

A THREE PAPER SERIES

ACCESS TO JUSTICE

PART I



CENTER FOR MIGRANT ADVOCACY

ACCESS TO JUSTICE: MONEY CLAIMS

July 2015

The Center for Migrant Advocacy thanks its intern Sophie Levack for putting together this report on access to justice of OFWs and their families.

This publication is part of a three paper series on Filipino migrant worker's access to justice. The first part focuses on the issue of the Single Entry Approach (SENA) in response to money claims made by Overseas Filipino Workers (OFWs). It provides a comprehensive look at the institutions that seek to provide redress mechanisms for distressed OFWs upon their return to the country. The paper provides an analysis of the achievements and challenges faced by these institutions, and enumerates recommendations to better serve justice and protect the rights and welfare of Filipino migrant workers.



Center for Migrant Advocacy
15 (Unit 7) Casal Building, Anonas Road, Project 3, Quezon City, Philippines
Phone: (632) 990-5140; Fax: (632) 433-0684
Email: cma@cmaphils.net Web: www.centerformigrantadvocacy.com

Introduction

Several redress mechanisms are available for Filipino migrant workers who have experienced abuse and exploitation. Criminal cases, which include cases of physical abuse, are prosecuted in the courts of law. Administrative cases are handled by the Philippine Overseas Employment Administration (POEA) given that the POEA's mandate is to ensure compliance of employment agencies to relevant laws and regulation. Finally, civil cases which include disputes between an OFW and their employer or employment agency are sent to the National Labor Relations Commission (NLRC) which acts as a quasi-judicial employment tribunal. In 2010, however, civil cases are first processed through the Single Entry Approach (SEnA) for mandatory conciliation before seeking any further remedy at the NLRC or courts of law. While our migrant workers face much of these cases daily, this report shall focus on money claims filed by OFWs in instances of non-payment of wages, contract violations, etc.

Money claims are civil cases and may be filed when the migrant worker is seeking compensation in cases of abuse from the employer, failure to pay wages, illegal termination of contract and even in cases of agencies charging exorbitant and illegal fees. Such claims can be filed in the Philippines against the recruitment agency under the principle of joint and solidary liability (which we shall explore later on).

1 The institutions

1.1 The Philippine Overseas Employment Administration (POEA)

The POEA is a government branch with an online website primarily focused on the development and protection of migrant Filipino workers¹. To this end, the POEA upholds the principles of human rights and protection, and develops a clear system that will help Filipinos as they work overseas.

The POEA has four core functions—Industry Regulation, Employment Facilitation, Workers Protection, and General Administration/Support Services. These functions operate towards the promotion of workers' rights, and the provision of legal and technical support for Filipino overseas workers to enjoy governmental support and be provided with a working standard to prevent abuse. Additionally, POEA is tasked with monitoring the current global trend in order to view and evaluate the working environment for Filipinos.

¹ "POEA - Philippine Overseas Employment Administration," Philippine Overseas Employment Administration, <http://www.poea.gov.ph/>

POEA also provides orientations for those wanting to work overseas. Orienting and educating Filipinos on good practices and legitimate recruiting agencies is a key focus for the Industry Regulation section. Another focus is on the constant facilitation of those workers by providing them with multiple accesses to government assistance for their employment needs. For worker's rights the POEA works under two banners: Preventive and Remedial. POEA's preventive work aims to prevent cases of illegal recruitment, by providing pre-orientation and information dissemination in various fields of media, informing citizens of the characteristics of illegal recruiting. POEA's remedial work occurs in cases of worker victimization, in which the agency shall provide assistance and pursue legal action. Furthermore, the POEA monitors employment agencies through license renewal, physical inspections of the agencies, and compliance with capitalization and escrow requirements monitoring.²

For OFWs in distress, the process first begins with the Philippine Overseas Labor Office (POLO). Labor attachés can conciliate if there are issues between the employer and employees. In cases where repatriation is necessary, the POEA is informed and it notifies the private recruitment agency. The agency is asked to provide a pre-paid airplane ticket within 48 hours, and is also required to assist with the procurement of an exit visa within 15 days. To ensure that this order is complied with, POEA is able to suspend documentary processing for the private recruitment agency, which means the agency will not be able to process other OFWs so they cannot run their business. In 2011, POEA's intervention in these cases resulted in private recruitment agencies paying the repatriation expenses of their distressed and physically ill workers for a total of P98.46 million, instead of the government paying for repatriation costs.³ Additionally, administrative action can take the form of conciliation, or if there are grounds for recruitment violation, the penalty will be according to the offence.

1.2 The National Labor Relations Commission (NLRC)

The NLRC's vision is to act as a quasi-judicial agency by way of a fair, speedy, equitable disposition of labor cases at lesser cost. The organization pursues to resolve labor disputes in the fairest, quickest, least expensive and most effective way possible.

² "Annual Report 2011", Philippine Overseas Employment Administration, p. 13, <http://www.poea.gov.ph/ar/AR2011.pdf>

³ Ibid, p. 15.

NLRC's regional arbitration branches deal with many tasks involving money claims by OFWs. This is significant to the overseas workers as many of them are strongly dependent on their employers since they are strangers in a foreign country. The NLRC helps most in cases where OFWs received salaries lower than what was stated in their contracts; in such cases, complaints can be filed against recruitment agencies. Moreover, OFWs can save on expenses by filing their cases with the local NLRC in their areas, instead of filing them in Manila.

The first stage from filing a complaint at the NLRC is a set of no more than three mandatory conferences where the complainant and the respondent have the opportunity to enter into compulsory arbitration. If the parties are unable to settle, then they have 15 days from the last conference to submit their position papers and memorandum. The Labor Arbiter will then have 30 days to make a decision.

The rules and regulations implementing RA 10022 (IRR RA 10022) state that the NLRC has 90 days to hear and decide a claim arising out of an employer-employee relationship⁴ and the money claim and damages must be paid within 30 days from the approval of the settlement⁵. Moreover, employers and recruitment agencies are expressed to have joint and several liability⁶. Finally, if the final judgment is found against a foreign employer, they shall be automatically disqualified from recruiting and hiring Filipino workers until and unless they satisfy the judgment award⁷.

The party against whom the decision was made may make an appeal to the Commission within 10 days of the decision being made⁸. The appellant may further appeal the Commission's decision to the Court of Appeal and then to the Supreme Court.

1.3 The Overseas Workers Welfare Administration (OWWA)

The OWWA is the leading DOLE agency tasked to protect and promote the welfare of OFW and their families. The OWWA is the main body responsible for OFWs in distress. OWWA will bear the cost of repatriation in cases where the employer and employment

⁴ Implementing Rules and Regulations of Republic Act No. 10022, Rule VII, Section 1.

⁵ Implementing Rules and Regulations of Republic Act No. 10022, Rule VII, Section 4.

⁶ Implementing Rules and Regulations of Republic Act No. 10022, Rule VII, Section 3.

⁷ Implementing Rules and Regulations of Republic Act No. 10022, Rule VII, Section 6.

⁸ Presidential Decree No. 442, Article 223, "Labor Code of the Philippines".

agency cannot be identified⁹. Moreover, part of the OWWA's role is to provide assistance in the enforcement of the contractual obligations of agencies or employers. In order to do so, the OWWA will arrange conferences or conciliation meetings between the OFW and the agency in order to reach a settlement.¹⁰

1.4 The Philippine Overseas Labor Offices (POLO)

The 34 POLOs that run parallel to Filipino embassies around the world act as an overseas extension of the Department of Labor and Employment (DOLE). The role of POLOs is to promote and protect the welfare of OFWs. For instance, POLOs have the power to suspend accreditation for overseas recruitment agencies¹¹ and to handle money claims by OFW against employers or agencies¹².

2 Policies in place

The majority of claims made by OFW are money claims such as exorbitant fees, unpaid salaries or money owed after an illegal dismissal¹³. Several policies are in place to ensure the cases get processed swiftly, to help calculate what the award for a particular money claim will be as well as to help ensure that the OFW will be able to receive that amount if their claim is successful.

2.1 Joint and solidary liability

As a requirement to receive a license from the POEA to operate as a private employment agency, such agencies must "assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability

⁹ Republic Act No. 8042, Section 5.

¹⁰ Implementing Rules and Regulations of Republic Act No. 10022, Rule 1 Section 13(2).

¹¹ The Manila Times, "POLO-SG suspends recruiter for selling maids in malls," The Manila Times, 2014 July 2. <http://www.manilatimes.net/polo-sg-suspends-recruiter-for-selling-maids-in-malls-2/108623/>

¹² Tina Santos, "POLO scraps accreditation of recruiter in discount maids," Inquirer, 2014 July 02. <http://globalnation.inquirer.net/107477/polo-scraps-accreditation-of-recruiter-in-discount-maids/>

¹³ National Labor Relations Commission, "2011 Report," <http://nlrc.dole.gov.ph/?q=node/105>.

compensation and repatriations”¹⁴. Moreover, an agency which is a corporation or a partnership must agree that its officers, partners and directors “will be jointly and severally liable with the company over claims arising from employer employee relationship”¹⁵. What this means is that if an OFW wants to make a claim for compensation for an illegal action or breach of contract by the employer, he or she may make that claim, not only against the employment agency, but also against its partners or directors. This protects the OFW who may have suffered a loss in a destination country whose laws are not favorable to the OFW and prevent them from being justly compensated.

With this policy, OFW may make a claim in the Philippines, upon their return, based on the contract that they signed with the employment agency, even if the erring party is the direct employer and not the agency itself.

2.2 Minimum capitalization and the escrow account

According to the Rules and Regulations of the POEA, an employment agency is required to possess a minimum capitalization or minimum paid-up capital of two million pesos.¹⁶ Moreover, the POEA requires that all recruitment agencies put aside one million pesos in an escrow account in order to ensure that any money successfully claimed by a wronged OFW will be accessible to him¹⁷. Moreover, if any money is withdrawn from the escrow account, the agency must replenish it within 15 days of the POEA’s notification of withdrawal.¹⁸ This ensures that the agency has sufficient funds to compensate OFWs who have successfully made a money claim against the agency following the joint and solidary liability principle. The OFW’s award may be enforced against either the paid up capital or the escrow account; the advantage of the escrow account is that the agency is

¹⁴ Part II Rule II Section 2f3 POEA Rules and Regulations Governing the Recruitment and Employment of Overseas Workers.

¹⁵ Part II Rule II Section 2g POEA Rules and Regulations Governing the Recruitment and Employment of Overseas Workers.

¹⁶ Part II Rule I Section 1b POEA Rules and Regulations Governing the Recruitment and Employment of Overseas Workers.

¹⁷ Part II, Rule II, Section 9 (f) POEA Rules and Regulations Governing the Recruitment and Employment of Overseas Workers.

¹⁸ Part II, Rule II, E Section 17, POEA Rules and Regulations Governing the Recruitment and Employment of Overseas Workers.

unable to dissipate the money in that account should it want to avoid to make the payment.

2.3 The Single Entry Approach (SENA)

The SENA was introduced in 2010 as an initiative to provide a speedy and cost-efficient settlement procedure¹⁹. This approach offers a mandatory conciliation for all labor and employment issues (including OFW cases) in order to prevent issues between employers and employee to turn into proper disputes; thus preventing cases which can be amiably settled from having to be tried at the NLRC or courts of law. The approach has been considered successful in its speediness and in terms of the number of cases that are settled. According to SENA regulations, conciliation period should take no more than 30 days. The actual average time it took for cases to be settled through SENA in 2011 was 17 days.²⁰ Moreover, an estimated 35% of cases were settled through SENA in 2013²¹ thus relieving the case load of the NLRC and courts of law.

2.4 The Speedy and Efficient Delivery of Labor Justice Project (SpeED)

SpeEd targets to get the NLRC and other government bodies (such as the POEA) to dispose of all their cases within the prescribed time period.²² According to the NLRC's 2013 Annual Report, it managed to dispose of 91% of its cases within the prescribed cycle time.²³

This project illustrates the government's seeming intent to reduce the time it takes for a case to go through. Indeed, time is an issue for OFW who usually settle for very low sums due to inability to afford a long legal process.

¹⁹ "Frequently Asked Questions on SENA" DOLE website
<http://www.blr.dole.gov.ph/index.php/faqs/sena-single-entry-approach>

²⁰ Institute for Labor Studies, "First Impressions: The Single Entry Approach (SENA) in its First Year," DOLE, 2011, <http://ilsdole.gov.ph/first-impressions-the-single-entry-approach-sena-in-its-first-year-vol-no-5/>

²¹ World Bank, "Philippine Development Report," 2013,
<http://www.worldbank.org/content/dam/Worldbank/document/EAP/Philippines/PDRFullReport.pdf>

²² National Labor Relations Commission, "2013 Annual Report",
<http://nlrc.dole.gov.ph/content/2013.Annual.Report.Final.pdf>

²³ Ibid.

2.5 Appeal or surety bonds

As explained above, a party in a money claim may make an appeal against the decision by the NLRC's Labor Arbiter. In such instances, the NLRC requires that for the appeal to be perfected, the appellant must post a surety bond of the amount "equivalent to the monetary award in the judgment appealed from".²⁴ This means that if the appeal finds against the appellant, the amount of the first award has been secured and the claimant will be able to receive that money without the appellant having the opportunity to get rid of it.

3. Shortcomings

Although the Philippine government has institutions and policies in place to ensure that they abide to the constitutional principle that the state has a duty to protect the right of workers and to promote their welfare, practice falls somewhat short of the principle.

3.1 Money claims after illegal termination

In cases of illegal termination by the employer, the OFW may make a money claim. According to RA 10022:

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.²⁵

Although this section was amended in 2010, it retained the previous subject clause that the lesser of the two values would be paid to the OFW. This subject clause had been deemed unconstitutional by the Supreme Court only a year earlier. In the 2014 case of *Sameer Overseas v Joy C Cabiles*, the Supreme Court revisited the question of whether the subject clause abided to the constitution and it found that the 2009 case of *Antonio M Serrano v Gallant Maritime Services and Marlow Navigation* had been correct in its declaration of the subject clause's unconstitutionality.

²⁴ Presidential Decree No. 442, Article 223, "Labor Code of the Philippines".

²⁵ Republic Act No. 10022, Section 7.

Proposals for amendment of this law are currently being reviewed by the House of Representatives.

The review of the current law is crucial given that the Supreme Court decision clearly illustrates its practical application rather than Congress' unsupported scheme.

3.2 Escrow

In March 2009, the Migrant Rights Group noted that the required one million pesos escrow deposit was not a sufficient measure to ensure agencies were able to pay money claimed by wronged OFWs. Indeed, from January 2006 to June 2007 the approved claims of 452 OFWs were unsatisfied due to "insufficient escrow deposit balances".²⁶ Furthermore, it was noted that not only are the rules and regulations surrounding the escrow deposit not being upheld sufficiently, but the scheme actually runs counter to "the principle of immediately suspending or cancelling licenses of unscrupulous agencies to avoid further exploitation of a great number of OFWs".²⁷ Indeed, as soon as an agency has their license suspended or cancelled they are no longer required to replenish the account; thus leaving many OFWs without satisfactory redress for their loss. This leads to some agencies that still have licenses failing to replenish their escrow account knowing that in doing so they will lose their license and will not be required to abide by the POEA regulations.

3.3 Quit Claims

In many cases of domestic workers escaping from the household they work for due to some sort of abuse (physical, emotional or sexual), the employment agency will provide them with their flight fare home. What has transpired from many of the cases our sources have worked with is that these employment agencies make the OFW believe that they can only provide them with the return ticket if the OFW signs a waiver or a quit claim excusing the agency of any liability which thus prevents the OFW from bringing a claim against them. This amounts to a serious form of deception; if the employer fails to

²⁶ Center for Migrant Advocacy, "Philippine Migrant Rights Groups Written Replies to the List of Issues Relating to the Consideration of the Initial Report of the Philippines," March 2009, http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/PHL/INT_CMW_NGO_PHL_10_9894_E.pdf

²⁷ Ibid.

provide the ticket, the agency is required to do so by the POEA²⁸. As such the agency is unduly coercing the OFW to sign the waver which will lead the OFW to being unable to successfully claim for compensation for the harm done to them.

If the OFW has signed a quit claim, not only will he or she be unsuccessful in pursuing a money claim, but the OFW will also be unable to file an administrative case against the agency at the POEA. As such, agencies are able to excuse themselves from any liability thus putting other OFWs at risk of abuse by them or by employers.

3.4 SENA and other settlement procedures (pressure from the agencies)

Although SENA has been deemed successful due to its speediness and to the number of settled cases, it is very likely that this program and other settlement procedures have resulted in lopsided results. Since OFWs are negotiating from a position of weakness against the employer's or agency's position of strength, they are likely to settle for sums far lower than those they are entitled to, thus making this form of dispute resolution ineffective. OFWs who are rightfully owed a particular sum are shortchanged due to varying factors unaddressed by SENA and other settlement procedures (feeling intimidated by the employer or agency, wanting to go abroad to work again, needing the money imminently for personal reasons, etc.).

Moreover, in many cases the representative for the agency will offer a settlement of 5,000 pesos regardless of the actual sum due. The representative will then increase the sum by making it seem to the OFW that they are putting 5,000 of their own money into the settlement. Furthermore, they make comments such as "we didn't harm you; your employer did" which deceives the OFW into believing that they are not pursuing the right person. Finally, OFWs are made to believe that they owe the employment agency for finding them work and as such are less likely to press them for a sum equivalent to what is owed to them.

This situation is distressing since the state has a constitutional duty to ensure workers their rights and benefits under the law²⁹ and if a considerable proportion of OFW are not receiving close to the amount there are due (they usually settle for 25% to 30% of the amount due), then surely this constitutional duty of the state is being ignored.

²⁸ Implementing Rules and Regulations of Republic Act No. 10022, Rule XIII Section 3.

²⁹ 1987 Philippine Constitution, Section III, Article XIII.

3.5 Pressure to settle by the system

There are many steps in a money claims procedure and many opportunities for the OFW and the agency to settle. In fact, a money claim case filed by a distressed OFW will be subjected to up to three separate institutions (the OWWA, the SENA and the NLRC) calling for a settlement. Furthermore, not only does each of these institutions offer several conferences or conciliation meetings in order to reach a settlement, but settlement meetings will also take place once the case is being heard by a decision maker (the Labor Arbiter or, later on, a judge).

There are many reasons for which a settlement between parties may benefit a case: it shortens the time needed for the claimant to be compensated, both parties have to agree on the sum thus making it fair, and the claimant can be sure to receive some amount in compensation. This being said, many OFW with money claims are actually subjected to excessive pressure to settle. Indeed, as mentioned above, they may be intimidated by the agency or may be lead to believe that they owe the agency. However, the most appalling discovery is that in many cases it is in fact the labor officer who puts undue influence on the OFW to settle; the OFW is convinced by the officer that it is risky for them to pursue the case further considering they do not know what the outcome will be, the officers exaggerate the time the process will take (this is especially shocking considering the effort put in by the government to speed up the system) and, most atrociously, there have been instances of victim blaming on the part of the government officer, compelling the OFW to believe they are not justified in filing their claim.

3.6 Corruption and fraud

The main shortcoming of several money claim cases happens, in fact, at the time of execution of the money claim decision. Indeed, in order to avoid paying the full sum owed to the OFW, some agencies have gone so far as doing illegal acts such as corruption and fraud.

Some agencies have been known to have an internal scheme in order to evade payment of awards. For instance, some agencies have put in place dummy managers; this usually occurs in agencies where the actual manager is foreign and where the dummy does not hold enough assets for the OFW to pursue the claim against them. Furthermore, some agencies that have surrendered their license have filed dummy claims in order to empty the escrow account (and to redirect that money back into the pockets of the agency's bosses) thus preventing real claims from being compensated.

Furthermore, there have been instances where sheriffs have delayed implementing a court order thus giving time for the agency to dissipate its funds, it is very likely that this occurs when the sheriff receives consideration from the agency. Evidence that there is corruption within the government system can be incredibly damning to the credibility of the Filipino judicial system, and as such it should be a priority of the Filipino government to ensure that the rule of law is not undermined.

4 Recommendations

4.1 Bonds imposed by the Philippine Embassy

In order to bypass the Filipino agency in case of money claims where abuse was solely at the hand of the employer, it has been suggested that the Philippine embassies impose a bond on all employers in destination countries who hire OFWs. This way, if the OFWs are, for example, illegally dismissed, haven't received their full wage, or have failed to receive their repatriation costs, then the OFW may sue the employer directly (under Filipino law) and the sum awarded to them will be deduced from that bond.

This scheme is in place in Singapore and it has been noted that in some cases this policy may actually worsen the work conditions of the OFW whose employer has become much more restrictive about the OFW's movement, etc.³⁰ Further research into this approach will thus be necessary.

4.2 Increase the amount in the escrow account

One solution to the issue of escrow accounts emptying before all claims against the agency have been implemented is to increase the amount required in the account. For example, the account could be required to contain at all times a sum proportional to the number of OFW placed abroad in that year. As such, agencies will only be required to increase their escrow accounts depending on how many cases they are likely to be receiving.

These are some issues with this approach; it doesn't solve the problem of the agency not replenishing the account if their license has or is about to lapse – thus there is still the possibility that many OFW will not receive compensation - , moreover, it may lead to some agencies not declaring the number of OFW they have placed in order to cap the

³⁰ Human Rights Watch, "Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore," November 2005.

size of their escrow account. However, it is a start which could help a fair number of OFW in obtaining justice.

4.3 Change the regulations of the escrow account to make it binding even once the agency's license has lapsed

Alternatively, the regulations surrounding the escrow accounts may be modified in order to make them binding even after an agency's license has lapsed. This way, the agency will be required to replenish this account even after the POEA has revoked its license to recruit OFWs.

This approach may, however, be difficult to fulfill, since the POEA will have to find an incentive for the agencies to keep replenishing the account even after the agency has been abolished, and it may be difficult to decide which legal person will be liable for this replenishment. Moreover, imposing this duty on the directors, partners or officers may not be the most effective since we have seen earlier that some agencies name dummy managers whose personal assets are unable to cover the award sums administered against the agency.

One solution may be to have all the assets of an employment agency frozen as soon as its license is revoked by the POEA. This way, the agency will be unable to dissipate the funds and they can be used to pay the award sums of the OFWs.

4.4 Establish a surety bond as soon as a decision has been made

The policy of the surety bond on appeal is exemplary in assuring that the OFW's award sum is guarded from any risk of the agency dissipating its funds or of the escrow account running out. However, since this bond only occurs when an appeal has been filed, it would make a lot of sense to create a bond as soon as a decision is reached. The NLRC or court decision would be immediately registered at the Registry of Property with respect to property owned by the agency. This system would prevent the agency from dissipating the money even in the disguise of a sale, and would guarantee the OFW's award sum.

This does not prevent the agency from dissipating its funds as a case is being heard, but at least it will be able to benefit a greater number of OFWs (those who are claiming through the bond and those claiming against the escrow account).

4.5 Impose a floor for settlements at all stages of the money claim's process

In order to avoid the OFW from being compelled to settle for a very small sum, there could be a floor imposed on the settlement value at all stages of the money claims procedure. The value at which this floor should be set may be put up for discussion, however as a starting point, may we suggest that any settlement pre-decision should have a floor of 25-30% of the calculated sum owed (according to what is said in the law) and that all settlements post-decision should be floored at 50% of the latest decision made by the NLRC or court of law.

This will lead to a fairer outcome since the OFW is likely to receive more than what many have been settling for so far. Moreover, if the agency believes that they are not guilty of the charge filed by the OFW, then they may help accelerate the hearing process in order to receive bona fide justice.

As such, not only will this measure enable a quicker settlement or decision process, but it will also protect the OFW from the undue pressure from both agencies and officials.

However, this will only work if the issues of corruption within the money claims process have been gotten rid of; indeed, it has been said that some decisions of Labor Arbiters have been written by the employment agency's legal counsel: a clear violation and perversion of justice.

4.6 Formalizing common practices

As well as the formalizing a floor for the value of settlements, there are other common practices that should be formalized to ensure that the money claim process runs smoothly for OFWs. One such practice is naming the directors in the persons against which the claim is made. As mentioned above, if an OFW is unable to receive money from the agency, they may claim it against the directors or partners of the agency. However, unless the claim is explicitly against both the agency and its directors, the OFW will have to make a claim against the directors from scratch if they intend on receiving compensation from them; thus unnecessarily prolonging the process.

Instead, a claim against a recruitment agency should automatically include its directors, thus preventing the current waste of time and resources that occurs when the OFW and their legal councilor are unaware of this repercussion.

4.7 Get rid of SENA

Although government studies suggest that SENA has been a successful endeavor, as an additional step in an already lengthy process, it appears to act to the detriment of the OFWs. Indeed, not only does it add several weeks, even months to a money claim, it also contributes to the excessive pressure put onto OFW to settle.

Getting rid of SENA (at least for OFW cases) will still leave behind the OWWA and NLRC which both provide formal frameworks for settlement without the overbearing pressure that can be noticed at present.

* * *

Acknowledgements

We - at the Center for Migrant Advocacy (CMA) - would like to acknowledge the help and resources provided by Atty. Noel Ben, Atty. Henry Rojas and Mr. Erwin Puhawan, of Lawyers Beyond Borders Philippines. These three men have worked on many OFW cases pro bono and their expertise and experience has been invaluable to the completion of this project.

Atty. Noel Ben is Integrated Bar of the Philippines (IBP) governor for Western Mindanao Region, but before accepting this post, he worked on many OFW cases in his capacity as a lawyer.

Atty. Henry Rojas has been CMA's legal counsel for many years and represents OFW in distress pro bono.

Mr. Erwin Puhawan works for the Kanlungan Center Foundation which represents OFWs and advocates for their rights.

* * *

Nota bene

This report only covers money claims issues, however, there is more about access to justice than money claims. For example, issues concerning the POEA and the administrative cases against recruitment agencies have come up a lot during my research. Notably, questions have arisen about how the POEA monitors recruitment agencies (and whether the visits are a good method), whether the criteria necessary to bring forward an administrative case should be changed (in line with the above issues of

quit claims, and the fact that many OFWs settle, it was suggested that instead of basing administrative cases on successful cases against agencies, there should be a point system which would include breaches of the agency as illustrated by the signature of a quit claim by an OFW and the fact that the OFW settled – thus implying guilt on the part of the agency).

Works Cited

1987 Philippine Constitution

Center for Migrant Advocacy. "Philippine Migrants Rights Groups' Written Replies to the List of Issues Relating to the." 2009.
http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/PHL/INT_CMW_NGO_PHL_10_9894_E.pdf

Department of Labor and Employment. *Frequently Asked Questions on SENA*.

Human Rights Watch. *Maid To Order: Ending Abuses Against Domestic Workers in Singapore*. 2005. <https://www.hrw.org/report/2005/12/06/maid-order/ending-abuses-against-migrant-domestic-workers-singapore>.

Implementing Rules and Regulations of Republic Act No. 10022.

Institute for Labor Studies. *First Impressions: The Single Entry Approach (SENA) in its First Year*. Policy Brief, Department of Labor and Employment, 2011.

National Labor Relations Commission. "2011 Report."

National Labor Relations Commission. "2013 Annual Report." Performance Report, 2013.

Philippine Overseas Employment Administration. "Annual Report 2011."

Philippine Overseas Employment Administration. "Rules and Regulations Governing the Recruitment and Employment of Overseas Workers."

POEA - *Philippine Overseas Employment Administration*. n.d. <http://www.poea.gov.ph/>.

Presidential Decree No. 442. *Labor Code of the Philippines*

Republic Act No 8042. *Migrant Workers and Overseas Filipinos Act of 1995*.

Republic Act No. 10022.

Santos, Tina G. *POLO Scraps accreditation of recruiter in discount maids*. July 02, 2014.
<http://globalnation.inquirer.net/107477/polo-scraps-accreditation-of-recruiter-in-discount-maids/>.

The Manila Times. *Manila Times*. July 2, 2014. <http://www.manilatimes.net/polo-sg-suspends-recruiter-for-selling-maids-in-malls-2/108623/>.

World Bank. "Philippine Development Report: Creating More and Better Jobs." 2013.