



migrant domestic workers' access to justice

A STUDY ON ADMINISTRATIVE CASES AND MONEY CLAIMS
2018



International

EXECUTIVE SUMMARY

The Center for Migrant Advocacy (CMA) conducted an assessment of Filipino migrant domestic workers' (MDW) access to justice in the Philippines. The study identified factors that hinder meaningful access to justice by returned Filipino migrant domestic workers through filing administrative cases in the Philippine Overseas Employment Administration (POEA) and money claims in the National Labor Relations Commission (NLRC).

The study was conducted for a total of three (3) months from August 2018-November 2018. Information and data on Filipino MDWs from 2015 -2017 were analyzed for purposes of the research.

MAIN OBJECTIVES OF THE STUDY

The main objective of the study is to provide evidence for potential policy reforms regarding improving access to justice mechanisms for Filipino MDWs. Based on this study, recommendations and actionable steps will be proposed and presented to relevant government agencies such as POEA and NLRC.

1. To measure MDWs' access to justice through filing administrative cases and money claims by measuring the effectiveness and efficiency of the programs and/or policies that ensure their rights;
2. To identify gaps in the policies and procedures governing administrative cases and money claims, and;
3. To provide possible policy interventions and/or recommend reform strategies and programs to improve MDWs' access to justice through the implementation of rules and regulations on administrative cases and money claims.

METHODOLOGY

The study employed qualitative research methods, such as focused group discussions among MDWs, key informant interviews with OFW Organization Leaders, and data analysis from POEA and NLRC.

MAIN RESULTS AND CONCLUSIONS

The study found that MDWs' access to justice through redress mechanisms: administrative cases and money claims in the Philippines has yet to be meaningfully and effectively implemented so as to deliver justice to abused and exploited MDWs.

1. Legal knowledge of MDWs themselves is low. The research found that in Nueva Ecija, MDWs who file administrative cases in CMA-engaged-areas are often zero. This is also true for Bicol region where key informants who were OFW organization leaders claim that only a small percentage of their members would be aware of the said redress mechanisms.
2. Legal advice and representation to access justice through administrative cases and money claims is also not substantially achieved. This is because of the costs incurred due to the inaccessibility of arbitration offices or offices that can process their cases and the length of time a case consumes.
3. Respondent MDWs who are able to file cases at POEA and NLRC score the agencies low in terms of providing for a fair procedure. Based on records of the NLRC, an average of 73.22% of total

money claims filed during 2015-2017 are disposed through settlements and not through decisions on the merits of the cases. Both FGD and KII respondents also express the “hopelessness” of filing cases since it does not produce resolutions to their benefit. Often, they are forced to settle for lesser amounts of money.

4. Decisions are rarely enforced. Respondents who have filed and won their cases cite instances of paper victories. No matter how huge the amount awarded to them by the POEA or the NLRC, the burden of enforcing the decision falls on the worker.

KEY RECOMMENDATIONS

1. Include of the redress mechanism in migrant worker education pre-, during, and post- migration;
2. Involve local government in information dissemination;
3. Monitor implementation of the new order to increase minimum capitalization for recruitment agencies;
4. Provide and capacitate arbiters for more POEA regional arbitration offices;
5. Review Single Entry Approach (SEnA) implementation and its impact on MDWs’ access to justice; and,
6. Improve information collection and evaluation of implementing government agencies.

I. INTRODUCTION

This report presents an assessment of Filipino migrant domestic workers' (MDW) access to justice through two redress mechanisms available in the Philippines—filing of administrative cases and money claims from 2015-2017. This research project is part of a three-year program of the Center aimed at strengthening capacities of MDWs and their families.

A. Methodology, Coverage, Limitations of the Research

The study conducted by CMA employed descriptive, qualitative research using focused group discussions, key informant interviews and data analysis.

Data and information were requested from the POEA and NLRC. Data collected covered information from 2015-2017 on MDWs. Pertinent data such as the number of administrative cases and money claims filed by MDWs, case resolutions, etc. were requested from POEA and NLRC. To supplement and provide a deeper understanding of the numbers given by the agencies, discussions with relevant staff from the agencies were conducted. A descriptive analysis of the data was conducted to analyze the process of administrative cases and money claims—from filing to resolution.

A focused group discussion was conducted with 12 participants who have experienced or are in the process of filing either an administrative case in POEA or money claims in NLRC. All participants were women. Respondents were pooled from a method of convenience sampling. They were either previous MDWs assisted by CMA, members of partner OFW Family Circles (OFCs) organizations or immediate family members of MDWs. The discussion was aimed at gathering deeper insight on the experiences of MDWs, their awareness of the available redress mechanisms and their own assessment of how just the mechanisms are. The FGD was guided by a survey questionnaire designed for the purpose of the research. 2 more FGDs were originally designed to be conducted in the region of Nueva Ecija, however, the research team could not find MDWs who were able to file administrative cases or money claims in the selected areas.

Furthermore, key informant interviews with 3 OFW Organization Leaders in Bicol Region were conducted to complement the FGD. Bicol region was purposively selected as an area for key informant interviews given that the region had an active regional arbitration office that hears administrative cases and money claims. The interviewees were identified through the method of convenience sampling. Informants were part of CMA's network in the region. The interviews were aimed at threshing out factors affect the likelihood of MDWs filing an administrative case or money claims at the regional arbitration office.

The research team is composed of two researchers employed by CMA. The research team conducted everything from contacting government agencies for information and document gathering, to organizing focus group discussions in selected areas.

The research is bound by time and resources available to the organization. Due to the strict timeframe followed by the three-year program of CMA on strengthening capacities of MDWs and their families, the research was limited to one focus group discussion organized in Quezon City. Data analysis from POEA and NLRC was heavily dependent on the availability of the requested information from the respective government agencies.

B. Statement of the Problem, Research Questions and Objectives

MDWs are vulnerable to abuse and exploitation. To further protect them and provide for the basis of reforms that would improve their welfare, the implementation of policies, exclusively those of POEA and NLRC, that institute administrative cases and money claims as redress mechanisms for migrant workers must be assessed and evaluated. This study sought to answer the following:

- What are the factors that hinder the access to justice of MDWs?
- How effective are the programs and policies of POEA and NLRC that ensure access to justice of MDWs?
- What are the common problems or challenges encountered by the government agencies that hinder them from resolving issues as efficient as possible?

This study specifically aimed:

1. To measure MDWs' access to justice through filing administrative cases and money claims in terms of the effectiveness and efficiency of the programs and/or policies that ensure their rights;
2. To identify gaps in the policies and procedures governing administrative cases and money claims, and;
3. To provide possible policy interventions and/or recommend reform strategies and programs to improve MDWs' access to justice through the implementation of rules and regulations surrounding administrative cases and money claims.

C. Framework

The access to justice of MDWs is measured in terms of its 5 elements, namely, Legal Framework, Legal Knowledge, Legal Advice and Representation, Fair



Figure 1. Access to Justice Framework

Procedure, and Enforceable Decision.¹ The legal framework that supports redress mechanisms such as the administrative case and money claims filing against Philippine Recruitment Agencies (PRAs) is based on the Joint and Several Liability (JSL) clause provided for by Republic Act No. 8042 as amended by Republic Act No. 10022. This shall be explored in the paper in more detail in the second part of the study. As the legal framework for MDWs' access to justice has been institutionalized in the country by virtue of RA 10022, the study shall proceed to measure MDWs' access to justice in these terms. (See Figure 1.)

Legal knowledge pertains to the awareness of MDWs of the redress mechanism available to them. The study also looks at how select local OFW organization leaders are able to relay information and facilitate MDWs' access to justice.

Legal advice and representation refers to the ability and accessibility of advice and representation necessary to solve their justice problems. Locations of institutions that cater to MDWs' justice problems, formal and informal costs of availing redress mechanisms, and the manner and time at which the procedure is conducted are all factors that are considered to measure this element.

Fair Procedures pertain to how the redress mechanisms—administrative case and money claims filing—resolve issues of MDWs justly. Do the institutions that deliver these services ensure that the MDWs are able to present their cases? Are disputes adjudicated impartially and without improper influence? This element highlights that access to justice is not only measured by how fast a case is disposed but how MDWs are able to claim what is rightfully theirs without being intimidated, forced or misinformed about their decision to settle.

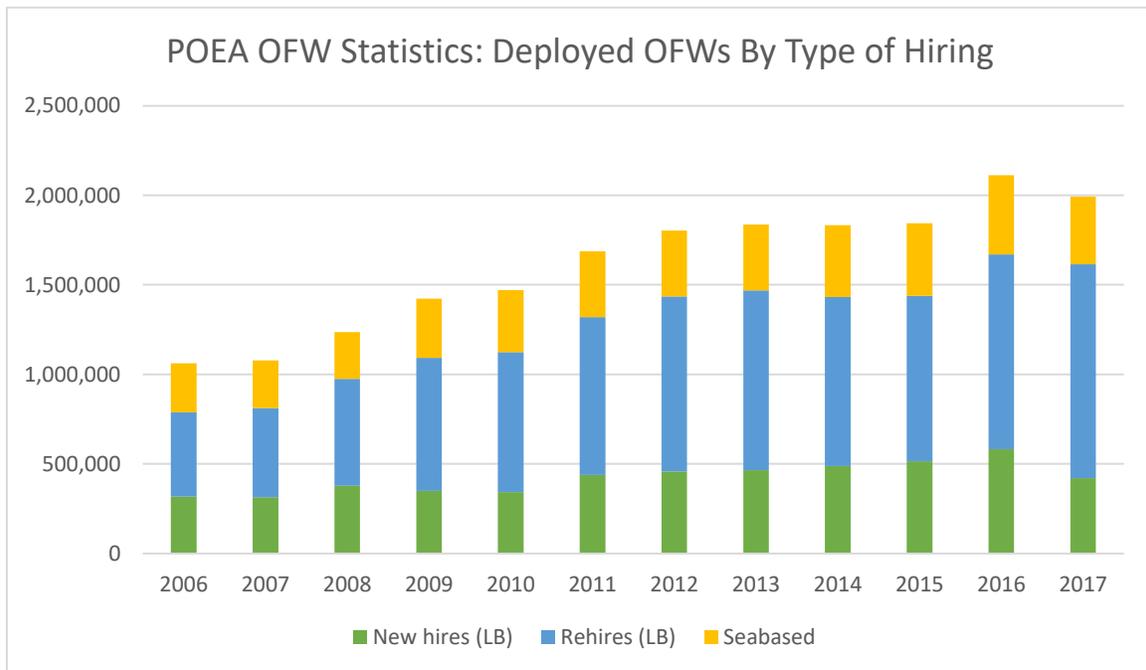
Lastly, meaningful access to justice is translated into enforceable decisions that resulted from mechanisms that seek to provide justice to MDWs. Decisions must translate into real action. MDWs must be able to get full garnishment of the awarded money, or corresponding penalties to the PRA is enforced.

There may be several roadblocks that may hinder MDWs' access to justice. This study shall examine which elements are not sufficiently met, and how to address these roadblocks to access to justice.

¹ American Bar Association, Access to Justice Assessment Tool (Washington DC: American Bar Association, 2012), , https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_access_to_justice_assessment_m anual_2012.authcheckdam.pdf.

II. OVERVIEW: ADMINISTRATIVE CASES AND MONEY CLAIMS

In 2017, the Philippines deployed an estimated 1,050,621 Filipinos to work overseas.² 81% of which are landbased workers.



For the first time in 10 years, OFW deployment had gone down by 9% in 2017. More specifically, latest available deployment figures from POEA showed it has deployed an additional 275,073 newly hired MDWs in 2016— a 41.18% increase from 194,835 in 2015.³ It is also important to note that the Philippine Statistics Authority (PSA) estimates that women comprise majority of OFWs deployed. Establishing information that majority of our OFWs are women who work as migrant domestic

² Philippine Overseas Employment Administration, Deployed Overseas Filipino Workers - By Type of Hiring, raw data, [http://www.poea.gov.ph/ofwstat/compendium/deployment 2006-2018S1.pdf](http://www.poea.gov.ph/ofwstat/compendium/deployment%202006-2018S1.pdf).

³ Philippine Overseas Employment Administration, Deployed Overseas Filipino Workers by Country/Desination (total) 2016 vs 2015, raw data, [Http://www.poea.gov.ph/ofwstat/compendium/2015-2016 OES 2.pdf](Http://www.poea.gov.ph/ofwstat/compendium/2015-2016%20OES%202.pdf).

workers already set the basis for strengthening and improving mechanisms that seek to prevent and mitigate the vulnerabilities they face.

The increasing number of deployed MDWs exposed the risks and vulnerabilities in domestic work. Domestic workers are exposed to “human rights abuses, due to inequalities determined by gender, race, ethnicity, national origin and social status”.⁴ MDWs are even more vulnerable to these abuses. Among the usual violations experienced by MDWs are non-payment or withholding of wages, long working hours, contract substitutions, passport retentions, violations of human dignity and fundamental freedoms, degrading treatment and violence, forced labor and, trafficking for labor exploitation.⁵

To mitigate the issues and threats faced constantly by MDWs, Republic Act No. 8042, also known as the Migrant Workers and Overseas Workers Act of 1995 as amended by Republic Act No. 10022, sought to institutionalize a Joint and Several Liability to hold the Philippine Recruitment Agencies (PRAs) liable and accountable whenever an OFW experiences abuse and exploitation in the hands of their employers. Through the JSL, an OFW may file administrative cases in POEA and money claims in NLRC against their PRA.

Philippine Overseas Employment Administration

The POEA is a government agency assigned to oversee and monitor the overseas recruitment agencies in the country. The Administration regulates private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It also formulates and implements, in coordination with appropriate entities concerned, when necessary, a system for regulating and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic labor requirements. It is also responsible for the regulation and management of overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers.

The POEA has four core functions; industry regulation, employment facilitation, worker’s protection, and general administration and support services. All in all, these functions operate towards the promotion of workers’ rights, and the provision of legal and technical support for Filipino overseas workers to access government support and be provided with a working standard to prevent abuse.

Under Part IV, Rule III of the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, there are three types of recruitment violations and disciplinary action cases, namely Recruitment Violation Cases (Sec. 143), Disciplinary Action against Employers/Principals (Sec.144), and Disciplinary Action against Workers (Sec.145).

⁴ ILO, Protecting Migrant Domestic Workers: The International Legal Framework at a Glance.1c v

⁵ Ibid.

For the first stage of filing an administrative case, the worker has to go through POEA Legal Assistance Division for free legal counseling and advice. Afterwards, the case will be transferred to the Docket and Enforcement Division for docketing and scheduling of case. Once the case has been docketed, it will be submitted to the Overseas Employment Adjudicator or OEA who shall schedule a maximum of two (2) hearings. If the complainant does not appear, the case will be dismissed. If the respondent fails to appear, the complaint shall be resolved based on the evidence on record. The OEA shall submit his/her findings and recommendations in the form of a draft Order within six (6) months from the date of filing of the complaint. The Administrator shall render a decision within two (2) months from receipt of the findings and recommendations.

To ensure that the worker is given the money he/she was awarded, the 2016 POEA Revised Rules and Regulations requires all licensed agencies a minimum capitalization of five million pesos (Php 5,000,000) and to maintain an escrow account of one million pesos (Php 1,000,000). If any money is withdrawn from the escrow account, the agency must replenish it within 15 days of the POEA's notification of withdrawal. The failure to comply with all provisions of the POEA Revised Rules and Regulations shall be meted with suspension or cancellation of license.

National Labor Relations Commission

The NLRC, a quasi-judicial agency attached to the Department of Labor and Employment (DOLE), is mandated to adjudicate labor and management disputes involving both local and overseas workers through compulsory arbitration and alternative modes of dispute resolution.

While the NLRC's two core goals – disposition of labor and management disputes based on social justice and promotion and maintenance of industrial peace based on social justice through economically-viable dispute settlement machinery– are earnestly being pursued, it continues to adopt innovative policies and practices as well as landmark reform measures to ensure achievement of these goals.

NLRC has 176 regional arbitration branches that deal with many tasks including money claims by OFWs in order for workers and their families to easily access their rights. OFWs can save on expenses by filing their cases with the local NLRC in their areas, instead of filing them in Manila.

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. This is again mandated by the Principle of Joint and Solidary Liability.

The first stage in filing a complaint at the NLRC is a set of three mandatory conferences where the complainant and the respondent have the opportunity to enter into compulsory arbitration but if not settled, they have 15 days from the last conference to submit their position papers and memoranda. The Labor Arbiter will then have 30 days to make a decision.

Notwithstanding any provision of law to the contrary, the Labor Arbiters of the NLRC shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing

of the complaint, the claims arising out of an 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 damages and damages must be paid within 30 days from the approval of the settlement. 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 award. The party against whom the decision was made may make an appeal to the Commission within 15 days when decision was made and raise the appeal to the Court of Appeals and Supreme Court.

Administrative Cases – POEA

From 2015-2017, POEA had a total of 1,799 docketed cases filed by household service workers. Household service workers remain as the top complainant of administrative cases (See Figure 4). Administrative cases may be filed against recruitment agencies that are found to have violated recruitment rules and regulations set by the POEA.

Position/Title	2015	2016	2017	Total
1. Household service worker	209	364	245	818
2. Household worker	0	1	3	4
3. Domestic Helper	278	274	256	808
4. Housemaid	54	58	49	161
5. Servant	5	2	1	8
6. Baby sitter	0	0	0	0
Total Docketed Recruitment Violation Cases	546	699	554	1,799

Table 1. POEA Number of Docketed Cases

If an MDW or any OFW wishes to file a complaint against their recruitment agencies, they can go to the Central Office located at Ortigas Avenue, Mandaluyong in Metro Manila or to any regional adjudicators' office nearest to their locations. However, as per POEA, there is an evident lack of adjudicators to attend to the sheer amount of complaints filed. Although POEA has 17 and NRLC has 176 regional branches and satellite offices, adjudication may not be an available service. As disclosed during the discussion with POEA, although some branches also hear and decide cases, most of the time these cases pile up. The main reason for this is lack of human resources inside the government institutions. The number of complaints filed and cases to attend to is disproportionate to the number of adjudicators of POEA.

As per POEA, the issue of lack in manpower can be addressed through opening vacancies in the agency. However, opening and hiring competent staff to fill in these positions is fraught with challenges. Several bureaucratic processes need to be followed to be able to do this which takes time. Ensuring competence and capacity of staff is also a task that cannot be fast-tracked. A staff from POEA shared that applicants for government positions have to go through a long process,

examinations and interviews, “Keen discretion is necessary to make sure that only the best people will serve the public”, she added.

For an MDW or any OFW to file an administrative case against their recruitment agencies, they must submit the following documents for their cases to be processed⁶:

1. List of agency personnel as verified from Licensing Branch
2. Agency Status as verified from Licensing Branch
3. Request to Docket Case from the Conciliation Unit

No fees are collected from the worker for processing of their complaints. Filing a case should approximately take only twenty (20) minutes per POEA⁷. The steps to be taken for just filing a case can be seen in Figure 5:

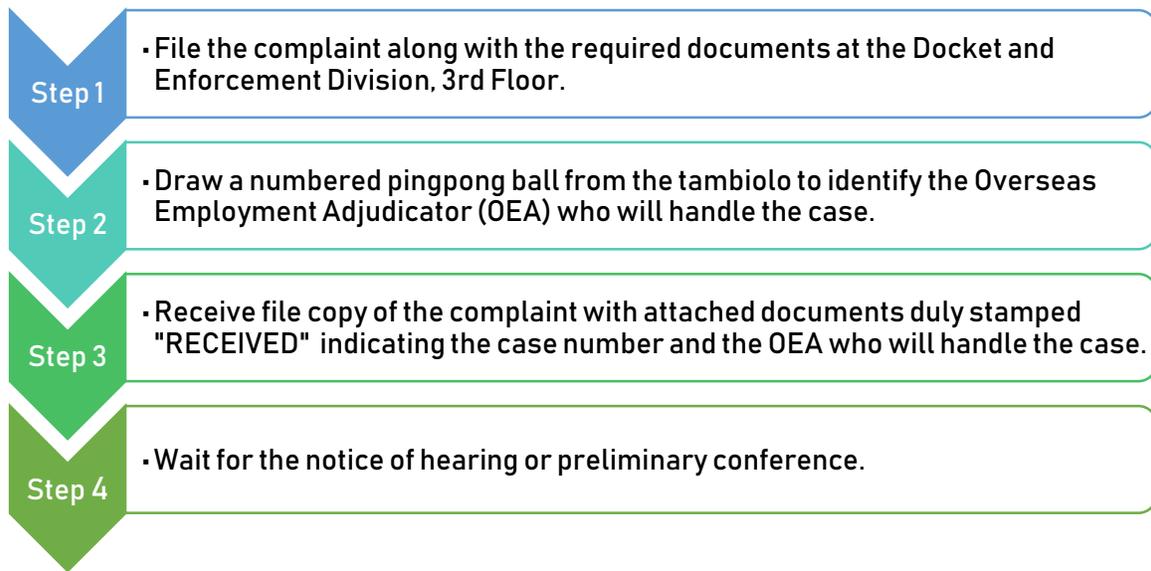


Figure 2. Filing a Case at POEA

Once a case has been filed at the Docket and Enforcement Division of the POEA, “the POEA shall notify and furnish the respondents with a copy of the complaint-affidavit, supporting affidavits and documentary evidence, with a directive for the respondents to file an answer within the period provided under the pertinent rules.”⁸

Both the MDW and the recruitment agency will be called to an adjudication to resolve the case. Case decisions would range from appropriate compensation for damages, cancellation or suspension of license, to formal reprimands.

Penalty	Licensed Manning Agencies			Licensed Recruitment Agencies			Total
	2015	2016	2017	2015	2016	2017	
Cancellation	0	1	0	48	2	19	69

⁶ Philippines, Philippine Overseas Employment Administration, Docket and Enforcement Division, Filing/Docketing of Cases.

⁷ Ibid.

⁸ DOLE Department Order No. 87-08, series of 2008. January 2008.

Suspension	0	0	2	92	236	23	353
Reprimand	1	0	0	19	23	24	67
Total	1	1	2	160	261	66	

Table 2. Number of Agencies Imposed with Penalties

From 2015-2017, a total of 69 manning and recruitment agencies' licenses were cancelled while 353

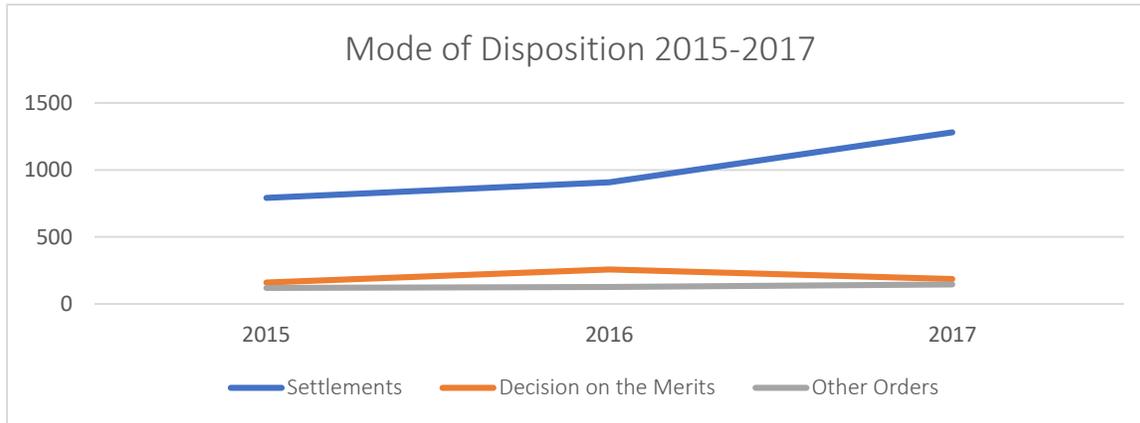


Figure 3. Modes of Disposition 2015-2017

were suspended. 67 licensed agencies were given formal reprimands by POEA. The number pales in comparison to the number of docketed cases in POEA from 2015-2017.

Once a case had been filed, the POEA is mandated to process and dispose of the case within 60 days. However, as per discussions and interviews with MDWs and OFW Organization leaders, respectively, this timeframe is most unlikely to be followed.

Money Claims – NLRC

Under RA 10022, by virtue of JSL, OFWs may file money claims against their local recruitment agencies.

Year	2015	2016	2017	Jan-July 2018
No. of cases filed	1,071	1,291	1,698	1,321
Cases disposed:				
Judgment in favor of Labor	895	1,067	1,381	1,009
Judgment in Favor of Management	176	224	232	80
Modes of Disposition				
Settlement	792	908	1,280	984
Decisions on the Merits	160	256	187	40
Other Orders	119	127	146	65
Judgment Award	66,395,997.24	89,055,540.17	87,264,253.89	52,375,377.39
Workers benefitted	955	1,101	1,414	1,033

Table 3. Cases Filed by Household Workers

From 2015 to the first semester of 2018, the NLRC NCR Region has heard 5,381 money claims cases filed by household workers or MDWs. The number of cases filed increase every year. There was a 20.5% increase in cases in 2016 and a 31% increase in 2017. Judging from the rate at which the first semester of 2018 has been, there is again an apparent yearly increase in the number of cases filed by MDWs.

From the records of the NLRC, it is clear that most money claims filed are disposed of through settlement between the worker and the recruitment agency (See Figure 5). This begs the assumption that the MDWs may not be getting the amount they originally demand from their agencies. The MDWs may be getting less than what is due to them. However, information is not enough to conclude that decision on the merits are decisions that were made in favor of the worker hence, awarding just compensation to the worker.

The top 5 countries of destination of MDWs who have filed a case at NLRC are Kingdom of Saudi Arabia (1445), Taiwan (650), Kuwait (516), Hong Kong (268), and Malaysia (266) respectively (See Annexes for complete list). It is important to note that the number increased yearly from 2015-2017. There are a lot of factors to consider why the numbers of MDWs from these countries are high. For one, there may be a proportional number of total MDWs deployed in these areas. Several factors may be studied further to interpret this information.

III. FINDINGS AND RESULTS

Awareness of legal remedies available in the country among MDWs is low

Due to the strict time frame and availability of resources, the research team was able to interview three (3) OFW organization leaders (who were also former OFWs) in Bicol, Philippines. Bicol region was identified as a target area given the availability of a regional arbiter for POEA and NLRC.

All of the three key informants claimed that only a handful of their members are aware of the access to justice mechanism available to MDWs and OFWs in general. Two (2) out of three admitted that before engagements with CMA, they themselves were not aware that they could file an administrative case or money claims against their recruitment agency once an OFW has returned to the Philippines. They attribute these to the failure of government to orient them on these mechanisms.

During the FGD among MDWs in Quezon City, 11 out of 12 participants expressed that they were not aware that such access to justice mechanisms were available to them in the Philippines. There was a resounding agreement among participants that the information of these redress mechanisms were given to them by non-governmental organizations either abroad or in the Philippines. All participants went through proper channels hence, they all went through various orientation seminars such as Pre-Employment Orientation Seminar (PEOS), and Pre-Deployment Orientation Seminar (PDOS). Given such, this begs the question of how orientation seminars help educate MDWs on justice mechanisms they can avail of.

The research team attempted to conduct focus group discussions in other areas such as Nueva Ecija however, according to partner organizations in the area, there are no MDWs who have filed such cases. While there may be several MDWs who have experienced human rights violations and abuses that have

come forward in the area, none of them have filed cases either because they are not aware that they can or because they are discouraged to do so.

High Incurred Costs while Filing Cases

When an MDW decides to file a case at POEA or NLRC, they are not charged of anything by the responsible agencies. However, while no fees are charged for the actual filing of cases at POEA and NLRC MDWs often incur costs in the form of transportation expenses, food, lodging and notarization fees, photocopying of documents, legal counsel, etc. According to the participants of the FGD, they had to spend an estimated five thousand pesos (Php 5,000) during the whole process from filing to disposition of their cases. Transportation costs would make up most of MDWs' expenses given the location of arbitration offices from their homes. Given the financial vulnerability most MDWs face after their experience abroad, participants expressed that cases would often get dismissed because of their inability to be present during the actual hearings of their cases. They are not able to attend these hearings because they have run out of money to be used for their transportation expenses.

According to Informant C from Catanduanes, there are no arbitration offices in the island of Catanduanes. If an MDW decides to file a case, s/he would need to travel to Legazpi City, Albay and spend an estimated amount of three thousand pesos (Php 3,000) for transportation, food and lodging expenses for a day. This does not include the following back and forth travel to attend several hearings and to follow up with the case.

Lengthy Process

According to the POEA, filing an administrative case would only take 30 minutes in the central office. However, no such information in regional arbitration offices and NLRC is available. While the process of filing supposedly takes less than an hour, the actual hearings and resolution of the cases can take 2 weeks up to two years according to the FGD participants.

All the participants agreed that they experienced intimidation while seeking help from government agencies because they are not fairly treated. They are not immediately accommodated so they have to go back and forth to the government offices that would cost them more money since the offices are far from them. The accessibility and availability of government offices and personnel posits another challenge for the workers. Oftentimes, MDWs would discontinue filing a case because it turns out that what they're doing is not time-and cost-efficient. Participant B added, "...di na nila alam kung saang ahensiya ba dapat lumapit, at pabalik-balik sila....nanawa nalang yan eh, sa pabalik-balik. Dahil sa nanawa na sila, hindi na nila nakamtan ang katarungan para sa kanila..." Participant G shared, "...although kapit bahay ko yung embahador, hindi naman naming siya malapitan...hindi naman naming alam ang gagawin, pinagpapasa-pasahan lang kami."

The process is too complicated that it is no longer time and money efficient. Not everyone has the financial resources, especially the MDWs, to go back and forth taking into consideration that their main reason for filing a case is to get the money and just compensation that they deserve. This adds to the inconveniences the workers are experiencing. Oftentimes, the prescription of time mandated by law in

hearing and deciding a case and the rewarding of garnishment for money claims are not as rigidly followed. Participant H stated that the process of administrative case filing took 3 her months, “umabot po siguro ng 3 months, wala pong nangyari.”

MDWs are forced to settle for lower amounts of money

The results of the FGD reveals that MDWs are often pressured to settle either because of immediate needs, or intimidation from the recruitment agencies. From more than Php 150,000 money claim, FGD participant A relayed that she accepted a Php 6,000 settlement due to pressure from their recruitment agencies. Participant B shared that she was offered a Php 50,000 settlement for over a Php 1,000,000 claim. Recruitment agencies would often argue that they themselves did not perpetuate the abuse rather it was the employer who was at fault. Further, the research suggests that most participants in the research settled for lower amounts of money due to immediate needs such as food, shelter, etc. Since MDWs are negotiating at a point of vulnerability (financially, emotionally, and mentally), monetary offers that will be given immediately however smaller than their claim, would seem sufficient. This is compounded by the perception that the case may take longer time to be disposed, therefore more expenses to be covered by the worker. It is also important to remember that according to information provided for by NLRC, an average of 73.22% of money claims yearly are disposed through settlements.

What has also become apparent during the discussion is that most of the time, workers don't only get intimidated by their employment agencies but several roadblocks such as threats to life are put in their way. Participant D, former MDW from Riyadh, disclosed how her agency offered to send her home in exchange of her silence. She shared to everyone what she was asked, “...palabasin ko na nirescue ako, kahit hindi. Tinago lang ako sabahay ng may-arang agency.” Participant E shared that her agency told her not to pursue the case, “Hindii ka na lalaban ha? Ibinigay na naman gusto mo” after they bought the plane ticket for her to return to the Philippines.

Lack of Manpower in Implementing Government Agencies

As revealed in the discussion with the government agencies, the lack of people to supervise the filing of cases costs a lot for the workers given the constraints of time and resources. Labor arbiters and adjudicators are outnumbered by the cases that pile up. Hence, the need to designate more people is necessary. The sheer number of cases that are lodged at the POEA and NLRC every day is disproportionate to the number of staff capable of handling these cases. There is also not enough people in the agencies to be sent in the regions to hear cases. To institute and open new positions to cater to the justice problems of MDWs in the regions, the POEA and NLRC have to go through several bureaucratic processes.

Perceptions and Allegations of Fraud and Corruption

The allegations of corruption and fraud also emerged during the discussion. The term “padulas” or “grease money” emerged from the focused group discussion. A former MDW, now a staunch migrants' rights advocate, claimed the need to be ready for potential bribe money that they would need to ease the

process of their cases. Recruitment agencies are arguably more financially capable as opposed to the distressed migrant domestic workers. FGD participants agree that they feel there may be under-the-table transactions between arbiters and recruitment agencies or what they coined “padulas”. Allegedly, recruitment agencies have been identified to have an internal scheme in order to evade payment of awards. Participant A showed a strong conviction that bribery happens, she stated “Hindi kami makalaban, unang-una walang pera. Pangalawa, walang tunay na nagmamalasakit dahil sa bawat lakad kailangan may pera...yung sa bawat lakad hindi maaaring walang padulas. Walang pera dun sa maglalakad or di kaya maski i-direkta na, i-ignoring kung walang backer.” Furthermore, the involvement of high ranking officials is another issue. Participant I named a high rank public official that was involved in her case and shared how the filing of case became cumbersome for her because justice is constrained due to the influence of the people in power, “Isang OFW advocate na nagtatanggol daw sa atin. So yung kasoko tumagal ng ganitokatagal...pinangako niya akong ganito ganun pero hanggang sa walang nangyari sa akin. Kasi mahirap manahimik. Di ko siya sinisiraan, linalabas ko lang ang katotohanan...ako mismo ang pinaalis ng agency, hindi niya ako tinulungan.”

IV. CONCLUSION AND RECOMMENDATIONS

The study has found that MDWs’ access to justice through redress mechanisms: administrative cases and money claims in the Philippines has yet to be meaningfully and effectively implemented so as to deliver justice to abused and exploited MDWs.

1. Knowledge on the legal rights of MDWs themselves is low. The research found that in Nueva Ecija, MDWs who file administrative cases in CMA-engaged-areas are often zero. This is also true for Bicol region where key informants who were OFW organization leaders claim that a small percentage of their members would be aware of the said redress mechanisms.
2. Legal advice and representation to access justice through administrative cases and money claims is also not substantially achieved. This is due to the costs incurred due to the inaccessibility of arbitration offices or offices that can process their cases and the length of time a case consumes.
3. MDWs who are able to file cases at POEA and NLRC score the agencies low in terms of providing for a fair procedure. NLRC money claims are disposed through settlements and not through decisions on the merits of the cases. Most respondents of the research also express the “hopelessness” of filing cases since it does not produce resolutions to their benefit. Often, they are forced to settle for lesser amounts of money.
4. Decisions are rarely enforced. Paper victories have been acquired by research respondents who have successfully filed and resolved their cases. However huge the amount awarded to them by the POEA or the NLRC, the burden of enforcing the decision falls on the worker.

Given the aforementioned findings and conclusions of the study, the following are proposed points for intervention to address the issues in access to justice identified by the research:

1. Inclusion of the redress mechanism in migrant worker education pre-, during, and post-migration;
 - To mitigate the issue of lack of awareness on redress mechanisms MDWs can avail of once they go back to the Philippines, continuing education must be conducted at all phases of the migration cycle. Although PDOS, PEOS, and PAOS are all orientational in

nature, it is thus recommended to convene a technical working group, which must be inclusive of all relevant stakeholders from the government, private sector, and civil society, to assess the content of these orientation seminars and its capacity to empower MDWs through accurate and true information of their rights. Furthermore, information and education campaign materials should be created to address the information gap.

2. Involve local government in information dissemination;
 - Local government units (LGUs) play a crucial role in assisting MDWs through information dissemination, case facilitation, etc. Under the Republic Act No. 10022, LGUs are mandated to take part in migration governance. LGUs through their OFW help desks/kiosks may take part in facilitating information dissemination and cases filed by MDWs.
 - To incentivize LGUs further, the establishment of a functional OFW Help Desk may be included as a criteria for the Seal of Local Good Governance and Housekeeping awarded by the Department of Interior and Local Government (DILG) to qualified LGUs.
3. Monitor implementation of the new order to increase minimum capitalization for recruitment agencies;
 - Minimum capitalization as a requirement for all recruitment and manning agencies 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. In 2017, POEA ordered recruitment and manning agencies to submit as proof of compliance for the yearly increase of capitalization. Agencies also were directed to subsequently comply with the yearly increase of PhP750,000.00 until the minimum capitalization of PhP5,000,000 is fully completed. On the other hand, agencies that have fully complied with the required capitalization were directed to submit a certification issued by the Securities and Exchange Commission (SEC) on the present paid-up capital of the corporation or partnership, or the bank certificate, in case of single proprietorship. The failure to comply for the requirement shall be meted with suspension of license. The POEA has settled the deadline for the submission of the yearly increase for land-based agencies on or before April 28, 2017. For the manning agencies, the deadline was September 4, 2017. Since the deadline had already lapsed, POEA should heavily monitor the compliance and impose penalties for the omission thereof.
4. Provision and capacity-building for more regional arbitration offices;
 - Lead implementing agencies for the redress mechanisms and legal remedies for MDWs should be able to follow through with its plans of creating more regional offices that are capable of hearing administrative cases and money claims. Another recommendation is for POEA and NLRC to conduct performance and financial audits in their offices including their regional and satellite branches to ensure that there is sufficient competent personnel with high level of integrity to attend to the cases of migrants.
5. Review SEnA implementation and its impact on MDWs' access to justice; and

- MDWs more often than not, settle at the level of SEnA. While the SEnA may provide for speedy arbitration of disputes, an assessment of how fair and just resolutions are must be conducted.
6. Improvement of information collection and evaluation of implementing government agencies.
- Among the difficulties encountered by the research team is the incomplete information provided for by the lead implementing government agencies.
 - Section 13 of R.A. 10022, which took effect August of 2010, provided the establishment of a Shared Government System of Information for Migration or SGISM, an interagency committee of between different government agencies that shall initially make available the information contained in existing data bases/files of migrant workers. The second phase shall involve linking their computer facilities in order to allow free flow data exchanges and sharing among concerned agencies. However, the year 2018 is soon to end but the project is yet to be realized. What has been revealed in this study is that government agencies don't have a shared and centralized database available to the public, nor in the internal spheres of their offices. For NLRC, the only data gathered were money claims filed in the National Capital Region (NCR) from 2015-2017. (See Appendix B) The development of centralized database and communication system by the government and made accessible to the public is a way of keeping track of the records of the workers deployed, applicants, recruitment agencies and their companies, and even cases filed by distressed workers. This database should be regularly maintained and updated by the concerned government agencies. This doesn't only promote transparency in the transactions of the government but also allows the public to take part in the promotion and protection of their rights, consistent to the exercise of the right to information enshrined in the Bill of Rights of the 1987 Philippine Constitution. More so, this database is also meant to contribute to a well-supported and more thorough decision-making process when the court releases its judgment on cases and its involved parties, and promote better coordination between and among the different government agencies involved.
7. Allocation of an "access to justice" allowance to address the costs and tedious process of going back and forth to arbitration offices
- A modest allowance that would cover unintended costs of filing cases in POEA and NLRC may be provided by the government through the Overseas Workers' Welfare Administration (OWWA). This may ensure that the MDWs are not hindered from pushing through their cases due to the lack of money for transportation to and from the arbitration offices. However, it is recommended that this be seen as a short-term solution to provide immediate assistance to MDWs filing their cases. It is still best to work on improving processes of the POEA and NLRC to cut down the time it takes for cases to be heard and disposed.

References

- American Bar Association. Access to Justice Assessment Tool. Washington DC: American Bar Association, 2012.
https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_access_to_justice_assessment_manual_2012.authcheckdam.pdf.
- DOLE Department Order No. 87-08, series of 2008. January 2008
- Philippine Overseas Employment Administration. Deployed Overseas Filipino Workers - By Type of Hiring. Raw data. [Http://www.poea.gov.ph/ofwstat/compendium/deployment 2006-2018S1.pdf](http://www.poea.gov.ph/ofwstat/compendium/deployment%202006-2018S1.pdf).
- Philippine Overseas Employment Administration. Deployed Overseas Filipino Workers by Country/Desination (total) 2016 vs 2015. Raw data.
[http://www.poea.gov.ph/ofwstat/compendium/2015-2016 OES 2.pdf](http://www.poea.gov.ph/ofwstat/compendium/2015-2016%20OES%202.pdf).
- Philippines. Philippine Overseas Employment Administration. Docket and Enforcement Division. Filing/Docketing of Cases.