

working paper

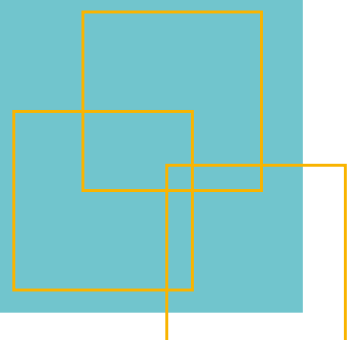


International  
Labour  
Organization

# FAIR SHARE?

International recruitment  
in the Philippines

**F**air recruitment initiative



# **FAIR SHARE?**

International recruitment in the Philippines

Dr Mi Zhou

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## Preface

In today's globalized economy, workers are increasingly looking for job opportunities beyond their home country. Governing the recruitment and employment of migrant workers in a way that maximises the benefits to the workers themselves, and to their countries of origin and destination, is a pressing development concern, including for the Philippines. An estimated 10 million Filipinos live abroad and, each year, more than one million people leave the country to work elsewhere. Given the long history of Filipino migration, the country has one of the most developed apparatus for labour migration in Asia and has become a model for other countries in the region and beyond.

The government of the Philippines has enacted legislation and formulated policies to uphold the rights of its citizens in countries of destination. Key national legislation includes the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042), the Philippine Overseas Employment Administration Act of 2007 (Republic Act No. 9422), and the Amendment Act of 2009 (Republic Act No. 10022). Yet, despite the comprehensive system of regulation and licensing of private employment agencies in place, Filipino migrant workers continue to report problems with recruitment processes for overseas jobs.

This working paper brings together evidence on the culture and practice of fair recruitment for overseas employment in the Philippines. It identifies the good practices applied by those private employment agencies that adopt fair recruitment principles for prospective migrant workers. It also describes the challenges that such recruiters face, including the bottlenecks and gaps in the legislative and regulatory frameworks that stand in the way of agencies committed to fair principles. The paper considers the commercial and practical challenges that confront fair labour recruiters, and identifies opportunities to help them to thrive in a highly competitive market. It examines how fair recruitment practices can be promoted in areas such as Mindanao, where deceptive and abusive recruitment practices are currently most prevalent. Finally, it identifies specific migration corridors in which fair recruitment practices could become the norm.

This working paper has been published as part of ILO's Fair Recruitment Initiative, launched in June 2014. This multi-stakeholder initiative is implemented in close collaboration with governments, representative employers' and workers' organizations, the private sector and other key partners. One key objective of the Initiative is to advance and share knowledge on policies, laws, emerging practices and challenges related to the recruitment of workers within and across countries. The Fair Recruitment Initiative will contribute to the Sustainable Development Goals, particularly to Target 8.7 to end forced labour and modern slavery, and to Target 10.7 to bring down the costs of recruitment and promote the positive contribution of migrants to inclusive growth and sustainable development.

We hope this working paper will stimulate further discussions with our Filipino constituents and contribute to effective action to foster fair recruitment practices, prevent human trafficking and reduce the costs of labour migration in the Philippines. We would like to thank the author, Dr Mi Zhou, for this important piece of research and all ILO colleagues involved in the research process. Thanks are also extended to the Swiss Agency for Development and Cooperation for its financial support. Opinions and ideas expressed in this working paper are the responsibility of the author and do not necessarily represent the policies of or constitute an endorsement by the International Labour Organization.

Khalid Hassan, Director  
Country Office for the Philippines

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The responsibility for any errors or misrepresentation rests solely with the author.

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## List of Abbreviations

AHKMA	Association of Hong Kong Manpower Agencies
AIRB	Anti-Illegal Recruitment Branch (the Philippines)
ASPROE	Association for Professionalism in Overseas Employment (the Philippines)
CDA	Cooperative Development Authority (the Philippines)
CFO	Commission on Filipinos Overseas
DOH	Department of Health (the Philippines)
DOLE	Department of Labor and Employment (the Philippines)
DSWD	Department of Social Welfare and Development (the Philippines)
ECOP	Employers Confederation of the Philippines
FADWU	Hong Kong Federation of Asian Domestic Workers Union
FDH	Foreign domestic helper
FPAs	Foreign placement agencies
HKD	Hong Kong Dollar
HKSAR	Hong Kong Special Administrative Region, China
IDP	Internally displaced people
ILAB	International Labor Affairs Bureau (the Philippines)
ILO	International Labour Organization
IOM	International Organization for Migration
ITUC	International Trade Union Confederation
JSL	Joint and several liability
MOU	Memorandum of Understanding
MRM	Migrant Recruitment Monitor
NLRC	National Labor Relations Commission (the Philippines)
OFW	Overseas Filipino Worker
OWWA	Overseas Workers Welfare Administration (the Philippines)
PAOS	Post-Arrival Orientation Seminar
PASEI	Philippine Association of Service Exporters
PDOS	Pre-Departure Orientation Seminar
PEOS	Pre-Employment Orientation Seminar
PESO	Public Employment Service Office (the Philippines)
PHP	Philippine Peso
PLEP	Philippine Labor and Employment Plan
PLU	Progressive Labor Union of Domestic Workers in Hong Kong
POEA	Philippine Overseas Employment Administration



POLO	Philippine Overseas Labor Offices
PrEAs	Private Employment Agencies
PSA	Philippine Statistics Authority
SHARP	Society of Hong Kong Accredited Recruiters of the Philippines
SRA	Special Recruitment Authority
TESDA	Technical Education and Skills Development Authority (the Philippines)
TFHI	The Fair Hiring Initiative (the Philippines)
TVET	Technical and Vocational Education and Training
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
USD	United States Dollar

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# 1. INTRODUCTION AND BACKGROUND

## 1.1. Purpose of the study

This research report was commissioned by the ILO as part of its Integrated Programme on Fair Recruitment (FAIR), a global project that seeks to contribute to the promotion of fair recruitment practices globally and across specific migration corridors in North Africa, the Middle East and South Asia. This integrated project was developed jointly by the ILO's Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) and the Labour Migration Branch (MIGRANT). The long-term goal of the FAIR project is a reduction in deceptive and coercive practices during the recruitment process and violations of fundamental principles and rights at work, as well as other human and labour rights, brought about through increased safe migration options, effective regulation of public and private employment agencies and by ensuring unscrupulous actors are held to account for violations.

To achieve its goals, the FAIR project adopts a three-pronged approach:

1. establishing fair recruitment corridors to prevent abuses and exploitation of migrant workers;
2. providing migrant workers with access to reliable information and improved services; and
3. conducting innovative research and disseminating knowledge on fair recruitment.

These components will be implemented through several pilot initiatives at the global and country level. Target countries include Jordan, Nepal, the Philippines and Tunisia.

This research study contributes to the goals of the FAIR project by providing evidence on the culture and practice of fair recruitment in the Philippines. It identifies the existing practices of private employment agencies (PrEA)<sup>2</sup> that adopt fair recruitment principles for prospective migrant workers. It also describes the challenges that fair labour recruiters face, including the bottlenecks and gaps in the legislative and regulatory frameworks that increase the barrier to entry for new PrEAs committed to fair principles (“the fair labour recruiters”). The study also considers the commercial and practical challenges that confront fair labour recruiters and identifies opportunities to support fair labour recruiters and enable them to thrive in a competitive market. The study finally examines how fair recruitment practices can be promoted in areas, such as Mindanao, where prospective migrant workers are most vulnerable to deceptive and abusive recruitment practices.

The FAIR project is also committed to exploring new ideas that could help reduce deceptive and abusive recruitment practices. As such, drawing on related but independent research, the study also considers whether workers' cooperatives, regulated by the Cooperative Development Authority, have the potential to play a role in promoting fair recruitment practices. Based on a feasibility study exploring the political and practical viability of workers' cooperatives taking an active role in cross-border labour intermediation services in the Philippines, the study makes recommendations for the role of cooperatives in the protection of workers, by promoting fair recruitment or as a provider of cross-border recruitment services.

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<sup>2</sup> ILO Convention concerning Private Employment Agencies, 1997 (No. 181) defines private employment agencies as any natural or legal person, independent of public authorities, which provides certain labour market services. In the Philippines, the term used in the industry and national legislation is “private recruitment agency” or “PRA”. However, this report adopts the terminology of Convention No. 181.

## 1.2. Methodology

The research methodology for this study is based on both a desk review of available literature and field visits to the Philippines covering the National Capital Region (known as Metro Manila), and Zamboanga Peninsula (Administrative Region IX) focusing on Zamboanga City. The field work incorporated in-depth, semi-structured qualitative interviews with key stakeholders, including government officials and civil servants at national and regional levels working in the regulation of overseas Filipino workers and cross-border recruitment; trade unionists and workers' representatives; employers, including managers and owners of PrEAs; and civil society organizations that work for the protection of migrant workers. Interviews also took place with representatives of private employment agency (PrEA) associations. Supplementary interviews with a PrEA association also took place in HKSAR and via Skype with a foreign PrEA in Saudi Arabia.

Fieldwork for this study took place over nine days in July and September 2016. Thirty-four interviews and focus group discussion were conducted with 49 respondents across Metro Manila, Zamboanga, Hong Kong Special Administrative Region, China (HKSAR) and via Skype. In total, 12 interviews and focus group discussions were conducted in Zamboanga City and 20 in Manila.

The researcher met four government officials at the national level in Metro Manila and four regional level administrators in Zamboanga Peninsula from Department of Labour and Employment (DOLE), the Philippine Overseas Employment Administration (POEA), and the Department of Social Welfare and Development (DSWD). The researcher also consulted five trade unions and workers' organizations, interviewing nine trade unionists and workers' organizers in Metro Manila. The researcher also met three civil society organizations working on the issues of migrant labour, including the Migrant Forum in Asia. In addition, in order to deepen understanding on particular issues, an independent researcher on child trafficking and a labour lawyer were also interviewed.

In Mindanao, focus group discussions were held with three people who had been displaced by armed conflict in Zamboanga City in 2013 and continued to live in transitory sites. All were beneficiaries of an ILO-supported skills enhancement programme. Separate focus group discussions were also held with five returned migrants (known as ex-abroads). The ex-abroads were also displaced people residing in two separate transitory sites. Four were women who had worked in Gulf Cooperation Council countries as domestic workers. One woman had illegally entered Malaysia to work in the service industry.

In order to understand the commercial and practical realities of PrEAs, the researcher visited seven PrEA offices in Metro Manila, including three fair labour recruiters, and interviewed nine managers and directors. In Zamboanga City, the researcher also visited four PrEAs, including a branch office of a Manila-based PrEA. In addition, the researcher held discussions with representatives of three PrEA associations in the Philippines. The researcher also met the Employers Confederation of the Philippines (ECOP), which includes PrEAs among its members. The researcher met three of ECOP's officials, including its President, in Manila.

Many of the respondents contacted were identified in consultation with the ILO. The researcher deliberately sought to identify respondents who were perceived to have an influence on or an in-depth understanding of the cross-border private recruitment industry. Many of the respondents, particularly those from the government, trade unions and the employers' confederation, were familiar with the ILO's work in the Philippines. However, many of the PrEAs, particularly those who are not committed to fair

recruitment principles, were unaware of the ILO's work in this area. Some of the PrEAs were identified through lists, provided by POEA, of the agencies which deployed the largest number of Overseas Filipino Workers (OFWs) to specific destinations.<sup>3</sup>

Interview respondents and focus group participants were informed that the research was conducted for the purposes of a report on fair recruitment practices in the Philippines as part of the FAIR project. Respondents and participants were given the opportunity to select a level of confidentiality for their own discussions. In focus group discussions, the researcher facilitated conversation in a group setting but also interviewed participants individually to provide an opportunity for the participant to communicate any sensitive information. Confidentiality was emphasized to facilitate candid and open discussions.

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<sup>3</sup> Through the ILO, the researcher requested the POEA to provide names of PrEAs that deployed the highest numbers of OFW in different sectors and to three destinations (Hong Kong, Japan, and the United Arab Emirates). However, the POEA only provided the lists of PrEAs that had the highest volume of deployment to specific destinations. No disaggregated information based on occupation or industry sectors was provided.

## 2. LABOUR MIGRATION IN CONTEXT

### 2.1. Employment and poverty in the Philippines

The Philippines is East Asia's oldest democracy and one of the most dynamic economies in the region.<sup>4</sup> In the past decade, it has remained a strong performer in the region, despite slow global growth, with an average annual growth rate of more than 5 per cent. Among major economies in the region, the Philippines ranks third, behind China and Viet Nam.<sup>5</sup> With a population of 100.7 million, the Philippines is classified as a lower middle-income country with GDP per capita of US\$2,872.50.<sup>6</sup> The Philippines ranked 115 out of 188 countries on the Human Development Index, which places it in the medium human development category but below the average for countries in the Asia and Pacific Region.<sup>7</sup>

Recently, extreme poverty has decreased, falling from 10.6 to 9 per cent between 2012 and 2014.<sup>8</sup> However, according to the United Nations, 6.3 per cent of the population, or 6.2 million people, still lived in multidimensional poverty in 2014. Moreover, 19 per cent of the population lives below the income poverty line of \$1.25 per day.<sup>9</sup>

In 2014, there were 43.8 million people in the Philippines who were economically active, with women making up 39.2 per cent of the total labour force. The total labour participation rate was 67.1 per cent in 2014, and the unemployment rate stood at 7.1 per cent.<sup>10</sup> In addition, 39.8 per cent of workers are in vulnerable employment.<sup>11</sup> As of July 2016, the unemployment rate was 5.4 per cent, but an additional 17.3 per cent of the work force was under-employed.<sup>12</sup> According to the Labour Force Survey published in January 2016, there are 7.88 million people looking for more hours of work in the country, among whom 38.6 per cent work as labourers or unskilled workers.<sup>13</sup>

In early 2016, the World Bank reported that one feature of the Philippine's labour market is the high incidence of in-work poverty.<sup>14</sup> Despite economic growth in the past decade which has created enough jobs to absorb the growing labour force, the new jobs are characterized by informality, low pay and precariousness. Economic development has not changed the existing labour structures in the Philippines, where there is a high proportion of low-skilled and informal jobs.<sup>15</sup> According to the Philippine Statistics Authority, 31.7 per cent of workers are engaged as "labourers and unskilled workers" as at January 2016.<sup>16</sup> There is a shortage of skilled jobs and educated workers are often obliged to take unskilled jobs. Approximately 30 per cent of workers with secondary education hold unskilled jobs. Conversely, 35 per cent of labourers have been educated to at least secondary school level.<sup>17</sup>

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<sup>4</sup> USAID: *Democracy, human rights and governance: Philippines* (2016); World Bank: *Philippines Overview* (Washington, DC. 2016).

<sup>5</sup> World Bank: *Philippines Overview* (2016).

<sup>6</sup> World Bank: *Data for Philippines*. (2016).

<sup>7</sup> UN Development Program (UNDP): *Briefing note for countries on the 2015 Human Development Report*. (New York. 2015); UNDP: *Human Development Report 2015 – Philippines*. (New York. 2015).

<sup>8</sup> World Bank: *Philippines Overview* (2016)

<sup>9</sup> UNDP: *Briefing note for countries on the 2015 Human Development Report*. (New York. 2015); UNDP: *Human Development Report 2015 – Philippines*. (New York. 2015).

<sup>10</sup> World Bank: *Data for Philippines*. (2016).

<sup>11</sup> UNDP: *Briefing note for countries on the 2015 Human Development Report*. (New York. 2015); UNDP: *Human Development Report 2015 – Philippines*. (New York. 2015).

<sup>12</sup> Philippines Statistics Agency (PSA): *Labor Force Statistical Surveys* (2016). See: <https://psa.gov.ph/content/january-2016-labor-force-statistical-tables>

<sup>13</sup> *Ibid.* Table 13.

<sup>14</sup> World Bank: *Republic of the Philippines Labor Market Review* (Washington, DC. 2016)

<sup>15</sup> *Ibid.* pp. 8-9.

<sup>16</sup> PSA: *Labor Force Statistical Surveys* (2016).

<sup>17</sup> World Bank: *Republic of the Philippines Labor Market Review*, p. 11.

The increase in the number of workers in precarious employment and in informal sectors means that,<sup>18</sup> despite economic growth and contrary to other Asian countries, real wages have remained stagnant. Between 2004 and 2014, real GDP grew by 5.3 per cent, employment increased by 1.9 per cent, and labour productivity increased by 3.4 per cent. Yet, there was no increase in real wages.<sup>19</sup> In addition, wage distribution has not significantly changed in the last 15 years, while wage inequality has increased slightly.<sup>20</sup> Income inequality as measured by the Gini coefficient was 43 in 2014.<sup>21</sup> Minimum wage policies have not had a significant impact in reducing in-work poverty as 90 per cent of low-paid workers are employed informally and excluded from the minimum wage protections; 84 per cent of them live in rural areas.<sup>22</sup> According to the United Nations Development Programme (UNDP), 36.8 per cent of those in employment are classified as the working poor and earn less than \$2 per day.<sup>23</sup>

Ironically, workers in low-productivity jobs run a higher risk of poverty than the unemployed. The unemployed are often well-educated young people from relatively affluent families who look for jobs that meet their professional aspirations.<sup>24</sup> In contrast, the under-employed are workers who do not have a secondary education and come from poor socio-economic backgrounds.<sup>25</sup> As the World Bank states bluntly: “people are poor in the Philippines because they earn little, not because they do not work”. It is particularly striking that “having a job does not provide a pathway out of poverty”.<sup>26</sup> This phenomenon of persistent in-work poverty in the Philippines is an important factor in the continuing culture of labour migration from the country.

## 2.2. Culture and landscape of labour migration

According to the Commission on Filipinos Overseas (CFO), as of December 2013,<sup>27</sup> there were 10.24 million Filipinos working overseas. Of these, 48 per cent had permanently migrated and another 41 per cent were temporary migrants. The remaining 11 per cent of overseas Filipinos had irregular status. Overseas Filipinos play a significant role in the economy of the country. In 2014, personal remittances constituted 9.8 per cent of the country’s GDP, totalling more than \$28 billion. Although the dollar value of personal remittance has steadily increased since 1998, the percentage contribution of personal remittances to the GDP peaked in 2005 at 13.3 per cent.<sup>28</sup>

Labour migration is an important driver among those overseas Filipinos who are abroad temporarily. Statistics from the POEA show that more than 1.4 million workers have been deployed annually since 2010, with the numbers increasing in 2013 to 1.84 million and then dropping back

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<sup>18</sup> In its report, the World Bank uses the term “‘bad’ jobs” to describe jobs that “are low-paid and informal, thus not covered by labour regulations.” Jobs can also be “bad” if they “are involuntarily part-time, temporary or casual”. These jobs are associated with an elevated risk of poverty. This report uses two ILO terms to capture this idea: “workers in precarious employment” and work in “the informal sector”, both defined by the 15<sup>th</sup> International Conference of Labour Statisticians Guidelines (1993): “Workers in precarious employment” leads to the classification of workers as “casual workers” or “short-term workers” or “seasonal workers”, or workers whose contract of employment will allow the employing enterprise or person to terminate the contract at short notice.

<sup>19</sup> World Bank: *Republic of the Philippines Labor Market Review*, pp. 27-28.

<sup>20</sup> *Ibid.*, pp. 13.

<sup>21</sup> UNDP: *Human Development Report 2015 – Philippines*. (New York. 2015)

<sup>22</sup> World Bank: *Republic of the Philippines Labor Market Review*, pp.15 and 19.

<sup>23</sup> UNDP: *Briefing note for countries on the 2015 Human Development Report*. (New York. 2015); UNDP: *Human Development Report 2015 – Philippines*. (New York. 2015).

<sup>24</sup> World Bank: *Republic of the Philippines Labor Market Review*, p. 14.

<sup>25</sup> *Ibid.* p. 33.

<sup>26</sup> *Ibid.* p. 13.

<sup>27</sup> The most recent figures available are from 2013 at *Stock Estimate of Overseas Filipinos*, Commission on Filipinos Overseas (CFO), undated, <http://www.cfo.gov.ph/downloads/statistics/stock-estimates.html> [accessed 3 July 2016].

<sup>28</sup> World Bank. *Personal remittances, received (current US\$) – Philippines*. (Washington, DC. 2016)



slightly in 2014 to 1.83 million. Of these, a majority were land-based deployments. In 2014, the top ten destinations received more than 84 per cent of land-based OFWs.<sup>29</sup>

As these figures suggest, the Philippines is one of the major contemporary countries of emigration. Since the 1970s, it has been the dominant source of labour migration in Asia in terms of the magnitude. Given the recent findings on the pervasive low and stagnant wages, as well as the high rates of under-employment and vulnerable employment, it is unsurprising that both ordinary Filipinos and the government appear to have accepted emigration as a palliative against poverty and the ailing economy.<sup>30</sup> As a country of origin, the Philippines ranks second in the world, after Mexico.<sup>31</sup> As such, some commentators have argued that a “culture of migration” is now established in the Philippines.<sup>32</sup>

Although other forms of migration began much earlier,<sup>33</sup> labour migration from the Philippines began during the Organization of the Petroleum Exporting Countries (OPEC) oil crisis of 1973. At the time, labour migration was seen as a solution to unemployment and inadequate foreign exchange earnings in the Philippines.<sup>34</sup> Men composed the majority of Overseas Contract Workers (OCW) who worked on oil rigs and construction sites in the Middle East. The phrase “Katas ng Saudi” (“fruit of Saudi”) became popular to refer to material possessions or a better life as a result of working in Saudi Arabia.<sup>35</sup> In the 1980s and 1990s, the service sector boomed and women began leaving to fill domestic and caregiving vacancies in developed countries and around Asia.<sup>36</sup> Although the government of the Philippines has promoted the emigration of labour as a temporary measure, the phenomenon has not only persisted but expanded over the last four decades.

The Middle East remains a major important destination for Filipino labour, although other markets have emerged.<sup>37</sup> However, since the 1980s, newly industrializing nations have also experienced labour shortages due to high economic growth rates. For example, Taiwan emerged as a new market in the 1990s, but recruitment subsequently declined due to the transfer of manufacturing industries to mainland China. Overall, the so-called “tiger economies” of East Asia have become increasingly significant labour-importing markets. Between 1998 and 2000, the Asian region briefly overtook the Middle East as the major labour importing region, although by early 2003, the Middle East had again regained its dominance.<sup>38</sup> In 2013, there were more than 2.3 million Filipinos temporarily working in the Middle East and 841,228 in Asia.<sup>39</sup>

The long-term trend in terms of annual worker outflow is a consistent increase. Around 2003, the trend reversed temporarily due to the combined impact of the global economic recession, the US-Iraq War in the Middle East, the SARS outbreak in Asia and restrictive immigration policies arising from increased security concerns in the Americas and Europe. At the same time, however, new markets

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<sup>29</sup> Between 2010 and 2014, the following countries have consistently remained the top ten destinations for OFWs, albeit with slight variations in ranking among them: Saudi Arabia, the United Arab Emirates, Singapore, Qatar, Hong Kong, Kuwait, Taiwan, Malaysia, Bahrain and Canada.

<sup>30</sup> R. Ball: “Trading Labour: Socio-economic and Political Impacts and Dynamics of Labour Export from the Philippines, 1973-2004” in Kaur, A. & Metcalfe, I. (eds.). *Mobility, Labour Migration and Border Controls in Asia*. (Palgrave Macmillan: London, 2006).

<sup>31</sup> *Ibid.* p. 115.

<sup>32</sup> M.M.B. Asis: *The Philippines’ Culture of Migration*. Washington, DC, Migration Policy Institute (2006).

<sup>33</sup> D.A. Ang: *Philippines International Migration: Causes and Consequences*. Commission on Filipinos Overseas, (2008).

<sup>34</sup> International Organization for Migration (IOM): *Country Migration Report 2013: the Philippines*, (2013), p. 154.

<sup>35</sup> For clarification, “Overseas Contract Workers” (OCW) was the earlier term used in the Philippines. The term “Overseas Filipino Worker” (OFW) came into use in the 1990s and is now defined in the Amendment Act (Republic Act No. 10022) which amended the Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042).

<sup>36</sup> R. Ball: “Trading Labour”, p. 115.

<sup>37</sup> *Ibid.* p. 116.

<sup>38</sup> *Ibid.* p. 117.

<sup>39</sup> Commission on Overseas Filipinos (CFO): *Stock Estimate of Overseas Filipinos* (2013). See: <http://www.cfo.gov.ph/downloads/statistics/stock-estimates.html> [accessed 3 July 2016]

expanded for OFWs and the deployment of Filipino workers to Africa increased by 26.5 per cent between 2002 and 2003.<sup>40</sup> Between 2010 and 2014, the annual deployment of OFWs steadily increased from 1.47 million to 1.83 million.<sup>41</sup> Saudi Arabia and the United Arab Emirates have remained the top two destinations for land-based OFWs, with the number of deployments to Saudi Arabia increasing significantly faster than those to the United Arab Emirates. In 2010, for example, 293,049 and 201,214 land-based OFWs were deployed to Saudi Arabia and the United Arab Emirates respectively. By 2014, the number of land-based OFWs deployed to Saudi Arabia had increased to 402,837 whereas the United Arab Emirates received 246,231 workers. During the same period, Singapore, Qatar and HKSAR were the next most popular destinations for OFWs although the relative balance between these countries has varied. HKSAR dropped from being the third highest OFW-receiving destination to fifth place by 2014. Similarly, in 2010, more OFWs travelled to Qatar than Singapore; but by 2014, Singapore exceeded Qatar in the number of OFWs received.<sup>42</sup>

Early OFW deployments, driven by the OPEC oil price hike, were primarily male construction workers who were deployed to meet the demands of infrastructure developments in the Gulf States. By the mid-1990s, however, Filipino women accounted for 60 per cent of migrant workers departing the country.<sup>43</sup> Most OFWs find employment as service or production workers. These two categories comprise around 80 per cent of all jobs for OFWs.<sup>44</sup> The category of production and related workers encompass a variety of skill levels, including plumbers and pipe fitters, machine-tool operators and earthmoving operators. Unskilled labourers and general helpers form the largest occupational category among production workers.<sup>45</sup>

Employment in the service sector has grown rapidly since the 1990s to overtake the production sector as the top occupational category for OFW deployments. Significantly, since 2005, household service workers<sup>46</sup> – including domestic workers – have been the single largest occupational category for new hires among land-based OFWs.<sup>47</sup> In 2014, for example, 52 per cent of all land-based new hires were deployed in the service sector. Of these, 73 per cent were domestic workers. This means that 38 per cent of all OFW land-based deployments in 2014 were as domestic workers.<sup>48</sup>

Since 2004, there has been an overall reduction of OFWs in the professional and technical category.<sup>49</sup> This is partly due to the significant fall in demand for Filipino entertainers in Japan and elsewhere. At the same time, however, numbers have been buoyed by the increasing deployment of Filipino nurses. In 2014, nurses were the second largest occupational category for new hires (after domestic workers). Nevertheless, since 2012 the number of domestic workers deployed annually has been around ten times that of nurses.<sup>50</sup>

Waiters, bartenders and related workers are the third largest occupational group of land-based deployments for new hires. Between 2011 and 2014, annual deployment of these workers exceeded

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<sup>40</sup> R. Ball: "Trading Labour", p. 117.

<sup>41</sup> Philippines Overseas Employment Administration (POEA), *Overseas Employment Statistics, 2010-2014*, Table 2. See: <http://www.poea.gov.ph/ofwstat/compendium/2014.pdf> [accessed 3 July 2016]

<sup>42</sup> Ibid, Table 3.

<sup>43</sup> R. Ball: "Trading Labour", p. 117.

<sup>44</sup> IOM: *Country Migration Report 2013*, p. 4.

<sup>45</sup> Ibid. p. 66; POEA: *Overseas Employment Statistics, 2010-2014*, Tables 6 and 7.

<sup>46</sup> POEA statistics uses the occupational category 'household service workers' which include domestic workers. See: POEA, *Overseas Employment Statistics, 2010-2014*, Table 7. Except when referring specifically to POEA statistics, this report will use the term "domestic workers" in accordance with the ILO Domestic Workers Convention, No. 189.

<sup>47</sup> IOM: *Country Migration Report 2013*, p. 67; POEA: *Overseas Employment Statistics, 2010-2014*, Tables 6 and 7.

<sup>48</sup> POEA: *Overseas Employment Statistics, 2010-2014*, Tables 6 and 7.

<sup>49</sup> IOM: *Country Migration Report 2013*, pp. 66 and 67.

<sup>50</sup> POEA: *Overseas Employment Statistics, 2010-2014*, Table 7.

12,000, peaking in 2012 at 14,892.<sup>51</sup> Disaggregated figures for destination countries for this occupational group category is not publicly available.

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<sup>51</sup> Ibid.

## 3. LABOUR MIGRATION MANAGEMENT

### 3.1. Governance and policy

The Philippines has the most well developed apparatus on labour migration in Asia and has become the model for other countries.<sup>52</sup> The government has initiated sophisticated policies and legislation on overseas employment, beginning with the Labour Code of 1974, which established the regulatory framework. Under the former President of the Philippines, Ferdinand Marcos, institutional infrastructure was developed to enable outward labour migration. The POEA, like its precursors the Overseas Employment Development Board and the National Seaman's Board, was established to improve the safety and efficiency of labour migration.

Over the years, the Philippine government has introduced legislative and policy measures to promote and protect the welfare of OFWs. Key national legislation regulating labour migration includes the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042), the POEA Act (Republic Act No. 9422), and the Amendment Act (Republic Act No. 10022). Revised POEA Rules were most recently passed in 2016.

Like many other countries, the Philippines uses licensing as its predominant form of recruitment regulation. Created in 1982 with a mission to ensure decent employment opportunities for OFWs, the POEA is the licensing authority for private recruitment agencies. The POEA's four core tasks are: regulation of the private labour recruitment industry, employment facilitation, worker protection and general administration.

As industry regulator for overseas employment, the POEA is chiefly responsible for supervising all aspects of recruitment activity by private recruitment agencies, implementing minimum labour standards, and supervising governmental anti-illegal recruitment initiatives. The POEA monitors and facilitates all facets of the employment process, undertaking activities ranging from negotiation and entry into memorandums of understandings on the employment of Filipino workers between the Philippines and foreign host countries; accreditation, registration and approval of manpower requests of foreign principals and employers seeking to employ Filipino labour; and the processing of employment contracts.<sup>53</sup>

The POEA further takes an active role in worker protection through their supervision of public education initiatives; the administration of pre-employment orientation seminars; and the global profiling of OFWs. Notably, the POEA provides substantive assistance to OFWs both pre- and post deployment and works with civil society organizations to protect the rights of OFWs.

Although the subject of POEA's mandate – labour migration – is an inherently cross-border issue, it is a local operation and has no offices or permanent representatives internationally. Most overseas activities are handled by Philippine Overseas Labor Offices (POLO), field offices under the Department of Labor and Employment (DOLE) based at consulates worldwide.<sup>54</sup> POLO is the key contact point for

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<sup>52</sup> R. Ball: "Trading Labour", p. 131.

<sup>53</sup> POEA: Revised Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016 (POEA Rules and Regulations) Part I, Rule II, section 34, defines "principal" as the employer, or a foreign placement agency, or a foreign service contractor staffing agency that hires Filipino workers for overseas employment through a licensed recruitment agency or through the Administration.

<sup>54</sup> D.R. Agunias: *Managing Temporary Migration: lessons from the Philippine Model*. Migration Policy Institute (Washington, DC. 2008), p. 4.

OFWs in destination countries and provides welfare assistance on-site. Under POEA Rules and Regulations, POLO has delegated authority to accredit principals and employers, including the validation of job orders. POLO also conducts post-arrival orientation seminars (PAOS) for OFWs.<sup>55</sup>

Despite POLO's role in implementing POEA policy, it is not directly accountable or organizationally connected to the POEA. Consistent with the one-country team approach, POLOs are under the administrative supervision of the Philippine embassy in each country. POLOs are headed by labour attachés who supervise labour officials at the post and manage the operations of the Filipino Workers' Resource Centres. In practice, cooperation between POLO and the POEA is facilitated by the International Labor Affairs Bureau (ILAB) of DOLE, which – among other functions – advises the Labor Secretary on the supervision of POLO's operation and activities.<sup>56</sup>

Other agencies within DOLE are also important to the governance of labour migration. The National Labor Relations Commission (NLRC) is a quasi-judicial agency mandated to adjudicate labour and management disputes involving both local and overseas workers through compulsory arbitration and alternative modes of dispute resolution. The NLRC is the forum for “money claims” where OFWs are seeking compensation based on contractual disputes with their employers and/or private employment agencies where there is joint and several liability. Since 2010, the NLRC has also implemented the single entry approach, which stipulates a 30-day mandatory conciliation-mediation period for all labour and employment cases.

The Technical Education and Skills Development Authority (TESDA) is an independent body responsible for developing labour skills and providing technical training to Filipino workers, including OFWs. Established in 1994 by Republic Act No. 7796, TESDA is mandated to formulate manpower and skills plans, set appropriate skills standards and tests and provide policy direction and guidelines for resource allocation for technical and vocational education and training (TVET) institutions. Under POEA Rules and Regulations, a worker seeking overseas employment, including domestic workers, must undergo a skills test in a TESDA-accredited testing centre and acquire certification before being deployed.<sup>57</sup> Importantly, neither POEA nor DOLE has no oversight authority over TESDA.

POEA also works closely with the Overseas Workers Welfare Administration (OWWA), a government welfare institution that manages the welfare fund for migrant workers and protects the interests of OFWs. OWWA membership is compulsory for OFWs and the membership rate is among the costs and fees chargeable against the principal/employer.<sup>58</sup> OWWA membership is effective from the payment of the contribution until the end of the employment contract or for a maximum of two years, whichever is earlier.<sup>59</sup> Membership provides a range of benefits for migrant workers and their families for the duration of their contract. These include legal, livelihood, welfare, enterprise, career development and skills upgrading assistance, as well as the delivery of benefits such as disability and burial allowances. OWWA can also facilitate the repatriation of OFWs by advancing costs, and has representation internationally within Philippine embassies, often alongside POLO.<sup>60</sup>

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<sup>55</sup> POEA Rules and Regulations, Part III Rule 1; Part VIII, Rule IV, section 224.

<sup>56</sup> ILAB is the DOLE agency primarily responsible for developing policies, plans, programmes, projects, and operating standards relative to international labour and employment concerns and monitors the country's observance and implementation of its obligations/commitments, courtesies and facilities required by international organizations. It provides advisory services to the office of the Secretary in the supervision, monitoring and reporting of operations/activities of the Philippine Overseas Labor Offices (POLOs) and the Filipino Resource Centers (FRCs) in different parts of the world.

<sup>57</sup> POEA Rules and Regulations, Part III, Rule II, sections 117 and 118.

<sup>58</sup> *Ibid.*, section 53. Currently, this equates to US\$25 for the duration of the membership.

<sup>59</sup> OWWA: *FAQ*, <http://www.owwa.gov.ph/?q=content/faq> [accessed 24 February 2017]

<sup>60</sup> POEA Rules and Regulations, Part VIII, Rule II, section 214.

Other major public institutions dealing with overseas Filipinos are the Commission on Filipino Overseas (CFO), the Overseas Absentee Voting Secretariat, the Department of Foreign Affairs - Office of the Undersecretary for Migrant Workers Affairs and the newly established National Reintegration Center for Overseas Filipino Workers. Many of these public institutions have an overseas presence in labour-receiving countries to better serve and engage with the overseas Filipino community.

In addition to the national regulatory framework, the Philippines has ratified 30 ILO Conventions, including all eight fundamental Conventions, the Migration of Employment Convention, 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). In 2012, it was also the second country to ratify the ILO Domestic Workers Convention, 2011 (No. 189) to promote international standards surrounding both the recruitment and employment of Filipino domestic workers. It has not, however, ratified the Private Employment Agencies Convention, 1997 (No. 181) or the recent Protocol of 2014 to the Forced Labour Convention (P029). Some stakeholders – particularly trade unions, civil society and fair PrEAs in the Philippines – have expressed strong support for the ratification of those instruments.

### 3.2. Statutory regulation of recruitment

Overseas employment can be obtained through three main avenues. First, government-to-government recruitment, which has been limited mostly to Saudi Arabia.<sup>61</sup> Second, workers can apply to foreign employers or labour recruiters as direct hires.<sup>62</sup> Most overseas employment, however, is driven by the private sector recruitment industry. In 2007, for example, 94 per cent of OFWs were deployed by PrEAs, 5 per cent of workers were processed as direct hires and only 1 per cent was deployed through a government-to-government programme.<sup>63</sup>

Private sector participation in overseas employment is regulated by the POEA in a tripartite system. First, PrEAs must be licensed by the POEA. Second, foreign placement agencies (FPAs) and foreign employers must be accredited by the POEA and each job order verified. Third, the POEA also sets the standards for workers' fitness for overseas employment, including skills testing and medical examination.<sup>64</sup> In addition to the POEA Rules and Regulations, from time to time the Governing Board of the POEA also passes Resolutions which are binding on PrEAs.<sup>65</sup>

Only Filipino citizens can engage in the private recruitment business as a sole proprietor or a partnership. If a corporation is formed, then at least 75 per cent of the authorized and voting capital of the stock must be owned and controlled by a Filipino citizen.<sup>66</sup> This requirement ensures that the owners of the PrEA are within the jurisdiction of the Philippines if litigation is necessary.<sup>67</sup> Several categories of individuals and corporations are disqualified from participating in the recruitment business, including

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<sup>61</sup> IOM: *Country Migration Report 2013*, p. 4. POEA's Government Placement Branch is currently recruiting 200 female dental assistants for the Ministry of Health in Saudi Arabia and 50 female factory operators for NXP Semiconductors' operations in Taiwan. In October 2016, 306 female nurses, 40 respiratory therapists and 20 female electrophysiology technicians were recruited to Saudi Arabia for the King Abdullah Medical Complex in Jeddah via the Ministry of Health. Since 2013, 455 nurses have been sent to Germany under the Triple Win programme and another 300 are currently being recruited. In addition, the Government Placement Branch has previously recruited 300 female midwives, 250 licensed specialist x-ray technicians and over 800 nurses to Saudi Arabia, as well as 50 factory workers for Powertech Technology Inc in Taiwan. See <http://www.poea.gov.ph/vacancies/vacancies.html> and <http://www.poea.gov.ph/twp/photos.htm>. Some jobs are advertised on POEA's Facebook page: <https://www.facebook.com/mypoea/> [accessed 24 February 2017]

<sup>62</sup> D.R. Agunias: *Migration's middlemen: regulating recruitment agencies in the Philippines-United Arab Emirates Corridor*, Migration Policy Institute (Washington, DC, 2010), p. 8.

<sup>63</sup> *Ibid.*, p. 6.

<sup>64</sup> POEA Rules and Regulations, Part II, Rule VI.

<sup>65</sup> *Ibid.*, Part X, section 243.

<sup>66</sup> *Ibid.*, Part II, Rule I, section 2.

<sup>67</sup> D.R. Agunias: *Managing Temporary Migration* (2008), p. 7.



those that operate travel or airline sales agencies, who provide compulsory insurance coverage for OFWs, as well as officials or employees – and their family members – of government agencies directly involved in the implementation of Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042).<sup>68</sup> Anyone with a “derogatory record”, including criminal convictions and previous revocation or cancellation of POEA licences, would also be disqualified.<sup>69</sup> Moreover, the applicant must show that the sole proprietor, managing partner, president or CEO of the PrEA has at least four years of relevant experience or a bachelor’s degree. All members of the board of the agency must pass police clearance.<sup>70</sup>

Prospective agencies must prove that they have sufficient capital, pay registration fees and post bonds at various stages of the application process.<sup>71</sup> The total amount has increased since 1974. In 2016, the government raised the capitalization and paid-up capital requirement to 5 million Philippine pesos (PHP) (\$105,000).<sup>72</sup> The agencies must pay a filing fee of PHP25,000, (\$515) to apply for the licence. If the application is successful, agencies must pay a license fee of PHP100,000 (\$2,059) and also post an escrow account of PHP 1 million (\$22,000).

In addition to the relevant application information forms and proof of business registration,<sup>73</sup> applicants must provide proof as to the existence of a new market, which encompasses submission of a POLO-verified or consulate-authenticated Recruitment/Service Agreement entered into by the applicant and the prospective principal or employer.<sup>74</sup> Where the principal or employer is a foreign PrEA, further documentation is required. These include proof of possession of the requisite educational requirements or experience<sup>75</sup> by the chief officers of the agency; a list of documents of all personnel involved in recruitment and placement;<sup>76</sup> a duly notarized Affidavit of Undertakings agreeing to assume responsibility for matters of protecting hired workers and adherence to all legal and ethical standards;<sup>77</sup> a certificate indicating attendance of the chief officers at a Pre-Licensing Orientation Seminar; and a flowchart detailing all recruitment procedures.

Post-qualification requirements include the securing of a lease contract for office space conforming to stipulated requirements and the submission of an office layout and organizational charts outlining the duties and responsibilities of business officers and staff.

The PrEA will be initially granted a provisional licence. A full licence is issued on the filing at least three months before the expiration of the provisional licence, provided that the following conditions are met: the deployment of the required number of workers to agreed principals; a Quality

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<sup>68</sup> There is no prohibition on owners of TESDA accredited assessment centres to also own PrEAs.

<sup>69</sup> POEA Rules and Regulations, Part II, Rule I, section 3.

<sup>70</sup> *Ibid.*, section 4.

<sup>71</sup> Such proof must be tendered by the submission of, regardless of type of business entity, a bank certificate showing a deposit of at least 5,000,000 Filipino Pesos (PHP); duly executed authorization to examine bank deposits; duly filed income tax returns; proof of registrable property(ies) and sources of investment. For a checklist outlining the requirements for the application and issuance of recruitment licenses, see POEA: “Checklist of Requirements for Issuance of License of Landbased Agency”, (14 June 2016), <http://www.poea.gov.ph/agency/files/checklist%20issuance%20new%20license%20LB.pdf> [accessed 23 October 2016].

<sup>72</sup> POEA Rules and Regulations, Part II, Rule I, section 2.

<sup>73</sup> For example: Applicant Information Sheet for Issuance of License (FM-POEA-03-IR-01B).

<sup>74</sup> POEA Rules and Regulations, Part II, Rule II. Information must be provided about the employer, e.g. a valid business licence or commercial registration; information on business activity; the number of years in operation and number of persons employed.

<sup>75</sup> The educational standard stipulated is a bachelor’s degree authenticated by the Commission on Higher Education (CHED). In the absence of such attainment, proof of at least four years of experience in human resource management or similar may be provided in lieu. POEA: “Checklist of Requirements for Issuance of License of Landbased Agency”, (14 June 2016).

<sup>76</sup> This includes, *inter alia*, the provision of bio-data and passport-size pictures; National Bureau of Investigation clearance; police clearance from their country of origin; and individual affidavits attesting to their good character. POEA: “Checklist of Requirements for Issuance of License of Landbased Agency”, (14 June 2016).

<sup>77</sup> In the case of a corporation or partnership, a further undertaking by corporate officers or partners to be jointly and severally liable with respect to any claims is required. POEA: “Checklist of Requirements for Issuance of License of Landbased Agency”, (14 June 2016).

Management System Manual; updated bank certificate evidencing maintenance of the escrow deposit; certificates of no adverse report during period of provisional licence; certificate of attendance at the Continuing Agency Education Program by all staff; and the latest audited financial statement.<sup>78</sup>

The POEA also has a system of assessment for compliance with labour laws.<sup>79</sup> Depending on the nature of the violation and whether it is a repeat offence, a PrEA can be reprimanded, receive a fine, a suspension order, or have its licence revoked. For serious offences, principals and employers can also be temporarily suspended, permanently disqualified or delisted from the roster of accredited principals/employers.<sup>80</sup> The POEA can also take disciplinary action against the OFW for a range of offences, with sanctions, ranging from a six-month suspension to permanent disqualification from the overseas employment programme.<sup>81</sup>

### 3.3. Fraudulent and abusive recruitment practices

The complex system of regulation and licensing for PrEAs in the Philippines has not eliminated problems with the recruitment processes for OFWs. Unlicensed PrEAs continue to operate and deploy workers and some licensed PrEA engage in unfair or illegal practices.

Previous studies suggest that violations of recruitment regulations occur due to a number of factors. These include, but are not limited to: wilful violations by both licensed and unlicensed recruitment agencies; unfair practices of counterpart foreign recruitment agencies selling job orders to recruitment agencies in the Philippines; unenforceable standards of wage or employment conditions set by POEA; lapses or omissions in the verification and accreditation processes for employers and projects; lack of coordination between national and provincial recruitment authorities; weak recruitment monitoring; a lack of inspection of recruitment and working conditions; and poor enforcement of penalties.<sup>82</sup> In addition, lack of policy coherence, cooperation and assistance between countries of origin and destination can lead to a failure to adequately deal with the cross-border aspects of recruitment regulation violations.

Practices which cause major concerns include charging workers excessive fees, whether regulated or unregulated, for recruitment and related costs such as skills training and accreditation; misrepresentation during the recruitment process, including contract substitution, charging undisclosed fees and reassignment to different jobs; and unauthorized withholding of documents, including identity papers and passports.<sup>83</sup> Further, non-payment, delayed payment and under-payment due to salary deductions are widespread. Such abusive, deceptive, or exploitative recruitment practices can transform a migrant worker into a victim of human trafficking and forced labour.

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<sup>78</sup> POEA: “Checklist of Requirements for Issuance of License of Landbased Agency”, (14 June 2016).

<sup>79</sup> POEA Rules and Regulations, Part VI, Rule III.

<sup>80</sup> Ibid., Rule IV.

<sup>81</sup> Ibid., Part V.

<sup>82</sup> IOM: *Country Migration Report 2013*; D.R. Agunias: *Migration's middlemen* (2010).

<sup>83</sup> D.R. Agunias: *Migration's middlemen* (2010).



## 4. FAIR RECRUITMENT

The ILO General Principles and Operational Guidelines for Fair Recruitment (ILO principles and guidelines) were adopted by a Tripartite Meeting of Experts on 7 September 2016 and later validated by ILO's Governing Body. These non-binding principles and guidelines are derived from international labour standards and related ILO instruments, as well as human rights instruments, voluntary guidelines and codes of conduct. They consolidate the guidance on fair recruitment,<sup>84</sup> and are intended to cover the recruitment of all workers, including migrant workers, whether directly by employers or through intermediaries. They apply to recruitment within and across national borders and through temporary work agencies and cover all sectors of the economy.

The ILO principles and guidelines contain 13 general principles, which are intended to orient implementation at all levels. In addition, there are 31 operational guidelines which address the responsibilities of specific actors in the recruitment process. They articulate international standards of fair recruitment and are detailed, comprehensive and wide-ranging. They put the onus on the government and the labour inspectorate to regulate recruitment and to take measures against abusive and fraudulent recruitment methods:

Governments have an obligation to respect, protect and fulfil internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, in the recruitment process. This includes respect for, and protection of, the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.<sup>85</sup>

### 4.1. What is fair recruitment in the Philippines?

In the Philippines, stakeholders have a varying range of positions on what constitutes fair recruitment. On the one hand, a few stakeholders – some PrEAs and employers' representatives – consider recruitment practices that are compliant with statutory regulations to be “fair”.<sup>86</sup> Defining fair recruitment as synonymous with being compliant with statutory regulations in the Philippines means that the collection of recruitment fees in accordance with the law is considered fair in certain sectors. This position is contrary to ILO Convention No. 181 and other international standards and guiding principles, which define fair recruitment as including – but not limited to – full compliance with legal requirements in the countries of operation.<sup>87</sup>

Many stakeholders, particularly those PrEAs that have committed explicitly to fair practices as a part of their brand and identity, consider a total prohibition on collecting fees from all jobseekers to be

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<sup>84</sup> Prior to the adoption of the ILO principles and guidelines, guidance on fair recruitment was derived from sources such as binding ILO Conventions, including Convention No. 181, and non-binding standards. The private industry also adopted various voluntarily codes and guidelines, including the Covenant of Ethical Conduct and Good Practices for Overseas Employment Service Providers (2005) signed by national associations of overseas employment service providers from eight countries including the Philippines; the Athens Ethical Principles and the associated Luxor Implementation Guidelines to the Athens Ethical Principles (2006) adopted by the business community; the WEC World Employment Confederation's Code of Conduct (2015), which calls for its members to comply with Convention No. 181; the Dhaka Principles for Migration with Dignity (2011) drafted by the Institute for Human Rights and Business; the Ethical Trading Initiative's Base Code (last amended in 2014); and the Ethical Framework for Cross-Border Labour Recruitment (2012) issued by Verité and the Manpower Group. Some of these documents cross-reference each other, as well as the ILO fundamental Conventions and UN instruments.

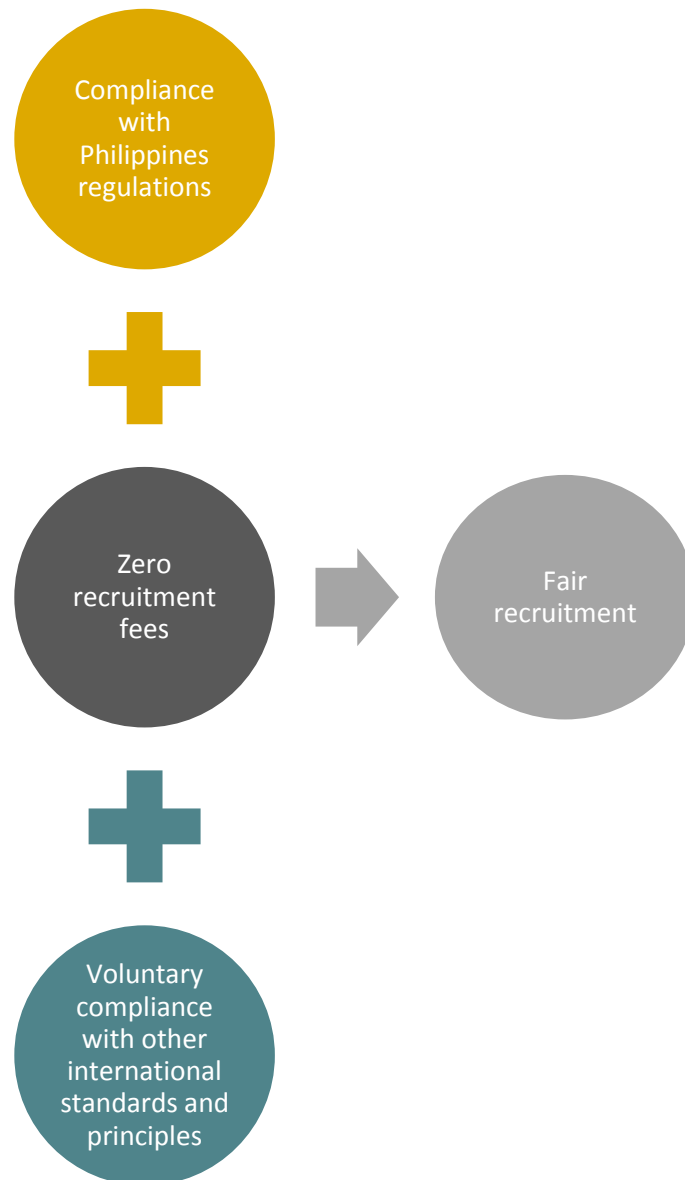
<sup>85</sup> ILO: *General Principles and Operational Guidelines for Fair Recruitment* (2016).

<sup>86</sup> Interviews with officials of PrEAs and ECOP, the Philippines, 11-15 July and 13-16 September 2016.

<sup>87</sup> World Employment Confederation (WEC): *Code of Conduct* (Brussels 2015); Verité: *Ethical Framework for Cross-Border Labour Recruitment* (2012).

an essential element of fair recruitment (the “zero recruitment fees” position).<sup>88</sup> Some stakeholders argue that recruitment fees and related costs should be transparent and that the POEA should set guidelines on all associated costs including training and medical certificates. Some fair labour recruiters and workers’ representatives also express a broader view of fair recruitment which constitutes a package of voluntary practices including zero recruitment fees, minimum labour standards, post-deployment monitoring mechanisms, mechanisms to address disputes and grievances, social protections, as well as non-discriminatory treatment for migrant workers in relation to their access to pathways towards permanent residency.<sup>89</sup>

*Figure 1: Different positions on what is fair recruitment in the Philippines*



<sup>88</sup> In the Philippines context, stakeholders refer to recruitment fees as “placement fees”. This is also the term used in the national legislation. This report, however, adopts ILO terminology of “recruitment fees” throughout.

<sup>89</sup> Interview with officials from PrEAs, trade unions, ECOP and others, the Philippines, 11-15 July and 13-16 September 2016.

While most stakeholders interviewed supported the expansion of fair recruitment – albeit with differing definitions – the Employers’ Confederation of the Philippines (ECOP) held a different view. Its current priorities are focused on concerns with increases in minimum wages across the Philippines and the issue of the “contractualization” of workers rather than OFWs.<sup>90</sup> However, some of its executive officers questioned the need for a fair recruitment initiative.<sup>91</sup> They expressed the view that the POEA Rules and Regulations should not be enforced too strictly because flexibility was needed. In particular, some ECOP officers argued that market forces should regulate overseas recruitment and that the government should “let it be”. From its perspective, the recruitment rules are currently unfair towards the PrEAs.

ECOP officers were more concerned about rules which set out minimum standards of labour conditions of overseas workers, specifically minimum wages, rather than the requirement for zero recruitment fees in relation to certain occupational groups. ECOP officers argued that setting minimum labour standards makes Filipino overseas workers less competitive than those from other countries that are sources of labour migration, such as Indonesia, and that there is a danger the Philippines will miss out on overseas deployments.

However, ECOP members held different personal views on this issue. For example, some members of the Association for Professionalism in Overseas Employment (ASPROE) are also members of the ECOP. ASPROE is the only association of recruitment agencies whose members are committed to a no recruitment fees policy. The President and Founder of ASPROE has argued vigorously for implementing human rights and labour standards protections for migrant workers, particularly unskilled workers. He is also a member of the Council of Leaders in ECOP.

#### 4.2. Recruitment fees and related costs

Convention No. 181 clearly stipulates that “private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers” (Article 7.1). This binding provision is supported by General Principle 7 of the ILO principles and guidelines, which stipulates that “No recruitment fees or related costs should be charged to, or otherwise born by, workers or jobseekers”.<sup>92</sup>

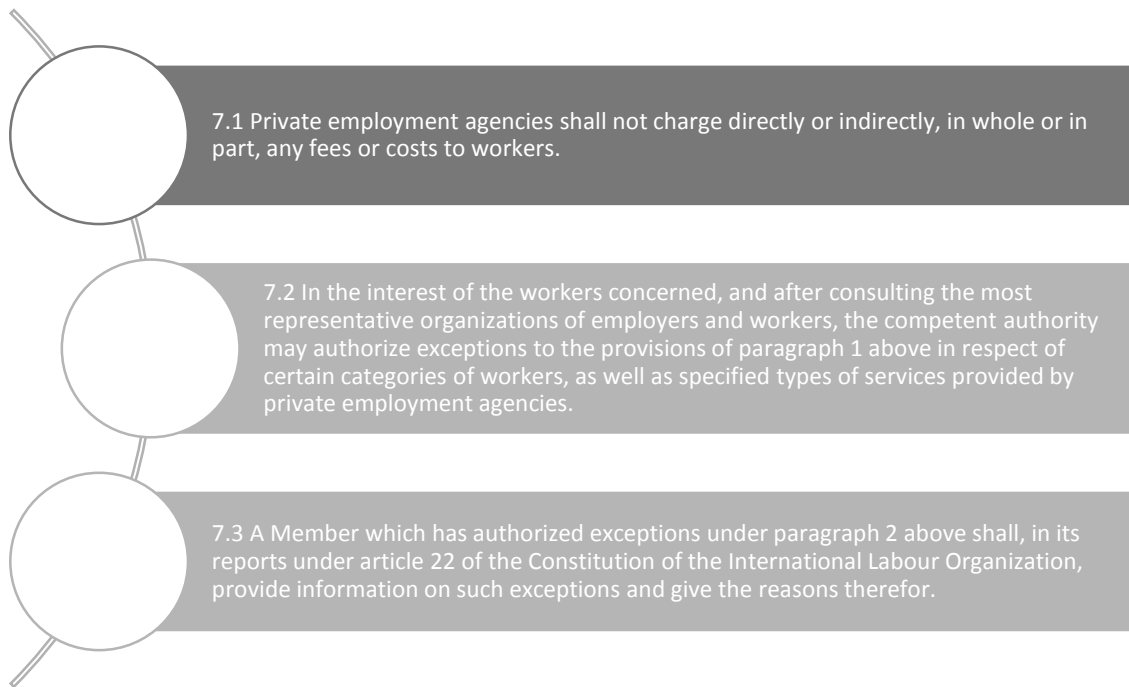
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<sup>90</sup> This term relates to third party outsourcing of workers, which is another form of casualization.

<sup>91</sup> Interview with an official from ECOP, Philippines, September 2016.

<sup>92</sup> Other sources for the prohibition of charging fees and costs to workers include: ILO Convention No. 97, Art. 7(2) and Art. 4 of Annex I and Annex II; ILO Convention No. 181, Art. 7; ILO Convention No. 88, Art. 1; R203; Maritime Labour Convention, 2006, Regulation 1.4(1) and Standard A1.4(5); IRIS Code. Principle 1; CIETT. Principle 3; Verité Code of Conduct. Tool 1.

Figure 2: Convention No. 181, Article 7



Although the Philippines has not yet ratified Convention No. 181, there is a general prohibition on charging recruitment fees to seafarers.<sup>93</sup> For land-based OFWs, the POEA Rules and Regulations specify the recruitment-related costs that should be paid by the agency, employer/principal and worker for each hire (Figure 3). A recruitment fee can still be collected from workers to the maximum equivalent of one month's basic salary, as specified in the POEA-approved contract.<sup>94</sup>

There are several important exceptions to this rule. First, the POEA has prohibited the charging of recruitment fees for domestic workers since 2006. Second, where the destination country has prohibited the collection of recruitment fees directly or indirectly from migrant workers, then the recruitment agencies in the Philippines must abide by the laws and regulations of the destination country in respect of workers deployed there.<sup>95</sup> For example, the United Kingdom, the Netherlands, Ireland, and some provinces of Canada have national legislation that prohibits the collection of recruitment fees from migrant workers. Similarly, Bahrain, Qatar, Saudi Arabia and the United Arab Emirates also have national laws that prohibit the charging of recruitment fees from workers.<sup>96</sup> As such, no recruitment fees should be charged to Filipino workers travelling to these destinations, regardless of the occupation. Third, in accordance with the DOLE Order No. 106 (2010), the deployment of technical interns under the Japan International Training Cooperation Organization (JITCO) programme is under the administration of the POEA and no fee of any kind can be collected from jobseekers for their selection and deployment under the JITCO Skills and Technology Transfer Project.

<sup>93</sup> POEA: 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, Part II, Rule IV, section 49 and Rule V, sections 50 and 52.

<sup>94</sup> POEA Rules and Regulations, Part II, Rule V, section 51.

<sup>95</sup> Ibid.

<sup>96</sup> R. Jureidini: *Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor*. ILO (Geneva, 2016). p 9; UNODC: *The role of recruitment fees and abusive and fraudulent practices of recruitment agencies in trafficking in persons* (Vienna, 2015), pp 39-40.

As noted earlier, despite the varying practices of the PrEAs in the Philippines, many stakeholders – including some PrEA associations and workers’ representatives – agreed that one of the defining features of fair recruitment is zero recruitment fees for workers. Many considered zero fees to be a necessary, but not sufficient, condition for fair recruitment. There are several agencies in the Philippines that have voluntarily implemented the zero recruitment fee policy for all occupational categories, which is above what is legally required by Filipino law. These include members of ASPROE, such as Manpower Resources of Asia, which deploys a range of semi-skilled to highly skilled workers.<sup>97</sup> Other non-affiliated PrEAs such as Staffhouse International Resources also deploy semi-skilled and skilled workers. Most recently, new entrants such as The Fair Hiring Initiative (TFHI) has deployed skilled professionals such as nurses as well as, for a brief time, domestic workers.

Figure 3: POEA Rules and Regulations on recruitment-related costs and fees to be paid in land-based agency hires



<sup>97</sup> ASPROE members include, in addition to Manpower Resources of Asia, Industrial Personnel and Management Services (IPAMS), EDI-Staff Builders International (EDI), InterAsia Outsource (IOI), and International Skill Development (ISD). See <http://asproe.strikingly.com/> [accessed 24 February 2017].

Figure 4: Levels of compliance by PrEAs in the Philippines



Despite statutory regulations on the fees and the costs that are to be paid by each party in the recruitment process, opportunities for excessive charging and exploitation remain. One study showed that the ban on recruitment fees for domestic workers in 2006 has had no discernible effect on halting the steady increase in the total recruitment costs paid by workers destined for HKSAR.<sup>98</sup> In addition to the blatant and illegal charging of recruitment fees, recruitment agents have been creative in passing on recruitment costs from the principal/employer to the workers by exploiting loopholes in statutory regulation.

#### 4.3. Training fees and related costs

The major gap in the statutory regulation of recruitment costs centres on training and associated costs. Multiple stakeholders, including the POLO and compliant recruiters, repeatedly pointed to training and associated costs as the opportunity for unfair labour recruiters to charge fees to jobseekers.

<sup>98</sup> R. Varona: *License to Exploit: A report on the recruitment practices and problems experienced by Filipino domestic workers in Hong Kong*. APL-Sentro, LEARN, PLU-APL, Friedrich Ebert Stiftung, Landsornaisasjonen I Norge. (2013), p. 32.

In addition, stakeholders are also concerned about fees related to medical and health examinations. Importantly, TESDA and the Department of Health (DOH) are the respective authorities. The POEA does not regulate these areas and has no authority over TESDA or the DOH.

TESDA is authorized to accredit, coordinate and oversee the formal and non-formal vocational education training programmes. It established a unified TVET programme registration and accreditation system (UTPRAS) which registers and accredits training centres and programmes, including those that train and certify OFWs before their deployment. TESDA also promulgates training regulations for courses which define the competency standards for a national qualification and how such qualifications can be gained, assessed and recognized.

Although TESDA publishes a list of “assessment fees” for the assessment of candidates for national certification and includes the assessor’s fee plus costs of materials and supplies,<sup>99</sup> it does not regulate tuition fees or charges by private training centres or the duration of training for each programme. For example, many training centres that offer Caregiving National Certification level 2 (NC II) require 786 hours for the course, but others require 1,000 hours or 1,440 hours. The significant variation in hours required suggests tuitions fees would also vary. Previous research illustrates that for domestic workers in HKSAR, average training costs were PHP7,000 to PHP8,000 (US\$139-US\$159) but could reach up to PHP40,000 (US\$796). This represents a substantial portion of the total debt incurred, which renders domestic workers vulnerable to debt servitude.<sup>100</sup>

Although the POEA Rules and Regulations disqualify TESDA officials and employees and their families from participating in the private recruitment of OFWs,<sup>101</sup> it does not prohibit owners of training or assessment centres from acting as private recruiters. Many PrEAs will operate their own training centres or have close relationships with training centres. All PrEAs will “recommend” jobseekers to specific training centres. Many training centres require students to be in residence for the duration of their training. Alternatively, some recruitment agencies require jobseekers to travel to Manila for training.

The living expenses during TESDA training and certification are also unregulated. In addition, many jobseekers/workers from the regions who travel to Manila are required to stay in agency recommended or owned accommodation while awaiting the processing of their contract and visa. Although some agencies provide lodging and accommodation free of charge, previous research shows that these cost, on average, about PHP5,482 PHP (\$109) per recruit and are paid by the workers/jobseekers. In some cases, food and lodging costs have reached up to PHP30,000 (\$597).<sup>102</sup> In many cases, workers/jobseekers are given limited choices as to where to undertake training and where to live.

In addition, the DOH accredits medical facilities for OFWs and seafarers; a list is published on the POEA website. The required medical fitness and tests needed vary for each destination country. In addition, each clinic can set their own fees. The costs of medical exams can also increase if a worker needs additional tests for clearance. As such, while the average for a fit-to-work medical certificate appears to be around PHP2,500-3,500 (\$50-60), they can be as high as PHP8,000 (\$159).<sup>103</sup> The

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<sup>99</sup> E.g. TESDA: *List of Assessment Fees*, <http://www.tesda.gov.ph/uploads/File/ListofAssessmentFees.pdf> [accessed 24 February 2017]

<sup>100</sup> R. Varona: *License to Exploit* (2013); Progressive Labour Union of Domestic Workers in Hong Kong (PLU): *Between a Rock and a Hard Place*, Hong Kong Federation of Asian Domestic Workers (FADWU), (Hong Kong, 2016) pp. 13-16

<sup>101</sup> POEA Rules and Regulations, Part II, Rule I, section 3(f).

<sup>102</sup> R. Varona: *License to Exploit* (2013), p. 31.

<sup>103</sup> *Ibid.*

accumulation of these unregulated pre-deployment expenses may expose some OFWs to significant debt and, at worst, perpetuate debt bondage at the hands of unscrupulous recruiters.

#### 4.4. Fundamental principles and rights at work

The ILO principles and guidelines clearly stipulate the human rights basis of fair recruitment. In addition, several general principles are concerned with the protection of workers' rights and the preservation of the voluntary nature of recruitment and employment. This includes workers' right to information and freedom of movement and the ability to terminate their employment. (Figure 5).

*Figure 5: ILO Principles and Guidelines for fair recruitment – key provisions*





The Philippines have taken some measures in compliance with the ILO principles and guidelines. As noted in section 3.2 above, it has adopted legislation and regulations to cover all aspects of the recruitment process, including workers in vulnerable situations. The POEA, as the regulatory authority for recruitment, has set out the minimum working and living conditions that must be incorporated into OFWs' employment contracts (Figure 6). Employers and workers retain the freedom to stipulate better work conditions and benefits, but cannot contract working employment standards less than those stipulated by the POEA.<sup>104</sup> In addition, the POEA set the minimum wage for deployed domestic workers at \$400 in 2006.<sup>105</sup> For other occupations, the wage rates must be not less than the prevailing minimum wage in the National Capital Region of the Philippines. As of 2 June 2016, the daily minimum wages are set at PHP454 to PHP491 (\$9.40 to \$10.20), depending on the occupational classification by the Department of Labor and Employment.<sup>106</sup>

*Figure 6: POEA Rules and Regulations, section 135*

<p>POEA Rules, section 135: Minimum provisions of employment contracts</p>	<ul style="list-style-type: none"> <li>a. Complete name and address of the employer/company;</li> <li>b. Position and jobsite of the Overseas Filipino Worker;</li> <li>c. Basic monthly salary, including benefits and allowances and mode of payment. The salary shall not be lower than the prescribed minimum wage in the host country or prevailing minimum wage in the National Capital Region of the Philippines, whichever is higher;</li> <li>d. Food and accommodation or the monetary equivalent which shall be commensurate to the cost of living in the host country, or off-setting benefits;</li> <li>e. Commencement and duration of contract;</li> <li>f. Free transportation from and back to the point of hire, or off-setting benefits, and free inland transportation at the jobsite or off-setting benefits;</li> <li>g. Regular work hours and day off;</li> <li>h. Overtime pay for services rendered beyond the regular working hours, rest days and holidays;</li> <li>i. Vacation leave and sick leave for every year of service;</li> <li>j. Free emergency medical and dental treatment;</li> <li>k. Just/valid/authorized causes for termination of the contract or of the services of the workers, taking into consideration the customs, traditions, norms, mores, practices, company policies and the labor laws and social legislations of the host country;</li> <li>l. Settlement of disputes;</li> <li>m. Repatriation of worker in case of imminent danger due to war, calamity, and other analogous circumstances, at the expense of employer; and</li> <li>n. In case of worker's death/repatriation of Overseas Filipino Workers human remains and personal belongings, at the expense of the employer.</li> </ul>
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In addition, the POEA has taken some steps to ensure that employment contracts are clear through the provision of a Standard Employment Contract, which stipulates important details as to terms and conditions of work. For example, "regular work hours" are not defined in the POEA Rules, but are stipulated in the Employment Contract for Various Skills as a "maximum of 8 hours per day, six days per week". However, one of the challenges in terms of OFW protection is that standard clauses in employment contracts often lack detail. For example, for Filipino domestic workers in HKSAR, the

<sup>104</sup> POEA Rules and Regulations, Part V, Rule I, sections 135 and 136.

<sup>105</sup> POEA: Governing Board Resolution No. 5, Series of 2006 (24 October 2006).

<sup>106</sup> DOLE: Summary of Current Regional Daily Minimum Wage Rates (February 2017), [http://www.nwpc.dole.gov.ph/pages/statistics/stat\\_current\\_regional.html](http://www.nwpc.dole.gov.ph/pages/statistics/stat_current_regional.html) [10 March 2017].

standard employment contract lists “domestic duties” which are so broadly drafted that they clearly favour the employer in terms of the scope of interpretation and put workers at a disadvantage.<sup>107</sup>

To promote workers’ awareness and ensure that they have the necessary information about their rights in relation to recruitment and employment, the Philippines requires all OFWs to attend three seminar sessions – 1) Pre-Employment Orientation Seminar (PEOS); 2) Pre-Departure Orientation Seminar (PDOS); and 3) Post-Arrival Orientation Seminar (PAOS) – as a condition of their deployment.<sup>108</sup> In addition, trade unions such as PS Link have developed sector specific pre-decision making toolkits, to assist jobseekers in making informed decisions about recruitment and employment. These are distributed to jobseekers during Pre-Employment Orientation Seminars.<sup>109</sup>

#### 4.4.1. *Prevention of trafficking in persons*

Fair recruitment practices also prevent forced labour and trafficking in persons and help deter all fraudulent and abusive recruitment practices.<sup>110</sup> The ILO general principles include provisions which prohibit practices that indicate forced labour, such as the retention of identity documents.<sup>111</sup> In particular, general principle 5 stipulates that: “the competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons”.

The Philippines ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) in 2002. It also enacted the Anti-trafficking in Persons Act, 2003, Republic Act No. 9208 which was later amended by the Expanded Anti-Trafficking in Persons Act, 2012, Republic Act No. 10364. Under the legislation, deceptive or abusive recruitment of persons for the purposes of exploitation, including forced labour, amounts to human trafficking (Figure 7). There is a consensus among stakeholders in the Philippines that any recruitment practices that result in human trafficking are illegal.

Several elements of the crime of human trafficking are reflected in the POEA Rules. PrEAs that advertise for manpower polling must display warnings in a large font, including “beware of illegal recruiters and human traffickers”.<sup>112</sup> Moreover, to facilitate or grant a loan to an OFW with interest exceeding 8 per cent per annum for recruitment costs constitutes illegal recruitment.<sup>113</sup> Recruitment agencies are also prohibited from imposing compulsory and exclusive arrangements on an OFW to obtain loans from designated institutions or persons.<sup>114</sup> It is also illegal for PrEAs to engage in misrepresentation or deception in relation to the recruitment process.<sup>115</sup>

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<sup>107</sup> In Hong Kong, “household chores” have been interpreted to include external window cleaning in high-rise building, which has led to the death of several domestic workers. The exclusion of this task from the list of domestic duties has been the subject of discussions between the Consular General of the Philippines and the Hong Kong Government.

<sup>108</sup> POEA Rules and Regulations, Part I, Rule II, sections 29-31; Part III, Rule II, sections 117(f), 118(e), and Rule IV, section 224.

<sup>109</sup> Interview with an official from PS Link, Philippines, 14 September 2016.

<sup>110</sup> ILO: Protocol of 2014 to the Forced Labour Convention 1930, Article 2(d).

<sup>111</sup> ILO: *General Principles and Operational Guidelines for Fair Recruitment*, Report of the Governing Body. Meeting of Experts on Fair Recruitment (Geneva, 2016). See also voluntary industry guidelines such as Institute for Human Rights and Business: *Dhaka Principles: for migration with dignity* (2012) Principle 4; and Ethical Trading Institute, *ETI Base Code* (2014), Clause 1.

<sup>112</sup> POEA Rules and Regulations, Part II, Rule VIII, section 69.

<sup>113</sup> *Ibid.*, Part II, Rule X, section 76(p).

<sup>114</sup> *Ibid.*, section 76(q).

<sup>115</sup> *Ibid.*, section 76(b)-(d).

Figure 7: Expanded Anti-Trafficking in Persons Act 2012 – key provisions

<p>section 3(a) Trafficking in Persons</p> <ul style="list-style-type: none"><li>• Refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.</li></ul>
<p>section 3(d) Forced Labour</p> <ul style="list-style-type: none"><li>• Refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of, force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception including any work or service extracted from any person under the menace of penalty.</li></ul>
<p>section 3(e) Slavery</p> <ul style="list-style-type: none"><li>• Refers to the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.</li></ul>
<p>section 3(f) Involuntary Servitude</p> <ul style="list-style-type: none"><li>• Refers to a condition of enforced and compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that if he or she did not enter into or continue in such condition, he or she or another person would suffer serious harm or other forms of abuse or physical restraint, or threat of abuse or harm, or coercion including deprivation of access to travel documents and withholding salaries, or the abuse or threatened abuse of the legal process.</li></ul>
<p>section 3(i) Debt Bondage</p> <ul style="list-style-type: none"><li>• Refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.</li></ul>

Nevertheless, previous research has raised concerns about the continuing risk of debt bondage for OFWs. Jobseekers/workers who pay excessive recruitment fees to secure employment can be effectively debt bonded.<sup>116</sup> Although there is little statistical data, previous research estimated that two thirds of domestic workers in HKSAR, for example, finance their recruitment costs through loans or borrowing.<sup>117</sup> Over a third of the domestic workers in HKSAR had an excessive debt burden where their debt-to-income ratio was equal to or greater than 30 per cent of their reported annual income.<sup>118</sup> One indicator of the prevalence of loans for jobseekers/workers to finance their recruitment might be the presence of hawkers outside of the POEA, who distribute flyers advertising easy and quick loans to OFWs (Figure 8).<sup>119</sup>

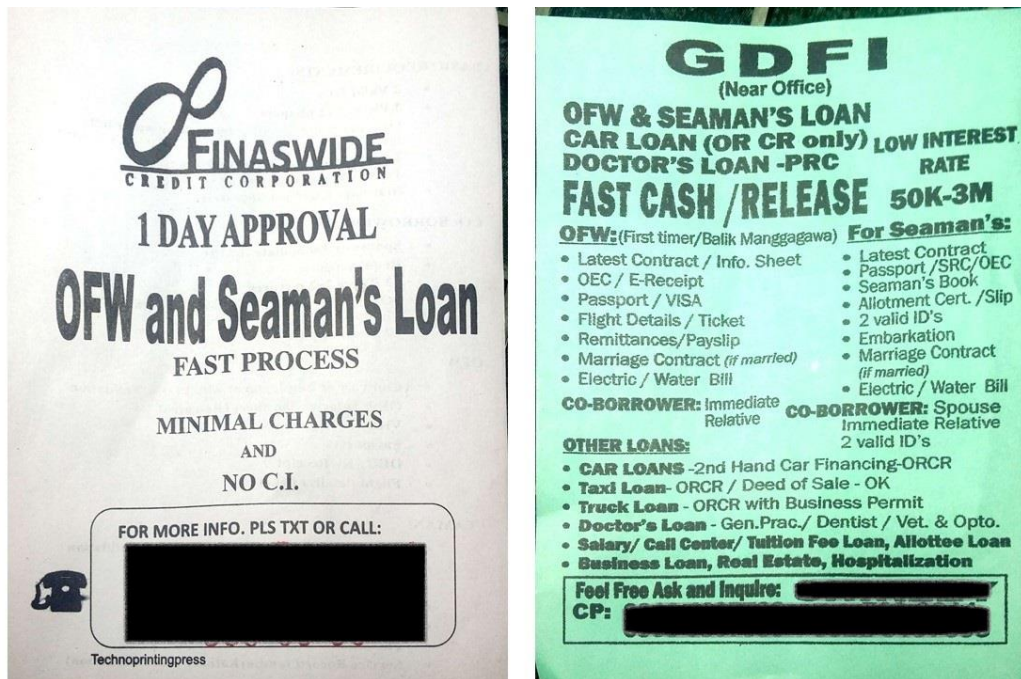
<sup>116</sup> For example, news outlets have reported on OFWs' levels of debt and being effectively forced to return to work despite adverse medical conditions.

<sup>117</sup> R. Varona: *License to Exploit* (2013), p. 26.

<sup>118</sup> Justice Centre: *Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong* (Hong Kong, 2016).

<sup>119</sup> The Philippines has ratified ILO Convention No. 189. Articles 3, 9 and 15 of C189 of which, in particular, stipulate that Member States must take appropriate measures to protect migrant domestic workers, including those recruited by private employment agencies, from abuse.

Figure 8: "OFW loan" advertisements



Another continuing concern is the withholding of passports by PrEAs, even those that consider themselves compliant with POEA regulations in other respects. PrEAs appear to routinely withhold passports to prevent workers from “dropping out” mid-processing before deployment. From the agency’s point of view, particularly those who do not charge recruitment fees in compliance with the law, abortive recruitment processes amount to a financial loss because of the investment in time and other processing costs.<sup>120</sup> Under POEA Rules and Regulations, the unjustified refusal to continue with the application after signing an employment contract, or to depart for the worksite after all the documents have been duly approved, is a serious disciplinary offence on the part of the worker.<sup>121</sup>

At the same time, for the recruitment agent, the withholding of travel documents before departure for monetary or financial considerations, or for any reasons other than those authorized under the Labor Code, constitutes illegal recruitment.<sup>122</sup> Yet, at the branch office in Zamboanga of an agency deploying domestic workers, the staff displayed a number of passports retained and withheld from workers who did not complete the recruitment processes. Staff noted that if the workers wanted to reapply with another PrEA, they could apply for a new passport by swearing an affidavit that the passport was lost.<sup>123</sup>

<sup>120</sup> Interviews with officials from PrEAs, Philippines, 11-15 July and 13-16 September 2016.

<sup>121</sup> POEA Rules and Regulations, Part VI, Rule V, section 145.

<sup>122</sup> Ibid, Part II, Rule X, section 76(1)

<sup>123</sup> Interview with officials from PrEAs, Philippines, 11-15 July and 13-16 September 2016.

## 4.5. Grievance mechanisms

General principle 13 of the ILO principles and guidelines stipulates that:

Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

The operational guidelines identify the responsibility for providing grievance mechanisms as primarily that of the government and employers.

*Figure 9: ILO General Principles and Operational Guidelines for Fair Recruitment*

8. Governments should take steps to ensure that workers have access to grievance and other dispute resolution mechanisms, to address alleged abuses and fraudulent practices in recruitment, without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred.

...

27. Employers should provide or facilitate effective access to grievance and other dispute resolution mechanisms in cases of alleged abuses in the recruitment process, and to appropriate remedies.

In addition, the UN Guiding Principles on Business and Human Rights provide that various forms of grievance mechanisms should be made available, including state-based judicial mechanisms; state-based non-judicial mechanisms; and non-state based grievance mechanisms.<sup>124</sup> Businesses should establish or participate in effective operational-level grievance mechanisms for individuals and communities and make it possible for grievances to be addressed promptly and remedied directly.<sup>125</sup> The Dhaka Principles also call on businesses and corporations to ensure that migrant workers have access to judicial remedy and to credible grievance mechanisms, without fear of recrimination or dismissal.<sup>126</sup>

At the business enterprise level, the POEA requires that dispute settlement provisions are contained in all employment contracts.<sup>127</sup> A standard clause is contained in the POEA Standard Employment Contract for Various Skills:

All claims and complaints relative to the employment contract of the employee shall be settled in accordance with the Company policies, rules and regulations. In the case the employee contests the decision of the employer, the matter shall be settled amicably with the participation of the Labor Attaché or any authorized representative of the Philippine Embassy/ Consulate nearest competent or appropriate government body in

<sup>124</sup> UN: *Guiding Principles on Business and Human Rights* (New York and Geneva, 2011) Articles 26-31.

<sup>125</sup> *Ibid.* Principle 29.

<sup>126</sup> Institute for Human Rights and Business: *Dhaka Principles: for migration with dignity* (2012) Principle 9.

<sup>127</sup> POEA Rules and Regulations, Part V, Rule I, section 135(l).

host country or in the Philippines if permissible by host country laws at the option of the complaining party.

Although the clause allows recourse to POLO and state-level grievance mechanisms, the POEA leaves enterprise-level dispute resolution processes entirely at the discretion of the employers. It provides no specific role for the PrEA. In 2015, to improve the transparency of the industry and to protect vulnerable workers, the POEA stipulated that all recruitment agencies deploying domestic workers must maintain a Facebook account to provide a communication platform, to prevent disputes, to endorse complaints and for submission of reports to the POEA.<sup>128</sup>

Although the requirement only applies to PrEAs deploying domestic workers, fair labour recruiters who do not deploy domestic workers also voluntarily maintain Facebook accounts as a platform for communication, complaints and early dispute resolution. Staffhouse, for example, employs a full-time Welfare and Monitor Officer, who monitors social media and Facebook accounts for any complaints and tries to address problems as promptly as possible.<sup>129</sup> Some trade unions have been involved in the monitoring of workers' conditions via bilateral agreements for government-to-government deployments.<sup>130</sup>

Consistent with Article 15 of ILO Convention No. 189, one feature of Filipino national legislation is the joint and several liability (JSL) provision which applies to:

the liability of the principal/employer and the recruitment/manning agency, for any and all claims arising out of the implementation of the employment contract involving Filipino workers for overseas deployment.<sup>131</sup>

In addition, if the recruitment/manning agency is a juridical being, "the corporate officers and directors and partners, as the case may be, shall themselves be jointly and severally liable with the corporation or partnership" for such damages.<sup>132</sup> An applicant for a POEA licence must provide a duly notarized undertaking stating that the applicant shall, among other things:

Assume 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.<sup>133</sup>

The JSL provision allows Filipino courts and the POEA to hold PrEAs accountable for any violations of national regulations at any stage of the recruitment and employment of OFWs. It overcomes jurisdictional difficulties in holding to account employers, manning agencies or employment agencies who are overseas. The JSL provision applies to money claims from workers heard at the National Labor Relations Commission (NLRC);<sup>134</sup> to administrative liability, such as suspension or

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<sup>128</sup> POEA: Memorandum Circular No. 1 of Series 2015 (24 February 2015); and Memorandum Circular No. 3 of Series 2015 (14 March 2015).

<sup>129</sup> Interview with an official from Staffhouse, Philippines, 14 September 2016

<sup>130</sup> Interview with an official from PS Link, Philippines, 14 September 2016

<sup>131</sup> Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042) as amended by Republic Act 10022, Rule II, section 1(s); POEA Rules and Regulations, Part I, Rule II, section 17.

<sup>132</sup> *Ibid.*

<sup>133</sup> POEA Rules and Regulations, Part II, Rule II, section 4(f)(8).

<sup>134</sup> Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042) as amended by Republic Act 10022, Rule VII, section 3.

termination of the licence; and criminal liability.<sup>135</sup> These provisions are intended to deter private recruitment agencies in the Philippines from dealing with unscrupulous employers. It provides workers with remedies in situations where the violator is outside of the jurisdiction of the Philippines and cannot be brought to justice.

These provisions have allowed the POEA to cancel private recruiters' licences for contract substitution and for deceptive recruitment. For example, the POEA cancelled the licence of a PrEA for repeated offences of misrepresentation in recruitment and "reprocessing" workers where OFWs were sent to a different job or employer than that specified in the job order. In June 2015, the POEA also reported that they preventatively suspended the licence of a Filipino PrEA, and the accreditation of its principal – an employment agency in the United Arab Emirates – for allegedly deploying a domestic worker without proper documentation and for maltreatment suffered by the worker during the course of her employment in the United Arab Emirates.<sup>136</sup> Generally, the POEA appears willing to enforce regulations against unscrupulous agencies and has been responsive to social partners, including trade unions.

Most labour recruiters appear to adopt an informal troubleshooting approach to grievances and disputes, with an emphasis on conciliation. In addition, labour recruiters in the Philippines, including fair labour recruiters, have reported that due to the JSL provisions, they generally try to prevent the escalation of disputes into a formal complaint. Complaints to the POEA can result in administrative sanctions against the agency including suspension of operations. Money claims lodged at the NLRC can also lead to administrative sanctions as well as financial penalties. As such, JSL provisions encourage PrEAs to settle disputes quickly and informally. In cases of workers' disputes with employers, the labour recruiter often acts as the informal mediator. However, to avoid formal claims, some recruiters will settle disputes on behalf of the employers to avoid escalation of the claim.<sup>137</sup>

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<sup>135</sup> POEA Rules and Regulations, Part I, Rule II, section 17; R. Jureidini: *Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor* (2016), p. 28.

<sup>136</sup> POEA administrative actions are sometimes announced through news releases. See, for example, POEA: "News release: Agency loses license after three misrepresentation offenses and deception of a household worker" (12 October 2015) and "News advisory: recruiter lied about destination of domestic worker, loses license" (9 October 2015).

<sup>137</sup> Interviews with officials from PrEAs, Philippines, 11-15 July and 13-16 September 2016



## 5. THE BUSINESS OF RECRUITMENT

### 5.1. Conventional model

#### 5.1.1. Volume-based business

The core income of recruitment agencies in the Philippines is derived from the service fee paid by the employer and the recruitment fee paid by the worker (Figure 10) for each deployment. For larger recruitment agencies that deploy workers of a variety of skill levels and occupational categories, these fees may vary for each category or skill level. Most recruitment agencies, therefore, operate on a business model based on the volume of deployments. The more deployments, the more income. The service fee tends to be a flat rate per destination per skill category. Similarly, recruitment fees, if legally charged, tend to be a flat rate per job category.<sup>138</sup> Where recruitment fees can be legally charged, regulations cap the recruitment fees at one month of the workers' salary.

Figure 10: The dominant business model



\* Recruitment fees collected from workers where national regulations allow.

Regulations prohibit PrEAs from charging recruitment fees for domestic workers. Therefore, for PrEAs that deploy domestic workers, their profitability is dependent solely on the volume of their deployments based on the service fee. In addition, some agencies expand their income by providing other value-added services to employers/principals, such as payroll, training and qualification testing of candidates.

For deployments to HKSAR, Society of Hong Kong Accredited Recruiters of the Philippines (SHARP) reported that, when recruitment fees were routinely collected, jobseekers paid up to PHP100,000 (\$2,083)<sup>139</sup> to secure employment as domestic workers. At the same time, Hong Kong employers paid 3,000 Hong Kong dollars (HKD) (\$385) per deployment to Hong Kong agencies for each domestic worker hired, part of which would then be passed on to the Filipino recruitment agencies. However, after SHARP imposed a brief moratorium on Hong Kong deployments in 2013, employers have paid service fees of between HKD7,800 and HKD12,000 (\$1,000 to \$1,538) per worker.<sup>140</sup> For each deployment, Filipino recruitment agencies earn between \$200 and \$300 from service fees.<sup>141</sup>

The volume-driven business model is partly encouraged by the POEA, which identifies top performers based on a variety of factors including the number of deployments. The top performing employment agency in 2015, East West Placement Center Inc (EWPCI), deployed 6,525 workers during

<sup>138</sup> Interviews with officials from PrEAs, Philippines, 11-15 July and 13-16 September 2016.

<sup>139</sup> At time of writing; US\$1 = PHP48; \$1 = HKD7.8.

<sup>140</sup> Interviews with officials from PrEAs, Philippines, 11-15 July and 13-16 September 2016.

<sup>141</sup> Interviews with officials from PrEAs, Philippines, 11-15 July and 13-16 September 2016.



the year. It has deployed the highest number of workers annually since 2006, peaking in 2007 at 11,315 workers. In 2014, it deployed 10,264 workers from the Philippines. Of the 131,523 workers it has deployed since 1994, 69 per cent were sent to Saudi Arabia. The United Arab Emirates and Qatar each received 16,476 (13 per cent) and 14,754 (11 per cent) workers respectively. The vast majority of these workers (99,620 – 76 per cent) were deployed in oil and gas, construction and heavy and civil construction.<sup>142</sup> Another agency, Agency A, one of the top five recruiters to Hong Kong and among the top 50 performing agencies in 2015 overall, deploys around 300 domestic workers each month.<sup>143</sup>

Regional branch officers identify appropriate candidates to send to their headquarters, usually in Manila, for deployment. Recruiters, particularly from branch offices in Zamboanga City, repeatedly complained that they did not have sufficient applicants for jobs as domestic workers abroad. One recruiter talked about the disappointment and challenges faced in organizing recruitment events outside of the office. The PrEA is required to apply for a Special Recruitment Authority (SRA) from the POEA,<sup>144</sup> only to have six candidates come for interviews after more than 20 initially expressed interest.<sup>145</sup> Ironically, the scarcity of good candidates does not appear to have encouraged better services for jobseekers. Instead, it appears to have led to abusive behaviour by labour recruiters, such as charging fees and confiscating passports during the course of recruitment in order to retain the jobseeker in the recruitment process.

### *5.1.2. Recruitment fees considered a commercial necessity*

There are still strong resistance from PrEAs against the total abolition of recruitment fees charged to workers. The Philippine Association of Service Exporters (PASEI), established 36 years ago, is the largest association of PrEAs in the Philippines, with some 300 active members. It has refused to implement a general zero recruitment fee policy, beyond that required by POEA regulations. PASEI asserts that its members are mostly compliant with POEA regulations, and indeed that it encourages its members to comply with them, but its official position is that recruitment fees charged to workers should remain at current levels as set by the POEA.

PASEI argued that a zero recruitment fee policy is not a commercially viable for many recruitment agencies. It is assumed that with zero recruitment fees, the costs to employers would increase as agencies would seek to recuperate their loss of income by raising service charges. Such a move, however, is considered to be detrimental to both the agency and the OFW market as the Philippines would become less competitive than other labour-sending countries. PASEI representatives considered fair labour recruiters such as Manpower Resources of Asia Inc to be anomalies in a highly competitive field. They argued that such agencies were established more than 30 years ago, when the market was different and employers were more willing to pay the costs of foreign worker recruitment. They consider the continued commercial success of Manpower Resources of Asia Inc to be based on the long-term clients that it developed and the continuity of those relationships.

In addition to the concern about commercial viability if workers' recruitment fees are abolished, some recruiters believe that they are necessary to ensure workers fulfil their contracts. Agency B, a member of PASEI, and among the top 50 performing agencies in 2015, argued vigorously against the

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<sup>142</sup> EWPCI: *Company Profile* (Manila, 2016), pp. 5-6.

<sup>143</sup> Interview with an official from PrEA Agency A, Philippines, 15 September 2016.

<sup>144</sup> SRAs allow agencies to essentially undertake outreach activities outside of their registered office premises to try to identify potential candidates for deployment. In 2014, the POEA issued 180 SRAs, according to its *Annual Report* (2014).

<sup>145</sup> Interview with an official from PrEA Agency T in Zamboanga City, Philippines, 14 July 2016.

abolition of the one-month recruitment fee for semi-skilled and skilled workers. The agency is founded by a repatriated OFW who had spent more than 16 years working abroad in a variety of occupations. The agency was established more than 10 years ago, and focuses on sending skilled workers to the Middle East, primarily in the construction industry. According to the agency's President, 80 per cent of the OFWs deployed paid a recruitment fee.<sup>146</sup> The agency does not charge a recruitment fee for occupations for which labour is difficult to source, for example, welders. The agent claimed that with full compliance with POEA regulations, his income from recruitment fees paid by workers exceeded that from the service fees paid by employers. As such, he claimed that the agency would not be commercially viable without the collection of recruitment fees.

Agent B appears to use fees as a form of control. He categorically stated that not collecting fees from jobseekers is “wrong”. He argued that workers “will abuse” the overseas deployment system if no fees are charged. He considered the recruitment fee a necessary investment for the OFW in the job itself, without which the worker is more likely to misbehave or resign without completing the contract.<sup>147</sup> The agent thus sees the recruitment fee as a way of passing on the risk of an unsuccessful or incomplete deployment to the worker. Recruitment agencies report that, depending on the circumstances, they are often put in the position of having to compensate the employer or the worker each time a contract is terminated early. Even if they are not legally liable, recruiters will often informally settle with the worker to prevent a formal complaint being lodged with the POEA, or compensate the employer in order to keep a client. As such, some recruiters see the recruitment fee as a form of insurance against the early termination of the employment contract by either the worker or the employer.

## 5.2. Fair recruitment model

Of 1,200 validly licensed PrEAs, the number of fair recruiters who have a zero recruitment fee policies is very low. One estimate puts the number of agencies explicitly committed to fair recruitment practices at seven, all of which – at the time of research – deployed skilled workers only.<sup>148</sup> They are, as noted earlier, voluntarily complying with international principles, and implementing recruitment practices to a higher standard than that required by POEA regulations. Fair recruiters are entirely reliant on service fees from the employers for their income. Although some agencies believe a zero recruitment fee policy would not be a viable business model, fair labour recruiters have consistently argued that fair recruitment practices do not impinge on their commercial success.

### 5.2.1. Better deployments

In many ways, fair labour recruiters operate similarly to other agencies and rely, in part, on the volume of their deployments. However, of the top 50 performing agencies identified by the POEA in 2015, only one is a fair recruiter. Based on detailed interviews with three fair recruitment agencies, it appears that although they rely to an extent on the volume of deployments to generate profits, they focus on the quality of deployments for the workers as well as employers. Fair labour recruiters aim for better matching between workers and jobs, and are therefore able to sustain long-term client relationships with overseas employers and principals.

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<sup>146</sup> Interview with an official from PrEA Agency B, Philippines, 15 September 2016.

<sup>147</sup> Interview with an official from Agency B, Philippines, September 2016, anonymized for confidentiality.

<sup>148</sup> ASPROE members, Staffhouse and TFHI.

Staffhouse International Resources is also among the top 50 agencies in the Philippines in terms of its volume of deployment in 2015.<sup>149</sup> Since its inception in 1999, it has always been a “100% non-fee charging company” and collects zero fees from its workers, regardless of job postings or destination. Currently, it deploys between 3,000 and 4,000 workers per annum, 80 per cent of whom go to Saudi Arabia in all sectors. According to its Managing Director, 39 per cent of the agency’s workers are deployed in the food and beverage and hospitality industries. The agency also recruits workers in a range of other industries including construction, IT, logistics and distribution, engineering and consulting, automotive and retail. Among the lowest skilled workers deployed by Staffhouse are farmworkers, usually deployed to commercial farms in Saudi Arabia. By contrast, 12 per cent of its workers are highly skilled professionals and another 12 per cent are nurses and healthcare workers.<sup>150</sup> Staffhouse does not recruit domestic workers.

Manpower Resources of Asia is another fair recruitment company. Regarded as an early leader in fair recruitment and an advocate for workers in the industry, the agency and its founder have received numerous prizes and awards, including the Presidential Award of Excellence (2010) and the POEA Award of Excellence (2005). One of the earliest fair recruitment companies established in the Philippines, Manpower Resources of Asia has deployed workers overseas since 1978. It also recruits only skilled workers, and currently deploys workers in the oil and gas and construction industries. In addition, it deploys health workers and nurses to the Middle East, often as a part of a broader multi-skilled workforce recruited for construction projects.<sup>151</sup> Manpower Resources of Asia does not recruit any domestic workers.

TFHI is the newest fair recruiter in the Philippines. Its founder formerly worked with Verité on fair recruitment and other labour issues. The agency was formed with the mission of making fair recruitment “the standard, not the exception”, to connect socially responsible employers with qualified jobseekers and to demonstrate that a zero recruitment fee policy can be profitable and accessible. Although the agency was established in 2012, it did not receive its POEA licence until 2014. Since then, and as at July 2016, TFHI had deployed 37 workers to Jordan, including tailors and domestic workers. It was preparing to deploy 76 nurses to Qatar. More recently, it has looked to recruit workers for the Middle East in a variety of jobs including in the automotive industry, transportation services and the food and beverage and hospitality industries. Although the agency did deploy domestic workers to Jordan in the past, it has now stopped due to problems with workers’ protection there.

By not collecting fees from workers, fair recruiters argue that they are best able to source the right candidate for the job vacancy. By taking the ability to pay out of the equation, fair recruiters can identify candidates solely based on their work experience and qualifications and thus provide more competent workers for employers. That is, their competitive advantage is the pool of qualified candidates that they can identify and thus their ability to provide a better core service to the employers or foreign placement agencies that they work with.<sup>152</sup>

Fair recruitment agencies reported that they tend to avoid the deployment of domestic workers as a matter of policy and business strategy. They focus on semi-skilled and skilled workers in a variety of industries. This suggests an interesting paradox: agencies which do not charge jobseekers recruitment fees deliberately avoid the one occupational category (domestic workers) where there is a regulatory

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<sup>149</sup> As of 12 February 2016, it was ranked number 13.

<sup>150</sup> Interview with an official from Staffhouse, Philippines, 14 September 2016.

<sup>151</sup> Interview with an official from Manpower Resources of Asia, Philippines, 12 July 2016.

<sup>152</sup> Interviews with fair labour recruiters, Philippines, 11-15 July and 13-16 September 2016.

ban against the collection of recruitment fees. Or to put another way, fair recruitment agencies are not seeking to compete in the only occupational category where the field is “levelled” by statutory regulation. Instead, fair recruitment agencies choose to compete in areas where, in theory, they are at the most disadvantage. In order to operate successfully, fair recruitment agencies must convince employers to pay 100 per cent of the recruitment costs. In contrast, their competitors can charge the employers a lesser amount, as the costs are shared between workers and employers. By avoiding the domestic service sector, fair labour recruiters also effectively exclude themselves from a large segment of the OFW market, which is counterintuitive to the commercial logic of recruitment agencies.

Yet, fair recruitment agencies choose to avoid the domestic worker sector for several key reasons. First, all three agencies noted that there are considerable reputational risks for the agencies in the deployment of domestic workers. Fair labour recruiters are especially concerned about their ongoing obligations in relation to the working conditions of the OFWs they deploy and it has been well documented that domestic workers are particularly vulnerable to exploitation and abuse. Fair labour recruiters have, therefore, made a business decision to focus on developing skilled deployments rather than risking reputational damage to their brands. Notably, all three fair recruitment agencies interviewed were founded with a zero fee for jobseekers’ policy and have publicly committed to fair practices from inception.

Second, and related to the issue of reputational risk, fair labour recruiters feel that there are insufficient due diligence and monitoring mechanisms in relation to deployments in domestic work. Fair labour recruiters are more selective in their choice of employers and foreign PrEAs. In part, as described earlier, this is a self-selecting process between the employer and the agency based on the employers’ willingness to bear the costs of recruitment. At the same time, fair labour recruiters make a significant effort to conduct due diligence on employers for whom they recruit, as well as monitoring conditions and resolving disputes as they arise. For example, Staffhouse employs a full-time welfare and monitoring officer to handle grievances from workers, and uses social media platforms, such as Facebook, as complaints mechanisms. It also primarily deals directly with corporate employers as principals. Staffhouse’s management also travels to the host countries and meets the employers directly. In Saudi Arabia, where they cooperate with recruitment companies, Staffhouse has favoured the so-called “mega recruitment agencies” that have a higher level of regulatory liability than others. It was mentioned that one such agency, SAED, conducts labour inspections on corporate clients prior to entering into a contract with them. Such workplace inspections would not be possible of employers of domestic workers.<sup>153</sup> TFHI stopped deploying domestic workers to Jordan when their principal could not improve due diligence and employer selection there.<sup>154</sup>

Third, these fair labour recruiters operate with a sense of moral mission that also underlines their decision not to deploy domestic workers. In one case, a fair labour recruiter noted that he did not want to contribute to the image of the Philippines as a sender of low-skilled workers to the rest of the world. By focusing on higher skilled workers, he hopes to transform the international image of Filipino workers and secure better employment for them.<sup>155</sup>

Fair labour recruiters compete not on the basis of lowering the service charge to the employers, but on the quality of the services provided. This includes, first, the suitability and competence of the workers deployed; second, minimizing the risks and costs of disputes and grievances during the

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<sup>153</sup> Interview with an official from SAED, Philippines, 16 September 2016.

<sup>154</sup> Correspondence with the Fair Hiring Initiative, Philippines, on file with the author.

<sup>155</sup> Interview with an official from Staffhouse. Philippines, 14 September 2016.

contracted deployment by seeking socially responsible employers; and third, minimizing the risks and costs of reputational risk by carrying out due diligence on the employers, monitoring labour conditions and providing mechanisms to resolve disputes and grievances.

The deliberate shift away from the deployment of domestic workers means that fair labour recruiters are less reliant on the volume-driven profits. By focusing on skilled and semi-skilled workers, fair labour recruiters have confined themselves to a smaller segment of the OFW market.<sup>156</sup> At the same time, however, fair labour recruiters tend to focus on higher-value deployments in terms of job occupation and/or destination. For example, one fair labour recruiter reported that service fees charged to employers are set at several tiers, depending on the skill level and qualifications of the workers. At the lower end, service fees per worker deployed to the Middle East are comparable to those deploying domestic workers. However, the fees increase substantially if workers are deployed to other countries. Deployments of skilled or semi-skilled workers to destinations such as the Europe (United Kingdom), Canada, Australia, and New Zealand generate higher value services fees for the recruiters. For the most high-value deployments of managerial staff or professionals, service fees are paid by the employers and calculated as a percentage of gross commencing annual salary. A different fair labour recruiter also links the service fees payable by employers to the salary of the workers. For lower skilled workers, a flat rate plus regulatory costs are charged to the employer.<sup>157</sup> Fair labour recruiters also ensure that other costs chargeable to the employers under the regulations are paid by the employers.

As such, while the volume of deployments still has an impact on the overall profitability of fair recruiters, their business model focuses more on higher-value deployments of more skilled and professional workers and to higher-value destinations. As fair recruiters generally deploy lower volumes of workers, with the notable exception of Staffhouse, they have not been included in top-performer lists. By contrast, according to data provided by the POEA, the top five agencies that deploy domestic workers all featured in the top 50 performers in 2015 reflecting their volume-based business model.

### 5.2.2. *Lower risks*

Fair labour recruiters with a zero recruitment fee are able to identify more cooperative and responsible employers/principals and thus provide better employment opportunities for workers. Each fair labour recruiter had anecdotes about the employers who pressured them to shift the costs of recruitment onto the worker. One noted that employers and others in the industry thought he was “crazy” to not charge the workers.

However, by refusing to work with employers or foreign placement agencies who insist on burdening the workers with recruitment costs, fair labour recruiters are essentially selecting employers who share a sense of social responsibility and who also prioritize the qualifications of workers. Although statistical evidence is not available, anecdotally, one result of a better job-to-worker or worker-to-employer fit is that the risk of early termination of contracts by either worker or employer is reduced. This limits the potential liability of the PrEA in claims related to unfinished contracts and prevents disputes that result in the recruiter having to compensate either the worker or the employer.

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<sup>156</sup> At the time of writing, no fair recruitment agency was deploying domestic workers.

<sup>157</sup> Confidential correspondence with fair labour recruiters, Philippines, on file with the author.

Moreover, the natural selection of employers who support the zero-recruitment fee policy of the fair labour recruiters becomes a preliminary part of due diligence. That is, employers and foreign placement agencies who are willing to invest in the recruitment of their workers are more likely to provide better working conditions and benefits to their employees. As PrEAs are jointly and severally liable for any violations by the employer/principal, this means that the overall risk for non-compliance with labour laws is reduced for the PrEA itself.

## 6. CHALLENGES AND OPPORTUNITIES FOR A FAIR RECRUITMENT MODEL

The POEA has a “hard-to-enter, easy-to-go” policy towards the regulation of PrEAs.<sup>158</sup> In 1982, when the POEA began to regulate the recruitment system, there were 1,100 agencies, a significant increase from 44 agencies in 1974. The POEA was tasked with trying to reduce the number of agencies to an “optimal” level to prevent “cut throat competition” among them. However, the government has never set a target for the “optimal” number of agencies.<sup>159</sup> In 2014, the POEA approved 70 new licensed recruitment agencies.<sup>160</sup> As at 21 October 2016, there were still 1,200 validly licensed PrEAs: 799 land-based agencies and 401 sea-based agencies.

Competition between recruitment agencies is unavoidable, even necessary, but can lead to negative consequences. Such competition between recruitment agencies can drive a “race to the bottom”, as agencies attempt to maximize their profits through fraudulent practices and abusive behaviour. Recruiters who first entered the market more than 30 years ago report that, as the culture of migration emerged, the culture and professional practices of recruiters also changed.<sup>161</sup> As more recruiters entered the market, they competed by lowering the costs of recruitment to employers and shifting the costs to workers. Or, they maximized their own profits by charging both a service fee to the employer and a recruitment fee to the worker. In a highly competitive environment, recruiters – particularly those who focused on high-volume and low-value deployments of domestic workers – were more likely to breach POEA Rules and Regulations by overcharging recruitment fees, colluding with employers to deploy OFWs in work conditions that did not comply with POEA or international standards and other abusive practices.

At the same time, PrEAs in the Philippines are competing with recruiters from other labour-sending countries. As noted earlier, some ECOP officers take the view that to ensure that Filipino labour remains attractive, it is important to minimize the cost of labour recruitment for employers on the global market. Their fear is that workers from other countries, for example Indonesia, will increase their participation in the global labour market at the expense of Filipino workers. Thus, one strategy to maintain employers’ interest in Filipino workers is to reduce costs to employers by passing recruitment costs to workers. Despite competition from other countries of labour migration, Filipino workers remain the top choice for employers in the countries of destination and typically enjoy better conditions than migrant domestic workers from elsewhere.

In this context, fair recruiters stay competitive and commercially viable by building their reputation as recruiters who can supply qualified and suitable workers, as well as ensuring that workers are placed in safe and decent working conditions. However, fair recruiters also face specific difficulties in a market where their fair practices run counter to the prevailing industry culture.

To promote a cultural shift in the way the private recruitment industry operates in the Philippines, it is important that efforts for reform target all parties in the relationship at the heart of the overseas employment contract: the jobseekers/worker, the employer/principals, and the PrEAs, as well as trade unions and the government (Figure 11). The POEA, with exclusive jurisdiction over the statutory

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<sup>158</sup> P. Martin: “Asian Migration to the United States: Development Implications for Asia” in J. Cortina et al, *New Perspectives on International Migration and Development* (New York, NY, Columbia University Press, 2013), pp. 276-302.

<sup>159</sup> D.R. Agunias: *Managing Temporary Migration* (2008).

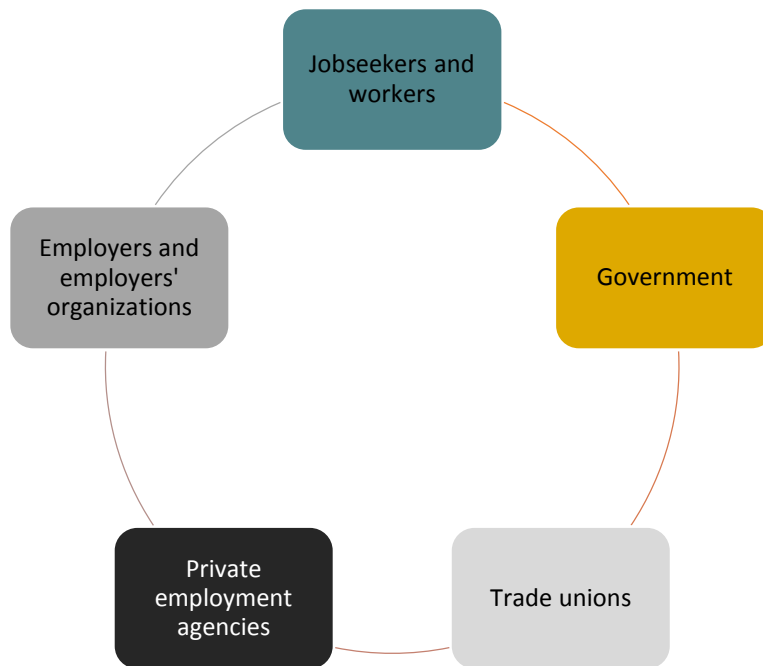
<sup>160</sup> POEA: *Annual Report* (2014), p. 6.

<sup>161</sup> Interview with an official from Manpower Resources of Asia, Philippines, 12 July 2016.

regulation of PrEAs, has a key role to play in relation to each of these stakeholders. As such, legislative and policy changes should focus on the following complementary approaches to effect practical changes in the industry:

1. Government: designing, implementing and enforcing necessary policy reforms to promote fair recruitment and cultural change in the private recruitment industry;
2. Private employment agencies: reward fair recruitment practices, lower entry barriers for new fair labour recruiters, sanction illegal recruiters and encourage due diligence by employers;
3. Employers: encourage effective due diligence of employers' labour supply chain, reward fair practices and sanction illegal recruitment;
4. Jobseekers/workers: change the expectations of jobseekers/workers, raise awareness of the practicalities and commercial realities of seeking a job overseas and provide accessible and transparent information on recruitment options and rights during recruitment;
5. Trade unions: act as a watchdog regarding unfair recruitment practices and contribute to better transparency in recruitment processes.

Figure 11: Stakeholders in reforming recruitment practices



## 6.1. Private employment agencies

### 6.1.1. New entrants and the “new market rule”

For new entrants seeking registration as a licensee, the POEA has created strict entry rules that aim to limit overseas employment participation to those who meet the qualifications – the “hard to enter” approach. As noted earlier, this is part of an attempt to ensure that the market in the Philippines is not overcrowded. The entry requirements apply to all recruiters alike, regardless of whether they commit



to fair practices. TFHI is the most recently registered fair PrEA, having received its licence in 2014. As such, its experience in trying to enter the market is illustrative.

One of the key conditions for the granting of a private recruitment licence is that the applicant must demonstrate that it is bringing a new market of foreign employers to the Philippines (“the new market rule”). The applicant agency must show that it has sufficient marketing capacity and has partnered with a new foreign employer which has never been accredited or registered with any other licensed PrEA in the Philippines, but has existed for at least a year. If the applicant is partnering with a foreign placement agency (FPA), the client employers of the FPA must be identified and must not have been previously accredited in the Philippines.<sup>162</sup> The applicant agency must show that it can generate job orders that have not been previously placed in the Philippines, known in the industry as “virgin job order” or “new virgin market”.<sup>163</sup>

The new market rule aims to protect workers by limiting the competition between recruitment agencies. At the same time, it protects incumbent recruitment agencies by ensuring that new agencies cannot compete with the existing ones for accredited FPAs and/or employers. There are no exceptions to this rule, so even if an existing PrEA engages in illegal conduct and is sanctioned, their commercial relationship with their existing principals/employers is still protected. Conversely, the ability of an FPA and/or employer to change PrEA is limited as they cannot contract a fair labour recruiter who is new to the market as they are unable to provide the “virgin job order”.

To demonstrate the ability to develop a new market, the documentary evidence required includes, among other things, a Service and/or Recruitment Agreement verified by POLO (or authenticated by the embassy if there is no POLO at the jobsite). The POEA Rules and Regulations, however, do not specify a process for verifying or authenticating the Recruitment Agreement or Service Agreement that is distinct from the overall accreditation and registration procedure undertaken by POLO. That is, to get a Recruitment or Service Agreement verified, POLO needs to accredit the principal/employer under section 96 of the POEA Rules and Regulations. The full accreditation of principal/employer requires a heavier evidentiary burden than simply the presentation of a Recruitment Agreement and/or Service Agreement. Additional requirements for accreditation of the principal/employer include the job order, indicating the type and number of positions; the master employment contract; an authenticated commercial registration or business licence; and contingency plans. There are further requirements if a foreign placement agency or staffing/sourcing company is involved.

At the same time, under section 76 of the POEA Rules and Regulations, as well as section 6 of the Republic Act No. 8042, illegal recruitment is defined broadly as “canvassing, enlisting, contracting” as well as “promising or advertising” for employment abroad, whether or not for profit, by a non-licensee. Although 2016 amendments to the POEA Rules and Regulations have eased some of the barriers, the new market requirement presents a significant challenge to new entrants. It creates a “catch-22” situation where prospective agencies have to develop a market for Filipino workers as non-licensees. That is, the applicant agency must persuade a new foreign employer who has not previously recruited workers from the Philippines to sign a Recruitment or Service Agreement and must do so before conducting any market activities abroad.

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<sup>162</sup> POEA Rules and Regulations, Part II, Rule II, section 4(c).

<sup>163</sup> See, for example, Business Coach Inc’s advice on “how to start and manage an international recruitment agency” at <http://www.businesscoachphil.com/how-to-start-and-manage-an-international-recruitment-agency> [accessed 27 November 2016].

Due to the tensions within these rules, there can be confusion between POEA requirements and POLO practice. For example, TFHI reports that when it applied for the licence and submitted its documents – including job orders – to satisfy the new market rule and verify the Recruitment Agreement, the POLO in Dubai asked for their provisional licence. TFHI did not have such a licence as its submission was a part of its application for the provisional licence.<sup>164</sup>

For fair labour recruiters, the challenges of creating a new market are compounded by their relative lack of competitiveness on the rates charged to employers for service fees. Fair labour recruiters, as noted earlier, ensure that workers do not pay for the recruitment, thus they can be undercut in service fees to employers by labour recruiters who collect fees from workers. Unlike fair labour recruiters who are established and have a valuable brand, new entrants who want to operate ethically do not yet have their reputation as an asset in negotiations.

By contrast, if an unscrupulous new labour recruiter is seeking to circumvent the new market rules and evade POEA regulation, there appear to be at least two alternatives. The first is to “buy” a new market job order, where an applicant will give various incentives to the employer or principal for new recruitment contracts. For example, new labour recruiters can strike deals with human resources managers for corporate employers. To offset the costs of such incentives to employers or principals, PrEAs often shift the financial burden onto the workers, resulting in illegal and excessive fees.<sup>165</sup> Or, new labour recruiters can offer to deploy workers to the principal/employer at no cost to them, usually by recuperating costs from the workers, which can result in the excessive and illegal charging of fees. These methods are illegal and unfair and thus not legitimate ways of reducing the barrier to entry for fair labour recruiters.<sup>166</sup>

Alternatively, new labour recruiters can circumvent the licensing and registration process entirely by buying a PrEA as a going concern and using its existing licence.<sup>167</sup> Although there is a prohibition on the transfer of the licence itself, directly or indirectly,<sup>168</sup> this does not appear to prevent the sale of a PrEA as a business.<sup>169</sup> The ownership of the agency can be transferred through filing documents for the transfer of shares.<sup>170</sup> A change of composition of partners or the board of directors, depending on the corporate structure of the agency, is also possible.<sup>171</sup> New partners or new members of the board would need to go through clearances by the National Bureau of Investigation and the Anti-Illegal Recruitment Branch of the POEA, as well as submit tax returns with proof of payment.<sup>172</sup> In order to transfer control in the operations of a licensed PrEA, the new set of board of directors or partners is subject to a panel interview to ascertain their qualifications, as provided for in the POEA’s Rules.<sup>173</sup> As persons and agencies appearing on the list for “derogatory records” for recruitment malpractice are disqualified from

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<sup>164</sup> Interview with an official from TFHI, Philippines, 11 July 2016.

<sup>165</sup> For a discussion of kickbacks to employers, see R. Jureidini: *Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor* (2016); Verité, *Corruption and Labor Trafficking in Global Supply Chains* (2013).

<sup>166</sup> Interview with an official from TFHI, Philippines, 11 July 2016.

<sup>167</sup> Although the licence is not transferable from the agency, under POEA Rules, section 21, ownership can be effectively changed in this way.

<sup>168</sup> POEA Rules and Regulations, Part II, Rule II, section 21.

<sup>169</sup> See for example an ad for the sale for 50% share of an international recruitment agency at price of 4.5 million PHP: <https://www.olx.ph/item/international-recruitment-agency-for-sale-ID4ZsEa.html> [accessed 27 November 2016].

<sup>170</sup> POEA Rules and Regulations, Part II, Rule II, section 26.

<sup>171</sup> *Ibid.*, section 25.

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*: Although the qualifications for a new head of a recruitment agency is not explicitly stated in section 25, the reference to “qualifications as provided in these rules” suggests the application of the same pre-qualification requirements for the original sole proprietors, managing partners, etc. under section 4(d)-(f), which would have been similarly ascertained by panel interview pursuant to section 6.

recruitment and placement activities, it is presumed that until their name is removed from the list, they cannot circumvent the prohibition on recruitment activity arising from a revoked licence.<sup>174</sup>

This method of entry into markets is not illegal. For the new labour recruiter, it entails a higher entry cost in terms of the financial resources required, but the purchase price of the agency is offset by savings in terms of fees paid during the registration process, as well as the value of existing recruitment/service agreements and job orders. The key advantage of this method of entry into the market is that it circumvents the new market rules and the new labour recruiters can benefit from the existing client base. However, for labour recruiters who are committed to fair practices, this method of entry into the private recruitment sector is incompatible with their principles as it evades POEA's scrutiny and weakens its regulatory authority.<sup>175</sup>

As such, although the policy intention underlying the new market rule is to protect workers, the rule does not encourage the growth of fair recruitment agencies and can create significant barriers to entry. The POEA does not currently have a mechanism to create regulatory space for the expansion of the fair recruitment sector and treats all recruitment agencies alike. That is, the POEA Rules and Regulations do not recognize a category of fair labour recruiters who commit to a standard of practice which is beyond that legally required.

### *6.1.2. Recent revisions to the POEA Rules and Regulations for new entrants*

With the 2016 revisions of the POEA Rules and Regulations, the Philippine Government has recently eased the barriers to entry for new fair labour recruiters. Under the previous rules of 2002, a provisional licence granted to a new PrEA was limited to one year, within which time the applicant had to deploy 100 workers to its new principal. Notably, there were no restrictions on the type of workers a provisional licensee could deploy. If an applicant was unable to deploy the requisite number of workers, then it risked the expiration of its licence. One consequence of this requirement is that it implicitly encouraged the deployment of lower-skilled workers, as there is more demand for unskilled workers and it is easier to deploy them. For skilled workers and professionals, deployment often takes longer as there are additional requirements that must be met by the workers, including language and qualification testing, as well as the verification of credentials. There is also less demand for skilled and professional workers compared to domestic and unskilled workers. As noted earlier, fair labour recruiters tend to focus on skilled and professional deployments rather than the volume-based deployments of unskilled or low-skilled workers.

Two revisions in the 2016 POEA Rules and Regulations potentially lower the barriers for fair labour recruiters. First, provisional licenses are now valid for two years and the minimum requirement of 100 deployed workers has been taken out.<sup>176</sup> Second, an agency with a provisional licence is now barred from deploying domestic workers.<sup>177</sup> These changes allow labour recruiters more time to find better employment opportunities for their workers, which can lower the barriers for fair labour recruiters, and removes the incentive to adopt a high-volume low-skilled model of deployment for

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<sup>174</sup>Ibid., section 3(e) provides for the disqualification of (but is not limited to) sole proprietors, partners etc. such as the following: (1) those convicted or prima facie guilty of illegal recruitment and its related offences, or crimes "involving moral turpitude"; (2) agencies whose licences have been revoked on the basis of violation of Migrant Workers and Overseas Filipinos Act, 1995, RA 8042; Labor Code of the Philippines, as amended, PD 442 and Trafficking of Persons Act of 2003, RA 9208 along with related regulations; (3) agencies whose licences have been cancelled or those included in a "list of persons with derogatory record" for violation of recruitment laws and regulations.

<sup>175</sup> Interview with an official from TFHI, Philippines, 11 July 2016.

<sup>176</sup> POEA Rules and Regulations, Part II, Rule II, section 11.

<sup>177</sup> Ibid., section 12.

applicants with a provisional licence. Such changes are consistent with the Philippine Labor and Employment Plan (PLEP) 2011-2016, which includes “enhance the quality of employment” for both local and migrant workers among its objectives.

However, while these changes can support new fair labour recruiters, they may conversely lead to unscrupulous new labour recruiters, who intend to rely on a high-volume and low-skilled business model, to try to circumvent the entry requirements. As such, again, it is important that the Philippine Government develop more rigorous monitoring and control of the sale of recruitment agencies to ensure that it cannot be used as a loophole to avoid regulatory scrutiny of new entrants to the market.

### 6.1.3. Existing private employment agencies

Fair labour recruiters compete with fee-charging labour recruiters in the recruitment market. As noted earlier, existing recruitment agencies, regardless of compliance or ethical policy, are protected by the new market rules against competition from new labour recruiters. To promote fair labour recruiters, the POEA can adopt a two-pronged approach of sanction and reward. First, it must ensure that illegal recruitment and non-compliant practices are sanctioned through the strict enforcement of existing regulations. Second, the POEA should develop mechanisms to reward existing fair labour recruiters and promote fair practices. Third, the POEA should work with its regulatory partners to limit opportunities for excessive and illegal charging of fees in areas such as training.

To promote fair recruitment for domestic workers, the POEA should vigorously pursue and sanction private employment agencies that continue to charge recruitment fees. In addition, the POEA should actively verify that agencies rewarded as top performers for the deployment of domestic workers are complying fully with rules and regulations and are conducting their businesses in compliance with fair recruitment principles. Moreover, the Philippine Government can promote fair recruitment practices by setting up compliance mechanisms in cooperation with the government and partners in the country of destination and assist private employment agencies in the Philippines to identify fair and willing partners in the country of destination. The Government should also introduce incentives for PrEAs to adopt fair recruitment practices, for example, tax relief for fair recruiters.

Although some cases against employers and labour recruiters are brought to the POEA and the NLRC, the number of cases is low compared to the number of deployments of OFWs. Victims of abusive or deceptive recruitment practices are reluctant to file formal cases due to concerns that their application for overseas employment would be affected. Moreover, formal legal processes are lengthy, slow and costly.<sup>178</sup> Previous research suggests that for many OFWs who have disputes with recruitment agencies, the priority is to recover the expenses they have incurred so that they can migrate again rather than to hold the agencies accountable.<sup>179</sup> As such, it is important for the POEA to take a more active role in the investigation and sanctioning of agencies. One potential area for ILO intervention, in consultation with the POEA, is to support capacity building of the Anti-Illegal Recruitment Branch (AIRB) which conducts inspections and investigations, as well as the Adjudication Branch, which can endorse cases for prosecution.

Moreover, as noted earlier, POEA statutory rules can only distinguish between compliant and illegal labour recruiters. There is currently has limited ability for it to recognize the achievements of

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<sup>178</sup> IOM: *Country Migration Report* (2013), p. 91; D.R. Agunias: *Migration's middlemen* (2010), p. 29.

<sup>179</sup> D.R. Agunias: *Migration's middlemen* (2010), p. 30.

fair recruitment agencies. Under POEA Rules and Regulations, among the many criteria considered for Agency Awards is “no placement fee charged for workers deployed” under the heading of “Industry Leadership” when an agency is in contention for an Award of Excellence or a Presidential Award.<sup>180</sup> However, to be eligible for an Award of Excellence, an agency must have received the Top Performer Award three times. Additionally, to be eligible for the Presidential Award, an agency must have received the Award of Excellence three times. The Top Performer award, however, does not consider whether recruitment fees are charged, but is focused on marketing capacity and deployment volume.<sup>181</sup>

As outlined earlier, one major area of concern is excessive charging of fees related to skills training. The POEA and TESDA should work together to set guidelines for training fees chargeable to OFWs. This may require the POEA and TESDA to work together on regulating the curriculum, including the length of the course. For certification that is commonly required for OFWs, such as housekeeping, caregiving or domestic work certifications, the need to set standards for courses and fees is particularly urgent. In addition, the POEA and TESDA should investigate the ownership of training centres and recruitment agencies and consider regulation along the same lines as is currently in place for travel agents.

In order to ensure that workers do not bear the burden of fees or costs incurred in the recruitment process in order to secure employment or placement, the POEA should promote the approach of zero recruitment fees. Research has repeatedly shown that issues linked to fees do not lie only with “recruitment fees”, but also with training, medical and other associated fees. In consultation with regulatory partners such as TESDA, DOH and others, the POEA should promote zero recruitment fees for jobseekers/workers.

#### 6.1.4. *Exploring the role of cooperatives in cross-border labour recruitment*

According to the website of the Cooperative Development Authority (CDA), a cooperative is “an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic and cultural needs and aspirations by making equitable contributions to the capital required, patronizing their products and services and accepting a fair share of risks and benefits of the undertaking in accordance with the universally accepted cooperative principles”. As of December 2014, there were 24,652 registered cooperatives in the Philippines.

Based on research commissioned by the ILO,<sup>182</sup> it appears that some cooperatives already provide labour services of various kinds, including the provisions of workers for employers under subcontracting arrangements domestically. However, it is not clear that they have the commercial relationships with overseas employers and placement agencies that would allow them to develop new markets as required under POEA Rules and Regulations. Cooperatives also appear to have low levels of knowledge of the regulatory requirements in the Philippines and there is no evidence of their knowledge of the regulatory environment in receiving countries such as Saudi Arabia, the United Arab Emirates and HKSAR.

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<sup>180</sup> POEA Rules and Regulations, Part IX, Rule I, section 233.

<sup>181</sup> M. M. B. Asis and S. P. Go: *An Assessment of the Philippine Overseas Employment Administration's Agency Performance Awards*. (ILO, Country Office for the Philippines, 2014).

<sup>182</sup> B. Dy et al: *Feasibility study on the role of cooperatives in international labour recruitment* (ILO, 2016), unpublished.

Cooperatives appear to be interested and willing to enter into the international recruitment market and have the financial capacity to do so.<sup>183</sup> However, they recognize that they face considerable legal barriers in obtaining a licence from the POEA. Crucially, a cooperative is not a sole proprietor, a partnership or a corporation; it is therefore not a legal entity eligible to participate in overseas employment programmes under POEA Rules and Regulations.<sup>184</sup> Furthermore, cooperatives would face significant challenges in finding “virgin job orders” to meet the requirements of the new market rules. In addition, cooperatives are subject to a different tax regime from PrEAs. As beneficiaries of tax relief, their entry into the private recruitment industry will be perceived as creating unfair competition with existing PrEAs, and may even lead to increased unscrupulous recruitment practices.

While the ethos of cooperatives is commendable, it is not clear that worker-run recruitment services would outperform existing recruitment agencies in terms of deployment numbers, compliance or fair practices. Notably, there are many existing recruitment agencies which are operated by repatriated OFWs. There is no evidence that their experience as former OFWs leads to better and fairer recruitment practices. Moreover, the blurring of roles between labour recruiters and workers under a cooperative recruitment model may lead to further regulatory complications which require more detailed consideration.

Nevertheless, cooperatives have extensive reach and access to workers and have significant capacity to conduct training with workers at no cost to them. As such, cooperatives can develop an important role in recruitment through the training of jobseekers and workers. Cooperatives can also play a part in ensuring that jobseekers and workers have access to comprehensive, relevant and accurate information to enable them to make better choices about recruitment.

### Recommendations to foster fair practices by private employment agencies

#### *To the Philippine Government:*

1. Ease restrictions on entry by amending the new market rules for fair labour recruiters. For example:
  - Lower the number of deployments required under a provisional licence.
2. Lower market protections for non-compliant recruitment agencies. For example:
  - Allow principals/employers accredited with a non-compliant PrEA to transfer their accreditation to a new fair PrEA and deem any job orders under the transfer as “virgin job orders” in fulfilment of the new market rules.
3. Allow fair labour recruiters to undertake limited marketing activities during the application process to secure job orders.
4. Through legislation, introduce incentives such as tax relief or discounted fees for fair PrEAs, particularly in the domestic work sector.

<sup>183</sup> Interview with officials from the Cooperatives Development Authority, 11 July 2016.

<sup>184</sup> POEA Rules and Regulations, Part II, Rule I, section 2.



5. Mandate the POEA and TESDA to work together on issues affecting OFWs and regulate on the:
  - Development of a standardized curriculum for courses most relevant to OFWs, prioritizing courses that are most relevant to low-skilled deployments and those required for domestic workers;
  - Setting of criteria to exempt returning workers (*balik-manggagawas*) from training requirements;
  - Setting guidelines on training fees paid per course; and
  - Setting guidelines on the length of training.
6. Regulate the relationship between owners and operators, of training centres registered with TESDA and private recruitment agencies regulated by POEA.
7. Mandate the POEA and DOH to work together to regulate the cost of medical certificates.
8. Reform legislation, over time, to extend the prohibition on recruitment fees to all workers in all sectors.
9. Exercise powers under section 235 of the POEA Rules and Regulations to develop a system of recognition for fair labour recruiters, including developing a “white list” of PrEAs that do not charge workers any recruitment fees or related costs.

***To the ILO:***

1. Facilitate consultations with TESDA, the POEA, the DOH and social partners to eliminate hidden costs, particularly in relation to domestic work, including:
  - Establishing standard fees to be paid by employers;
  - Setting the standard duration for domestic work skills training in the Philippines;
  - Reform the POEA Rules and Regulations to ensure the Domestic Work NC II competency course is not required for domestic workers already certified; and
  - Enhance enforcement mechanisms to monitor the POEA’s no recruitment fees policy for domestic workers.
2. Support capacity building of the Anti-Illegal Recruitment Branch (AIRB) of the POEA, to improve inspections and investigations.
3. Support capacity building of the Adjudication Branch of the POEA, which can endorse cases for prosecution.
4. Facilitate bilateral or multilateral agreements between fair employment agencies in the domestic work sector in the Philippines and destination countries to develop a sustainable fair recruitment model.

## 6.2. Employer expectations and behaviour

Labour recruiters often tell two versions of the same story about employers/principals. Fair labour recruiters report how employers/principals are incredulous about zero recruitment fee policies and argue that as Filipino regulations allow the charging of recruitment fees, the labour recruiters should take advantage of it. Other labour recruiters recount how employers/principals try to bargain down the service fee, arguing that as workers paid a recruitment fee, they should pay less in service fees. Unscrupulous employers also pressure labour recruiters to collect more recruitment fees from workers to reduce the service fees.

By allowing agencies to collect recruitment fees from workers, Philippines has contributed to an expectation on the part of the principal/employers that they can reduce their costs by passing them onto workers, particularly for domestic workers. For effective change in recruitment practices, the Philippine Government should prohibit the collection of recruitment fees from workers in all sectors, and effectively enforce such prohibition. It also needs to change principal/employers' expectations and commercial behaviour. One strategy, similar to the approach for labour recruiters, is to sanction behaviour of individual employers/principals that is not compliant with regulations. For example, the POEA can suspend or cancel the accreditation of employers/principals, such that they are unable to employ Filipino workers. In addition, the POEA can develop mechanisms of recognition and accreditation for fair employers/principals on the same lines as that of labour recruiters.

While the criteria for Employers' Awards do include consideration of fair practice, a complementary accreditation system could improve the visibility of fair employers and increase the transparency of the recruitment system as a whole. In addition, the Philippine Government should consider financial incentives for fair recruiters, for example, tax relief or discounted fees.

For example, the International Organization for Migration is currently leading a multi-stakeholder effort to establish an International Recruitment Integrity System (IRIS) to combat unfair recruitment. It is a voluntary, multi-stakeholder certification system. Recruitment and employment agents can become IRIS members through an accreditation process. Employers can also become a member by only using IRIS-accredited recruiters and by respecting IRIS standards of fair recruitment. At the time of writing, the accreditation system was still in development. It was also not clear to what extent IRIS accreditation will be verified by workers' organizations.

Alternatively, a less formal system of annual awards for best employers and best labour recruiters could be instituted. The International Trade Union Confederation (ITUC) is currently developing the Migrant Recruitment Monitor (MRM) website to better inform workers and jobseekers. The MRM will allow workers to assess and review labour recruiters and provide transparent worker-generated information on recruitment options. In addition to these functions, the MRM could identify annual winners selected through the ratings of each labour recruiter and/or by popular votes from workers.

In addition, to increase skilled deployments of OFWs to better employers overseas, the POEA must work closely with DOLE and other partners to ensure that Filipino labour moves up the value chain of the global migrant labour market. The Philippine Government must implement the relevant provisions of the PLEP, for example, increasing human capital investments, upskilling OFWs and improving the quality of employment both locally and overseas.



## **Recommendations to change employers' expectations and commercial behaviour**

### ***To the Government of the Philippines:***

1. Increase administrative sanctions against non-compliant employers/principals by suspending or cancelling their licence or accreditation.
2. Collaborate with fair labour recruiters to pilot test a model of fair recruitment and to establish a fair recruitment corridor, based on ILO principles and guidelines for fair recruitment.
3. Publicize the suspension or cancellation of an employer or principal's licence or accreditation in the Philippines, for example through the publication and dissemination of a "black list".
4. Increase cooperation with POLO and Labour Attachés in the relevant destination countries to ensure consistency of policy and implementation in relation to accreditation of employers/principals, as well as suspensions and terminations.
5. Develop mechanisms of recognition and accreditation for fair employers/principals, including a "white list" of compliant employers/principals.
6. Implement the relevant provisions of the PLEP 2011-2016, particularly in relation to provisions to increase investment in human capital and the upskilling of OFWs and to improve the quality of employment both locally and overseas.
7. Improve marketing of the skills and capacity of OFWs to overseas employers to increase the value of labour deployments.
8. Negotiate bilateral agreements with countries of destination to put in place joint monitoring systems for migrant workers, particularly migrant domestic workers.

### ***To the ILO:***

1. Support capacity building of the Anti-Illegal Recruitment Branch (AIRB) and the Adjudication Branch of the POEA to increase sanctions against non-compliant employers/principals.
2. Support the development of a worker-led monitoring system of labour recruiters to complement the improved regulatory system. The development of such a system should include enhancing the capacity of trade unions in the Philippines and destination countries to improve the representation of workers and monitoring of recruitment-related abuses.
3. Support the expansion of the MRM website to include a function to allow the identification of best labour recruiters annually, based on workers' ratings of each labour recruiter and employer and/or by popular votes from workers.

### 6.3. Worker expectations and behaviour

Fair labour recruiters are confident of the commercial viability of their business model. Nevertheless, they face significant challenges in establishing an ethical brand that is recognized by workers, employers and the broad community. Perhaps unexpectedly, one of the key challenges to fair labour recruiters and other zero recruitment fee agencies is the expectations and choices of jobseekers. The problem is particularly acute in relation to unskilled workers who are more vulnerable to fraudulent and abusive practices.

Many labour recruiters describe recruitment for migrant workers in the Philippines as an industry that has suffered from increasing competitiveness from other countries of origin. Related to this is an increase in abusive and exploitative recruitment where workers are asked to pay the costs of recruitment so that employers can benefit and Filipino labour remains a cheap and attractive commodity.<sup>185</sup>

Recruitment fees charged to workers are now so pervasive that it seems to be a part of the culture of labour migration. Several labour recruiters and civil society actors noted that the expectation that jobseekers should pay something to get a job is now entrenched and that workers see recruitment agents as providing a service.<sup>186</sup> SAED, a foreign placement agency from Saudi Arabia that recruits workers from many countries, including the Philippines, stated that when it abolished fees for jobseekers in other parts of Asia, workers were suspicious and thought that the recruitment process was a sham.<sup>187</sup> Vulnerable jobseekers who have limited employment opportunities in the Philippines are particularly susceptible to fraudulent and abusive recruitment practices. As discussions in Mindanao demonstrate, jobseekers hold recruiters in high esteem and speak of them with a deep sense of uncritical gratitude.

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<sup>185</sup> Interviews with officials from ECOP, Philippines, 13 September 2016.

<sup>186</sup> Interview with an official from CMA, Philippines, 13 September 2016.

<sup>187</sup> Interview with an official from SAED, Philippines, 16 September 2016.

### Vulnerable jobseekers: Mindanao

Experienced recruiters argue that the recruitment market needs to be understood in segments based on skill levels. The vulnerability of low-skilled workers is well documented and reflected in POEA Rules and Regulations which seek to protect domestic workers specifically. In Mindanao, natural hazards such as typhoons and landslides, as well as internal armed conflict, have created large populations of internally displaced people (IDPs), many of whom who seek opportunities elsewhere. IDPs from Zamboanga City, displaced since the siege of 2013, reported that private recruitment agencies have advertised among their communities and they have seen flyers. One IDP reported that he had been approached by a recruiter, though it is unclear whether the person was licensed or not.

However, these prospective migrants have intersectional vulnerabilities that make them susceptible to fraudulent and abusive practices. IDPs are often unskilled and long-term unemployed and face multiple barriers to finding jobs locally and overseas. For example:

- They lack knowledge about how to find a job locally.
- They have not been able to access DOLE resources successfully for their own entrepreneurial initiatives.
- They often lack minimal qualifications for deployment. (Some IDPs had been provided with training leading to National Certificate 1 and 2, which provides them with the minimum qualifications.)
- They lack civil documentation, including birth certificates and other identification.
- They lack financial resources to replace missing civil documentation.
- They are unable to acquire the necessary documentation, including passports, for overseas deployment.
- Despite having family members who have worked abroad either legally or illegally, IDPs have low levels of knowledge about how to find employment overseas.
- They have some knowledge of the POEA and its regulatory functions, but little knowledge of the practicalities involved in finding a suitable recruitment agency.

Some of the IDPs expressed a willingness to pay for a recruitment agent if they can find a job quickly. Most troublingly, even the most well-informed of the IDPs was willing to take out a loan to finance the recruitment. They talked about recruiters as providing an opportunity for improving their circumstances by working overseas. For example, one man who had not yet applied for any overseas jobs as he did not have the requisite documentation nevertheless spoke of his hypothetical future recruiter with a deep sense of gratitude.

For example, in compliance with POEA regulations, members of SHARP reported that they did not collect recruitment fees from the domestic workers they deploy.<sup>188</sup> However, contrary to expectations, SHARP members have not experienced an advantage in attracting jobseekers to them. Candidates for jobs often are willing to pay to secure a job, particularly if they can be assured of employment quickly.

Two main factors contribute to this. First, non-compliant labour recruiters have moved away from the term “recruitment fees” and are finding more innovative ways to charge excessive and unauthorized

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<sup>188</sup> Zero-fee agencies are not necessarily fair labour recruiters if they are not compliant with international guidelines and principles on recruitment. SHARP has now signed an MOU with the Association of Hong Kong Manpower Agencies (AHKMA) with regards fair recruitment practices.

fees to the workers. For example, by increasing training costs. Second, non-compliant labour recruiters are sometimes able to place jobseeker in work more quickly. Jobseekers in the Philippines appear willing to pay for expedited deployment. It is not clear how the non-compliant labour recruiters are able to do this. However, it is likely that by lowering the costs of recruitment for employers, non-compliant agencies in the Philippines can engage with more agencies in, for example, Hong Kong, by offering them a cheaper service fee, thereby attracting a larger pool of potential employers.

Despite workers' expectations that they will pay for recruitment services, crucially, agencies also compete for workers with almost as much urgency as workers are looking for overseas jobs. Without workers, recruitment agencies would have no business. As described in 4.4.1. above, one reason some labour recruiters withhold workers' passports is to discourage them from dropping out or finding another labour recruiter mid-process. However, workers and jobseekers themselves are unaware of their own value to the market.

Changes in jobseekers' expectations and their acceptance of a culture in which workers pay for jobs will require both practical and regulatory strategies. Moreover, a better understanding of jobseekers' needs and preferences is also necessary. As noted earlier, the MRM Website is currently under development by the ITUC and will serve to better inform workers and jobseekers. One limitation of the MRM is that, as a web-based resource, jobseekers without easy access to smartphones, computers and the internet will be unable to benefit. As such, the ILO could support the creators of the MRM to develop outreach programmes to vulnerable workers in areas outside urban centres of the Philippines to ensure that they are also protected and have access to information about recruitment options and the risks of exploitation.

### **Recommendations to empower workers and improve their knowledge of the recruitment process**

#### ***To the Government of the Philippines:***

1. Increase prosecutions and administrative sanctions against non-compliant PrEAs and illegal labour recruiters.
2. Disseminate practical guidance on how to navigate the recruitment process and provide information on the regulatory regime, including by:
  - Tasking the Public Employment Service Office (PESO) of DOLE and the POEA to provide practical guidance to workers on how to choose an appropriate PrEA; and
  - Increasing public awareness of the regulatory and commercial realities of the recruitment business.
3. Through DOLE and PESO, provide better in-country assistance in vulnerable areas, including those with a high number of IDPs, to ensure that overseas deployment is not the only livelihood option available.

#### ***To the ILO:***

1. Support the dissemination of commercial and legal knowledge among jobseekers before they enter the recruitment process through:

- Trade unions: help enhance the capacity of trade unions to disseminate information through social media and other non-traditional formats about the recruitment process, overseas employment and associated risks. For example:
    - Short films to be screened at strategic locations such as POEA, PESOS and DOLE offices, as well as community centres;
    - A YouTube channel for OFWs that can be accessed on smartphones;
    - Public information campaigns to be conducted in languages other than Tagalog and English.
  - Cooperatives: support cooperatives to develop public information and education campaigns targeted at their members.
  - Government: support the PESOS, POEA and other government agencies that have contact with jobseekers in disseminating information developed by trade unions or cooperatives.
2. Support the ITUC to develop outreach programmes as an extension of the MRM targeted at vulnerable jobseekers, particularly in areas outside urban centres and where there are high numbers of IDPs.

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Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042) as amended by Republic Act 10022

Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016

Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers

Technical Education and Skills Development (TESDA) Act 1994 (Republic Act No. 7796)

