REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

RESOLUTION
CHR (V) No. POL2021-007

The Commission **RESOLVES** to **ADOPT** the attached policy paper titled, *"Gaps in Access to Justice: The Overseas Filipino Workers' Experience, an Initial Analysis of Philippine Jurisprudence on Labor Migration,"* prepared by the Human Rights Policy Advisory Office.

SO RESOLVED.

Done this 5th day of July 2021, Quezon City, Philippines.

JOSE LUIS MARTIN C. GASCON
Chairperson

KAREN S. GOMEZ DUMPIT
Commissioner

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Commission Secretary

REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

GAPS IN ACCESS TO JUSTICE: THE OVERSEAS FILIPINO WORKERS' EXPERIENCE, AN INITIAL ANALYSIS OF PHILIPPINE JURISPRUDENCE ON LABOR MIGRATION

A study by the Commission on Human Rights of the Philippines[1]

and

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I. ABSTRACT OR EXECUTIVE SUMMARY

In this research study, cases involving overseas Filipino workers (OFWs) that were decided by the Supreme Court in 2015 to 2019 were examined, in conjunction with other online secondary sources, for the purpose of identifying possible gaps/concerns in the migrant/human rights protection regime for OFWs, and to come up with policy recommendations to address such gaps or concerns.

The following migrants' rights concerns were identified in the study:

1. In the OFW cases decided by the Supreme Court in 2015-2019, it took **7.2 years** on the average for an OFW money claims case to go through the entire judicial process from the date of filing of the complaint before the National Labor Relations Commission

[1] The Commission on Human Rights of the Philippines (CHR) is the National Human Rights Institution (NHRI) of the Philippines. Established by the 1987 Philippine Constitution, the CHR has a general jurisdiction for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection. An "A" NHRI, the CHR complies with the Paris Principles on the Status of National Human Rights Institutions adopted by the UN General Assembly in 1995. The CHR demonstrates the following characteristics of Paris Principles- compliant NHRI: independence, pluralism, broad mandate, transparency, accessibility and operational efficiency.

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("NLRC") up to the date of decision of the Supreme Court. Case management by the courts must be made more efficient to reduce the age of OFW caseloads of the courts.

2. Debt bondage has been identified as one of the problems faced by OFWs, domestic workers in particular. While there are existing laws that may be utilized to address the problem of debt bondage, much still has to be done in the areas of public information and education about debt bondage and prosecution of offenders.

3. The existing laws against illegal recruitment are already sufficient to address the problem but much work has to be done in the areas of public information and education and prosecution of offenders.

4. The combined claims for total or partial disability benefits and claims for death benefits filed exclusively by sea based OFWs accounted for 80.72% of the total number of OFW cases decided by the Supreme Court from 2015-2019. The underlying explanation for this observation is the gross disparity existing between land based and sea based OFWs as far as compensation or benefits for work-related injury, illness and death are concerned. There is a need to review the provisions of R. A. 8042, as amended, as well as the POEA-Standard Employment Contracts for land based OFWs to provide for compensation and benefits in case of work-related injury, illness or death of the land based OFWs similar to, or comparable to, that of the sea-based OFWs.

5. While amicable settlement or compromise is a preferred mode of settling labor disputes, gaps were identified in the Single Entry Approach (SEnA) process for OFWs, specifically in the SEnA conferences conducted before the Philippine Overseas Labor Offices (POLOs). The SEnA rules for OFWs must be reviewed to ensure that the rights of OFWs are protected during SEnA conferences at the POLOs and that the OFWs can have access to legal advice/assistance in the process.

II. INTRODUCTION

2.1 Background

This research was undertaken as an offshoot of the Migrants Rights Observatory (MRO) of the Commission on Human Rights of the Philippines (CHR or the Commission). The MRO is a component of a bigger project, the **Human Rights Observatory** (HRO), which aims to track progress of implementation by the Philippine Government of its human rights obligations. It is one of the four observatories set up by the CHR to monitor the protection of human rights among vulnerable groups, namely the: 1) Indigenous Peoples' Human Rights Observatory (for indigenous peoples); 2) Gender-Based Violence Observatory (for women, LGBTQI persons, and persons with diverse SOGIE); 3) Climate Change Observatory (for populations affected by climate change and natural disasters); and 4) Migrants' Rights Observatory (for overseas Filipino workers and members of their families). The HRO acts as a data repository of relevant human rights documents, including laws, bills, ordinances, treaties, as well as Supreme Court case documentation, human rights violation cases reported to the Commission on Human Rights, and situational reports. Guided by the human rights–based principles, data analysis is undertaken by the HRO to broaden an understanding of human rights issues, foster advocacy, and develop policy recommendations.

Specific to the MRO, its purpose is to monitor compliance of the Philippine government with international and national human rights mechanisms on the protection of migrants' rights, including the rights of overseas Filipino workers (OFWs)[3], the Filipino diaspora, members of their families and migrants in the Philippines.

The CHR collaborates with civil society partners and government agencies, with the support of The GOJUST Human Rights Project of the European Union, to make progress with the following objectives of the MRO:

1. Establish an appropriate system of baseline information on the human rights situation of overseas Filipino workers (OFWs) and members of their families, as well as monitoring and evaluation (M&E) system using a human rights-based approach (HRBA);

2. Establish a mechanism to enable OFWs and their families to report rights violations and access justice;

3. Enhance the capacity of relevant civil society organizations and CHR personnel, especially in the regions to improve on the system of monitoring the human rights situations of OFWs and their families; and

4. Strengthen the network of NHRIs and civil society in Middle East and South East Asia in protecting the rights of OFWs and members of their families.

The online MRO database[4]. houses the Supreme Court labor migration cases from 1996 up to 2019. Besides being a repository of jurisprudence, documents are catalogued by the nature of case[5]., types of rights violation/s and location of where the violations happened. This database is envisaged to help identify policy and program implementation gaps in the protection of the rights and welfare of OFWs and their families; guide policy formulation and reform; as well as provide facts-based arguments to promote the human rights-based approaches to labor migration.

2.2 Objectives

This work utilizes the data from the MRO in an attempt to undertake an initial analysis of cases involving OFWs decided by the Supreme Court for the five (5) year period 2015-2019. It aims to answer the question of whether there are considerable gaps in migrant worker rights protection in the existing overseas employment regime that causes, or contributes to, the violations of the migrant worker rights and human rights of OFWs. The

[3] As defined in Section 3(a) of R. A. 8042, as amended, an "Overseas Filipino worker" or OFW "refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker."

[4] Refer to https://chr-observatories.uwazi.io/en/page/hxgjtdg5c3j

[5] The Commission acknowledges the work of the Lawyers Beyond Borders Philippines, particularly their publication, "Philippine Jurisprudence on Overseas Employment (1995-2015)" as it serves a very valuable resource in identifying the nature of cases.

output of this study will be recommendations to the Philippine government and non-state actors on how to improve response to labor recruitment issues that encourage recruitment reform. Specifically, this study aims to:

(a) conduct a quantitative and qualitative analysis of the cases involving OFWs decided by the Supreme Court for the five (5) year period 2015-2019 for the purpose of identifying possible gaps or weak areas in migrant worker rights protection and access to justice, if any, and to come up with the corresponding policy recommendations to address the identified gaps or weak areas in migrant worker rights protection and access to justice; and

(b) analyze the migrant rights issues and problems confronted by OFWs as described in the OFW cases decided by the Supreme Court, or as identified in the baseline study on the rights of OFWs[6] commissioned by the CHR and other secondary sources, and to come up with the corresponding policy recommendations.

2.3 Framework

The over-arching conceptual framework adopted in this report is the human and migrant rights-based framework on migration issues.

Under this framework, OFWs are identified as holders of rights as enshrined in the Philippine Constitution, as defined in existing laws and regulations, and as provided in international treaties, conventions, and other international agreements. On the other hand, the governments – referring to the Philippines and the governments of destination countries of OFWs, the private recruitment agencies ("PRAs") and other public and private entities that perform a role in the overseas employment program are treated as duty bearers with the obligation to protect and to promote the rights and welfare of the OFWs.

The OFW cases decided by the Supreme Court from 2015-2019 were analysed in order to identify and to determine, based on the facts and legal issues involved in the cases, whether or not the OFW rights and obligations involved in these cases are already sufficiently protected under existing laws, rules and regulations or whether or not there are gaps or weaknesses in the existing laws and regulations or in the implementation of such laws and policies that may contribute, directly or indirectly, towards the violation of the rights of OFWs.

Existing laws, rules, and regulations relevant to, or affecting, the human and migrants' rights issues confronted by OFWs are analyzed in order to identify policy gaps and weaknesses in implementation, as well as to determine if said laws, rules and regulations are compliant with international laws, treaties, conventions and other international agreement to which the Philippines is a party.

[6] Blas F. Ople Policy Center and Training Institute, "Baseline Study on the Rights of Filipino Migrant Workers (Overseas Filipino Workers) Towards a Human Rights Observatory for Migrant Workers" (2020)

Policy recommendations are then formulated to address the identified gaps or weaknesses in the protection of the rights of OFWs.

2.4 Methodology

A combination of quantitative and qualitative research methods was utilized in this study. Secondary data obtained from various government agencies, non-governmental organizations and other online sources of information were used.

In analyzing the cases involving OFWs decided by the Supreme Court for the five (5) year period 2015-2019, copies of the decisions of the Supreme Court were accessed from the Supreme Court website[7] and other online law libraries.[8]

The cases were then tabulated per year and categorized according to: (a) number of OFWs involved per case; (b) sex of OFWs parties to the cases; (c) landbased or sea based OFWs; and (d) nature of principal legal issues involved. Key migrant rights issues that were the subject of the cases or discussed as part of the narrative of facts of the cases were identified and analyzed.

Cases decided by the Supreme Court involving OFWs claims arising from their overseas employment contract were given special attention. The length of time it took for the cases to be resolved from the date of filing until the date of decision by the Supreme Court were tabulated and analyzed.

Policy recommendations were then formulated to address the identified policy gaps or weak areas in the human/migrant rights protection mechanisms for OFWs. The findings and policy recommendations of other studies on the same subject were also taken into consideration.

Key migrant rights issues that were the subject of the case or discussed as part of the narrative of facts of the cases were also reviewed and analysed, taking into consideration the findings and policy recommendations of other existing studies or research on the same subject.

2.5 Limitations of the Study

Not all cases on labor migration reach the Supreme Court. Only those cases that fall within the jurisdiction of the Supreme Court are heard by the Court. The bulk of overseas labor migration cases that reach the Supreme Court tends to be grouped into the following: (a) illegal recruitment and *estafa* - either because the criminal penalty imposed requires judicial review of the Supreme Court, or the accused opted to exhaust the entire appeals process; (b) illegal dismissal cases and other money claims arising from, or relating to, overseas employment, including claims for damages; (c) claims for disability and death benefits by the seafarers; and (d) cases involving pure questions of law.

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7 http://sc.judiciary.gov.ph/

8 lawphil.net and chanrobles.com

There are very few cases decided by the Supreme Court concerning violations of the administrative regulatory regime governing overseas employment committed by recruitment agencies. Most of these cases are resolved at the POEA or NLRC levels only, or are dropped or dismissed due to amicable settlements or execution of a release/waiver/quitclaims by the complaining OFWs. In one study, it was found that based on records of the NLRC, an average of 73.22% of total money claims filed during 2015-2017 were disposed through settlements and not through decisions on the merits of the cases.[9] For this reason, the analysis of labor migration cases decided by the Supreme Court, although substantial in scope, may not capture all the major gaps in labor rights and human rights protection under the existing regulatory regime on overseas employment.

This study relied mainly on the published copies of the decisions of the Supreme Court accessed through the Supreme Court website[10] and other online law libraries. While most of the information or data necessary for this study are available in the published case decisions, some of the reported decisions of the Supreme Court did not contain all the data required for this study.

For instance, not all the Supreme Court decisions indicated the date of filing of the OFW's complaint before the NLRC. In those cases where the date of filing of the complaint was disclosed in the decision, the actual dates indicated were used. For those cases where the dates of filing of the complaint before the NLRC were not indicated, this study assumed that the date of filing is four (4) months prior to the date of promulgation of the Labor Arbiter's decision. The reason for this assumption is that the Labor Arbiter is required under the law to hear and decide the case within ninety (90) calendar days after the filing of the complaint.[11] If the mandatory thirty (30) day period for mediation-conciliation under the Single Entry Approach (SEnA) is considered, the case is expected to be at the Labor Arbiter level for at least four (4) months.

The date of filing of the petition for review on *certiorari* under Rule 45 before the Supreme Court is also not usually indicated in the reported Supreme Court decisions. Thus, for the purpose of computing the period of time that the case may be considered to be at the level of the Supreme Court, the period measured was counted from the date of the promulgation of the resolution of the Court of Appeals denying the motion for reconsideration filed, up to the date of promulgation of the decision of the Supreme Court. In real life, an allowance should also be made for the period of time it took for the decision of the Court of Appeals to be received by the counsels on record of the parties and the reglementary period allowed for a party to file before the Supreme Court the petition for review on certiorari under Rule 45 of the Rules of Court.

Likewise, the reported decisions of the Supreme Court did not indicate the dates when the cases were submitted for decision or resolution before the Labor Arbiter, the NLRC, the Court of Appeals and the Supreme making it impossible to determine, on the basis of the published copies of the Supreme Court decision alone, whether or not the tribunal or the court

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9 Center for Migrant Advocacy Philippines, "Migrant Domestic Workers' Access to Justice 2018" centerformigrantadvocacy.com/migrant-domestic-workers-access-to-justice-2018/

10 http://sc.judiciary.gov.ph/

11 Section 10 of R. A. 8042, as amended.

actually exceeded the mandated periods for the resolution of cases submitted for decision or resolution before said court or tribunal.

Finally, this study is being conducted amid the COVID-19 pandemic. The researcher was constrained to rely mainly from online sources of data, which was incomplete and not updated, especially data on illegal recruitment, as much of the more recent information and case details were either still unpublished or unobtainable in the limited time available.

III. PROFILE OF OFW CASES DECIDED BY THE PHILIPPINE SUPREME COURT FROM 2015-2019

3.1 Number of OFW cases resolved by the Supreme Court. (2015-2019)

The OFW cases selected for this study are only those cases where the principal legal issues involved relate to overseas employment. For the 5-year period 2015 to 2019, the Supreme Court decided on a total of 223 OFW cases, or an average of 44.6 OFW cases per year. OFW cases account for a mere 0.72% of the total number of the cases that were decided by the Supreme Court in 2018[12] and 0.76% in 2019.[13] Table 1 shows that from the lowest number of cases resolved in 2016 (36 cases), this peaked in the following year 2017 (53 cases) but has since declined in 2018 (47 cases) and 2019 (44 cases).

Table 1: Number of OFW cases resolved by the Supreme Court (2015-2019)

Year	2015	2016	2017	2018	2019
No. of OFW cases	43 cases	36 cases	53 cases	47 cases	44 cases

3.2 Case classification based on general category of OFWs parties to the case (land-based or sea-based) (2015-2019)

OFW cases that reach the Supreme Court were predominantly cases involving seabased workers. Table 2 shows the number of OFW cases that were decided by the Supreme Court classified according to the two (2) general categories of OFWs – landbased and seabased OFWs. For the five-year period 2015-2019, on the average, cases involving seabased workers accounted for 85.39% of the total number of OFW cases resolved by the Supreme Court per year. On the average, cases involving landbased workers accounted for only 14.61% of the total number of OFW cases that reached the Supreme Court per year.

[12] Supreme Court of the Republic of the Philippines, "The Judiciary Annual Report 2018" http://sc.judiciary.gov.ph/files/annual-reports/SC_Annual_18.pdf

[13] Supreme Court of the Republic of the Philippines, "The Judiciary Annual Report 2019" https://sc.judiciary.gov.ph/files/annual-reports/JAR-2019.pdf

Table 2: Number of cases classified per general category of OFWs parties to the case (landbased or seabased) (2015-2019)

CATEGORY	2015	2016	2017	2018	2019
Landbased	5 (11.90%)	10 (30.30%)	7 (13.21%)	5 (10.64%)	5 (11.36%)
Seabased	37 (88.10%)	23 (69.70%)	46 (86.79%)	42 (89.36%)	39 (88.64%)
Total	42 cases[14]	33 cases[15]	53 cases	47 cases	44 cases

In contrast, seabased OFWs accounted for only 18.97% of the total deployment of OFWs in 2017. Table 3 shows the annual deployment of OFWs per general category from 2006 to 2018.[16]

Table 3: Deployed Overseas Filipino Workers (2006 – 1st Semester of 2018)

Philippine Overseas Employment Administration
Overseas Employment Statistics
Deployed Overseas Filipino Workers - By Type of Hiring
2006-2018 (1st SEM)

Year	Total	Landbased	*New hires*	*Rehires*	Seabased
2006	**1,062,567**	788,070	*317,680*	*470,390*	274,497
2007	**1,077,623**	811,070	*313,260*	*497,810*	266,553
2008	**1,236,013**	974,399	*376,973*	*597,426*	261,614
2009	**1,422,586**	1,092,162	*349,715*	*742,447*	330,424
2010	**1,470,826**	1,123,676	*341,966*	*781,710*	347,150
2011	**1,687,831**	1,318,727	*437,720*	*881,007*	369,104
2012	**1,802,031**	1,435,166	*458,575*	*976,591*	366,865
2013	**1,836,345**	1,469,179	*464,888*	*1,004,291*	367,166
2014	**1,832,668**	1,430,842	*487,176*	*943,666*	401,826
2015	**1,844,406**	1,437,875	*515,217*	*922,658*	406,531
2016	**2,112,331**	1,669,511	*582,816*	*1,086,695*	442,820
2017	**1,992,746**	1,614,674	*419,955*	*1,194,719*	378,072
1st Sem 2018	**1,050,621**	950,809	*203,901*	*746,908*	99,812

Y2017-Y2018: Preliminary data.

[14] did not include in the count 1 case involving validity of law or regulation
[15] did not include in count 3 cases involving validity of law or regulation
[16] Philippine Overseas Employment Administration, Overseas Employment Statistics, Deployed Overseas Filipino Workers – By Type of Hiring, 2006-2018 (1st Semester) http://www.poea.gov.ph/ofwstat/compendium/deployment%202006-2018S1.pdf

Philippine Overseas Employment Administration
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Y2017-Y2018: Preliminary data.

Why do OFW seafarers who account for about 20% of annual OFW deployment, account for 85% of OFW cases decided by the Supreme Court every year?

The answer will be explored in detail in the latter part of this paper.

3.3 Number of OFW parties to the OFW cases, by sex (2015-2019)

There were a total of 328 individual OFW party-litigants in the 223 OFW cases decided by the Supreme Court for the period 2015-2019. OFW party-litigants were predominantly male OFWs representing, on the average, 78.96% of the OFW party-litigants per year.[17] On the average, female OFWs account for 21.04% of the OFW party-litigants per year. Between 2015-2016, only one in five (21%) of the OFW party-litigants were females, as most sea-based OFWs who made up the bulk of litigants, are predominantly male.

[17] For illegal recruitment and estafa cases involving applicant OFWs, the victims or private offended parties were counted as party-litigants. Deceased OFWs represented by their legal heirs were also counted as party-litigants.

Table 4: Number of OFW parties to the OFW cases, by sex (2015-2019)

CATEGORY	2015	2016	2017	2018	2019
Male	46 (92%)	48 (55.81%)	71 (87.65%)	48 (87.27%)	46 (82.14%)
Female	4 (8%)	38 (44.19%)	10 (12.35%)	7 (12.73%)	10 (17.86%)
Total	50 OFWs	86 OFWs	81 OFWs	55 OFWs	56 OFWs

3.4 Number of OFW parties to the cases by sex and by general OFW category (2015-2019)

Female OFW party-litigants represent 52.71% of the total number of landbased OFW party-litigants while male OFWs account for 47.29% of the total number of landbased OFW party-litigants. Broken down by general category of OFWs, males account for almost 100% of the seabased OFW party-litigants for the period 2015-2019. There was only one 2016 case which involved one female seabased worker.

Table 5: Number of OFW parties, by general category and by sex (2015-2019)

CATEGORY	2015	2016	2017	2018	2019
Landbased	4 females 8 males	37 females 25 males	10 females 22 males	7 females 5 males	10 females 1 male
Seabased	38 males 0 female	23 males 1 female	49 males 0 female	43 males 0 female	45 males 0 female
Total	50 OFWs	86 OFWs	81 OFWs	55 OFWs	56 OFWs

5.5 OFW cases classified per nature of main causes of action (2015-2019)

In Table 6, the OFW cases decided by the Supreme Court for the period 2015-2019 were classified per nature of the main causes of action as follows:

(a) claims for total or partial disability benefits filed exclusively by seabased OFWs;
(b) claims for death benefits filed exclusively by seabased OFWs;
(c) illegal dismissal cases, which included claims for non-payment of wages and benefits, and claims for damages and attorney's fees ancillary to the main cause of action;
(d) claims for damages that were filed as an independent action in the regular courts;
(e) criminal cases for illegal recruitment and *estafa* committed against applicant OFWs; and
(f) cases or petitions involving the constitutionality or validity of a law or regulation concerning overseas employment.

Table 6: OFW cases classified per main cause of action (2015-2019)

CATEGORY	2015	2016	2017	2018	2019
claims for disability benefits	30	19	38	38	34
claims for death benefits	5	4	6	3	3
Illegal dismissal cases	5	3	3	4	6
claims for damages	0	0	0	0	1
Illegal recruitment and estafa	2	7	6	2	0
validity of law or regulation	1	3	0	0	0
Total	43 cases	36 cases	53 cases	47 cases	44 cases

The combined claims for total or partial disability benefits and claims for death benefits filed exclusively by seabased OFWs accounted for 80.72% of the total number of OFW cases decided by the Supreme Court from 2015-2019.

Cases for illegal dismissal which include claims for non-payment of wages and benefits, and claims for damages and attorney's fees ancillary to the main cause of action accounted for 9.42% while criminal cases for illegal recruitment and *estaf*a accounted for 7.62% of the of the total number of OFW cases decided by the Supreme Court from 2015-2019. For the same period, there were only four (4) cases that involved the validity of a law or regulation concerning overseas employment that were decided by the Supreme Court.

IV. HUMAN RIGHTS AND MIGRANT RIGHTS ISSUES CONFRONTING OVERSEAS FILIPINO WORKERS: GAPS AND PROBLEM AREAS AS SEEN FROM CASES DECIDED BY THE PHILIPPINE SUPREME COURT

4.1 The Right to Access to Justice and the Right to Speedy Disposition of Cases of OFWs

"Access to justice" has been defined as "the ability of citizens to seek and obtain remedies through formal or informal justice institutions, and in conformity with international human rights standards."[18] Access to justice is recognized as a basic human right and as a means to protect other universally recognized human rights.[19]

[18] American Bar Association, "Access to Justice Assessment Tool (AJAT)" https://www.americanbar.org/advocacy/rule_of_law/publications/assessments/access_to_justice_assessment_tool/

[19] American Bar Association, "Human Rights and Access to Justice" https://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice/

The right to access to justice of all individuals is embodied in Articles 6, 7 and 8 of the Universal Declaration of Human Rights.[20] The right to access to justice of migrant workers and members of their families is also specifically provided for in Articles 18(1) and 24 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.[21]

In the Philippines, the right to access to justice is embodied in the due process and equal protection clause of the 1987 Philippine Constitution.[22] A corollary Constitutional right is the right to speedy disposition of cases which is provided for under Section 16 of the Article III ("Bill of Rights") of the 1987 Constitution.[23] The right to access to justice of OFWs is also recognized as one of the principal policies of the Philippine Government as embodied in Section 2(e) of Republic Act No. 8042, as amended, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended.[24]

One of the usual complaints of OFW party-litigants concerning their right to access to justice is that it takes a very long time before their cases are resolved with finality. The phrase "justice delayed is justice denied" is always put to the test in many OFW cases. Further, OFWs usually complain that they do not have enough resources to finance the cost of litigation, including attorney's fees. As a result, many of them enter into amicable settlements and accept payment much less than what they are legally entitled to under the law. An unintended consequence of this practice is that the erring private recruitment/manning agencies and abusive foreign employers are not properly held to account for their misdeeds once the OFW has already executed his/her release, waiver, and quitclaim in favor of the private recruitment/manning agency and/or foreign employer.

There are many examples of OFW cases decided by the Supreme Court within the five-year period of 2015-2019 that took a long period of time to be resolved counted from the

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[20] Article 6. Everyone has the right to recognition everywhere as a person before the law.
Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

[21] Article 18
1. Migrant workers and members of their families shall have the right 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.
Article 24
Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

[22] Section 1 of Article III of the 1987 Philippine Constitution states: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

[23] Section 1 of Article III of the 1987 Philippine Constitution states: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

[24] Section 2(e) of R. A. 8042, as amended states: ""(e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/documented or irregular/undocumented, are adequately protected and safeguarded."

date the complaints were filed until the date the cases were finally decided by the Supreme Court.

Four (4) of these cases are summarized below as illustrative examples of the very long period of time it took to resolve many of these OFW cases.

A.

In the case of *"The Heirs of the late Delfin Dela Cruz, represented by his spouse, Carmelita Dela Cruz vs. Philippine Transmarine Carriers, Inc., represented by Mr. Carlos C. Salinas and/or Tecto Belgium N.V."*[25], OFW-seafarer Delfin Dela Cruz fell ill while on duty on board the ship. On December 4, 2003, he filed before the NLRC his complaint for payment of sickness allowance and disability compensation.

On May 30, 2005, the Labor Arbiter rendered his decision in favor of Dela Cruz awarding him US$60,000.00 representing total permanent disability compensation, sickness allowance of US$2,140.00 plus 10% of the total monetary award as attorney's fees.

On January 23, 2007, the NLRC rendered its decision on appeal reversing the decision of the Labor Arbiter. The NLRC found Dela Cruz' claims to be barred by prescription. The NLRC also held that the causal connection between Dela Cruz' ailment and his working conditions was not established. Dela Cruz' motion for reconsideration was denied by the NLRC in a resolution dated March 30,2007.

Aggrieved by the NLRC decision, the heirs of Dela Cruz, represented by his spouse, Carmelita Dela Cruz, filed a petition for *certiorari* before the Court of Appeals. Apparently, Dela Cruz passed away before the petition was filed before the Court of Appeals. On June 18, 2010, the Court of Appeals rendered its Decision dismissing the petition filed by the heirs of Dela Cruz. Their motion for reconsideration was also denied by the Court of Appeals in a resolution dated March 29, 2011.

Undeterred by the decision of the Court of Appeals, the heirs of Dela Cruz elevated the case before the Supreme Court by way of petition for review on *certiorari*. On April 20, 2015, the Supreme Court rendered its decision denying the petition and affirming the decision of the Court of Appeals.

All in all, it took **more than eleven (11) years**, counted from the date Dela Cruz filed his complaint before the NLRC on December 4, 2003, before the case was finally decided by the Supreme Court. Dela Cruz passed away while his case was pending in court. In the end, after more than 11 years of litigation, his heirs got nothing.

B.

[25] G.R. No. 196357, April 20, 2015

In the case of *"Status Maritime Corporation, and Admibros Shipmanagement Co., Ltd., vs. Rodrigo C. Doctolero"*[26], OFW-Chief Officer Rodrigo C. Doctolero suffered an illness while working on board the M/V Dimitris Manios II. On January 22, 2007, Doctolero filed before the NLRC his complaint demanding payment of total and permanent disability benefits, reimbursement of medical and hospital expenses, sick wage allowance, moral and exemplary damages, and legal interest on his claims.

On July 18, 2008, the Labor Arbiter dismissed the complaint for lack of merit. According to the decision, the initial diagnosis of gastritis-duodenitis was not one of those listed as an occupational illness in the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) and that no evidence was adduced to establish that such illness had been caused or aggravated by the working conditions on board the vessel.[27]

On appeal, the NLRC modified the Labor Arbiter's decision. In its decision dated August 18, 2009, the NLRC affirmed the Labor Arbiter's finding that there was no basis to award sickness allowance and disability pay, but also held that the petitioner was liable for reimbursement for the cost of Doctolero's medical treatment in Mexico City in the amount of US$7,040.65.

Unhappy with the NLRC's decision, Doctolero elevated the case before the Court of Appeals by way of petition for review on certiorari under Rule 65 of the Rules of Court. In its Decision dated March 17, 2011, the Court of Appeals ruled in favor of Doctolero and awarded in his favor: (a) permanent and total disability benefits in the amount of US$60,000.00, or its equivalent in Philippine pesos at the time of payment; (b) moral and exemplary damages in the amount of PhP100,000.00; (c) US$7,040.65 as reimbursement of the cost of his medical treatment in Mexico City; (d) legal interest on the monetary awards; (e) sick wage allowance equivalent to 120 days of hid basic salary; and (f) attorney's fees equivalent to 10% of the total award.

The manning agency elevated the case before the Supreme Court by way of petition for review on certiorari under Rule 45 of the Rules of Court. In its decision dated January 18, 2017, the Supreme Court ruled in favor of the petitioning agency. The Supreme Court reversed and set aside the decision of the Court of Appeals and reinstated the decision of the NLRC dated August 18, 2009.

After **ten (10) years** of litigation, Doctolero got nothing more than US$7,040.65 as reimbursement of the cost of his medical treatment in Mexico City.

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[26] G.R. No. 198968, January 18, 2017
[27] Ibid.

C.

In the case of *"SAMEER Overseas Placement Agency, Inc. vs. Josefa Guiterrez,"*[28] OFW-Nurse Josefa Gutierrez filed her complaint for illegal dismissal and money claims before the NLRC sometime in 2001.[29]

On February 10, 2003, the Labor Arbiter rendered its decision in favor of Gutierrez, finding that she was illegally dismissed from her employment, and ordering respondents Sameer Overseas Placement Agency, Rizalina Lamzon and Irish Nursing Home Organization Limited to pay complainant jointly and solidarily, the following: (a) salary (2 1/2 mos.) 2,083.02 Pounds; (b) unexpired portion (6 mos.) 6,250.02 Pounds (Payable in Philippine peso at the rate of exchange prevailing at the time of payment); and (c) refund of placement fees in the amount of PHP23,000.00.

On appeal, the NLRC reversed the Labor Arbiter's decision. Gutierrez' motion for reconsideration was also denied by the NLRC.

On certiorari, the Court of Appeals reversed the decision of the NLRC and reinstated the decision of the Labor Arbiter.

Sameer then filed a petition for review in certiorari before the Supreme Court which was denied in a minute resolution dated March 8, 2010. Sameer's motion for reconsideration was also denied by the Supreme Court in a resolution dated August 16, 2010. The entry of judgement of the Supreme Court's decision was issued on October 8, 2010.

On July 13, 2012, upon Gutierrez' motion, the Labor Arbiter issued a Writ of Execution containing a re-computation of the original monetary award and its conversion into Euro currency.

Sameer moved for the recall/quashal of the writ of execution on the ground that in converting the award from Pounds to Euro on execution, the Labor Arbiter has illegally varied the terms of the final and executory decision in the termination case. In her Order dated December 12, 2012, the Labor Arbiter denied Sameer's motion. Sameer then filed before the NLRC a petition to annul the Labor Arbiter's Order dated December 12, 2012. The NLRC dismissed the petition in its Decision dated February 25, 2013. Sameer's motion for reconsideration and in its Resolution dated April 30, 2013 were likewise denied by the NLRC.

Sameer then elevated the matter on certiorari before the Court of Appeals. On January 22, 2015, the Court of Appeals dismissed Sameer's

[28] G.R. No. 220030, March 18, 2019

[29] The exact date of filing of the complaint was not stated in the decision of the Supreme Court. It was merely mentioned that in 2001, Gutierrez was deployed as a registered nurse to Ireland on a 2-year employment in a nursing home and that after merely two months, she was unceremoniously repatriated urging her to file for unlawful termination.

petition for lack of merit. Sameer's motion for reconsideration was likewise denied by the Court of Appeals in a Resolution dated August 5, 2015.

Still undeterred, Sameer elevated the case to the Supreme Court by way of petition for review under Rule 45 of the Rules of Court. The Supreme Court denied Sameer's petition in its Decision dated March 18, 2019.

All in all, it took **more than sixteen (16) years**, counted from the time Gutierrez filed her complaint before the NLRC, before she was able to finally execute on the money judgement awarded in her favor.

D.

In the case of *"Centennial Transmarine, Inc., Eduardo R. Jabla, Centennial Maritime Services & M/T Acushnet, vs. Emerito E. Sales,"*[30], OFW-Pumpman Emerito E. Sales suffered an injury while working onboard M/T Acushnet.

On October 4, 2006, Sales filed before the NLRC his complaint claiming entitlement to permanent and total disability benefits, moral and exemplary damages, and attorney's fees.

On September 28, 2007, the Labor Arbiter rendered his decision in favor of Sales. The Labor Arbiter held that Sales should be paid permanent and total disability benefits in accordance with the CBA. The Labor Arbiter also ruled that Sales was able to prove that he sustained injury onboard the vessel which eventually caused his disability.

CTI appealed the Labor Arbiter's decision. On April 2, 2009, the NLRC rendered its decision on appeal reversing and setting aside the decision of the Labor Arbiter. The NLRC held that Sales was not able to present evidence to prove the alleged accident that caused his disability. On reconsideration, the NLRC granted Sales disability benefits in accordance with the Grade 11 disability assessment issued by the company-designated physician.

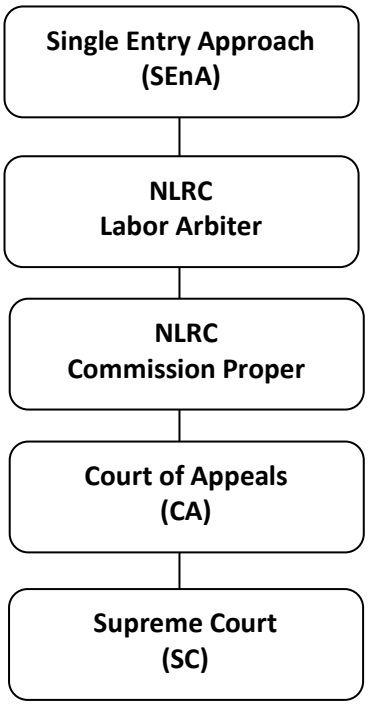
Sales then filed before the Court of Appeals a petition for review on certiorari under Rule 65 of the Rules of Court. On January 21, 2011, the Court of Appeals decided in favor of Sales. The Court of Appeals held that Sales is entitled to permanent and total disability benefits in the amount of US$78,750.00 because Sales was no longer able to return to work as a pumpman or as a seaman on account of his disability. The Court of Appeals also awarded Sales PhP25,000.00 moral damages, PhP25,000.00 exemplary damages and 10% attorney's fees. The Court of Appeals denied CTI's motion for reconsideration in a resolution dated April 12, 2011.

[30] G.R. No. 196455, July 8, 2019

CTI elevated the case before the Supreme Court by way of petition for review on certiorari under Rule 45 of the Rules of Court. On July 8, 2019, the Supreme Court rendered its decision finding that Sales is entitled to partial disability benefits only in the amount of US$11,757.00 plus 10% attorney's fees and six percent (6%) interest from the date of the filing of the claim on October 4, 2006, until fully paid.

It took **more than twelve (12) years** of litigation before Sales was finally awarded partial disability benefits. His case stayed at the Supreme Court level for **eight (8) years**, more or less. Fortunately for Sales, he was also awarded by the Supreme Court a 6% interest on his claims counted from the date he filed his complaint before the NLRC on October 4, 2006, until fully paid.

Just how long does it really take to resolve with finality OFW cases for money claims arising out of illegal dismissal or violations of the overseas employment contract that go through the entire judicial process?



The process starts with the Single Entry Approach (SEnA) as required under DOLE Department Order No. 151-16, series of 2016, entitled "Implementing Rules and Regulations of Republic Act No. 10396, or "An Act Strengthening Conciliation-Mediation as a Voluntary Mode of Dispute Settlement for all Labor Cases, amending for this purpose Article 228 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines."

Under this system, all issues arising from labor and employment, which necessarily includes OFW cases, shall be subject to a 30-day mandatory conciliation-mediation services of the SEnA. Single Entry Assistance Desks (SEADs) were established, among others, in the NLRC, POEA, OWWA, and Philippine Overseas Labor Offices (POLOs) for the purpose of

conducting the mandatory mediation-conciliation services for OFW cases. Requests for the conduct of mediation-conciliation under SEnA may also be made online through e-SEnA.[31]

The 30-day mandatory conciliation-mediation period is counted from the date of the initial conference of the parties which is conducted not later than 5 working days from the date of assignment of the Request for Assistance ("RFA"). The 30-day mandatory conciliation-mediation period is non-extendible except upon mutual agreement of the parties where there is a possibility for settlement. Such extension shall not exceed 15 days.[32] Assuming that no early settlement or termination of the SEnA proceedings is agreed upon by the parties, the SEnA process may take anywhere between 30-50 days to be completed.

Should the parties not be able to agree on a settlement of the dispute through SEnA, OFW's complaint for "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" shall be filed before the NLRC. The case will then undergo mandatory conciliation-mediation before the Labor Arbiter. If the mandatory conciliation-mediation fails, the parties will then be required to submit their respective position papers. The Labor Arbiters of the NLRC have the original and exclusive jurisdiction to hear and decide the OFW complaint, within ninety (90) calendar days after the filing of the complaint. Ideally, the case should stay at the Labor Arbiter level for not more than 90 calendar days.[33]

The decision of the Labor Arbiter may be appealed to the NLRC within ten (10) calendar days from receipt of the decision of the Labor Arbiter.[34] Issues of facts and law are resolved at the first instance at the level of the NLRC Labor Arbiter and at the second instance, on appeal before the NLRC. The NLRC is required to decide all cases within twenty (20) days from receipt of the Answer of the Appellee.[35] After the NLRC has rendered its decision on the appeal, the parties are allowed to file only one motion for reconsideration for each party within ten (10) calendar days upon receipt of the NLRC decision.[36]

Upon receipt of the NLRC resolution resolving the motion for reconsideration, a party aggrieved of the decision may file before the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court within a non-extendible period of sixty (60) days counted from the date of receipt of the NLRC Resolution of the motion for reconsideration. In this mode of review, the Court of Appeals determines whether or not the NLRC committed grave abuse of discretion in rendering its decision. Under Section 15(1) of Article VIII of the 1987 Philippine Constitution, the Court of Appeals has to decide or resolve cases within twelve (12) months from date of submission for resolution. After the Court of Appeals has rendered its decision, the parties are allowed to file only one motion for reconsideration within fifteen (15) days upon receipt of the decision of the Court of Appeals.[37]

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[31] See, https://sena.dole.gov.ph/
[32] Section 5(d) of Rule III of DOLE Department Order No. 151-16, series of 2016
[33] Section 10 of R. A. No. 8042, as amended
[34] Art. 229 of the Labor Code of the Philippines, as amended; Section 1 of Rule VI, 2011 NLRC Rules of Procedure, as amended
[35] Ibid.
[36] Article 229, Labor Code of the Philippines, as amended
[37] Section 1, Rule 52, Rules of Court

Within fifteen (15) days from notice of the resolution of the Court of Appeals resolving the motion for reconsideration, the aggrieved party may elevate the case before the Supreme Court by way of petition for review on *certiorari* under Rule 45 of the Rules of Court. For justifiable reasons, the Supreme Court may grant an extension of thirty (30) days within which to file the petition.[38]

The Supreme Court has consistently held that, save for a few exceptions, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Supreme Court is not a trier of facts and its jurisdiction is limited to errors of law only.[39]

In reviewing the decision of the Court of Appeals, the Supreme Court determines its legal correctness from the prism of whether the Court of Appeals correctly determined the presence or absence of grave abuse of discretion in the NLRC's decision.[40]

Under Section 15(1) of Article VIII of the 1987 Philippine Constitution, the Supreme Court has to decide or resolve cases within twenty-four (24) months from date of submission for resolution.

A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.[41]

Assuming that all mandatory and directory periods for the resolution of cases are observed in their maximum periods in all levels of the tribunals or courts, it may be reasonably concluded that it would take around **four (4) years** for an OFW money claims case to be resolved with finality from the date of filing of the complaint in the NLRC up to the date of decision by the Supreme Court.

What was the actual performance of the NLRC and of the Courts?

In its 2019 Performance Report, the National Labor Relations Commission ("NLRC") reported that the Regional Arbitration Branches were able to resolve 61% of cases within three (3) months from filing/receipt, while the NLRC Commission Proper was able to resolve 89% of the appealed cases within three (3) months from filing/receipt.[42]

Further, Table 7 below tells us that in 2019, 96% of the ending caseload of the Regional Arbitration Branch[43] of the NLRC were 1 to 9 months old and only 4% of their total caseload were at least 10 months old. At the Commission level, the NLRC reported that 99%

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38 Section 2, Rule 45, Rules of Court

39 *"Abosta Shipmanagement Corp., CIDO Shipping Company Ltd., and Alex S. Estabillo, vs. Dante C. Segui"*, G.R. No. 214906, January 16, 2019

40 *"Oscar M. Paringit vs. Global Gateway Crewing Services, Inc., Mid-South Ship and Crew Management, Inc., and/or Captain Simeon Flores,"* G.R. No. 217123, February 6, 2019, citing *Magsaysay Maritime Corporation v. National Labor Relations Commission,* 630 Phil. 352, 361 (2010)

41 Section 15(2) of Article III of the 1987 Philippine Constitution

42 National Labor Relations Commission Performance Report 2019 https://nlrc.dole.gov.ph/uploads/content/Annual%202019-Final%201.pdf

43 the NLRC Labor Arbiters

of its ending caseload were 1 to 6 months old and only 1% of their total caseload were 7 months or older.

Segregated data for the age of OFW caseloads was not available in the report.

Table 7: Age of Ending Caseloads of the NLRC in 2019

Regional Arbitration Branches AGE OF ENDING CASELOAD		
9 Month Process Cycle Time	**Actual**	**%**
1-3 months old (Oct to Dec 2019)	5,905	53%
4-6 months (July to September 2019)	3,232	29%
7-9 months old (April to June 2019	1,586	14%
10 months old and above (March 2019 and Earlier)	478	4%
TOTAL	**11,201**	**100%**

Commission Proper AGE OF ENDING CASELOAD		
9 Month Process Cycle Time	**Actual**	**%**
1-3 months old (Oct to Dec 2019)	981	80%
4-6 months (July to September 2019)	245	19%
7-9 months old and above (June 2019 and earlier)	7	1%
TOTAL	**1,233**	**100%**

source: National Labor Relations Commission Performance Report 2019

In the Judiciary Annual Report 2019,[44] the Supreme Court reported a caseload of 14,764 cases with 5,792 cases disposed of within the year, resulting to a Case Disposal Rate of 39%[45] while the Court of Appeals reported a caseload of 34,159 cases with 13,002 cases disposed of within the year, resulting to a Case Disposal Rate of 38%. Data for the age of caseloads were not available in the annual report.

In order to determine if the prescribed periods for resolution of OFW cases are adhered to at the levels of the Labor Arbiter, NLRC, Court of Appeals and the Supreme Court, the 202 OFW cases involving "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," inclusive of claims for disability and death benefits for the period 2015 to 2019 were examined.

[44] Supreme Court of the Republic of the Philippines, "The Judiciary Annual Report 2019" https://sc.judiciary.gov.ph/files/annual-reports/JAR-2019.pdf

[45] total number of cases disposed of in 2019/total caseload (pending cases + new cases) in 2019

The following periods were then measured and tabulated:

(a) the date of filing of the OFW complaint before the NLRC up to the date of the decision of the Labor Arbiter;

In cases where the date of filing of the complaint was not indicated in the decision of the Supreme Court, it was presumed for purposes of this study that the date of filing of the complaint before the NLRC happened four (4) months before the date of the Labor Arbiter's decision.

This measured period of time approximates the period of time the OFW cases were pending before the Labor Arbiter.

(b) the date of the decision of the Labor Arbiter up to the date of the NLRC's resolution of the motion for reconsideration;

This measured period of time approximates the period of time the OFW cases were pending on appeal before the NLRC.

(c) the date of the NLRC's resolution of the motion for reconsideration up to the date of the Court of Appeal's resolution of the motion for reconsideration filed before it, if any;

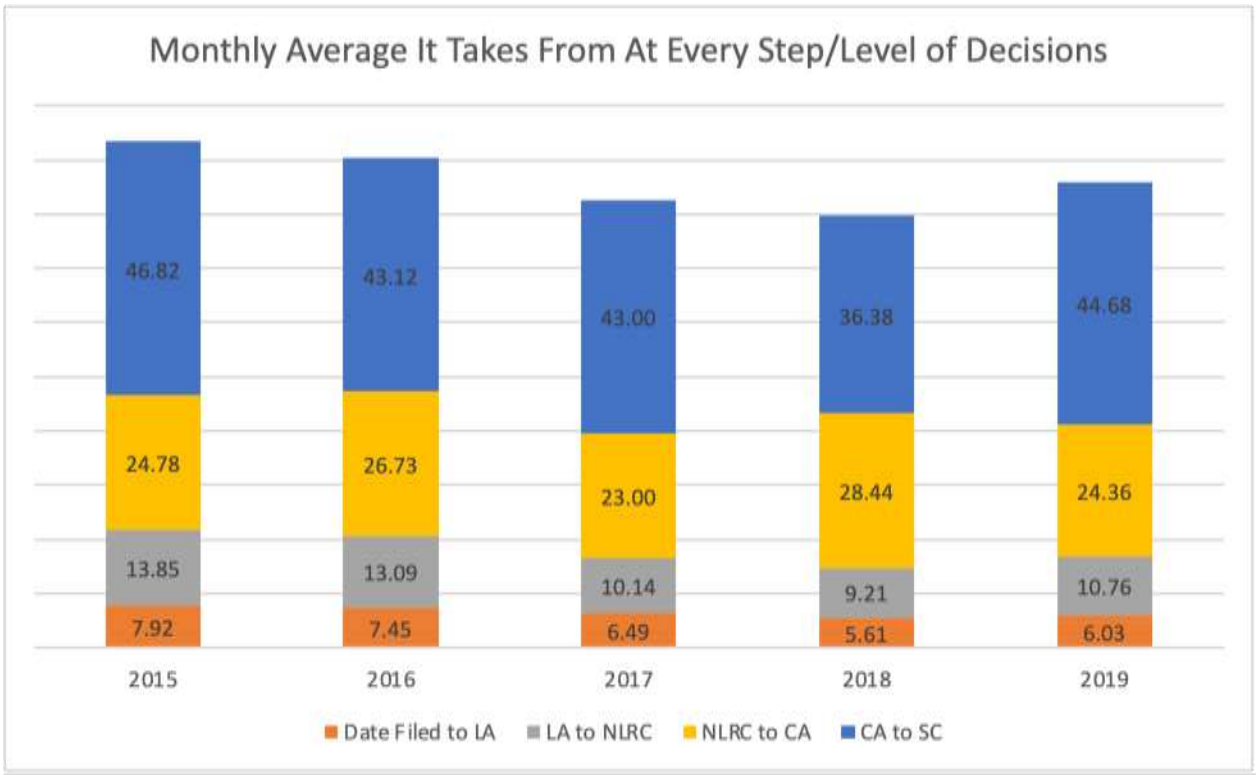
This measured period of time approximates the period of time the OFW cases were pending before the Court of Appeals.

(d) the date of the Court of Appeal's resolution of the motion for reconsideration up to the date of the Supreme Court's decision;

This measured period of time approximates the period of time the OFW cases were pending before the Supreme Court.

The results are presented in a stacked graph in Graph No. 1 as follows:

Graph No. 1: Average number of months per case per year per court level (2015-2019)



Monthly Average It Takes From At Every Step/Level of Decisions
46.82
24.78
13.85
7.92
43.12
26.73
13.09
7.45
43.00
23.00
10.14
6.49
36.38
28.44
9.21
5.61
44.68
24.36
10.76
6.03
2015
2016
2017
2018
2019
Date Filed to LA
LA to NLRC
NLRC to CA
CA to SC

Based on the foregoing, the following observations may be drawn:

1. In the OFW money claims cases decided by the Supreme Court in 2015, the cases stayed at the NLRC Labor Arbiter level for an average of 7.92 months. By 2019, this period was reduced to an average of 6.03 months. In contrast, the NLRC reported in its 2019 Performance Report that its Regional Arbitration Branches were able to resolve 61% of all labor cases within three (3) months from filing/receipt. Taken together, these figures indicate a decrease in the period of time an OFW money claims case stayed at the Labor Arbiter level of the NLRC.

2. In the OFW money claims cases decided by the Supreme Court in 2015, the cases stayed at the level of the NLRC Commission Proper for an average of 13.85 months. By 2019, this period was reduced to an average of 10.76 months. In contrast, the NLRC Commission Proper reported in its 2019 Performance Report that it was able to resolve 89% of the appealed cases within three (3) months from filing/receipt. Taken together, these figures indicate a significant decrease in the period of time an OFW money claims case stayed at the Commission Proper level of the NLRC.

3. In the OFW money claims cases decided by the Supreme Court in 2015, the cases stayed at the level of the Court of Appeals for an average of 24.78 months. In the OFW money claims cases decided by the Supreme Court in 2019, the cases stayed at the level of the Court of Appeals for an average of 24.36 months. These figures indicate, including those OFW money claims cases decided by the Supreme Court in 2016-2018, that on the average, an OFW money claims case stays at the level of the Court of Appeals for 2 years, more or less.

4. In the OFW money claims cases decided by the Supreme Court in 2015, the cases stayed at the level of the Supreme Court for an average of 46.82 months. In the OFW money claims cases decided by the Supreme Court in 2019, the cases stayed at the level of the Supreme Court for an average of 44.68 months. These figures indicate, including those OFW money claims cases decided by the Supreme Court in 2016-2018, that on the average, an OFW money claims case stays at the level of the Supreme Court for 42.8 months or almost 3 years and 7 months, more or less.

5. OFW money claims cases decided by the Supreme Court in 2015 took an average of 93.37 months or 7.78 years counted from the time the labor complaint was filed before the NLRC, up to the time the case was decided by the Supreme Court. The OFW money claims cases decided by the Supreme Court in 2019 took 85.83 months or 7.15 years to go through the entire judicial process. These figures indicate, including those OFW money claims cases decided by the Supreme Court in 2016-2018, that on the average, it takes 86.37 months or 7.2 years for an OFW money claims case to go through the entire judicial process counted from the time the labor complaint was filed before the NLRC, up to the time the case was decided by the Supreme Court.

Proceeding from the earlier premise that if all the mandatory and directory periods for the resolution of cases were followed, OFW money claims cases should take **no more than four (4) years** to be resolved from the date of filing of the complaint before the NLRC up to the date of decision by the Supreme Court. The foregoing data reveal that this is not the case as it took, on the average, **7.2 years** for an OFW money claims case to go through the entire judicial process in the period 2015-2019.

What can be sufficiently established in this study is the fact that in the period 2015-2019, it took 7.2 years on the average for an OFW money claims case to go through the entire judicial process…

What can be sufficiently established in this study is the fact that in the period 2015-2019, it took **7.2 years** on the average for an OFW money claims case to go through the entire judicial process from the date of filing of the complaint in the NLRC up to the date of decision by the Supreme Court. It goes without saying that there were OFW money claims cases that went through the entire judicial process in less than 7.2 years. Equally true is the fact that there were also OFW money claims cases that took more than 7.2 years to be resolved with finality.

Section 15(1) of Article VIII of the 1987 Constitution prescribes that "(a)ll cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts." A complaint based on this edict was however repudiated by the Supreme Court by arguing that the time limits are only directory, and that the quality of decisions could, at times, justifiably outweigh any intent to comply with the stipulated timelines. In the case of *"Re: Complaint-Affidavit of Elvira N. Enalbes, Rebecca H. Angeles and Estelita B. Ocampo against Former Chief Justice Teresita J. Leonardo-De Castro [Ret.], relative to G.R. Nos. 203063 and 204743."*[46] wherein an administrative complaint was filed against former Chief Justice Leonardo-De Castro due to her alleged failure to resolve for more than five (5) years, two (2) related petitions assigned to the First Division of the Supreme Court, the *En Banc* Resolution dismissed such complaint. The Supreme Court, speaking through the Supreme Court *ponente*, Justice Marvic F. Leonen, explained:

> "Being the court of last resort, this Court should be given an ample amount of time to deliberate on cases pending before it.
>
> "Ineluctably, leeway must be given to magistrates for them to thoroughly review and reflect on the cases assigned to them. This Court notes that all matters brought before it involves rights which are legally demandable and enforceable. It would be at the height of injustice if cases were hastily decided on at the risk of erroneously dispensing justice.
>
> "While the 24-month period provided under the 1987 Constitution is persuasive, it does not summarily bind this Court to the disposition of cases brought before it. It is a mere directive to ensure this Court's prompt resolution of cases, and should not be interpreted as an inflexible rule.

[46] A. M. No. 18-11-09-SC, January 22, 2019

> "Magistrates must be given discretion to defer the disposition of certain cases to make way for other equally important matters in this Court's agenda.
>
> "In *Coscolluela v. Sandiganbayan, et al.*, this Court noted that 'the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient.'
>
> "As a final note, the prescribed time limit should not be ignored as to render nugatory the spirit which breathes life to the letter of the 1987 Constitution. Ultimately, courts must strike an objective and reasonable balance in disposing cases promptly, while maintaining judicious tenacity in interpreting and applying the law."[47]

There is of course the matter of institutional capacity to absorb an expanding caseload, which has been pointed as a key contributor to the delay in case disposition.[48] While the number of cases filed before the Supreme Court may increase, the number of the Supreme Court Divisions and the number of the members of the High Court have remained constant and cannot be augmented without amending the 1987 Constitution. Nonetheless, said difficulty should not deter the High Court from pursuing the serious studies and efforts that it is undertaking to address the need for the speedy disposition of cases that have been clogging the Court's dockets for many years.[49]

As to where exactly the bottlenecks occur, it is difficult to determine with the information on hand. The dates on when cases are actually submitted for decision at each level (Supreme Court, the Court of Appeals, the NLRC, or the NLRC Labor Arbiter) are not indicated in the published decisions by the Supreme Court. Due to this lack of information, it will require more effort to trace at which juncture any particular case had endured extreme delays.

Addressing the challenges of institutional capacity for the long term will require reforms in the judicial architecture. Meantime at the interim, procedural enhancements could be proposed to improve administrative efficiency in the judiciary and thus compel duty bearers to act with more expediency.

In a recent public pronouncement, Supreme Court Chief Justice Alexander Gesmundo announced that the speedy resolution of cases is one of his short-term plans for the judiciary. SC Chief Justice Gesmundo aims to comply with the directory period of 2 years for the Supreme Court to resolve cases pursuant to Section 15(1) of Article VIII of the 1987 Constitution.[50]

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47 Ibid.

48 Asia Foundation, "Legal and Justice Reforms in the Philippines" https://asiafoundation.org/wp-content/uploads/2017/08/Philippines_LAW_2017.pdf

49 See 47

50 See, https://cnnphilippines.com/news/2021/6/11/SC-resolve-cases-filed-after-April-5-within-2-years.html?fbclid=IwAR10NAaNqb8qAQ4HX9jxEdHFPkKADD2sgYivNDpWEtQAE6A_LUAHioVmX8s

Recommendations to reduce delays in case disposition are the following:

1. Record and specifically state the date the case was submitted for decision in the decisions of the Labor Arbiter, the NLRC, the Court of Appeals and the Supreme Court. With this information, it can be determined if there was a substantial delay at each level, either before, or after the case has been submitted for decision.

2. Strictly implement at each level a monitoring system on the status of each case in order to determine if the last pleading has already been filed, and whether or not the case should already be submitted for resolution. In many cases, even if the last pleading has already been filed, the cases remain pending for some time without being formally submitted for decision by the court or tribunal.

3. Strictly monitor at each level the date the case was submitted for resolution. The courts/tribunal should also establish a monitoring system for cases that remain unresolved beyond the Constitutionally mandated periods in order to ensure that cases will not remain pending for so many years, especially at the level of the Supreme Court.

4. For courts to notify parties in the event these are unable to comply with the time limits[51] set by the constitution on the resolution of cases, as a courtesy and in consideration of the stress and mental anguish that a litigant goes through when pursuing a case. This is in accordance with Section 15(3) of Article VIII of the 1987 Philippine Constitution, which states:

> **"**Sec. 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.
>
> "(2) A case or matter should be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
>
> "(3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, **and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.**

[51] Section 15(3) of Article VIII of the 1987 Philippine Constitution, states:
(1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.
(2) A case or matter should be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself."

"(4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay."

5. Include "age of caseloads" in the annual reports of the Supreme Court and of the Court of Appeals, similar to what the NLRC is reporting regularly.

6. Study the feasibility of establishing an online CHR-NGO platform for the reporting and monitoring of OFW cases. OFWs can report via the online CHR-NGO platform their individual cases, starting at the SEnA stage. The online CHR-NGO platform can then monitor: (a) the progress of the case as it goes through the Labor Arbiter, NLRC, Court of Appeals and Supreme Court; (b) the result of cases resolved through settlement either through the SEnA process or through mediation/conciliation.

7. OFW organizations and migrants rights advocacy groups should continue to engage the NLRC and the Judiciary, the Supreme Court and the Court of Appeals in particular, towards the adoption of policies and measures to strengthen institutional capacities to absorb an expanding caseload and to promote the right to access to justice and the right to speedy disposition of cases of OFWs.

8. Conduct studies on how the judiciary can further augment its institutional capacities for speedy disposition of cases. One of the key findings of this study is that the NLRC has generally been efficient in the resolution of cases, and the delays occur at the level of the Court of Appeals and Supreme Court. Considering further that this study has established that OFW cases constitute less than 1% of the annual caseload of the Supreme Court, the unreasonable length of time in resolving OFW cases is symptomatic of the larger problem of court inefficiency that needs to be addressed for the benefit of all.

4.2 Debt Bondage

Debt bondage remains one of the most prevalent forms of modern slavery in all regions of the world despite being banned in international law and most domestic jurisdictions.[52]

The report by the United Nations Special Rapporteur on Contemporary Forms of Slavery to the Human Rights Council,[53] drew attention to women migrant domestic workers who are led into accepting a seemingly legitimate job offer but end up in slavery or in domestic servitude, which is a slavery-like practice. This can result in debt bondage, which occurs for instance where excessive recruitment fees are charged by agents.

[52] United Nations Human Rights, Office of the High Commissioner, Geneva. "Debt bondage remains the most prevalent form of forced labour worldwide – New UN report," 15 September 2016. https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20504

[53] Q&A with Urmila Bhoola, Special Rapporteur on Contemporary Forms of Slavery. Retrieved from https://16dayscampaign.org/2019/02/08/qa-with-urmila-bhoola-special-rapporteur-on-contemporary-forms-of-slavery/

For lack of better opportunities at the home front, workers are induced to leave for abroad with a promise of stable work and good pay.

The ILO Private Employment Agencies Convention 181 (C181, 1997)[54] provides that private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or cost to workers. The Philippines is not a signatory to the ILO Convention No. 181, but under Section 51 of Rule V of the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Land based Overseas Filipino Workers of 2016, no placement fee may be charged against: (a) domestic workers; and (b) workers to be deployed to countries where the prevailing system, either by law, policy or practice do not allow, directly or indirectly, the charging and collection of recruitment/placement fees. Placement fees are also not allowed to be collected from OFW seafarers. Notwithstanding the foregoing however, private recruitment agencies in the Philippines and/or recruitment agency in the host country continue to charge recruitment fees from migrant workers, the domestic workers, in particular.

Fees collected by private recruitment agencies for jobs abroad cover the cost of the recruitment itself, visa consultations, airfare and administrative costs. According to a study on Filipino domestic workers in Hong Kong by Varona (2013), majority 2/3 or (68%) had to take some kind of loan (from banks, financing agency, relatives or friends, or advanced by recruitment agency) to pay the recruitment costs, which can be substantial amounts.[55] For marginal workers who do are unable to raise money from their own sources, they are often referred by recruitment agencies to financing companies for easy loans with exorbitant interests. Thus, even before deployment the worker is already deeply buried in debt and is required to issue post-dated checks as loan security, or pledge a portion of their expected wages for debt repayment. This happens through contract substitution, an illegal practice by placement agencies wherein workers are coerced into signing a non-state approved contract at the last minute. In the same survey by Varona, debt bondage was identified as a major concern, next only to violations of recruiters to the "no placement fee" policy for domestic workers.

Although debt bondage *per se* was not one of the legal issues directly addressed in the cases decided by the Supreme Court in the period 2015-2019, there were several cases reviewed that indicated the existence of its practice.

In the case of *"Aldovino, et. al. vs. Gold and Green Manpower Management and Development Services, Inc."*,[56] the findings of facts show that the workers applied for work with a local manning agency whose foreign principal is based in Taiwan. Eventually, they were hired with a fixed monthly salary and other entitlements. Before deployment, each worker was required to pay the amount of PhP72,000.00 as placement fee. Unable to

[54] C181-Private Employment Agencies Convention 1997 (No. 181). International Labor Organization. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326

[55] Rex Varona, "LICENSE TO EXPLOIT: A Report on the Recruitment Practices and Problems Experienced by Filipino Domestic Workers in Hong Kong," (2013) https://idwfed.org/en/resources/license-to-exploit-a-report-on-recruitment-practices-and-problems-experienced-by-filipino-migrant-domestic-workers-in-hong-kong/@@display-file/attachment_1

[56] G. R. No. 200811, June 19, 2019

produce the amount on their own, the workers were referred to a financing company that granted them the necessary loan. When the workers arrived in Taiwan, the recruitment agency confiscated their travel documents, including passports. They were made to sign another contract that provided for wages based on piece-rate instead of a fixed monthly salary. Eventually, the workers defaulted on their loan obligations with the financing company owing to a take home pay that is less than the fixed salary provided in the original contract. When the workers filed a complaint against their employers before a local court in Taiwan, the employer ordered their return to the Philippines as it was no longer interested in their services.

In the case of *"Princess Talent Center Production, Inc., vs. Masagca"*,[57] G.R. No. 191310, April 11, 2018, the overseas worker was persuaded to apply for a job as a singer/entertainer in South Korea. An employment contract was drawn providing a minimum compensation of US$600.00 minus the authorized fees of the Philippine Agent and the Talent Manager which was deducted from the worker's salary at US$100 each good for three (3) months only. But for nine (9) months, the worker worked without receiving any salary. She subsisted on the 20% commission she received for every lady's drink the customers ordered for her, 50% of which was remitted to the respondent for payment of a fictitious loan amounting to US$10,600.00. When the overseas worker refused to surrender the 50% of her commission to the respondent, her stay in South Korea was questioned and charges of committing immoral and illegal acts were brought against her.

MS[58] on the other hand, was a trafficking victim assisted by a group of *pro bono* lawyers in the USA and when the case reached Philippine soil, the overseas worker was assisted by the Lawyers Beyond Borders Philippines, Inc. Her story began when she responded to an electronic advertisement for people to work in the United States. After all arrangements have been made, the overseas worker signed an employment contract to work as packer in the United States. The fees she was required to pay include PhP25,000.00 (approx. US$571.00) for pre-visa consultations and PhP350,000.00 (approx. US$8,000.00) for the job opportunity and airfare. The contract stipulated that the overseas worker would receive a paid airplane ticket, a salary of US$1,400.00 per month, and free food and housing for six (6) months. She paid the pre-visa fee with savings from her previous overseas work in Taiwan. After receiving her H2B visa from the US Embassy, the overseas worker took a loan covered by post-dated checks with a co-signatory, to fully pay her financial obligations to the placement agency. In the United States, the placement agency did not make good its promise based on the employment contract. After months of being unemployed, she was given work as a hotel maid with a salary far less than the promised amount in the original contract.

Meanwhile, interests to the loan accumulated because of the overseas worker's failure to fund the checks she issued with her co-signatory. Warrants of arrest were issued and her co-maker was arrested, and a standing warrant was issued against the overseas worker that prevented her from coming back to the Philippines. With the intercession of LBB Philippines, the criminal case against RM was dismissed when she made an arrangement with the credit company for a longer repayment terms.

[57] G. R. 191310, April 11, 2018
[58] not her real name

In the New UN Report (Debt Bondage, 2016), it was disclosed that people in debt bondage end up working for no wages or wages below the minimum in order to repay the debts contracted or advances received, even though the value of the work they carry out exceeds the amount of their debts. Furthermore, bonded labourers are often subjected to different forms of abuse, including long working hours, physical abuse, and other forms of violence.

Under such conditions, overseas workers end up in a trap trying to pay off the debt which could never be repaid.

To address the problem of debt bondage, the Philippine Legislature enacted into law R. A. 10022 to amend, among others, Section 6 of R. A. 8042 in order to prohibit acts that may lead to debt bondage as follows:

> "xxx xxx xxx
>
> "In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:
>
> "(1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, post-dated checks in relation to the said loan;
>
> "(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;
>
> "(3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter's employment contract has been prematurely terminated through no fault of his or her own.
>
> "xxx xxx xxx".[59]

Despite the foregoing amendment, the problem of overseas workers succumbing to the inducement by recruitment agencies who have no qualms about maintaining the aforementioned unscrupulous and now explicitly illegal tacts remains unabated, leaving our workers still vulnerable to such schemes in a much disadvantageous space.

In her report, (Debt bondage, 2016) Ms. Bhoola recommended that more must be done to understand debt bondage. She outlines how UN Member States should take a varied approach based on universal human rights to eradicate the phenomenon.

"In order to effectively eradicate and prevent this practice, States should develop comprehensive and integrated programmes of action based upon international human rights

[59] Article 6, Section 1 of R. A. 8042, as amended by R. A. 10022

standards, which address the needs of those affected and eliminates the root causes of such practices," she stressed.

"Their approaches must be multifaceted and include legislative and policy measures that are effective, properly enforced and provide for protection, prevention and redress for rights violations," the Special Rapporteur urges in her report.

There were no cases involving prosecution of the foregoing prohibited acts enumerated in Section 6 of R. A. 8042, as amended in the OFW cases decided by the Supreme Court in 2015-2019.

In order to address the problem of debt bondage among OFWs, the following are the recommended courses of action:

1. Continuing public education on related laws and policies to prevent illegal practices by recruitment agencies which lead to debt bondage.

2. Firm and consistent enforcement of recruitment laws in the Philippines that protect DWs.

3. Access to no-collateral, OWWA guaranteed credit with low or zero interest, from government financial institutions (i. e. Land Bank of the Philippines, or Development Bank of the Philippines).

4. Urging recruitment agencies to adopt a code of conduct promoting fair recruitment wherein recruitment agencies do not charge fees to workers and commit to strive for the protection of workers in the recruitment process and throughout the supply chain.[60]

5. Inclusion in the disclosure statement the prohibited acts numbers (1), (2) and (3) in Section 6 of R. A. 8042, as amended, constituting, or leading to debt bondage, required to be given by the lending agency to the OFW debtor before the execution of the debt instrument for the purpose of raising the workers' awareness on their rights.

6. Inclusion of prohibited acts constituting debt bondage, the legal remedies available to the OFWs, and options for low or interest-free loans, in the pre-employment, pre-departure and post-arrival seminars being given to OFWs. Moreover, identification of other avenues for pro-active education and intervention by the CHR and NGOs be made in order to ensure that correct and helpful information can be given to prospective OFWs.

7. Studying of ways and means to stop debt bondage on OFWs by the POEA, the law enforcement agencies in cooperation with civil society. In particular, special attention should be given on how to prosecute violations of the prohibited acts under Section 6 of R. A. 8042, as amended, constituting, or causing debt bondage among OFWs. A monitoring system should be established in order to ensure compliance by lending agencies on the applicable provisions of R. A. 8042.

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[60] Migrant Forum in Asia, Open Working Group on Labour Migration & Recruitment, Policy Brief #5, "Ethical Recruitment" http://mfasia.org/migrantforumasia/wp-content/uploads/2017/01/5-Policy-Brief-Support-for-Ethical-Recruitment.pdf

4.3 Illegal Recruitment

In the five-year period 2015-2019 subject of this study, there were seventeen (17) cases of illegal recruitment and *estafa* that were decided by the Supreme Court.

Illegal recruitment cases that reach the Supreme Court are usually reviews on appeal of the conviction of the accused for illegal recruitment in large scale or illegal recruitment committed by a syndicate.

Charges of illegal recruitment are usually accompanied by a separate charge of *estafa* due to the allegations of fraud committed arising from the same set of facts.

Fifteen (15) of these illegal recruitment cases victimized ninety-three (93) OFW applicants. In these cases, the Supreme Court reviewed on appeal the conviction of the accused. The Supreme Court eventually affirmed the conviction of the accused in all 15 cases, albeit some, with modifications on the penalty imposed.

The two (2) other cases were not appellate reviews of the principal criminal cases for illegal recruitment. The 16th case was a petition for review on certiorari seeking to reverse and set aside the decision and resolution of the Court of Appeals nullifying and setting aside the order of the Regional Trial Court which denied the petition for bail filed by all accused in the criminal case for illegal recruitment in large scale and *estafa*.[61] The 17th case was a petition for review on certiorari assailing the decision and resolution of the Court of Appeals reinstating the criminal case for illegal recruitment and *estafa* against the accused.[62]

Number of illegal recruitment cases decided by the Supreme Court (2015-2019)

2015	2016	2017	2018	2019
2	7	6	2	0

The Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995", broadened the scope of illegal recruitment for overseas employment and increased the penalties there.

The changes in the law on illegal recruitment introduced by R. A. No. 8042 were explained in detail by the Supreme Court in the case of *"People of the Philippines vs. Alelie Tolentino a.k.a. "Alelie Tolentino y Hernandez"*[63] as follows:

> "Article 13(b) of the Labor Code defines recruitment and placement as 'any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not.'

[61] *"People of the Philippines vs. Dr. David A. Sobrepeña, Sr., Dr. Mona Lisa Dabao, Dr. Polixema Adorada, Dobela Fortes and Lirio Corpuz,"* G.R. No. 204063, December 05, 2016

[62] *"Eileen P. David vs. Glenda S. Marquez,"* G.R. No. 209859, June 05, 2017

[63] G.R. No. 208686, July 01, 2015

"Illegal recruitment, on the other hand is defined under Article 38 of the Labor Code as follows:

> 'ART. 38. Illegal Recruitment.
>
> '(a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.
>
> '(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.
>
> 'Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.
>
> '(c) The Secretary of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Secretary shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishments and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.'

"Illegal recruitment, as defined under Article 38 of the Labor Code, encompasses recruitment activities for both local and overseas employment. However, illegal recruitment under this article is limited to recruitment activities undertaken by non-licensees or non-holders of authority. Thus, under the Labor Code, to constitute illegal recruitment in large scale, three elements must concur:

"1. The accused undertook any recruitment activity defined under Art. 13 (b) or any prohibited practice enumerated under Art. 34 of the Labor Code.

"2. He did not have the license or the authority to lawfully engage in the recruitment and placement of workers.

"3. He committed the same against three or more persons, individually or as a group.

"RA 8042, otherwise known as the 'Migrant Workers and Overseas Filipinos Act of 1995,' established a higher standard of protection and promotion of the welfare of the migrant workers, their families and overseas Filipinos in distress. RA 8042 also broadened the concept of illegal recruitment for overseas employment and increased the penalties, especially for Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate, which are considered offenses involving economic sabotage. Part II of RA 8042 defines and penalizes illegal recruitment for employment abroad, whether undertaken by a non-licensee or non-holder of authority or by a licensee or holder of authority.

"Section 6 of RA 8042 provides for the definition of illegal recruitment, while Section 7 enumerates the penalties therefor, thus:

> 'SEC. 6. Definition. – For purposes of this Act, illegal recruitment shall mean 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 contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad for two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:
>
> '(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
>
> '(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

‘(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

‘(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

‘(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

‘(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

‘(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

‘(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

‘(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

‘(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

‘(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

‘(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

'(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

'Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

'The persons liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

'SEC. 7. Penalties. –

'(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).

'(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

'Provided, however, that the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.'

"Unlike illegal recruitment as defined under the Labor Code which is limited to recruitment activities undertaken by non-licensees or non-holders of authority, under Article 6 of RA 8042, illegal recruitment (for overseas employment) may be committed not only by non-licensees or non-holders of authority but also by licensees or holders of authority. Article 6 enumerates thirteen acts or practices [(a) to (m)] which constitute illegal recruitment, whether committed by any person, whether a non-licensee, non-holder, licensee, or holder of authority. Except for the last two acts [(l) and (m)] on the list under Article 6 of RA 8042, the first eleven acts or practices are also listed in Article 34 of the Labor Code under the heading 'Prohibited practices.' Thus, under Article 34 of the Labor Code, it is unlawful for any individual, entity, licensee, or holder of authority to engage in any of the enumerated

prohibited practices, but such acts or practices do not constitute illegal recruitment when undertaken by a licensee or holder of authority. However, under Article 38(A) of the Labor Code, when a non-licensee or non-holder of authority undertakes such 'prohibited practices,' he or she is liable for illegal recruitment. RA 8042 broadened the definition of illegal recruitment for overseas employment by including thirteen acts or practices which now constitute as illegal recruitment, whether committed by a non-licensee, non-holder, licensee, or holder of authority.

"Under RA 8042, a non-licensee or non-holder of authority commits illegal recruitment for overseas employment in two ways: (1) by 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; and (2) by undertaking any of the acts enumerated under Section 6 of RA 8042. On the other hand, a licensee or holder of authority is also liable for illegal recruitment for overseas employment when he or she undertakes any of the thirteen acts or practices [(a) to (m)] listed under Section 6 of RA 8042. To constitute illegal recruitment in large scale, the offense of illegal recruitment must be committed against three or more persons, individually or as a group."[64]

In order to further improve the standard of protection for OFWs against illegal recruitment, Sections 6 and 7 of R. A. 8042 were further amended by R. A. 10022.[65] The changes introduced by R. A. 10022 in Sections 6 and 7 of R. A. 8042 are underlined below:

"SEC. 6. *Definition.* - For purposes of this Act, illegal recruitment shall mean 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 non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, that any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

"(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;

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[64] Ibid.

[65] R. A. 10022 entitled "AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES" was signed into law by former President Gloria Macapagal-Arroyo on March 10, 2010 and became effective fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

"(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

"(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;

"(d) To include or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

"(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers' organization;

"(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

"(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

"(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

"(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of travel agency;

"(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations;

"(l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;

"(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage; and

"(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

"Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

"In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

"(1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;

"(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;

"(3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter's employment contract has been prematurely terminated through no fault of his or her own;

"(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

"(5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;

"(6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications; and

"(7) For a recruitment/manning agency or a foreign principal/employer to pass on the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.

"The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

"In the filing of cases for illegal recruitment or any of the prohibited acts under this section, the Secretary of Labor and Employment, the POEA Administrator or their duly authorized representatives, or any aggrieved person may initiate the corresponding criminal action with the appropriate office. For this purpose, the affidavits and testimonies of operatives or personnel from the Department of Labor and Employment, POEA and other law enforcement agencies who witnessed the acts constituting the offense shall be sufficient to prosecute the accused.

"In the prosecution of offenses punishable under this section, the public prosecutors of the Department of Justice shall collaborate with the anti-illegal recruitment branch of the POEA and, in certain cases, allow the POEA lawyers to take the lead in the prosecution. The POEA lawyers who act as prosecutors in such cases shall be entitled to receive additional allowances as may be determined by the POEA Administrator.

"The filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations.

"SEC. 7. *Penalties.* –

"(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) nor more than Two million pesos (P2,000,000.00).

"(b) The penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

"Provided, however, that the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

"(c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but

not more than twelve (12) years and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00).

"If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

"In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institutions, training school or medical clinic."

The changes introduced by R. A. 8042 and R. A. 10022 on the definition and scope of illegal recruitment have practically covered all forms of fraud that may be committed against applicant OFWs. New acts of exploitation or fraud committed against applicant OFWs not previously included in the formal definition of illegal recruitment are now being punished as prohibited acts with the corresponding criminal penalties. The new prohibited acts numbers (1), (2), and (3) are meant to address the problem of debt bondage faced by OFWs. The penalties of fines and imprisonment for illegal recruitment and the other prohibited acts were also raised significantly under the present laws.

A textual analysis of the present laws on illegal recruitment shows that the law has practically covered all possible scenarios and there are no perceivable gaps in the legal protection for OFWs against illegal recruitment.

Notwithstanding the enactment into law of R. A. 8042 and R. A. 10022, however, the problem on illegal recruitment continue to persist. Even in the face of stringent laws against illegal recruitment imposing imprisonment up to twenty (20) years and fines up to Five Million Pesos, illegal recruiters continue to victimize overseas job applicants, sometimes even including experienced migrant workers.

The fifteen (15) cases of illegal recruitment, mostly illegal recruitment in large scale or committed by a syndicate, were decided by the Supreme Court during the period 2015-2019. These were offenses committed after the enactment of R. A. 8042. In all these cases, the perpetrators did not have any valid license to recruit and yet, they were still able to defraud the victims.[66] On the other hand, the victims were not diligent enough to verify first with the POEA if the recruiters were licensed entities. In fact, in one case, the victims even admitted that they knowingly went through the process despite awareness that the perpetrator had no recruitment license because they were counting on the illegal recruiter's capacity to land them a job abroad.[67]

In a 2011 PIDS Discussion Paper, it was observed that notwithstanding the fact that laws are in place to protect OFWs, the implementation of the law leaves much to be desired.

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66 In the case of *"People of the Philippines vs. Delia Molina y Cabral,"* G.R. No. 207811, June 01, 2016, the Accused-Appellant was the President of a POEA-licensed recruitment agency but at the time the illegal recruitment took place, the license of her agency was suspended and her agency had no authority to recruit workers to Korea as it had no valid job order to do so.

67 *"People of the Philippines vs. Owen Marcelo Cagalingan and Beatriz B. Cagalingan,"* G.R. No. 198664, November 23, 2016

An example cited was that "many illegal recruiters, despite being issued multiple warrants of arrest, manage to evade arrest and continue to recruit unknowing OFWs desperate for work overseas. The Task Force Against Illegal Recruitment (TFAIR), an inter-agency body tasked to coordinate the efforts of different government agencies in the arrest and prosecution of illegal recruiters, currently has 20,000 unserved warrants for over two hundred large-scale illegal recruiters in the country. As the TFAIR is unable to arrest these large-scale illegal recruiters, they continue to swindle many OFWs of excessive placement fees and deploy OFWs to hazardous jobs overseas."[68]

The DOJ Prosecution Statistics on Illegal Recruitment for the period 2009- 2015 show that the total DOJ illegal recruitment case load or cases received was 18,885 cases (see Table 8 below). Of this total figure, only half (49%) or 9,345 were actually filed in court while other cases (15%) were either dismissed or referred. Over the years the percentage of illegal recruitment cases that were filed in court by the DOJ has fluctuated, reaching the lowest at 43% in 2012 and the highest at 57% in 2014, and then after dropping again in 2015 (53%). It can be observed that the rate of case disposition by the DOJ of illegal recruitment cases increased from 60% in 2009 to 77% in 2015, rising steadily except in year 2012 when it dropped to 57%.

Table 8: DOJ Illegal Recruitment Prosecution Statistics, Total Caseload and disposition of cases, 2009-2015

	Year							Total
Case Status	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	
Total Case Load (Number of Incoming)	2766	2767	2551	2752	3458	2764	1827	18885
Total Disposition (Number of Outgoing)	1661	1755	1733	1564	2148	1979	1398	12238
Breakdown of Disposition:								
Filed in court	1,204.00	1,392.00	1,328.00	1,185.00	1,695.00	1,575.00	966.00	9,345.00
Rate	*44%*	*50%*	*52%*	*43%*	*49%*	*57%*	*53%*	*49%*
Others (Dismissed, Referred)	457.00	363.00	405.00	379.00	453.00	404.00	402.00	2,863.00
Rate	*17%*	*13%*	*16%*	*14%*	*13%*	*15%*	*22%*	*15%*
	Year							**Total**
Case Status	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	
Total Case Load (Number of Incoming)	2766	2767	2551	2752	3458	2764	1827	18885
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Rate	*44%*	*50%*	*52%*	*43%*	*49%*	*57%*	*53%*	*49%*
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Rate	*17%*	*13%*	*16%*	*14%*	*13%*	*15%*	*22%*	*15%*

Source: DOJ Illegal Recruitment Prosecution Statistics 2009-2015

As for the POEA, the disposition rate has been on a decline from 45% in 2004 when 650 complaints out of 1,462 received were acted upon to 11% in 2009 and 17% in 2010. [69]

[68] Ambito, Julyn S. and Melissa Suzette L. Banzon, *"Review of Philippine Migration Laws and Regulations: Gains, Gaps, Prospects,"* Philippine Institute for Development Studies, Discussion Paper Series No. 2011-37, December 2011, https://dirp4.pids.gov.ph/ris/dps/pidsdps1137.pdf

[69] legacy.senate.gov.ph/press_release/2018/0226_recto1.asp

Only few of the cases filed in court end up in the conviction of illegal recruiters. Senator Ralph Recto, in a press statement dated February 26, 2018, lamented that of the 736 cases of illegal recruitment disposed by the DOJ in 2016, only 39 or 5 percent ended in conviction, while 211 were dismissed, 438 were archived, 23 resulted in acquittals and 25 resolved through mediation. This means six (6) out of ten (10) illegal recruitment cases were archived while three (3) out of ten (10) were dismissed.[70]

For the period 2015-2019, the POEA investigated and prosecuted a total of 502 illegal recruitment cases involving 1,124 complainants. 102 of these complaints (20%) were closed and terminated at the level of the POEA. 126 of these cases (25%) were dropped or dismissed by the Department of Justice/Local Prosecution Office. 20 of these cases (4%) were dismissed in court. 100 of these cases (20%) were archived in court pending arrest of the accused. There are 12 cases (2.4%) with on-going trial. 4 cases (0.8%) resulted in court conviction.[71]

For the same period 2015-2019, the POEA prosecuted and/or monitored 33 convictions for illegal recruitment.[72]

And then there is the matter of apprehension. Most illegal recruiters facing arrest manage to evade the law, there is reportedly a pile-up of unserved outstanding arrest warrants. "*At kahit libo-libo ang reklamo at nagiging biktima, ang average kada taon na bilang ng nahuhuli na illegal recruiter ay mga 40 lang*. This was the period 2004 to 2010, Recto said."

Data analysis on the intake and disposition of illegal recruitment cases was limited, as figures for 2018-2020 were not yet available online.

Closely related to the problem of illegal recruitment is the problem of human trafficking. Considering however, that there were no human trafficking cases involving OFWs decided by the Supreme Court in the period 2015-2019, the issue of human trafficking is not included in this study due to absence of data. This does not mean however, that human trafficking is not a problem of OFWs, as it is an ever-growing problem being faced by all. For the period 2015-2019 the Inter-Agency Council Against Trafficking (IACAT) monitored a total of 354 persons convicted in court for trafficking in persons.

In order to have a more focused campaign against illegal recruitment, trafficking in persons and recruitment of minor workers, DOLE Secretary Silvestre H. Bello III issued Administrative Order No. 551, series of 2019, creating the DOLE Task Force Against Illegal Recruitment, Trafficking In Persons and Recruitment Of Minor Workers. The task force is headed by DOLE Undersecretary Jacinto Paras, with the Administrator of the Philippine Overseas Employment Administration (POEA) as vice chair, and the Director of Bureau of Local Employment as member. The other members include the heads of the Overseas

70 Ibid.
71 2015-2021 POEA Illegal Recruitment Cases
72 2015-2021 POEA Prosecuted/Monitored Convictions

Workers Welfare Administration (OWWA), International Labor Affairs Bureau (ILAB), and Bureau of Workers with Special Concerns.[73]

"Among the general functions of the task force is to develop and execute strategies and schemes against the *modus operandi* of illegal recruiters, human traffickers and recruiters of minor workers; development and execution of strategies against syndicates responsible for tampering of birth records, securing spurious passports and travel documents; and recommend to the labor secretary the prosecution of recruiters of minors, human traffickers and illegal recruiters and syndicates, their cohorts, protectors, and coddlers.

"The task force also has the power to conduct surveillance and entrapment operations of persons believed engaged in illegal recruitment; and cause or direct the immediate investigation and speedy prosecution of cases involving illegal recruitment; coordinate with existing bodies, agencies, and other instrumentalities currently involved in the campaign against illegal recruitment, recruitment of minor workers and trafficking in persons.

"The task force can also request for the assistance of lawyers, operatives and support staff from the DOLE and its attached agencies and bureaus in such number as circumstances and exigency of service may require. There will be Task Forces from the DOLE Regional Offices, in coordination with Local Government Units and regional agencies and the regional task force's operational and law enforcement arm will be the National Bureau of Investigation (NBI) and the Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG). They shall operate as a composite team with members of the Task Force."[74]

It is clear from the foregoing that the current laws against illegal recruitment carry a strong capacity to potentially address the problem of illegal recruitment. The perceived problem areas are in public awareness for prevention, and the prosecution of illegal recruitment cases.

In order to address the identified shortcomings in the implementation of existing laws against illegal recruitment, the following measures are recommended:

1. Include basic orientation on what illegal recruitment and human trafficking are all about, including legal remedies of migrants in case abuse and recruitment violation are committed, in the pre-employment and pre-departure seminars being given to OFWs.

2. Considering that the recruitment is often done in communities, especially in the provinces, there is need to equip and educate the local government units, especially at the barangay level with regards to Illegal recruitment and human trafficking.

3. Published information and education materials on illegal recruitment and human trafficking should be in the language and form that can be easily grasped by prospective OFWs. Social media should be maximized as platform to discuss the issues,

[73] http://www.car.dole.gov.ph/default.php?retsamlakygee=756&resource=13dd621f27110108a10a88e99fe9ceaf

[74] Ibid.

modus operandi and other concerns pertaining to illegal recruitment and human trafficking. Regular announcements and information should be published online in order to encourage applicant OFWs to verify online with the POEA the license status of recruitment agencies.

4. The progress of cases involving Illegal recruitment and human trafficking should be monitored at all levels from filing, prosecution up to conviction and execution of judgment. The execution of affidavits of desistance by the complaining OFW victims, should there be other evidence available, should not deter the prosecution from proceeding with the prosecution of illegal recruitment cases.

5. The number of judges, public prosecutors and public attorneys should be increased in order to achieve effective management of their case loads, including illegal recruitment and human trafficking cases.

6. Close coordination with the Anti Money Laundering Council should be established by the prosecution in order to seize assets of illegal recruiters and human traffickers that may be used to compensate the victims.

7. The rights-based and gender-sensitivity approach should be included in the training manual of the DOJ and the Supreme Court, in order to train all personnel, including judges and state prosecutors especially in illegal recruitment and human trafficking cases.

8. The failure to serve more than 20,000 warrants of arrest for large scale or syndicated illegal recruitment should be given special attention. Strict penalties for sheriff or arresting officer who will fail to serve warrant of arrest without justifiable reason should be imposed.

4.4 Disability and Death Benefits

Two (2) observations that stand out in the OFW cases decided by the Supreme Court in the period 2015-2019 are the following:

(a) First, OFW cases decided by the Supreme Court were predominantly cases involving sea-based workers. For the five-year period 2015-2019, on the average, cases involving sea-based workers accounted for 85.39% of the total number of OFW cases resolved by the Supreme Court per year, whereas sea-based OFWs account for only 20% of annual OFW deployment.

(b) Second, the combined claims for total or partial disability benefits and claims for death benefits filed exclusively by sea-based OFWs accounted for 80.72% of the total number of OFW cases decided by the Supreme Court from 2015-2019.

This trend is not limited to the period 2015-2019 only. An examination of OFW cases decided by the Supreme Court in previous years shows that cases involving disability and death benefit claims of seabased workers constitute the majority of OFW cases decided by the Supreme Court annually.

Why are OFW cases decided by the Supreme Court in 2015-2019 predominantly cases involving disability and death benefit claims of sea-based workers?

The answer lies in the gross disparity on disability and death benefits of sea-based workers vis-à-vis land-based workers.

Section 37-A of R. A. 8042, as amended, provides for compulsory insurance coverage for all OFWs deployed through recruitment/manning agencies as follows:

Type of Benefit	Amount of Insurance Coverage
a) Accidental Death Benefit;	USD 15,000.00
b) Natural Death Benefit;	USD 10,000.00
c) Permanent Total Disablement Benefit;	USD 7,500.00
d) Repatriation Cost Benefit;	Actual cost
e) Subsistence Allowance Benefit;	USD 100.00 per month for a maximum of six (6) months
f) Money Claims Benefit;	Three (3) months for every year of employment contract with a maximum of USD 1,000.00 per month
g) Compassionate Visit Benefit;	Actual cost
h) Medical Evacuation Benefit;	Actual cost
i) Medical Repatriation Benefit	Actual cost

Source: Agency-Hired Compulsory Insurance - Frequently Asked Questions (FAQs) "Compulsory Insurance Coverage for Agency-Hired Migrant Workers"[75]

Under the compulsory insurance coverage for all OFWs under R. A. 8042, as amended, agency-hired land-based and sea-based OFWs are covered by a permanent total disability benefit in the amount of US$7,500.00 for permanent damage or disability to both arms, feet and eyes. The insurance coverage however, does not cover partial disability, such as loss of one foot, one arm or one eye.[76]

OFWs who are direct hires, name-hires or re-hires may also avail of the foregoing insurance coverage on a voluntary basis.

OFWs who are recruited by the POEA on a government-to-government arrangement are covered by a foreign employers guarantee fund that is answerable for the OFWs' monetary claims arising from breach of contractual obligations.[77]

[75] https://www.insurance.gov.ph/static/OFW/downloads/OFW%20FAQs%20-%20English.pdf. 2017.06.08.pdf

[76] Ibid.

[77] Section 37-A of R. A. 8042, as amended.

Aside from the compulsory insurance coverage under Section 37-A of R. A. 8042, all OFWs, may they be land-based or sea-based, who are OWWA members in good standing, are also entitled to the following benefits from OWWA:

Type of Benefit	Amount of Benefit
a) Accidental Death Benefit;	PhP 200,000.00
b) Natural Death Benefit;	PhP 100,000.00
c) Partial Disability Benefit;	PhP 50,000.00
d) Total Permanent Disability Benefit;	PhP 100,000.00
e) Burial Benefit;	PhP 20,000.00

Source: OWWA Frequently Asked Questions[78]

In addition to the foregoing, seabased OFWs are also provided with additional compensation for injury, illness, and death under the 2010 POEA Standard Employment Contract (2010 POEA-SEC) for seafarers.[79]

Under the 2010 POEA-SEC, the employer of seafarers is liable to pay compensation and benefits when the seafarer suffers work-related injury or illness during the term of his/her contract.[80] OFW-seafarers are entitled to temporary and permanent disability benefits up to a maximum of US$50,000.00 based on the Impediment Grad Schedule as provided for under the 2010 POEA-SEC. Those illnesses not listed in Section 32 of the 2010 POEA-SEC are disputably presumed to be work-related.[81]

In case of a work-related death of an OFW-seafarer, his/her beneficiaries are entitled to the Philippine Currency equivalent of US$50,000.00 and an additional amount of US$7,000.00 to each child under the age of 21, but not exceeding 4 children.[82]

What is the legal basis for compensation for work-related death or injury of an OFW-seafarer?

The Supreme Court expounded on the legal basis of compensation for work-related death of an OFW-seafarer in the case of *"Phil-Nippon Kyoei, Corp. vs. Rosalia T. Gudelosao, et al."*[83] as follows:

> "Act No. 3428, otherwise known as The Workmen's Compensation Act is the first law on workmen's compensation in the Philippines for work-related injury, illness, or death. This was repealed on November 1, 1974 by the Labor Code, and was further amended on December 27, 1974 by Presidential Decree No. 626. The pertinent provisions are now found in Title II, Book IV of the Labor Code on Employees Compensation and State Insurance Fund.

78 https://www.owwa.gov.ph/index.php/about-owwa/f-a-q
79 POEA Memorandum Circular No. 10, series of 2010, entitled "Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships"
80 Ibid, Section 20(A)
81 Ibid, Section 20(A)(4)
82 Ibid, Section 20(B)(1)
83 G. R. No. 181375, 13 July 2016

"The death benefits granted under Title II, Book IV of the Labor Code are similar to the death benefits granted under the POEA-SEC. Specifically, its Section 20(A)(l) and (4)(c) provides that:

> '1. In case of work-related death of the seafarer, during the term of his contract the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.
>
> xxx
>
> '4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:
>
> xxx
>
> 'c. The employer shall pay the beneficiaries of the seafarer the [Philippine] currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.'

"Akin to the death benefits under the Labor Code, these benefits under the POEA-SEC are given when the employee dies due to a work-related cause during the term of his contract. The liability of the shipowner or agent under the POEA-SEC has likewise nothing to do with the provisions of the Code of Commerce regarding maritime commerce. The death benefits granted under the POEA-SEC is not due to the death of a passenger by or through the misconduct of the captain or master of the ship; nor is it the liability for the loss of the ship as result of collision; nor the liability for wages of the crew. It is a liability created by contract between the seafarers and their employers, but secured through the State's intervention as a matter of constitutional and statutory duty to protect Filipino overseas workers and to secure for them the best terms and conditions possible, in order to compensate the seafarers' heirs and dependents in the event of death while engaged in the performance of their work or employment. The POEA-SEC prescribes the set of standard provisions established and implemented by the POEA containing the minimum requirements prescribed by the government for the employment of Filipino seafarers. While it is contractual in nature, the POEA-SEC is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. As such, it is deemed incorporated in every Filipino seafarers' contract of employment. It is established pursuant to POEA's power 'to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith' and 'to protect the well-being of Filipino workers overseas' pursuant to Article 17 of the Labor Code as amended by Executive Order (EO) Nos. 797 and 247.

> "But while the nature of death benefits under the Labor Code and the POEA-SEC are similar, the death benefits under the POEA-SEC are intended to be separate and distinct from, and in addition to, whatever benefits the seafarer is entitled to under Philippine laws, including those benefits which may be claimed from the State Insurance Fund.
>
> "Thus, the claim for death benefits under the POEA-SEC is the same species as the workmen's compensation claims under the Labor Code – both of which belong to a different realm from that of Maritime Law. Therefore, the limited liability rule does not apply to petitioner's liability under the POEA-SEC."

If the OFW-seafarer belongs to a seafarer's union, and his/her employment contract is covered by a Collective Bargaining Agreement that provides superior death or disability benefits, then the benefits payable to the OFW-seafarer are computed on the basis of the provisions of said Collective Bargaining Agreement.

Thus, unresolved legal disputes between the OFW-seafarer and the employer/manning agency on the compensability of claims of the OFW-seafarer for death or disability benefits, often reach the Supreme Court due to the huge amounts involved in the legal dispute. Usually, the legal dispute revolves around the following issues: (a) whether or not the illness/injury/death is compensable; (b) if the OFW or OFW heir is so entitled, what is the amount of compensation payable; and (c) whether or not the procedures in order to claim entitlement to the benefits defined and enumerated in the POEA-SEC for seafarers were observed.

It is unfortunate however, that the foregoing compensation for injury, illness, and death under the 2010 POEA-SEC for seafarers have no substantial equivalent in the POEA Standard Employment Contracts for land-based OFWs. The POEA-SEC for land-based OFWs merely provide for the medical expenses of the OFW, but not for compensation or benefits for work-related injury, illness, and death. Thus:

> (a) In the POEA-SEC for Various Skills[84], the employer is supposed to provide free medical and dental services and facilities, including medicine to the OFW.[85] The employer is also obligated to provide personal life accident insurance in accordance with host government and/ or Philippine government laws without cost to the worker. In addition, for areas declared by the Philippine government as war risk areas, a war risk area insurance of not less than P100,000 shall be provided by the employer at no cost to the worker.[86]
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> (b) In the POEA-SEC for Household Service Workers Bound For Saudi Arabia[87], the employer is required to shoulder the medical expenses that

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84 http://www.poea.gov.ph/files/sec_various_new.pdf
85 Ibid, Section 10
86 Ibid, Section 11
87 Section 9 of the POEA-SEC for Household Service Workers Bound For Saudi Arabia available at http://www.poea.gov.ph/docs/KSA%20SEC.pdf

may be incurred by the OFW-HSW. For acceptable medical reasons, the HSW shall be allowed to rest and shall continue to receive his/her salary.

(c) In the POEA-SEC for Household Service Workers Bound For Jordan[88], the employer is required to obtain a medical, life, accident and repatriation insurance for the OFW-HSW.

In the absence of a contractual stipulation for compensation or benefits for work-related injury, illness, and death in the standard employment contracts for land-based OFWs, is there legal basis to claim for damages for work-related injury, illness, and death under Section 10 of R. A. 8042, as amended?

Section 10 of Republic Act No. 8042, as amended, read as follows:

"SEC. 10. *Money Claims.* - 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 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 damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

"The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall 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 and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid 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.

"Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within thirty (30) days from approval of the settlement by the appropriate authority.

"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

[88] Section 3(j) of the POEA-SEC for Household Service Workers Bound For Jordan available at http://www.poea.gov.ph/docs/sec_jordan_2013.pdf

reimbursement if 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.[89]

xxx"

From the above-quoted portions of Section 10 of Republic Act No. 8042, as amended, it is clear that only OFWs/migrant workers who were illegally dismissed are entitled to the award of the unexpired portion of the contract, while OFWs who were repatriated back to the Philippines due to work-related injuries or illness, there being no illegal dismissal, are not so entitled.

Attempts to utilize Section 10 of R. A. 8042 in order to claim the unexpired portion of the overseas employment contract as compensation for OFWs who suffered work-related injuries were unsuccessful.

In the case of *"Renato Dasigan Masagca V. Batangueno Human Resources Inc., Keangnam Enterprises Ltd., and/or Ruel S. Atienza"* **[90],** a case wherein the OFW was repatriated by his employer due to his inability to work on account of the injury he suffered while at work. He suffered a deep cut in his right hand as well as broken bones. His right arm cannot be used anymore due to the pain and numbness radiating up to his shoulder. Since he cannot work anymore, he was repatriated to the Philippines. Complainant filed a case for payment of the unexpired portion of the contract.

The NLRC ruled as follows:

"Third, Anent the claim for the unexpired portion of the contract, this Office must necessarily deny the same. It must be noted that complainant never alleged illegal dismissal in the present case. Rather, complainant confirms that he suffered an injury which rendered him unable to work and which warranted his repatriation to the Philippines. There being no illegal dismissal, the claim for payment of salary for the unexpired portion of his contract cannot be sustained pursuant to paragraph 5 section 7 of RA 10022 (the Amended Migrant Workers Act) which clearly provides:

> *In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any authorized 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*

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89 The phrase "or for three (3) months for every year of the unexpired term, whichever is less" was struck down as unconstitutional by the Supreme Court in the first instance in the case of *"Serrano vs. Gallant Maritime Services, Inc. and Marlow Navigation Co., Inc.,"* G. R. No. 167614, 24 March 2009 and in the second instance in *"Sameer Overseas Placement Agency, Inc. vs. Joy C. Cabiles,"* G. R. No. 170139, 05 August 2014.

90 NLRC NCR Case No. (L)10-16171-12

or for three (3) months for everyday year of the unexpired term, whichever is less.

Clearly, to warrant the grant of salary for the unexpired portion of the contract, the termination of employment must be "without just, valid or authorized cause as defined by law or contract", a condition that is absent in the present case."

It is clear from the first paragraph of Section 10 of Republic Act No. 8042, as amended, that in addition to *"claims arising out of an employer-employee relationship or by virtue of any law or contract involving OFWs,"* the Labor Arbiters of the NLRC have original and exclusive jurisdiction to hear and decide, "*claims for actual, moral, exemplary and other forms of damage. xxx"* It is also clear in the law that *"the liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several."*

Further, one of the undertakings assumed by any person applying for a license to operate a recruitment agency is to "(a)ssume joint and several 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 unpaid wages, death and disability compensation and repatriation."[91]

But what exactly are the OFW claims for damages cognizable by the Labor Arbiters of the NLRC?

In the case of *"Spouses Hipolito Dalen, Sr. and Fe G. Dalen, et al. vs. United Philippine Lines, Inc., et al,"*[92] the Supreme Court made a distinction as to what type of damages are cognizable by the regular courts and by the Labor Arbiters of the NLRC. Thus:

"Before going into the issues raised by the parties, it is necessary to first settle whether the claim for damages based on tort filed by petitioners before the LA was proper.

"The Labor Code provides that:

"Art. 224.[217] *Jurisdiction of Labor Arbiters and the Commission*. –

x x x x

"4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

x x x x

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91 Section 4(f)(8) of Rule II (A) of the *POEA Revised Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016*

92 G.R. No. 194403, July 24, 2019

"Similarly, Section 10 of Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 provides:

> 'Sec. 10. MONEY CLAIMS. - 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 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'

"In deciding whether a case arises out of employer-employee relations, the Court formulated the 'reasonable causal connection rule', wherein if there is a reasonable connection between the claim asserted and the employer-employee relations, then the case is within the jurisdiction of the labor courts.

"In this case, petitioners' claim for damages is grounded on respondents' gross negligence which caused the sinking of the vessel and the untimely demise of their loved ones. Based on this, the subject matter of the complaint is one of claim for damages arising from *quasi-delict*, which is within the ambit of the regular court's jurisdiction.

"According to Article 2176 of the New Civil Code, 'Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called *quasi-delict*.'

"Thus, to sustain a claim liability under *quasi-delict*, the following requisites must concur: (a) damages suffered by the plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.

"Here, petitioners argue that respondents are duty bound to exercise due diligence required by law in order to ensure the safety of the crew and all the passengers therein. It was further averred that the negligence on the part of the respondents is quite apparent when they allowed the vessel to load and transport wet cargo. For failure therefore to exercise extra ordinary diligence required of them, the respondents must be held liable for damages to the surviving heirs of the deceased crew members. Notwithstanding the contractual relation between the parties, the act of respondents is a *quasi-delict* and not a mere breach of contract.

"Where the resolution of the dispute requires expertise, not in labor management relations nor in wage structures and other terms and conditions of employment, but rather in the application of the general civil law, such claim

falls outside the area of competence or expertise ordinarily ascribed to the LA and the NLRC. *(underscoring ours)*

"Therefore, the LA has no jurisdiction over the case in the first place; it should have been filed to the proper trial court."

Following the Supreme Court's decision in the case of *"Spouses Hipolito Dalen, Sr. and Fe G. Dalen, et al. vs. United Philippine Lines, Inc., et al,",* a distinction can be made as to when OFW claims for damages will fall under the jurisdiction of the Labor Arbiters of the NLRC, or of the regular courts.

The application of the "reasonable causal connection rule" – whether or not there is a reasonable connection between the claim asserted and the employer-employee relations – will determine the jurisdiction for OFW claims for damages against the employer.

Thus, OFW claims for damages arising from torts or *quasi-delict*, where the cause of action is grounded on the allegation of gross negligence, as in the case of *"Spouses Hipolito Dalen, Sr. and Fe G. Dalen, et al. vs. United Philippine Lines, Inc., et al.,* which caused the sinking of the vessel, and the resulting death of the loved ones of the petitioners, falls within the jurisdiction of the regular courts, and not of the NLRC.

On the other hand, where the OFW claim for damages is based on labor-management relations, wage structures, and other terms and conditions of employment, it is the Labor Arbiters of the NLRC that have the exclusive jurisdiction to hear and decide the case.

In theory, it may be possible for an OFW to file a claim for damages (not for compensation) arising from a work-related injury, illness or death, provided that the reasonable causal connection with the employer-employee relations can be established.

In contrast, local workers suing for work-related injuries, illness or death have two (2) options exclusive of one another – either to seek compensation under the Workmens' Compensation Act or to seek indemnity under the provisions of the Civil Code.

In the case of *"Candano Shipping Lines, Inc. vs. Florentina J. Sugata-on*"[93], the Supreme Court explained the options available to the local worker and his/her heirs as follows:

"In the case of *Floresca v. Philex Mining Company,* we declared that the employees may invoke either the Workmen's Compensation Act or the provisions of the Civil Code, subject to the consequence that the choice of one remedy will exclude the other and that the acceptance of the compensation under the remedy chosen will exclude the other remedy. The exception is where the claimant who had already been paid under the Workmen's Compensation Act may still sue for damages under the Civil Code on the basis of supervening facts or developments occurring after he opted for the first remedy.

[93] G.R. No. 163212, March 13, 2007.

"Stated differently, save for the recognized exception, an employee cannot pursue both remedies simultaneously but has the option to proceed by interposing one remedy and waiving his right over the other. As we have explained in *Floresca*, this doctrinal rule is rooted on the theory that the basis of the compensation under the Workmen's Compensation Act is separate and distinct from the award of damages under the Civil Code, thus:

"The rationale in awarding compensation under the Workmen's Compensation Act differs from that in giving damages under the Civil Code. The compensation acts are based on a theory of compensation distinct from the existing theories of damages, payments under the acts being made as compensation and not as damages (99 C.J.S. 53).

"Compensation is given to mitigate harshness and insecurity of industrial life for the workman and his family. Hence, an employer is liable whether negligence exists or not since liability is created by law. Recovery under the Act is not based on any theory of actionable wrong on the part of the employer (99 D.J.S. 36).

"In other words, under compensation acts, the employer is liable to pay compensation benefits for loss of income, as long as the death, sickness or injury is work-connected or work-aggravated, even if the death or injury is not due to the fault of the employer (Murillo v. Mendoza, 66 Phil. 689). On the other hand, damages are awarded to one as a vindication of the wrongful invasion of his rights. It is the indemnity recoverable by a person who has sustained injury either in his person, property or relative rights, through the act or default of another (25 C.J.S. 452)."

"The principle underscored in the case of *Floresca* was further affirmed in the later case of *Ysmael Maritime Corporation v. Avelino,* wherein we emphasized that once the claimant had already exercised his choice to pursue his right under one remedy, he is barred from proceeding with an alternative remedy. As eloquently laid down by Chief Justice Marcelo Fernan:

"It is therefore clear that respondents had not only opted to recover under the Act but they had also been duly paid. At the very least, a sense of fair play would demand that if a person entitled to a choice of remedies made a first election and accepted the benefits thereof, he should no longer be allowed to exercise the second option. 'Having staked his fortunes on a particular remedy, (he) is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission.'

"In the case at bar, Florentina was forced to institute a civil suit for indemnity under the New Civil Code, after Candano Shipping refused to compensate her husband's death.

"The pertinent provision of the New Civil Code reads:

"Article 1711. Owners of enterprises and other employers are obliged to pay compensation for the death of or injuries to their laborers, workmen, mechanics or other employees, even though the event may have been purely accidental or entirely due to a fortuitous cause, if the death or personal injury arose out of and in the course of employment. The employer is also liable for compensation if the employee contracts any illness or diseases caused by such employment or as the result of the nature of employment. If the mishap was due to the employee's own notorious negligence, or voluntary act, or drunkenness, the employer shall not be liable for compensation. When the employee's lack of due care contributed to his death or injury, the compensation shall be equitably reduced.

"In the case of *Philippine Air Lines, Inc. v. Court of Appeals*, this Court validated the strength of the aforementioned provision and made the employer liable for the injury suffered by its employee in the course of employment. We thus ruled:

"Having affirmed the gross negligence of PAL in allowing Capt. Delfin Bustamante to fly the plane to Daet on January 8, 1951 whose slow reaction and poor judgment was the cause of the crash-landing of the plane which resulted in private respondent Samson hitting his head against the windshield and causing him injuries for which reason PAL terminated his services and employment as pilot after refusing to provide him with the necessary medical treatment of respondent's periodic spells, headache and general debility produced from said injuries, We must necessarily affirm likewise the award of damages or compensation under the provisions of Art. 1711 and Art. 1712 of the New Civil Code. x x x.

"As early as the case of *Valencia v. Manila Yacht Club, Inc.*,[22] this Court, speaking through the renowned civilist, Mr. Justice J.B.L. Reyes, made a pronouncement that Article 1711 of the Civil Code imposes upon the employer the obligation to compensate the employee for injury or sickness occasioned by his employment, and thus articulated:

">Appellant's demand for compensation is predicated on employer's liability for the sickness of, or injury to, his employee imposed by Article 1711 of the Civil Code, which reads:

"Article 1711. Owners of enterprises and other employers are obliged to pay compensation for the death x x x.

"We find the abovequoted provision to be applicable and controlling in this case. The matter of the amount of compensation and allowable medical expenses should be properly determined by the Municipal Court after the parties are heard accordingly.

"Given that the right of the claimant arose from the contract of employment and the corresponding obligation imposed by the New Civil Code upon the employer to indemnify the former for death and injury of the employee circumstanced by his employment, necessarily, the provisions of the same code on damages shall govern the extent of the employer's liability.

"The pertinent provision on damages under the New Civil Code provides:

"Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

"Article 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

"In order to give breath to the aforestated provisions on damages of the New Civil Code, they must be transformed into a more tangible and practical mathematical form, so that the purpose of the law to indemnify the employee or his heirs for his death or injury occasioned by his employment, as envisioned by the Article 1711 of the same code may be realized. We deem it best to adopt the formula for loss of earning capacity enunciated in the case of *Villa Rey v. Court of Appeals*, in computing the amount of actual damages to be awarded to the claimant under Article 1711 of the New Civil Code.

"In Villa Rey, the common carrier was made liable for the death of its passenger on board a passenger bus owned and operated by Villa Rey Transit, Inc. going to Manila from Lingayen, Pangasinan. While the bus was nearing Sadsaran Bridge in Barrio Sto. Domingo, Minalin, Pampanga, it frontally hit the rear side of bull cart filled with hay and bamboo poles. The protruding end of one bamboo pole, about eight feet long, penetrated through the glass windshield of the bus and hit the face of Policarpio Quintos, Jr., who was then sitting at the front row, causing his death.

"The obligation of the common carrier to indemnify its passenger or his heirs for injury or death arose from the contract of carriage entered into by the common carrier and the passenger. By the very nature of the obligation which is imbued with public interest, in contract of carriage the carrier assumes the express obligation to transport its passenger to his destination safely and to observe extraordinary diligence with due regard to all the circumstances, and any injury that might be suffered by the passenger is right away attributable to the fault or negligence of the carrier and thus gives rise to the right of the passenger or his heirs for indemnity.

"In the same breadth, the employer shall be liable for the death or personal injury of its employees in the course of employment as sanctioned by Article 1711 of the New Civil Code. The liability of the employer for death or personal injury of his employees arose from the contract of employment

entered into between the employer and his employee which is likewise imbued with public interest. Accordingly, when the employee died or was injured in the occasion of employment, the obligation of the employer for indemnity, automatically attaches. The indemnity may partake of the form of actual, moral, nominal, temperate, liquidated or exemplary damages, as the case may be depending on the factual milieu of the case and considering the criterion for the award of these damages as outlined by our jurisprudence. In the case at bar, only the award of actual damages, specifically the award for unearned income is warranted by the circumstances since it has been duly proven that the cause of death of Melquiades is a fortuitous event for which Candano Shipping cannot be faulted."

In summary, while the right of seabased OFWs to sue for compensation and benefits for work-related illness, injury or death is well established under the law and under the provisions of the POEA-SEC for seafarers, the same conclusion could not be drawn for landbased OFWs as there are no provisions in the POEA-SEC for landbased OFWs that provide for their compensation and benefits in case of work-related illness, injury or death, similar to the provisions of the POEA-SEC for seafarers.

An attempt to apply the pertinent provisions of the Civil Code provisions in an OFW case involving claims for work-related injury was denied by the NLRC in the case of *"Deaver W. Solawen vs. Provident Overseas Placement Agency"*[94], to wit:

"The complainant suffered a work-related injury in Malaysia when a small block dislodged from a crane fractured his left leg. Because of the gravity and seriousness of the fracture, he was declared 'unfit to work' and can no longer finish his contract. He was repatriated to the Philippines where he was again subjected to another operation 'for docking with iliac bone graft.'

'In this case, complainant invoked Articles 1711 to 1712, in relation to Articles 2199, 2200 and 2205(1), of the Civil Code, complainant opines that he is entitled to the equivalent of his salary for the remainder of his contract term, which he would have earned had he not gotten injured, by way of compensatory or actual damages. Xxx

***"It bears to stress that the complainant's claims arose from his employment as an OFW in Malaysia. As such, the applicable law with respect to injuries sustained as a result of said employment is Republic Act (RA) No. 8042, as amended by RA No. 10022, or the Migrant Workers Act, and not the Civil Code**. Moreover, complainant cannot invoke Sameer Overseas Placement Agency, Inc. v. Joy C. Cabilles, as said case involves illegal dismissal case.xxx*

"The instant case clearly does not involve illegal dismissal case or authorized deductions from complainant's salary. It is an undisputed fact that he was repatriated, not because he was dismissed from employment, but because or work-related injuries. Thus, complainant has no legal basis under the Migrant

[94] NLRC LAC NO. 09-000762-15

Workers Act, or even under his employment contract, for his claim for his unpaid salary for the unexpired portion of his contract."

There were no OFW cases involving claims of land based OFWs for compensation and benefits for work-related injury, illness or death that were decided by the Supreme Court in 2015-2019. Thus, while the two OFW cases herein cited did not reach the Supreme Court, the decision of the Labor Arbiter and the Commission is to deny the claims of OFWs who suffered work-related injuries where there is no allegation or finding of illegal dismissal.

What is needed at this point is to review the provisions of R. A. 8042, as amended, as well as the POEA-SEC for land based OFWs in order to provide for joint and solidary liability of the foreign employer and the local recruitment agency for compensation and benefits in case of work-related injury, illness or death of the land based OFW similar to, or comparable to, that of the sea based OFWs.

4.5 Compromise Agreements, Quitclaims and the SEnA Process

One way to end a protracted legal dispute is by way of compromise.

A compromise agreement is defined as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."[95] Once freely and validly entered into, a compromise agreement becomes the judgment on the merits of the case and has the force of law between the parties.

Amicable settlements through compromise agreements are a preferred mode of settling labor disputes as these give the parties the opportunity to resolve the labor dispute in the least possible time and in the process, avoid a protracted and costly litigation.

Section 10 of R. A. 8042, as amended, requires that "(a)ny compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within thirty (30) days from approval of the settlement by the appropriate authority."

NLRC records show that for the period 2015-2017, 60-80% of all labor cases terminated at the Labor Arbiter's level were ended either through settlement while undergoing the Singe-Entry Approach (SEnA) process or through compulsory arbitration before the Labor Arbiter.[96]

NLRC data for the period 2010-2019 also show that for OFW cases, except for the year 2010, monetary awards through amicable settlement are much greater than monetary awards secured through judgment on the merits of the case. In 2019, the total monetary awards in favor of the OFW complainants amounted to PhP 3,946,932,081.16. Of this figure, PhP 2,813878,887.15, or 71.29% was awarded by way of amicable settlement while only PhP 1,133,053,194.01 or 28.71% was awarded through judgment on the merits.

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95 Article 2028, Civil Code of the Philippines

96 NLRC Performance Reports 2015-2017

YEAR	SETTLED	DECIDED
2019	2,813,878,887.15	1,133,053,194.01
2018	3,372,039,878.70	881,235,519.64
2017	2,348,841,422.03	608,971,005.54
2016	2,691,013,655.38	985,571,869.42
2015	3,281,782.54	958,713,256.00
2014	2,013,945.49	1,062,416.60
2013	3,054,883.40	1,314,169.59
2012	1,575,386.27	969,644,376
2011	1,314,563.82	905,128,917
2010	1,444,355.14	1,485,805.13

Source: NLRC 2019 Performance Report

In order to encourage the settlement of more labor disputes through amicable settlement, the NLRC is implementing a Double Barreled (2 Cycle) Conciliation-Mediation Program consisting of two (2) stages: (a) first, through mandatory conciliation-mediation prior to compulsory arbitration pursuant to the Singe-Entry Approach (SEnA) Rules of Procedure; and (b) mandatory conciliation-mediation during compulsory arbitration pursuant to the 2011 NLRC Rules of Procedure, as amended.

The Single Entry Approach (SEnA) is described as "an administrative approach to provide a speedy, impartial, inexpensive, and accessible settlement procedure of all labor issues or conflicts to prevent them from ripening into full-blown disputes or actual labor cases. It was first introduced through Department Order 107-10 and later institutionalized through the enactment of Republic Act 10396 in 2013 providing for a 30-day mandatory conciliation-mediation for issues arising from labor and employment (i.e., governed by employee-employer relations). As a form of conciliation-mediation intervention, the main objective is to effect 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. Labor dispute issues that may be settled through SEnA include, among others:

1. termination or suspension of employment issues;
2. claims for any sum of money, regardless of amount;
3. intra-union and inter-union issues, after exhaustion of administrative remedies;
4. unfair labor practices;
5. closures, retrenchments, redundancies, temporary lay-offs;
6. OFW cases; and
7. any other claims or issues arising from employer-employee relationship (except for occupational safety and health standards, involving imminent

danger situation, dangerous occurrences /or disabling injury, and/or absence of personal protective equipment)."[97]

On 22 February 2016, then Labor Secretary Rosalinda Dimapilis-Baldoz issued DOLE Department Order No. 151-16[98] which, among others, implemented the following changes as far as SEnA for OFWs are concerned:

(a) excluded from the SEnA violations of Philippine Overseas Employment Administration (POEA) Rules and Regulations involving:

1. Serious offenses and offenses penalized with cancellation of license;
2. Disciplinary actions against overseas workers/seafarers which are considered serious offenses or which carry the penalty of delisting from the POEA registry at first offense;
3. Complaints initiated by the POEA;
4. Complaints against an agency whose license is revoked, cancelled, expired or otherwise delisted; and
5. Complaints categorized under the POEA Rules and Regulations as not subject to SEnA[99]

Under Section 139 of Rule II, Part VI of the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, money claims of OFW shall be conciliated by the POEA or by the Philippine Overseas Labor Office (POLO) in accordance with SEnA Rules.

Money claims arising from: (a) placement fees charged or collected for deployment to countries where the prevailing system, either by law, policy or practice does not allow the charging and collection of placement fees[100]; and (b) amounts charged and collected, directly or indirectly, greater than that specified in the schedule of allowable placement fees, or when such charging or collection is prohibited by any law, rules or policy, or making a worker pay or acknowledge any amount greater than that actually received by him/her as loan or advance[101] are settled for the purpose of returning the full amount excessively/illegally collected.[102]

The following cases are not subject to SEnA: (a) cases referred by the POLO or any other government agency; (b) cases initiated by the POEA; and (c) cases involving acts of misrepresentation for the purpose of securing a license.[103]

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97 https://www.dole.gov.ph/sena-contents/

98 entitled "Implementing Rules and Regulations of Republic Act No. 10396, or "An Act Strengthening Conciliation-Mediation as a Voluntary Mode of Dispute Settlement for all Labor Cases, Amending For this Purpose Article 228 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines"

99 Section 3(e) of DOLE Department Order No. 151-16

100 Section 143 (g) of the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016

101 Ibid., Section 143 (h)

102 Ibid., Section 139

103 Ibid.

(b) established Single Entry Assistance Desks at the POEA and its regional offices, at the Overseas Workers Welfare Administration (OWWA) and its regional offices and at the POLOs.[104]

(c) allowed the conduct of SEnA for OFWs at the nearest POLO in the country of destination or disembarkation or at the nearest DOLE Office or attached agency of preference when in the country.[105]

Settlement agreement reached by the parties before the Single Entry Assistance Desk Officer (SEADO) are final and immediately executory. It is binding on all DOLE offices and attached agencies except when the settlement agreement is established to be contrary to law, morals, public order and public policy.[106]

The fairness/reasonableness of settlement agreements shall depend on the totality of the circumstances, the degree of voluntariness and credibility of the consideration.[107]

Concerns have been raised by many quarters about the implementation of SEnA for OFWs, especially at the POLOs. In particular,

(a) There appears to be an apparent conflict between the Section 3(e) of DOLE Department Order No. 151-16 and Section 139 of Rule II, Part VI of the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016.

While Section 3(e) of DOLE Department Order No. 151-16 excluded from the SEnA violations of POEA Rules and Regulations involving serious offenses and offenses penalized with cancellation of license, Section 139 of Rule II, Part VI of the 2016 Revised POEA Rules and Regulations allows OFW money claims arising from violations of Sections 143(g) and (h) of the 2016 Revised POEA Rules and Regulations to be subjected to SEnA proceedings for the purpose of returning the full amount excessively/illegally collected.

Violations of Sections 143(g) and (h) of the 2016 Revised POEA Rules and Regulations are both punishable with cancellation of the recruitment license at the first instance, and therefore, should not have been included in the types of OFW money claims that should be subject to SEnA proceedings.

In any case, even assuming that SEnA proceedings should be allowed solely for the the purpose of returning to the OFW the full amount excessively/illegally collected, the settlement agreement negotiated through SEnA should not result in the dismissal or weakening of the administrative and/or criminal cases filed against the erring recruitment agency and its directors and officers.

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104 Section 5, Rule I of DOLE Department Order No. 151-16
105 Ibid., Section 2, Rule II
106 Ibid., Section 3, Rule V
107 Ibid., Section 1, Rule V

(b) While it is true that there are many employment disputes between the OFWs and their foreign employer that have been resolved through the SEnA process at the POLOs, it is equally true that OFWs can be placed at a great disadvantage during SEnA proceedings before the POLOs if the foreign employer has possession of the OFW's passport and identity documents and is allowed to utilize the turnover of the OFW's passport and identity documents and issuance of the exit visa as bargaining chips in the SEnA negotiations.

SEnA proceedings before the POLOs puts greater pressure on the OFWs to accept the demands of the employer because the primary concern of OFWs in distress is to return home to their families in the Philippines. Their distress may be taken advantage of by the employer in order to secure a signed compromise agreement and a release, waiver and quitclaim in exchange for payment of unpaid wages, return of the OFWs passport and issuance of an exit visa. In many cases, it is the OFW himself/herself or OWWA that shoulders the cost of the plane fare to the Philippines should the foreign employer refuse to pay for it.

At the very least, the SEADO should ensure, in case that the foreign employer has possession of the OFW's passport and other identity documents, that the foreign employer shall immediately turn over possession of the same to the OFW without any conditions prior to the formal SEnA proceedings before the POLO. Should the employer and/or recruitment agency use the turnover of the OFW's passport and identity documents and issuance of the exit visa as bargaining chips in the SEnA negotiations, such fact should be indicated in the minutes of the SEnA proceedings and the signed compromise agreement, if any, should not bar the OFW from filing a money claims case before the NLRC upon his/her return to the Philippines.

(c) The compromise agreement and/or release, waiver and quitclaims executed by the OFW before the SEADO at the POLO effectively deprive/s the OFW the opportunity to file a money claims case before the NLRC upon return to the Philippines. It also weakens the efficacy of the joint and solidary liability of the foreign employer and recruitment agency.

While it is true that Section 3, Rule V of DOLE Department Order No. 151-16 provided that settlement agreements executed during SEnA is not binding if it is established that the settlement agreement is contrary to law, morals, public order and public policy, the OFW must hurdle a higher legal bar in having the settlement agreement nullified in view of the legal presumption of regularity in the performance of official duties on the part of the SEADO.

In the case of *"Lorelei O. Iladan vs. La Suerte International Manpower Agency, Inc., and Debbie Lao,"*[108] the Supreme Court held:

> "In the instant case, Iladan executed a resignation letter in her own handwriting. She also accepted the amount of P35,000.00 as financial assistance and executed an Affidavit of Release, Waiver and Quitclaim and an Agreement, as settlement and waiver of any cause of action against respondents. The affidavit of waiver and the settlement were acknowledged/subscribed before Labor Attache Romulo on August 6, 2009, and duly authenticated by the Philippine Consulate. An affidavit of waiver duly acknowledged before a notary public is a public document which cannot

[108] G. R. No. 203882, 11 January 2016

be impugned by mere self-serving allegations.[27] Proof of an irregularity in its execution is absolutely essential. The Agreement likewise bears the signature of Conciliator-Mediator Diaz. Thus, the signatures of these officials sufficiently prove that Iladan was duly assisted when she signed the waiver and settlement. Concededly, the presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. In this case, no such evidence was presented. Besides, "[t]he Court has ruled that a waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import."[29] Absent any extant and clear proof of the alleged coercion and threats Iladan allegedly received from respondents that led her to terminate her employment relations with respondents, it can be concluded that Iladan resigned voluntarily."

Thus, in order to overcome the presumption of regularity in the performance of official business for the purpose of nullifying a compromise agreement executed during SEnA before the POLO, the OFW has to prove irregularity in the SEADO's performance of his/her duties or that the settlement agreement is contrary to law, morals, public order and public policy.

(d) OFWs have the right to adequate legal counsel/assistance but have no access to competent and independent legal counsel/assistance of their choice during the SEnA conferences before the POLOs. While the SEnA Rules discourage the participation of lawyers in the SEnA conference itself, it does not bar OFWs from seeking legal advice or assistance. In order to address the lack of legal advice/assistance of OFWs during the SEnA conferences before the POLOs, it is recommended that a program or policy be instituted in order to provide the OFW access to virtual or online legal advice/assistance through the services of the Public Attorney's Office, the Integrated Bar of the Philippines, legal aid clinics, pro-bono lawyers or through the OFW's counsel of choice.

V. Recommendations

A. Recognizing that addressing the challenges of institutional capacity to absorb an expanding caseload for the long term will require reforms in the judicial architecture, meantime at the interim, the following procedural enhancements could be proposed to improve administrative efficiency in the judiciary and thus compel duty bearers to act with more expediency and public accountability:

1. Recording of the date the case was submitted for decision/resolution should be specifically stated in the decisions of the Labor Arbiter, the NLRC, the Court of Appeals and the Supreme Court. With this information, it can be determined if there was a substantial delay at each level, either before, or after the case has been submitted for decision.

2. Strictly implement at each level a monitoring system on the status of each case in order to determine if the last pleading has already been filed, and whether or not the case should already be submitted for resolution. In many cases, even if the last pleading has

already been filed, the cases remain pending for some time without being formally submitted for decision by the court or tribunal.

3. Strictly monitor at each level the date the case was submitted for resolution. The courts/tribunal should also establish a monitoring system for cases that remain unresolved beyond the Constitutionally mandated periods in order to ensure that cases will not remain pending for so many years, especially at the level of the Supreme Court.

4. For courts to notify parties in the event they are unable to comply with the time limits[109] set by the Constitution on the resolution of cases, as a courtesy and in consideration of the stress and mental anguish that a litigant goes through when pursuing a case, in accordance with Section 15(3) of Article VIII of the 1987 Philippine Constitution, which states:

> **"**Sec. 15. x x x
>
> x x x
>
> "(3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.
>
> "x x x"

5. Include "age of caseloads" in the annual reports of the Supreme Court and of the Court of Appeals, similar to what the NLRC is reporting regularly.

6. Study the feasibility of establishing an online CHR-NGO platform for the reporting and monitoring of OFW cases. OFWs can report via the online CHR-NGO platform their individual cases, starting at the SEnA stage. The online CHR-NGO platform can then monitor: (a) the progress of the case as it goes through the Labor Arbiter, NLRC, Court of Appeals and Supreme Court; (b) the result of cases resolved through settlement either through the SEnA process or through mediation/conciliation.

7. OFW organizations and migrants rights advocacy groups should continue to engage the NLRC and the Judiciary, the Supreme Court and the Court of Appeals in particular, towards the adoption of policies and measures to strengthen institutional capacities to absorb an expanding caseload and to promote the right to access to justice and the right to speedy disposition of cases of OFWs.

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[109] Section 15(3) of Article VIII of the 1987 Philippine Constitution, states:
(1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.
(2) A case or matter should be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself."

8. Conduct studies on how the judiciary can further augment its institutional capacities for speedy disposition of cases. One of the key findings of this study is that the NLRC has generally been efficient in the resolution of cases, and the delays occur at the level of the Court of Appeals and Supreme Court. Considering further that this study has established that OFW cases constitute less than 1% of the annual caseload of the Supreme Court, the unreasonable length of time in resolving OFW cases is symptomatic of the larger problem of court inefficiency that needs to be addressed for the benefit of all.

B. In order to address the problem of debt bondage among OFWs, the following are the recommended courses of action:

1. Continuing public education on related laws and policies to prevent illegal practices by recruitment agencies which lead to debt bondage.

2. Firm and consistent enforcement of recruitment laws in the Philippines that protect DWs.

3. Access to no-collateral, OWWA guaranteed credit with low or zero interest, from government financial institutions (i. e. Land Bank of the Philippines, or Development Bank of the Philippines).

4. Urge recruitment agencies to adopt a code of conduct promoting fair recruitment wherein recruitment agencies do not charge fees to workers and commit to strive for the protection of workers in the recruitment process and throughout the supply chain.[110]

5. To raise awareness of workers on their rights, the prohibited acts numbers (1), (2) and (3) in Section 6 of R. A. 8042, as amended, constituting, or leading to debt bondage, should be included in a disclosure statement required to be given by the lending agency to the OFW debtor before the execution of the debt instrument.

6. Inclusion of debt bondage and the prohibited acts constituting debt bondage, the legal remedies available to the OFWs, and options for low or interest-free loans, in the pre-employment, pre-departure and post-arrival seminars being given to OFWs. Other avenues for pro-active education and intervention by the CHR and NGOs should be identified in order to ensure that correct and helpful information can be given to prospective OFWs.

7. The POEA, and law enforcement agencies, in cooperation with civil society, should study ways and means to stop debt bondage on OFWs. In particular, special attention should be given on how to prosecute violations of the prohibited acts under Section 6 of R. A. 8042, as amended, constituting, or causing debt bondage among OFWs. A monitoring system should be established in order to ensure compliance by lending agencies on the applicable provisions of R. A. 8042.

[110] Migrant Forum in Asia, Open Working Group on Labour Migration & Recruitment, Policy Brief #5, "Ethical Recruitment" http://mfasia.org/migrantforumasia/wp-content/uploads/2017/01/5-Policy-Brief-Support-for-Ethical-Recruitment.pdf

C. In order to address the identified shortcomings in the implementation of existing laws against illegal recruitment, the following measures are recommended:

1. Include basic orientation on what illegal recruitment and human trafficking are all about, including legal remedies of migrants in case abuse and recruitment violation are committed, in the pre-employment and pre-departure seminars being given to OFWs.

2. Considering that the recruitment is often done in communities, especially in the provinces, there is a need to equip and educate the local government units, especially at the barangay level with regards to Illegal recruitment and human trafficking.

3. Published information and education materials on illegal recruitment and human trafficking should be in the language and form that can be easily grasped by prospective OFWs. Social media should be maximized as platform to discuss the issues, *modus operandi* and other concerns pertaining to illegal recruitment and human trafficking. Regular announcements and information should be published online in order to encourage applicant OFWs to verify online with the POEA the license status of recruitment agencies.

4. The progress of cases involving Illegal recruitment and human trafficking should be monitored at all levels from filing, prosecution up to conviction and execution of judgment. The execution of affidavits of desistance by the complaining OFW victims, should there be other evidence available, should not deter the prosecution from proceeding with the prosecution of illegal recruitment cases.

5. The number of judges, public prosecutors and public attorneys should be increased in order to achieve effective management of their case loads, including illegal recruitment and human trafficking cases.

6. Close coordination with the Anti Money Laundering Council should be established by the prosecution in order to seize assets of illegal recruiters and human traffickers that may be used to compensate the victims.

7. The rights-based and gender-sensitivity approach should be included in the training manual of the DOJ and the Supreme Court, in order to train all personnel, including judges and state prosecutors especially in illegal recruitment and human trafficking cases.

8. The failure to serve more than 20,000 warrants of arrest for large scale or syndicated illegal recruitment should be given special attention. Strict penalties for sheriff or arresting officer who will fail to serve warrant of arrest without justifiable reason should be imposed.

D. In order to address the perceived problems concerning disability and death benefits of landbased OFWS, it is recommended that the provisions of R. A. 8042, as amended, as well as the POEA-SEC for landbased OFWs, be reviewed in order to provide for joint and solidary liability of the foreign employer and the local recruitment agency for compensation and benefits in case of work-related injury, illness or death of the landbased OFW similar to, or comparable to, that of the seabased OFWs.

E. In order to address the perceived problems in the implementation of the SEnA Process for OFWs, it is recommended that:

1. The apparent conflict between the Section 3(e) of DOLE Department Order No. 151-16 and Section 139 of Rule II, Part VI of the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Filipino Workers of 2016 be resolved. In any case, even assuming that SEnA proceedings should be allowed solely for the the purpose of returning to the OFW the full amount excessively/illegally collected, the settlement agreement negotiated through SEnA should not result in the dismissal or weakening of the administrative and/or criminal cases filed against the erring recruitment agency and its directors and officers.

2. The SEADO should ensure, in case that the foreign employer has possession of the OFW's passport and other identity documents, that the foreign employer shall immediately turn over possession of the same to the OFW without any conditions prior to the formal SEnA proceedings before the POLO. Should the employer and/or recruitment agency use the turnover of the OFW's passport and identity documents and issuance of the exit visa as bargaining chips in the SEnA negotiations, such fact should be indicated in the minutes of the SEnA proceedings and the signed compromise agreement, if any, should not bar the OFW from filing money claims case before the NLRC upon his/her return to the Philippines.

3. In order to address the lack of legal advice/assistance of OFWs during the SEnA conferences before the POLOs, it is recommended that a program or policy be instituted in order to provide the OFW access to virtual or online legal advice/assistance through the services of the Public Attorney's Office, the Integrated Bar of the Philippines, legal aid clinics, *pro-bono* lawyers or through the OFW's counsel of choice.