayed wage payments, maltreatment, detention, overwork, death and health issues. While the CMA case load averages only 200 cases per year, their data suggests that the profile of the grievances is strikingly similar throughout this period.

Table 18. Top 15 categories of cases, CMA

TYPE OF CASE	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	
Non-payment/ delayed/ illegal deduction of salary	7	4	54	148	58	32	27	30	14	17	19	24	53	32	519
Request repatriation	3	1	69	84	42	23	14	23	2	10	3	-	-	-	274
Maltreatment/ physical/ verbal abuse	-	7	24	44	64	16	2	-	11	7	15	9	16	8	223
Detention	1	6	30	26	28	35	26	10	3	5	9	6	11	4	200
Overworked	-	3	10	65	19	5	13	12	5	5	5	16	26	12	196
Death & serious health problems	2	4	20	15	18	14	14	13	9	2	9	3	17	4	144
Contract substitution	-	-	47	4	12	8	2	21	1	6	3	8	13	11	136
Work/ permit/ iqama (GCC)/ visa problem	-	-	40	31	12	16	6	4	1	3	-	-	7	-	120
Illegal recruitment/ trafficking	-	-	20	6	15	16	9	12	3	4	3	3	7	1	99
Sexual abuse/ harassment/ rape	-	-	11	14	18	8	2	9	4	5	-	8	4	2	85
Run away from employment/ jobsite	5	3	31	-	-	7	7	11	4	4	3	4	5	-	84
Lack of welfare benefits	4	6	9	5	-	8	2	6	11	2	3	3	2	-	61
Illegal dismissal/ terminated	-	-	1	-	18	7	5	5	-	8	2	-	12	3	61
Whereabouts/ missing	2	4	12	8	8	2	7	6	3	2	-	2	3	1	60
Repatriation of remains	-	-	3	-	11	10	9	3	5	1	-	4	5	4	55
* Excluding cases categorized as Others as they are the highest number in the total cases															

Source: Center for Migrant Advocacy Philippines

A major difficulty in categorizing cases is that as OFWs narrate their experiences, they would start with the primary complaints of non-payment of wages, breach of contract that includes non-provision of days off, and salary deductions. In time, however, the narrative would provide more detail, showing the extent of the abuse and restrictions on workers' movement. Classifying a case becomes more complicated as a case initially classified as a contract violation would eventually include elements of forced labor, such as disallowing the worker communication with their family, physical or mental abuse, being forced to work in other households and withholding important documents such as the passport.

A majority of the complainants are women, many of whom were domestic or cleaning workers in the Middle East. Those approaching the CSOs have already exhausted their options with regard to their PRAs/FRAAs as well as the POLOs. Many of the complainants also include those workers who have switched employers/agencies or work while remaining in the foreign country and are unable to seek redress with the original recruitment agency.

In addition to the labor cases that relate to unfair labor practices such as overworking, underpaying and non-payment of wages, the CSOs also receive welfare cases specific to Philippine resettlement – access to healthcare, assistance, welfare benefits, material provisions and legal facilitation of cases. These services are funded from financial assistance given by generous individuals and donors.

CSO PROCESS IN ASSISTING A REPATRIATED OFW IN THE PHILIPPINES

1

A returned worker visits the CSO to narrate his/her personal overseas employment experiences. He/she brings documents to review – the employment contract and travel documents.

2

The CSO counsellor reviews the documents on hand and assesses whether there is a case to be made. The counsellor informs the worker of his/her options using complaints procedures and the different jurisdictions of government offices and agencies.

3

CSOs offer several options to the workers – either through a conciliation-mediation process mediated by a designated SEnA site or through the POEA's Legal Assistance Division.

4

The OFW may ask for the CSO to accompany him/her in filing cases and attending hearings before the POEA.

5

Once a complaint has been filed with the POEA and/or the NLRC, the POEA/NLRC will conduct an initial interview with the complainant. The POEA then schedules for a mediation/conciliation session with the workers' agency and can wait up to a month for the first hearing to take place. If the case is elevated to the NLRC, the process is somewhat similar and all hearings are repeated at each level.

6

The CSO may also counsel the OFW on the range of services for returned migrant workers in addition to legal assistance and counseling. They inform the OFW about livelihood grants, training options, and the like.

For workers already repatriated to the Philippines, the CSOs say that OFWs do not feel empowered to avail of the POEA/OWWA services as a matter of right. When OFWs visit government offices, many are so poorly treated, whether by office or security staff of different offices. In some cases, staff reportedly treat workers in an abrasive or aloof manner and security staff raise their voices, refusing to let workers enter the premises of an office without any explanation or reason.¹³⁶ The unfriendly environment is possibly why migrant workers seek the intervention of others for assistance. The CSOs address the workers' needs for information and education on their rights to services, ways to hurdle the barriers in availing of these services, clarification of processes, and even help in funding travel to and from offices.

In time, many OFWs drop out of these processes, losing their resolve to file a case even at the preliminary stages of case filing, since many believe that legal representation is needed. Workers also underestimate how long it takes to prosecute a case. This is also often the reason why some workers may feel deterred from pursuing a case, especially if they are not based in Metro Manila.

The OWWA data of 2020 on the status of complaints and cases (Figure 6) show that out of the total of 4,663 cases referred to the POEA in 2020, 58% resulted in settlements, 27% have formally withdrawn or have no further information, and 15% have been referred to both the NLRC and the POEA. For those dropping out of the processes, the OFWs lose their resolve for various reasons: the costs, the successful search for another job, among others. There are those deterred by the length of time it would take to complete their cases. Some OFWs mistake case filing with an office like the OWWA, for example, as a “one stop shop”, believing that the process would be finished in a day.¹³⁷

¹³⁶ Navarro, A.L. & Gonzales, S. (2021, January 14). Personal communication [Personal interview].

¹³⁷ Hapal, J. (2021, January 6). Personal communication [Personal interview].

IN THE DESTINATION COUNTRY

The CSOs based in the destination country consist of volunteers who are long-term residents or OFWs. These local organizations have the ground knowledge and credibility to directly and immediately assist distressed OFWs.¹³⁸ OFWs hear of CSO services either through referrals of other OFWs or information from Facebook pages and other social media platforms.

These CSOs consider themselves as “field workers” for the government as they provide workers with assistance and services. Their volunteers assist in the overseas migrant centers to counsel distressed OFWs, serve as a listening ear and reassure workers that despite their problems and living far from their families, there are other OFWs like them who are available and willing to listen to and help with their problems. Some CSOs are able to provide newly-arrived OFWs with knowledge and information on pertinent labor laws, the culture of the citizens of the destination country, their rights as OFWs, benefits to being OWWA members, and any other important rights and benefits they are entitled to as OFWs. These CSOs agree, however, that while there are mechanisms for complaints and access to redress in the countries of destination, these processes are notably slow and are likely to advise a quick return home to file cases and complaints.

Given the extent of services CSOs provide to overseas workers, these organizations also need continuous training to simply keep up with migration rules and regulations and develop additional skills to enhance their sensitivity to victim-survivors of gender-based violence. CSOs also need to access resources for psycho-social support services for victim-survivors in need of healthcare and protection. Some form of accreditation of the CSOs, following the example of Government of Singapore, may be an important step in ensuring continued services for distressed OFWs and lessening the workloads of the POLOs in the destination countries.

CSO PROCESS IN ASSISTING AN OFW IN THE COUNTRY OF DESTINATION

1

OFWs visit the CSO or send a message through online platforms, such as Facebook.

2

The CSO volunteers guide OFWs through the many processes of seeking remedy for their problems. They clarify the processes for different types of cases and advise on the timelines and resources that are needed.

¹³⁸ Obtained from one-on-one interviews with B. Concha and M. Padilla (2021).

3

For contract violations, the CSOs advise self-reliance to look for ways to resolve the issues at hand on their own.

4

There are different types of advice for workers in different occupations. They advise ways to establish better communication with the employer and being informed on internal company complaints mechanisms.

5

For household workers, the first step would be to call the foreign recruitment agent. Alternatively, the CSO can also call the Philippine recruitment agent or seek the POEA's assistance to compel the Philippine counterpart to facilitate action.

6

For workers whose residence and work permits have expired and are now in an irregular status, or for those who may need legal assistance for a suspected crime or help in the repatriation of remains, the advice is to go to the OUMWA/DFA. Direct help in family and personal matters means going to the OWWA.

7

CSOs advise that workers go to the POLOs even before the employer-worker relationship deteriorates to a significant degree that repatriation may often be the only option left to the workers.

8

Cases involving trafficking are brought directly and immediately to the POLOs. When workers raise their complaints with the POLOs and are dissatisfied with the outcome, they may choose to file a case again upon their return home.

THE MOVE TO PROVIDE SERVICES DIGITALLY

An unintended effect of the COVID-19 global lockdown has been the increased reliance of OFWs on digital applications for information and services. OFW-focused NGOs, especially in countries of destination, have received more attention from OFWs on their Facebook pages and other digital accounts. At first, the overseas workers queried on their entitlements to the DOLE-AKAP Cash Assistance Program.¹³⁹ In other instances, the CSOs served to filter many of the queries and complaints from OFWs by providing basic information on ways to address problems of company shutdowns, loss of benefits, and ways to secure repatriation benefits from their employers or agents or government-arranged mercy flights. As an example, the Facebook group Ang Kaagapay ng OFW continues to receive over 1,000 messages daily requesting for assistance. Their user reach on Facebook is more than 6 million. Kaagapay even has a Tiktok account with over 59,100 followers.¹⁴⁰

A major issue during the COVID-19 pandemic is what the Migrant Forum in Asia – and their large network of international CSOs advocating for a global justice mechanism for repatriated workers – call wage theft.¹⁴¹ Due to massive lay-offs during the pandemic, the OFW complainants were deprived not only of salaries and wages under existing contracts but also of their end-of-contract entitlements and benefits. In the situation of chaos as had happened during the COVID-19 shutdowns, it also became extremely difficult for agency-hired workers to access their passports and pertinent travel documents that were held by agencies or employers.¹⁴²

¹³⁹ OFWs were entitled to receive a one-time cash benefit of US\$200.

¹⁴⁰ Concha, B. (2021, March 4). Personal communication [Personal interview].

¹⁴¹ Migrant Forum in Asia, & Justice for Wage Theft. (2021). *Crying Out for Justice: Wage Theft Against Migrant Workers during COVID-19* (Volume 1).

¹⁴² See above citation: Wage theft

CHAPTER 7

DESIGNING AN IMPROVED FRAMEWORK ON COMPLAINTS MECHANISMS

The impact of the COVID-19 pandemic (2020-) has seriously tested and still continues to test the Philippines' capability in managing its foreign employment and overseas worker welfare programs. With over 700,000 Overseas Filipinos, half of whom are OFWs returning to the Philippines,¹⁴³ the pandemic has demonstrated the risks of having a major employment strategy dependent on the ups and downs and the vicissitudes of foreign labor markets. As thousands of foreign employing establishments all over the world shut down their operations, OFWs' contracts, especially in the sales and services sectors, were also summarily terminated. For many OFWs, the early terminations meant the loss of health and other social protection, together with their deserved benefits such as their severance packages and accumulated leaves.

The slowdown in overseas employment offers an opportunity to assess the national overseas employment program's policies, programs and services. With the clear priority of Philippine policy on the protection of its overseas workers, a key area of review would be how the government's complaint and workers' feedback mechanisms consider the scale of the overseas workers' complaints and concerns, the extent to which the OFWs are able to raise these complaints, and the manner in which these complaints are addressed.

This chapter completes the earlier discussions of the risks and vulnerabilities OFWs face, the country's commitments to protection and access to justice, and the Philippine feedback mechanisms organized to support the OFWs' efforts to rectify contract and recruitment violations. The chapter focuses on specific recommendations to improve the efficiency and relevance of the country's complaints mechanisms for OFWs. The following sections present an improved/enhanced framework on overseas workers' complaints. While this framework is broad in its scope, it seeks to respond to the key criticisms to perceived gaps in the current mechanisms.

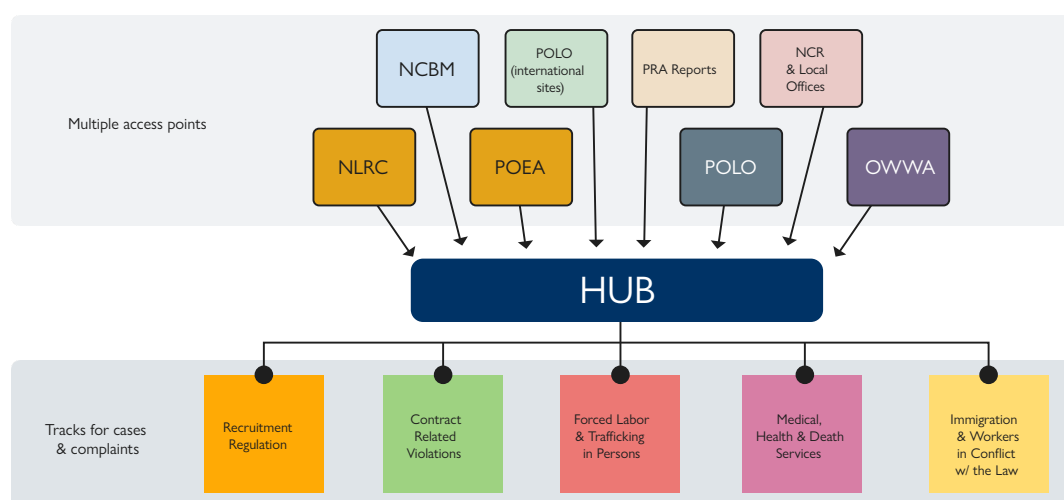


Figure 10. Improved framework on complaints mechanisms for OFWs

¹⁴³ Agcaoili, L. (2021, May 3). [OFW remittances may grow by 3.3% this year](#). Philstar.com.

7.1 MULTIPLE ACCESS POINTS

The NLRC and the POEA have jurisdiction over all grievances raised by the OFWs on their employer-employee relations arising from contracts. The POEA also has the power to impose disciplinary action on recruitment agencies. While the POEA mandate covers only the regulation over private recruitment agencies, there are no constraints on the NLRC to receive complaints from those workers recruited through government-to-government arrangements or hired directly by their foreign employers (i.e., not just those hired through agencies). The Joint and Solidary Liability of foreign employers and the private recruitment agencies is a lynchpin of Philippine OFW complaints mechanisms; it remains to be seen how much leverage Philippine Government decisions can bear on foreign employers solely, unless the governments of the destination countries concur and even assist the Philippine Government in enforcing redress. Enforcing decisions of foreign courts in another jurisdiction, however, is usually a challenging and lengthy process in almost any country.

The SEnA opens multiple pathways into the NLRC and POEA grievance mechanisms. The SEnA expanded avenues for OFWs to seek advice on their complaints and file cases against their employers and/or employment agencies in regional DOLE offices (including POEA, OWWA and NLRC regional branches) and internationally in its overseas labor offices. Private recruitment agents also file reports on significant events encountered by their hired OFWs, and these too can be considered as alert notifications registered and tracked in the complaints mechanisms.

While it is an innovative expansion that benefits access, SEnA has nevertheless received its share of criticism. It remains unclear whether OFWs are confident enough in the use of the DOLE's field offices outside of the POEA, OWWA and NLRC offices in the National Capital Region and in nearby areas like CALABARZON (Region IV-A). Of particular interest is whether the workers recruited from Mindanao, who are primarily female workers hired for domestic work, are availing of conciliation services from DOLE offices in their regions of origin.

Another contentious discussion is the quality and finality of compromise agreements negotiated and settled by the SEnA desk officers. An example is the case of a domestic worker who waited for several months for her SEnA case to start, expecting to receive her claim of unpaid wages of five months (approx. \$2,000). After a long period of waiting, she finally settled for \$250.¹⁴⁴ Labor officers based in foreign countries say that SEnAs conducted in the foreign country face constraints of jurisdiction and their inability to compel foreign employers or their representatives to report to the Philippine Embassy. The officers' only leverage is their ability to stop accreditation or contracts processing when cases are not settled. Private recruitment agencies also ask for their participation in online SEnA proceedings in the country of destination. The agencies also complain that the POLOs consistently advise the agency-hired workers to return home to pursue their cases, using JSL and insurance coverage as guarantees of redress.

Because of complaints on the quality of compromise agreements raised by the OFWs, the NLRC, the POEA and the OWWA have reserved the right for repatriated OFWs to reopen conciliation, especially where the compromises are clearly, though subjectively, considered substandard.¹⁴⁵ While this measure is understandable, when criteria for reopening are unclear, these decisions throw shade on the quality of the SEnA agreements negotiated outside of the Philippines or away from the Manila-based offices.

¹⁴⁴ Obtained in third ALTER Validation Workshop (Government).

¹⁴⁵ See above citation.

7.2 A CENTRAL HUB FOR ACCOUNTABILITY

While access at central and local levels allows OFWs much greater access to the grievance mechanisms and reduce their costs in pursuing their complaints, having a convergent hub would strengthen the operations of the grievance mechanisms. By establishing clear accountability, the hub is expected to provide oversight, facilitate access, develop systems, pursue efficiencies, monitor fair outcomes, and report on worker protection to those affected, the mechanisms' stakeholders and the general public. Among its priority tasks are to:

Standardize intake forms. This will allow the creation of common databases with comparable demographic and occupational variables – age, gender, occupation, work location, among others – and more detailed presentation of the complaints data for the better classification of cases. Updating of each intake form starts at entry and finishes with a settlement, an adjudication decision or an archival entry. Standardizing the forms may require revisiting all existing forms being used in current operations¹⁴⁶ including those overseas. Participating agencies start with a basic "data dictionary" where all the agencies adopt a common definition of all the terms that would be used for tracking and reporting.

Simplify procedures and complement processes. As all participating agencies are expected to exchange information freely, it would be possible to reduce repetitive processes and repeat submissions of documents. Public information on processes and procedures would need to detail required documentation and possibly information on the possible length of time to pursue cases, based on prior experiences.

Link internal monitoring systems. The POEA, the OWWA, the ILAB/POLOs and the NLRC have different internal monitoring systems for the performance of their operational units. Linking systems is a major undertaking, requiring a review of internally established procedures and protocols. Nevertheless, in the interim, producing commonly designed reports would enable comparability and afford a comprehensive view of the operations of the complaints mechanisms.

Undertake random reviews of case outcomes. The complaints mechanisms have to demonstrate the fairness of the outcomes. A set of indicators can be drawn to assess fairness and these should be tested on a number of settled and adjudged cases.

The hub is currently non-existent and its creation will bring a sense of order to the current operations of the complaints mechanisms. There may be not be a need to create a new office nor a new position. It may be as simple as designating a lead agency. But it is essential to establish a core group that will own up to the responsibility of ensuring that OFWs have access to the mechanisms and also, more importantly, that they have a fair chance at good outcomes. This will also help clarify to and encourage OFWs to use the grievance channels to claim their entitlements. It is also likely to reduce "forum-shopping" caused by a lack of clarity on the grievance mechanisms and also, partially, a clear distrust of the current processes. The hub needs to be funded, especially if it is reliant on digital operations.

In determining which government agency has the primary responsibility in overseeing the operations of grievance/complaints mechanisms, the Philippine Overseas Employment Administration (POEA) is the natural and likely lead (given its role historically). The Administration has the mandate for the supervision of the licensing and sanctioning of recruitment agencies, the fight against illegal recruitment, and the processing of contracts of all overseas workers. The Administration is also likely to be the technical secretariat for the negotiation and maintenance of the bilateral agreements on the hiring and placement

¹⁴⁶ To include processes found in the Joint Manual of Operations in Providing Assistance to Migrant Workers and Other Filipinos Overseas.

of Filipino overseas workers. More importantly, the POEA and its adjudicators have a firmer and deeper grasp of the nuances and peculiarities of overseas employment. The POEA promulgates, through its Governing Board and Administrator, the policies, rules and regulations on the recruitment, placement, hiring, processing, deployment, welfare and repatriation of OFWs. It issues advisories on the laws, rules and regulations of the various countries of destination, including those on onsite dispute settlement/resolution, as well as international conventions and bilateral labor agreements involving migrant workers. It accredits and registers foreign principals and employers, approves their job orders and processes employment contracts for use and implementation. It conducts overseas missions and visits to host countries to validate labor market reports. With its direct hands-on experience and broader knowledge, the POEA is in a strategic position to take on this role of oversight.

On the other hand, being the institution primarily responsible for the welfare of OFWs, the Overseas Workers' Welfare Administration (OWWA) is dedicated to monitoring the welfare of workers who have suffered contract violations and other welfare concerns. The OWWA is well-placed to provide its services, such as emergency shelter and quick repatriations, with its network of international and regional operations. With its Charter, the OWWA has much greater independence and the financial resources provided by the hired workers and their employers. In addition, unlike the POEA, the OWWA's protective mantle covers all overseas workers, including those who are undocumented and irregular. It is also the OWWA, at this time, that seems to have the better operational systems in place to monitor cases.

Alternatively, an independent third-party mechanism could also be considered. The Committee on Migrant Workers (CMW) under the United Nations has long suggested that States designate an Ombudsperson to facilitate migrant workers', particularly domestic workers',¹⁴⁷ access to redress mechanisms. Another inspiration is the Netherlands' National Rapporteur who, while reporting to the Dutch government, nevertheless remains independent. The Dutch National Rapporteur has published multiple reports on human trafficking, child pornography and sexual violence against children.¹⁴⁸

7.3 TRACKS FOR CLUSTERED CASES

At the hub, the complaints and cases are tracked into five channels, clustering complaints with similar management processes, whether in urgency of action, responsibility of designated units and coordination with other offices. These five tracks are recruitment regulation; contract related violations; forced labor and trafficking in persons; medical, health and death services; and immigration and workers in conflict with the law. Pandemic shutdowns or displacement by war involving mass repatriations are handled as extraordinary events and are treated separately.

¹⁴⁷ United Nations. (2009). United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Ninth and Tenth Session). United Nations Office.

¹⁴⁸ Bureau of the National Rapporteur. (n.d.). Publications. [National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children](#). Retrieved May 21, 2021.

7.4 DATA FOR POLICY MAKING AND PUBLIC REPORTING

The Migrant Workers Act of 1995 highlighted the value of consolidated and integrated data for government to quickly and immediately respond to our overseas migrant workers' needs and requests for protection. The Act required data sharing with connectivity among key stakeholders as a matter of priority, namely the databases of the Department of Foreign Affairs (DFA), Commission on Filipinos Overseas (CFO), Department of Labor and Employment (DOLE), the Philippine Overseas Employment Administration, the Overseas Workers' Welfare Administration (OWWA), Department of Tourism (DOT), Department of Justice (DOJ), Bureau of Immigration (BI), National Bureau of Investigation (NBI) and National Statistics Office (NSO).¹⁴⁹ The databases, as stated in law, would include:

- 1 A master list of Filipino migrant workers with pertinent demographic information
- 2 An inventory of pending legal cases of Filipino migrant workers
- 3 Master lists of departing and arriving Filipinos
- 4 A statistical profile on Filipino migrant workers/overseas Filipinos/tourists
- 5 Basic data on legal systems, immigration policies, law, civil and criminal codes in receiving countries, particularly those with large numbers of Filipinos
- 6 A list of labor and other human rights instruments where receiving countries are signatories
- 7 A tracking system of past and present disaggregated cases involving male and female migrant workers
- 8 A listing of overseas posts that may render assistance to overseas Filipinos in general and migrant workers in particular.

¹⁴⁹ 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, Rep. Act No. 8042, § 1-43 (1995), O.G., (Phil).

Improvements in technology combined with political will may make this legal provision a reality. The government organizations managing or facilitating complaints mechanisms need to produce and publish summary reports on the operations of its grievance mechanisms. These combined reports (or at the start, individual reports) should highlight the cases of OFWs, disaggregated with the following demographic and employment characteristics: land-based vs. sea-based; male vs. female; country of destination or flag (for seafarers); occupation, esp. domestic workers; and cause of action.¹⁵⁰ Analysis of the detailed data distributions can help sharpen the design of programs, especially in the distribution and allocation of staff and financial resources. The data may also be used to convince individual countries of destination to give more attention to contract violations in these countries. These complaints and their solutions should form part of negotiations and discussions of bilateral agreements.

Regular information to the stakeholders and the public builds the legitimacy and transparency of the mechanisms. Periodic analysis of the frequency, patterns and causes of grievances can enable the POEA/OWWA to identify policies, procedures and practices that prove effective and sustainable in the long term. Sharing the results to a wider audience provides an opportunity for the active participation and ongoing feedback about the performance of the grievance mechanism. This provides a continuous source of learning to identify lessons for improving the mechanism and preventing future grievances.

7.5 A UNIFIED COMMUNICATIONS PROGRAM

Any worker seeking information on taking a complaint forward to a docketed case and a grievance will have to consider different information sources – government websites, CSO help centers, and even information stalls in the airport. These websites and information sources post different telephone numbers, email addresses and resources to assist the worker. Information received online would usually not be harmonized with the mandatory pre-departure orientation programs required of departing overseas workers.

As the information is from government sources, it would be helpful to develop common instructions and useful information on posters, flyers and programs relating to complaints mechanisms. Synchronizing this information with business, civil society organizations, and pre-departure and pre-employment orientation programs will strengthen the impact of this messaging.

¹⁵⁰ De Guzman, F. (2021, January 20). Personal communication [Personal interview].

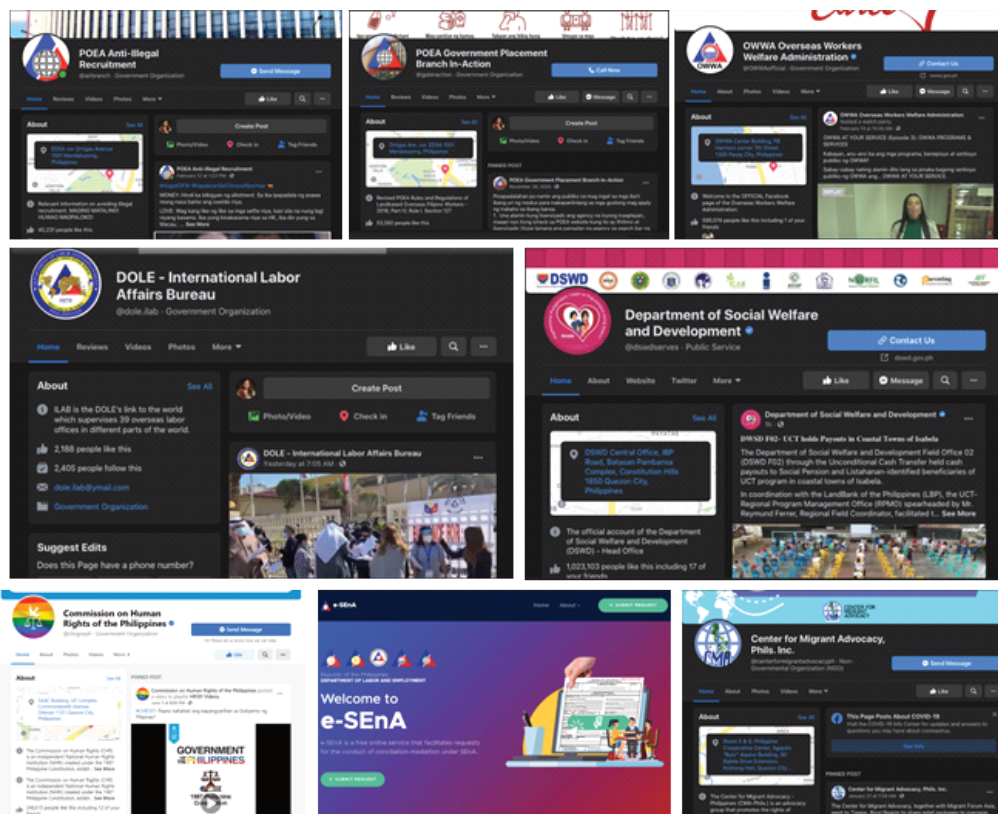


Figure 11. Image gallery of agencies' online portals for access of migrant workers

7.6 PARTNERSHIPS WITH BUSINESS AND CIVIL SOCIETY ORGANIZATIONS

The success of grievance mechanisms depends on the belief and trust of its stakeholders in the integrity and impartiality of the mechanisms. At this time, there are different perceptions on the effectiveness of the systems, whether these are sufficiently impartial and that the aggrieved parties have reasonable access to sources of information, advice and expertise. There are allegations of corruption and favouritism, trigger-happy complainants, and forum-shopping.¹⁵¹ There is little research on the outcomes of legal decisions, whether these are equitable or compatible with international human rights; to do so would require a commitment from those managing the systems to open the results to scrutiny.

The design of any enhanced framework would need the engagement of the private recruitment agencies and the civil society organizations. All parties in the grievance mechanisms should believe that different stakeholders – employers, workers and recruiters – have a fair chance in obtaining an equitable outcome. To obtain this engagement, it would be important to see how the mechanisms can contribute to the PRAs' needs for fairness and a better understanding of PRA constraints and challenges. The CSOs also need convincing that the system is meant to provide redress. It would also be helpful if the DOLE is able to designate or accredit CSOs, both in the countries of destination and in the Philippines, to advise and guide OFWs in filing and pursuing complaints and cases.

¹⁵¹ Series of Interviews

7.7 STAFF TRAINING

Staff training and capacity building emerged in many interviews and workshops as a major step forward in improving the workers' complaints mechanisms. Staff training needs to initially focus on the overall operations of the complaints mechanisms, in the identifying and categorizing of cases, in the mechanics of the legal procedures and in the closing of the cases. More specialized focus can be given to conciliation, negotiations for settlements, and compromise agreements and adjudication. With the higher proportion of women raising complaints and filing cases, there may be a need to offer gender-sensitivity training. This would also address the complaint raised by some OFWs that welfare officers need to be more empathetic to the worker-complainants, in particular the female complainants.

Participants could include SEnA desk officers, conciliators and overseas welfare officers who all need staff orientation and training. Where possible, joint training programs with PRA and CSO welfare officers should be arranged. These sessions will also strengthen the sharing of experiences and expertise among the different agencies.

7.8 INVESTMENT IN DIGITAL INFRASTRUCTURE

Many of the challenges in improving the operations of the complaints mechanisms require upgrades in the DOLE's obsolete digital infrastructure, in particular for the POEA. While there is in-house capacity at the POEA to develop their own applications, the POEA's systems cannot be improved or updated without the improvement of the overall digital infrastructure. The POEA servers were acquired during the 2013-2017 period. Many of the applications/programs of the POEA were developed in the 1990's under sub-contracts with technical support. These contracts are no longer subsisting.

If the POEA were to upgrade and link their different systems and applications, each individual system must be improved (which can only be achieved through improved infrastructure such as new equipment, servers, etc.) Even though a provision in the Migrant Workers Act states that a shared information system must be in place, it is currently not being implemented due to the obsolescence of the applications and the current infrastructure not being strong enough to support a larger integration.

Funding has become a real constraint, with limited funding allocated for the purchase of new equipment. During the pandemic, the POEA sought and obtained congressional approval for the POEA to retain 10% of the previous years' income to pay for server upgrades. While the required IT budget is pegged at ₱536 million, the 10% income retention granted them is ₱33 million.

The POEA-ICT is developing a mobile application for OFWs.¹⁵² The application would enable the workers to directly report to and update the POEA in real time. The OWWA is also interested in developing such an application in the future. There are now many examples of privately developed digital applications. These have been independently developed by private recruitment agencies or CSOs for different purposes, mainly to better monitor the status and conditions of hired workers and meet their commitments in reporting to the POEA. These applications can also be considered for use by other PRAs or CSOs under some licensing or subscription arrangement. Private developers have also looked

¹⁵² Funding for such a project has not been secured.

for ways to improve the interface with the POEA and OWWA systems.¹⁵³ Examples of these privately developed applications are found in the boxes below.

The power of these digital applications is that they democratize OFW access to information on migration, which reduces their reliance on third parties who are often the only source of information for prospective migrants. Digital pre-migration outreach also offers an improvement over traditional pre-migration programs because of the consistency of messaging, ability to quickly update content, lower cost, geographical reach and overall opportunities to scale.¹⁵⁴

PRINCIPLES FOR EFFECTIVE GRIEVANCE MECHANISMS

The Guiding Principles on Business and Human Rights¹⁵⁵ establish eight effectiveness criteria for non-judicial grievance mechanisms. These principles help guide the design of an improved framework for complaints mechanisms:

LEGITIMATE:

For contract violations, the CSOs advise self-reliance to look for ways to resolve the issues at hand on their own.

ACCESSIBLE:

being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

PREDICTABLE:

providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

¹⁵³ Buendia, AA. (2021). Personal communication [Personal interview].

¹⁵⁴ Stay Safe, Bangladesh

¹⁵⁵ United Nations Human Rights Office of the High Commissioner. (2011). Guiding Principles on Business and Human Rights (HR/PUB/11/04). OHCHR.

TRANSPARENT:

keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

EQUITABLE:

seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

**RIGHTS
-COMPATIBLE:**

ensuring that outcomes and remedies accord with international human rights;

**A SOURCE FOR
CONTINUOUS
LEARNING:**

drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

**BASED ON
ENGAGEMENT
AND DIALOGUE:**

consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

¹⁵³ Buendia, AA. (2021). Personal communication [Personal interview].

¹⁵⁴ Stay Safe, Bangladesh

¹⁵⁵ United Nations Human Rights Office of the High Commissioner. (2011). Guiding Principles on Business and Human Rights (HR/PUB/11/04). OHCHR.

OFW WATCH

OFW Watch is a Philippine-developed application¹⁵⁶ that enables the user to find and communicate with nearby OFWs. A user may send out an alert for abuse on the occasion of abuse, alerting all current users. A locator in the application may also show the user nearby POLOs, embassies and OWWA posts. The application also provides useful resources and articles to help empower its users with helpful information related to their migration journey.

The most current version of OFW Watch is formatted as Progressive Web App (PWA). This functions in the same way as a mobile application can, but is also accessible through a webpage. This means that even if an OFW does not have a smartphone, they could access a computer, enter the website URL and log in. Currently, OFW Watch also has a Facebook page that also serves as a channel where OFWs can send their grievances directly, where it is monitored. To date, the OFW Watch Facebook page has had a general reach of over 2 million views.¹⁵⁷

ABIZO

“Abizo OFW” is a customized application developed by a private contractor for OFWs abroad to raise work-related issues, register complaints and file cases. Abizo OFW acts as a “call centre,” receiving and sifting a large volume of complaints received from OFWs. Two complaint channels were developed, with one track for medical issues concerning welfare and health and the other channel for non-medical concerns. The non-medical issues pertain to complaints related to their ongoing employment, including contract violations and their living conditions. Urgent cases are tagged as “red flags” to signify the need for immediate action and sent to the most appropriate office / division / branch.

Developed and tested in cooperation of OFWs, PRAs, and the POEA, Abizo has already registered close to 10,000 OFWs. The application already cites several success stories on helping OFWs who were not paid their salaries and had complaints about their working conditions.

¹⁵⁶ Mynd Consulting, with funding support from Microsoft and in partnership with POEA and OWWA.

¹⁵⁷ Padilla, M. (2021, March 4). Personal communication [Personal interview].

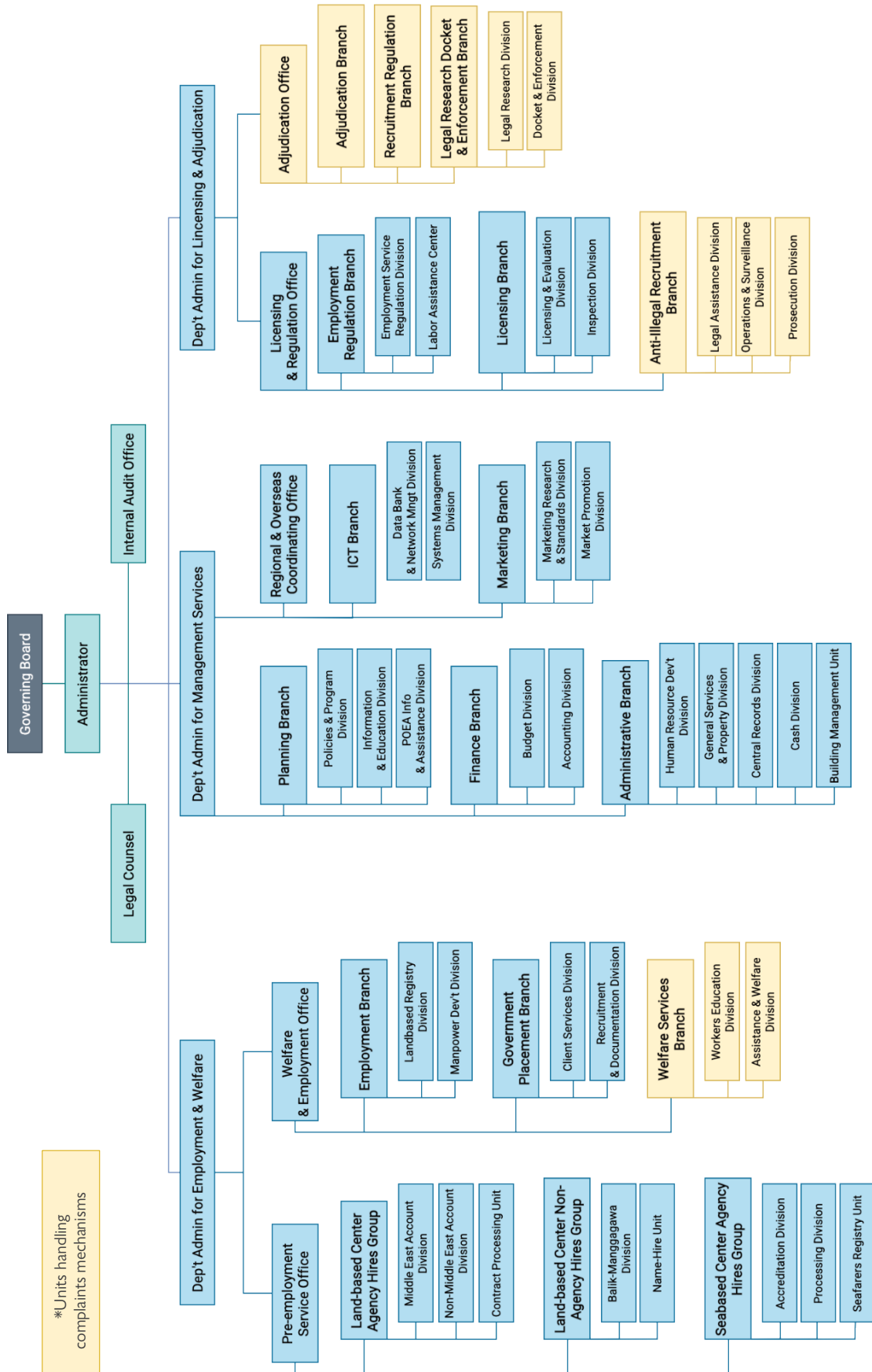
LBS RECRUITMENT SOLUTIONS

LBS Recruitment Solutions is a Philippine-based recruitment agency, one that is particularly oriented in developing their own technological solutions to worker monitoring and grievance mechanisms and making these available to their workers.

LBS Recruitment uses an internal system they developed themselves called the Advanced Recruitment Management System. Applicants may access their accounts via the LBS Recruitment Solutions website by logging in and viewing all their relevant information, which is also made available to all administrators and employees of LBS Recruitment. Workers may also chat or send messages to the dedicated monitoring staff of the agency. Families of the OFW are also notified by the agency on the status of their relative or kin during their application process and/or deployment status.

On top of their internal system, LBS Recruitment has a Facebook page where they are highly active in posting advisories, job advertisements, and other relevant announcements. On their homepage, additional contact details such as their central Email address, main office landline number, and website are listed. Workers may also message LBS Recruitment via the Facebook messenger platform, where they maintain a high response rate.

ANNEX A. POEA ORGANIZATIONAL CHART



BIBLIOGRAPHY

- CITATIONS (APA)

- adjudication. (n.d.). West's Encyclopedia of American Law, edition 2. (2008). Retrieved June 15, 2021, from <https://legal-dictionary.thefreedictionary.com/adjudication>

- Agcaoili, L. (2021, May 3). OFW remittances may grow by 3.3% this year. Philstar.com. <https://www.philstar.com/business/2021/05/03/2095377/ofw-remittances-may-grow-33-year>

- Ambito, J. S., & Banzon, M. L. (2011). Review of Philippine migration laws and regulations: Gains, gaps, prospects. Philippine Institute of Development Studies. <https://www.pids.gov.ph/publications/5045>

- Amo-Agyei, S. (2020). Migrant pay gap: Understanding wage differences between migrants and nationals. International Labour Organization (ILO). https://www.ilo.org/global/topics/labour-migration/publications/WCMS_763803/lang--en/index.htm

- An Act Governing the Operations and Administration of the Overseas Workers Welfare Administration, Rep. Act No. 10801, § 1-61 (2016), O.G., (Phil).

- 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, Rep. Act No. 8042, § 1-43 (1995), O.G., (Phil).

- An act protecting individual personal information in information and communications systems in the government and the private sector, creating for this purpose a national privacy commission, and for other purposes, Rep. Act No. 10173, § 1-45, (2012), O.G., (Phil).

- Andrees, B., Nasri, A., & Swiniarski, P. (2015). Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities. International Labour

- Andrees, B., Nasri, A., & Swiniarski, P. (2015). Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities. International Labour Organization (ILO). https://www.ilo.org/global/publications/working-papers/WCMS_377813/lang--en/index.htm

- Asian Development Bank Institute, International Labour Organization, & OECD.
(2017). Safeguarding the rights of Asian migrant workers from home to the workplace. OECD Publishing.

Association of Southeast Asian Nations (ASEAN). (2017). Terminologies Used Throughout the Compendium. In Compendium on Migrant Workers' Education and Safe Migration Programmes. ASEAN. <https://asean.org/storage/2012/05/ASEAN-Compendium-on-Workers-Education-and-Safe-Migration-Programmes.pdf>

Barkat, A., Hossain, M. D., & Hoque, E. (2014). The Cost: Causes of and potential redress for high recruitment and migration costs in Bangladesh. International Labour Organization (ILO).

Bureau of the National Rapporteur. (n.d.). Publications. National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children. Retrieved May 21, 2021, from <https://www.dutchrapporteur.nl/publications>

Carvalho, R. (2021, January 17). Hong Kong equality watchdog steps up for sacked Filipino

domestic worker. South China Morning Post. <https://www.scmp.com/week-asia/article/3117945/cancer-stricken-filipino-domestic-worker-gets-key-legal-backing-hong>

case. (n.d.) West's Encyclopedia of American Law, edition 2. (2008). Retrieved May 12, 2021, from <https://legal-dictionary.thefreedictionary.com/case>

Center for Migrant Advocacy (CMA), & AWO International. (2018). Migrant Domestic Workers' Access to Justice. Center for Migrant Advocacy. <https://centerformigrantadvocacy.com/migrant-domestic-workers-access-to-justice-2018/>

Chew, V. (2009, July 29). Flor Contemplacion. Singapore Infopedia. https://eresources.nlb.gov.sg/infopedia/articles/SIP_1551_2009-07-31.html

Christiane Kuptsch. (2006, January 24). Merchants of Labour. International Labour Organization (ILO). https://www.ilo.org/global/docs/WCMS_208712/lang--en/index.htm

Commission on Human Rights Philippines. (n.d.). Migrants rights observatory • Commission on human rights. Commission on Human Rights. <https://chrobbservatories.uwazi.io/page/hxgjtgdg5c3j#:~:text=The%20Commission%20on%20Human%20Rights,inclusing%20the%20rights%20of%20overseas>

Creating the Presidential Fact-Finding and Policy Advisory Commission on the Protection of Overseas Filipinos, Exec. Ord. No. 231, O.G. (March 20, 1995) (Phil.).

Department of Finance; Insurance Commission. (2017). Agency-Hired OFW Compulsory Insurance: Frequently Asked Questions (FAQs). <https://www.insurance.gov.ph/static/OFW/downloads/OFW%20FAQs%20-%20English.pdf.2017.06.08.pdf>

Department of Foreign Affairs. (n.d.). Assistance to overseas Filipinos. The Official Website of the Department of Foreign Affairs - Republic of the Philippines. <https://dfa.gov.ph/assistance-to-overseas-filipinos>

- Department of Foreign Affairs. (n.d.). Assistance to overseas Filipinos in distress. The Official Website of the Department of Foreign Affairs - Republic of the Philippines. <https://dfa.gov.ph/assistance-to-overseas-filipinos-in-distress>
- Department of Labor and Employment: Bureau of Labor Relations. (2011, March 8). The Rules of Procedure of the Single Entry Approach (SEnA). <https://blr.dole.gov.ph/news/the-rules-of-procedure-of-the-single-entry-approach-sena/>
- Department of Labor and Employment (DOLE). (2021). Single Entry Approach (SEnA). <https://sena.dole.gov.ph/index.php>
- Dizon, N. (2018, April 16). CHR plans migrant workers observatory to check abuses. INQUIRER.net. <https://globalnation.inquirer.net/165726/chr-plans-migrant-workers-observatory-check-abuss>
- Farbenblum, B., Taylor-Nicholson, E., & Paoletti, S. (2013). Migrant Workers' Access to Justice at Home: Indonesia. Open Society Foundations.
- Galvin, J. (2018, February). Five-point guide- Why international employment contracts are important. Global Payroll Management Institute. <https://www.gpminstitute.com/publications-resources/Global-Payroll-Magazine/february-2018/five-point-guide-why-international-employment-contracts-are-important>
- Global Forum on Migration and Development. (2019, April 5). Migrant recruitment advisor | Global forum on migration and development. Global Forum on Migration and Development (GFMD). <https://www.gfmd.org/pfp/ppd/11124>
- Government of Canada. (2020, June 25). Vulnerable foreign workers who are victims of abuse. Canada.ca. <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html>
- Harkins, B., & Åhlberg, M. (2017). Access to justice for migrant workers in south-east Asia. International Labour Organization (ILO)
- Hennebry, J., Grass, W., & McLaughlin, J. (2017). Women migrant workers' journey through the margins: Labour, migration and trafficking. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). 978-1-63214-062-3
- Hong Kong Federation of Asian Domestic Workers Unions (FADWU), & Progressive Labor Union of Domestic Workers Hong Kong (PLU). (2019). The Price of Justice - Migrant domestic workers' experience of trying to resolve labour disputes in Hong Kong. International Domestic Workers Federation. <https://view.publitas.com/rights-exposure/the-price-of-justice/page/1>
- ILO Integrated Programme on Fair Recruitment in the Philippines. (2019). Rapid Assessment: Recruitment Companies. Unpublished Report.
- ILO Project Office for the State of Qatar. (2019). Recommendations on the Establishment of the Workers' Support and Insurance Fund in Qatar. International Labour Organization (ILO). https://www.ilo.org/beirut/projects/qatar-office/WCMS_726175/lang--en/index.htm

Injury. (n.d.) The People's Law Dictionary. (1981-2005). Retrieved May 12, 2021, from <https://legal-dictionary.thefreedictionary.com/Injury>

International Domestic Workers Federation. (2020). Gender-based violence and harassment against domestic workers: Case stories from Asia. International Domestic Workers Federation (IDWF). <https://idwfed.org/en/resources/gender-based-violence-and-harassment-against-domestic-workers-case-stories-from-asia>

International Labour Organization (ILO). (2021, March 23). Country briefs of the regulatory frameworks governing migrant workers in the Arab states. International Labour Organization. https://ilo.org/beirut/projects/fairway/WCMS_776362/lang--en/index.htm

International Labour Organization. (1951). Equal Remuneration Convention, 1951 (No. 100). https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_84_en.pdf

International Labour Organization. (2019). General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs. https://www.ilo.org/global/topics/labour-migration/publications/WCMS_536755/lang--en/index.htm

International Labour Organization (ILO). (n.d.). Introduction to International Labour Standards. <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>

International Labour Organization - NORMLEX. (n.d.). C189 - Domestic workers convention, 2011 (No. 189). International Labour Organization. https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:2551460:NO

International Labour Organization (ILO). (2019, March 28). The ILO governing body approves the publication and dissemination of the definition of recruitment fees and related costs, to be read in conjunction with the general principles & operational guidelines for fair recruitment. International Labour Organization. https://www.ilo.org/global/topics/labour-migration/news-statements/WCMS_682734/lang--en/index.htm

International Labour Organization Regional Office for Arab States. (2017, May 4). Employer-migrant worker relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration. International Labour Organization.

International Migration Law Unit. (2019). IML Information Note on Access to Justice: A Migrant's Right. International Organization on Migration (IOM).

International Organization for Migration (IOM), & Scalabrini Migration Center. (2013). Country Migration Report: The Philippines 2013. International Organization for Migration (IOM). <http://smc.org.ph/wp-content/uploads/2019/11/CMReport-Philippines-2013-1.pdf>

International Organization on Migration. (2004). Glossary on Migration. United Nations Publications. https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf

- International Organization for Migration. (2020). The Montreal Recommendations on Recruitment: A Road Map towards Better Regulation (PUB2020/009/EL). <https://publications.iom.int/system/files/pdf/the-montreal-recommendation.pdf>
- International Organization for Migration. (2019). The IRIS Standard. <https://iris.iom.int/sites/iris/files/documents/1IRIS%20Standard.pdf>
- Jaymalin, M. (2021, March 11). OFW in Jordan cries for help after Philippine labor attaché's wife allegedly beat her. OneNews.ph. <https://www.onenews.ph/ofw-in-jordan-cries-for-help-after-philippine-labor-attach-s-wife-allegedly-beat-her>
- Justice for Wage Theft. (n.d.). Call for an Urgent Justice Mechanism for Repatriated Migrant Workers. Justice for Wage Theft Campaign. <https://justiceforwagetheft.org/>
- Labor Code of the Philippines, Pres. Dec. No. 442, as amended and renumbered (Phil.).
- Lister, J. (n.d.). Statements of purpose for businesses. Chron. <https://smallbusiness.chron.com/statements-purpose-businesses-26026.html>
- Luebker, M., Simonovsky, Y., & Oelz, M. (n.d.). Coverage of domestic workers by key working conditions laws. International Labour Organization (ILO). https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_157509.pdf
- Mangahas, A. (2020). Achieving effective recruitment policy and practice in Asia [PowerPoint Presentation]. Asian Decent Work Decade 2006-2015, Manila, Philippines.
- Mangahas, A. (2020). Protecting Women Migrant Workers Amidst the Pandemic and Beyond: A Contribution to the Zonta Campaign on Violence Against Women and Girls [PowerPoint Presentation]. 16 Days of Activism, Manila, Philippines.
- Migrant Forum in Asia. (n.d.). Challenges on Access to Justice for Migrants. https://mfasia.org/migrantforumasia/wp-content/uploads/2018/05/Access-to-justice-is_MFA.pdf
- Migrant Forum in Asia, & Justice for Wage Theft. (2021). Crying Out For Justice: Wage Theft Against Migrant Workers during COVID-19 (Volume 1). <http://mfasia.org/migrantforumasia/wp-content/uploads/2021/04/MFA-Crying-Out-for-Justice-04.12.pdf>
- Migrant Forum in Asia. (n.d.). Hamsa complaints mechanism and migrant recruitment advisor (MRA) partners meeting. <https://mfasia.org/3380-2/>
- Migrant Forum in Asia & the Global Coalition on Migration (n.d.). Recruitment Fees & Migrants Rights Violations (Policy Brief #1). Retrieved from <http://mfasia.org/migrantforumasia/wp-content/uploads/2017/01/1-Policy-Brief-Recruitment-Fees-Migrants-Rights-Violations.pdf>

Migrant Worker Justice Initiative. (n.d.). Migrant Worker Justice Initiative: Rights - Remedy - Responsibility. MWJI. Retrieved April 15, 2021, from <https://www.mwji.org/>

Minor Employment Claims Adjudication Board. (2016). A Simple Guide to Minor Employment Claims Adjudication Board. Labour Department: Hong Kong Special Administrative Region. <https://www.labour.gov.hk/eng/public/mecab/SGMECAB.pdf>

National Labor Relations Commission. (2011). The 2011 NLRC Rules of Procedure, As Amended. National Labor Relations Commission (NLRC).

OECD, Asian Development Bank Institute, & International Labour Organization. (2019). Building partnerships for effectively managing labor migration: Lessons from Asian countries. OECD Publishing.

OECD, Asian Development Bank Institute, & International Labour Organization. (2019). Labour migration trends and policies in Asia. 9th ADBI-OECD-ILO Roundtable on Labour Migration in Asia: Innovative Approaches for the Effective Management of Labour Migration in Asia, Tokyo, Japan.

Office of the United Nations High Commissioner for Human Rights. (2005). The International Convention on Migrant Workers and its Committee. <https://www.ohchr.org/Documents/Publications/FactSheet24rev.1en.pdf>

Ofreneo, R., & Samonte, I. (2005). Empowering Filipino migrant workers: policy issues and challenges. International Labour Organization. https://www.ilo.org/asia/publications/WCMS_160550/lang--en/index.htm

Paoletti, S., Farbenblum, B., Taylor-Nicholson, E., & Sijapati, B. (2014). Migrant Workers' Access to Justice at Home: Nepal. Open Society Foundations.

Philippine Overseas Employment Administration. (n.d.). About POEA. POEA - Philippine Overseas Employment Administration. <https://www.poea.gov.ph/programs/programs&services.html>

Philippine Overseas Employment Administration. (2010). Insurance Guidelines of the Omnibus Rules and Regulations Implementing Republic Act 8042 (The Migrant Workers and Overseas Filipinos Act of 1995), as Amended by Republic Act 10022 Relative to Compulsory Insurance Coverage for Agency-Hired Overseas Filipinos Workers. <https://www.poea.gov.ph/laws&rules/files/Guidelines%20on%20Insurance%20Coverage.pdf>

Philippine Overseas Employment Administration. (2015). Joint Manual of Operations in providing assistance to Migrant Workers and other Filipinos overseas. <https://www.poea.gov.ph/docs/Joint%20Manual%20of%20Operations.pdf>

Philippine Overseas Employment Administration (2020). Memorandum Circular No. 12, Series of 2020: Guidelines on the Provision of Legal Assistance During the State of Public Health Emergency. <https://www.poea.gov.ph/memorandumcirculars/2020/MC-12-2020.pdf>

- Philippine Overseas Employment Administration. (2010). Omnibus Rules and Regulations Implementing the Migrant Workers Act and Overseas Filipinos Act of 1995, as Amended by RA No. 10022. <https://www.poea.gov.ph/mandates/files/omnibus%20irr-ra10022.pdf>
- Philippine Overseas Employment Administration. (2016). Revised POEA Rules and Regulations governing the recruitment and employment of Landbased Overseas Filipino Workers of 2016. <https://www.poea.gov.ph/laws&rules/files/Revised%20POEA%20Rules%20And%20Regulations.pdf>
- Philippine Statistics Authority and University of the Philippines Population Institute. (2019). 2018 National Migration Survey. Philippines.
- The Pinoy OFW. (n.d.). 12 Reasons Why Filipinos Want to Work Abroad. <https://thepinoyofw.com/why-filipinos-want-to-work-abroad/#:~:text=Family%20and%20peer%20pressure%20%E2%80%93%20The,to%20try%20their%20luck%20themselves>
- Private Employment Agencies Convention, C181, International Labour Organization: Bureau for Workers' Activities, 85th Session, 1997.
- Public Information Services Unit. (n.d.). DFA repatriates 327,511 overseas Filipinos in 2020. The Official Website of the Department of Foreign Affairs - Republic of the Philippines. <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/28480-dfa-repatriates-327-511-overseas-filipinos-in-2020>
- Public Information Services Unit. (n.d.). DFA repatriates over 68,000 Filipinos since the beginning of COVID-19 repatriation efforts. The Official Website of the Department of Foreign Affairs - Republic of the Philippines. <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/27101-dfa-repatriates-over-68-000-filipinos-since-the-beginning-of-covid-19-repatriation-efforts>
- Rappler: The Filipino Times. (2014, June 30). Top 5 problems OFWs face in the UAE. Rappler. <https://www.rappler.com/nation/top-5-problems-united-arab-emirates>
- Ratha, D., & Seshan, G. (2018). Worker-paid recruitment costs 1. Global Labour and the Migrant Premium, 26-35. <https://doi.org/10.4324/9780429467387-4>
- Roy, E. (2016, December 23). How do you know which laws apply during an international dispute? Trade Ready. <https://www.tradeready.ca/2016/topics/import-export-trade-management/know-laws-apply-international-dispute/>
- Santos, A. P. (2016, August 22). How recruitment agencies deceive Philippine workers. DW.COM. <https://www.dw.com/en/how-recruitment-agencies-deceive-philippine-workers/a-19492133>
- Sapalo Velez Bundang & Bulilan Law Offices. (n.d.). 2011 NLRC – Rules of Procedure Flowchart. <https://www.sapalovelez.com/practice-areas/maritime-labor/>

- Social Weather Stations (SWS). (2019, June 18). The International Migration Almanac (IMA 2017). The National Economic and Development Authority (NEDA). <https://www.neda.gov.ph/the-international-migration-almanac-2017/>
- Social Weather Stations (SWS) (2017). SWS Scoping Study on International Migration in the Philippines: “Making the Case for More and Better Data for Policy-Making and Program Services” [PowerPoint Presentation]. Quezon City, Philippines.
- Tomacruz, S., & Hapal, D. K. (2017, October 4). How much does it cost to work abroad? Rappler. <https://www.rappler.com/newsbreak/iq/ofw-tips-cost-work-abroad>
- Tomacruz, S., & Santos, A. P. (2017, September 10). Are zero placement fees for OFWs scam or solution? Rappler. <https://www.rappler.com/newsbreak/iq/ofw-placement-fees-scam-solution>
- United Nations. (2009). United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Ninth and Tenth Session). United Nations Office. https://www.iom.int/sites/default/files/jahia/webdav/shared/shared/mainsite/policy_and_research/un/64/A_64_48.pdf
- United Nations Development Programme, Programming for Justice: Access for All: A Practitioner’s Guide to Human Rights-Based Approach to Access to Justice, 2005
- United Nations Human Rights Office of the High Commissioner. (1979). The Convention on the Elimination of All Forms of Discrimination against Women. UN Women. <https://www.un.org/womenwatch/daw/cedaw/>
- United Nations Human Rights Office of the High Commissioner. (2011). Guiding Principles on Business and Human Rights (HR/PUB/11/04). OHCHR. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf
- United Nations and the Rule of Law. (2019, February 19). Access to justice. <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>
- U.P. CIFAL. (2021). Research Study on Mapping the Recruitment Policies, Processes and Practices for Labour Migration from the Philippines to the Gulf Cooperation Council (GCC) Countries. CIFAL Philippines
- Verité: Help Wanted. (n.d.). Evaluating the effectiveness of grievance mechanisms. Verite.org. <https://helpwanted.verite.org/node/736/lightbox2>
- World Bank. 2017. “KNOMAD-ILO Migration Costs Surveys 2016”. Global Knowledge Partnership on Migration and Development (KNOMAD). Ref: WLD_2016_KNOMAD-ILO-MCS_v01_M. Downloaded from <https://microdata.worldbank.org/index.php/catalog/2944> on June 7, 2021.

World Employment Confederation. (2019, November 7). WEC Code of conduct. <https://wecglobal.org/world-employment-confederation-global/code-ofconduct-2/>

The World Justice Project. (2018). The World Justice Project: Rule of Law Index 2017-2018. 978-0-9882846-3-0

PERSONAL INTERVIEWS

- CITATIONS (APA)

PARENTHETICAL & REFERENCE LIST STRUCTURE CITATIONS



Jerome Alcantara (BFO Policy Center)

- Alcantara, J. (2021). Personal communication [Personal interview].



Sarah Arriola (DFA – Migrant Workers' Affairs)

- (S. Arriola, personal communication, January 15, 2021).
- Arriola, S. (2021, January 15). Personal communication [Personal interview].



Raquel Bracero (PASEI Inc.)

- (R. Bracero, personal communication, January 21, 2021).
- Bracero, R. (2021, January 21). Personal communication [Personal interview].



Benedicto Ernesto “Bobot” Bitonio

- (B. Bitonio, personal communication, 2021).
- Bitonio, B. (2021). Personal communication [Personal interview].



AA Buendia (AAB Management Services)

- Buendia, AA. (2021). Personal communication [Personal interview].



Mel Candano (POEA Planning)

- (M. Candano, personal communication, January 27, 2021).
- Candano, M. (2021, January 27). Personal communication [Personal interview].



Leslie B. Chua (Pioneer Insurance)

- Chua, L. (2021). Personal communication. [Personal interview].

Marc Capistrano (Staffhouse International Inc.)

- (M. Capistrano, personal communication, January 18, 2021).
- Capistrano, M. (2021, January 18). Personal communication [Personal interview].

Ka Bong Concha (Ang Kaagapay ng Bawat OFW)

- (B. Concha, personal communication, March 4, 2021).
- Concha, B. (2021, March 4). Personal communication [Personal interview].

Edwin Cristobal, Charity Jacob (POEA – GPB)

- (E. Cristobal & C. Jacob, personal communication, January 21, 2021).
- Cristobal E. & Jacob C. (2021, January 21). Personal communication [Personal interview]

Kiko De Guzman (POEA – AIRB)

- De Guzman, K. (2021). Personal communication [Personal interview].

Jalilo de la Torre (HK Labor Attache)

- de La Torre, J. (2020). Personal communication [Personal interview].

Saul de Vries, Zita Reyes (Singapore Labor Attache)

- (S. de Vries & Z. Reyes, personal communication, December 2, 2020).
- de Vries, S. & Reyes, Z. (2020, December 2). Personal communication [Personal interview]

Jocelyn Hapal (OWWA)

- (J. Hapal, personal communication, January 6, 2021).
- Hapal, J. (2021, January 6). Personal communication [Personal interview].

Lito Hernandez (IPAMS)

- (A. Hernandez, personal communication, January 19, 2021).
- Hernandez, A. (2021, January 19). Personal communication [Personal interview].

Ria Lano (Adjudication Office)

- (R. Lano, personal communication, January 8, 2021).
- Lano, R. (2021, January 8). Personal communication [Personal interview].

Hussein Macarambon (ILO Manila)

- (H. Macarambon, personal communication, January 11, 2021).
- Macarambon, H. (2021, January 11). Personal communication [Personal interview].

Froilan Malit Jr. (Rights Corridor)

- (F. Malit Jr., personal communication, January 20, 2021).
- Malit Jr., F. (2021, January 20). Personal communication [Personal interview].

Anna Liza Navarro, She Gonzales (CMA)

- (A.L. Navarro & S. Gonzales, personal communication, January 14, 2021).
- Navarro, A.L. & Gonzales, S. (2021, January 14). Personal communication [Personal interview].

Carmelita Nuqui (DAWN)

- (C. Nuqui, personal communication, January 18, 2021).
- Nuqui, C. (2021, January 18). Personal communication [Personal interview].

Myrna Padilla (Mynd Consulting)

- (M. Padilla, personal communication, March 4, 2021).
- Padilla, M. (2021, March 4). Personal communication [Personal interview].

Tess Delos Santos (WEO)

- Delos Santos, T. (2020). Personal communication [Personal interview].

Ken Sarmiento (POEA – ICT)

- (K. Sarmiento, personal communication, January 7, 2021).
- Sarmiento, K. (2021, January 7). Personal communication [Personal interview].

Lito Soriano (LBS Recruitment)

- (L. Soriano, personal communication, January 20, 2021).
- Soriano, L. (2021, January 20). Personal communication [Personal interview].

Atty. Francisco De Guzman (Legal Consultant, LBS Recruitment)

- (F. De Guzman, personal communication, January 20, 2021).
- De Guzman, F. (2021, January 20). Personal communication [Personal interview].

Alice Visperas (ILAB)

- (A. Visperas, personal communication, January 13, 2021).
- Visperas, A. (2021, January 13). Personal communication [Personal interview].



This research was funded in full by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State