

ASIAN  
DECENT WORK  
DECADE 2006  
2015



International  
Labour  
Organization

## ILO Asia-Pacific Working Paper Series

# Labour market governance in the Philippines: Issues and institutions

Benedicto Ernesto R. Bitonio Jr.

August 2008

Subregional Office for South-East Asia and the Pacific

Manila



Labour market governance in the Philippines:  
Issues and institutions

*By*

*Benedicto Ernesto R. Bitonio Jr.*

ILO Subregional Office for South-East Asia and the Pacific  
Manila, Philippines

Copyright © International Labour Organization 2008

First published 2008

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: [pubdroit@ilo.org](mailto:pubdroit@ilo.org). The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit [www.ifro.org](http://www.ifro.org) to find the reproduction rights organization in your country.

---

#### ILO Cataloguing in Publication Data

Bitonio, Benedicto Ernesto R.

Labour market governance: Institutions and issues / Benedicto Ernesto R. Bitonio; ILO Subregional Office for South-East Asia and the Pacific. – Manila : ILO Subregional office for South-East Asia and the Pacific, 2008

81 p. (Working paper (ILO Subregional Office for South-East Asia and the Pacific) ; no. 16)

ISBN: 978-92-2-121552-3 (print); 978-92-2-121553-0 (web pdf); 978-92-2-121554-7 (CD-ROM)

ILO Subregional Office for South-East Asia and the Pacific

labour market / governance / institutional framework / Philippines

13.01.2

---

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and electronic products can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: [pubvente@ilo.org](mailto:pubvente@ilo.org)

Visit our website: [www.ilo.org/publns](http://www.ilo.org/publns)

---

Printed in the Philippines

## Abstract

The Philippines is widely acknowledged, within Asia, as having one of the most advanced labour codes in the Region, affording worker protection and the right to organize. This basic law is supported by institutional mechanisms and institutions designed to promote best practice in labour market governance.

Why is it then that labour market outcomes in the Philippines have not matched expectations of providing Decent Work for All? In the Philippines, the labour force continues to grow more rapidly than the economy is able to create jobs. Out of a population of 90 million only 56.8 million are of working age (15 years and above); while some 36 million—or just 40 percent of the total population are actually in the labour force. Yet 10.1 million of these are underemployed and only 17.7 million—fewer than 50 percent of the labour force—are working in formal employment as wage and salary earners.

Many of the best and the brightest are leaving and finding work overseas; and while this has provided a safety valve for the economy it has also meant the loss of opportunities to grow the domestic economy to its full potential. Studies have shown that the social cost of family dislocation is high and that this is taking its own toll on social institutions in the Philippines.

Attaining a state of full, productive and decent employment is a shared development goal across countries. As Mr. Bitonio notes in this comprehensive study, one of the pillars necessary to achieving this is a well-functioning labour market: A labour market is said to function well if it achieves the two primary objectives of efficiency and fairness.

Has the Philippines, with its wealth of governance institutions, achieved these objectives? If not, what steps need to be taken to revive institutional mechanisms that, as Mr. Bitonio argues, have lain largely dormant for the past ten years?

In this paper the author outlines the present state of the labour market, the mechanisms available to support the attainment of full, productive and decent employment, and he examines critically the institutions, processes and capacity of the market as well as the manner of their interaction.

He concludes that there are multiple problems that need to be addressed including the weak enforcement of standards, the need for greater employment flexibility to address the needs of the knowledge economy as well as reform of the labour dispute resolution system.

The author suggests that the time has come for LMG institutions to renegotiate their mandates, objectives and purposes, as well as the social contract that binds them together. In this regard, it may be worthwhile for the tripartite partners (labour, employers and government) to consider setting up a high-level, dedicated, non-partisan and independent group to lead in the reform process. Finally, it is important that the group as a whole be eventually assured access to the political process to move reform forward.

## About the author

The author is a lawyer by profession. He has held various senior positions in the national government, including as director of labor relations, Department of Labor and Employment (DOLE); assistant secretary, DOLE; undersecretary, DOLE; and chairman of the National Labor Relations Commission.



He has practiced law and served as consultant on policy, management, legal and labour relations matters with several organizations, including the International Labour Organization.

Mr. Bitonio is currently executive vice president, Development Bank of the Philippines, with the portfolio of chief development officer and concurrent head, human resources. He is also a professorial lecturer at the UP Graduate School of Labor and Industrial Relations. He holds degrees in Bachelor of Arts and Bachelor of Laws from the University of the Philippines; and a Master in Public Management degree from the National University of Singapore.

Mr. Bitonio was a Lee Kuan Yew (LKY) Executive Fellow, Kennedy School of Government, Harvard University.

*The responsibility for opinions expressed in articles, studies and other contributions rests solely with their authors, and publication does not constitute any endorsement by the International Labour Office of the opinions expressed in them, or of any products, processes or geographical designations mentioned.*

## Foreword

At the 14th regional meeting of the International Labour Organization (ILO) held in Busan, Republic of Korea in August–September 2006, representatives of 40 Member States covering the Asia, Pacific and the Arab world agreed to the launch of the **Asian Decent Work Decade** with the aim of contributing to global poverty reduction through enhancing productivity, competitiveness and growth and the promotion of tangible policy measures to better ensure that economic growth throughout the region—the most dynamic in the World at the present time—translates into productive employment and decent work for all.

The Decent Work Decade will run to 2015. During this time governments, labour organizations and employer organizations alike are committed to a concentrated and sustained effort to create employment opportunities that enable individuals to realize their own potential through work appropriate to their skills and at a fair and just wage that, even for the unskilled, will give a living wage and thereby make a contribution to poverty reduction.

Integral to the programme is the ILO's Decent Work Agenda which stands on the pillars of rights of work, employment, social protection and social dialogue. ILO Director-General, Juan Somavia, speaking after the meeting summed up the programme:

*“The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.”*

In the Philippines where we have almost 30 percent of the workforce either unemployed or underemployed and where poverty remains entrenched in many places, the Decent Work Decade and the Agenda that accompanies it, is of special importance.

It provides us with a fresh opportunity to examine critically the policy assumptions and actions that inform the approach of government, of workers and of employers to the workplace and, hopefully, work towards solutions to present problems that can be endorsed and accepted by all groups.

With this in mind, the ILO Subregional Office in Manila has commissioned a series of papers designed to examine aspects of the labour situation in the Philippines from the standpoint of the commitments made in Busan and as a catalyst to informed debate.

This paper is part of that series.

Linda Wirth  
Director  
ILO Subregional Office for South-East Asia and the Pacific  
Manila, Philippines

August 2008



International  
Labour  
Organization

## Decent Work for all

*“The goal of decent work is best expressed through the eyes of the people. It is about your job and future prospects, about your working conditions, about balancing work and family life, putting your kids through school or getting them out of child labour. It is about gender equality, equal recognition and enabling women to make choices and take control of their lives.*

*For many, it is the primary route out of poverty. For many more, it is about realizing personal aspirations in their daily existence and solidarity with others. And everywhere, and for everybody, decent work is about securing human dignity.”*

Juan Somavia, ILO Director-General

## Table of contents

Abstract.....	iii
About the author .....	iv
Foreword.....	v
1 Introduction .....	1
1.1 Labour market governance institutions: A working definition .....	1
1.2 Objective and organization of the study.....	1
2 State of the labour market .....	2
2.1 employment and decent work challenges.....	2
2.2 The strategy .....	4
2.3 Why and where governance matters: The heart of the debate.....	4
3 Promoting and securing labour market rights .....	5
3.1 Scope of labour market rights .....	5
3.2 Training and HRD .....	6
3.2.1 Institutional mechanisms.....	6
3.2.2 Training delivery and performance .....	6
3.2.3 Strategic choices: Pushing TESDA’s limits.....	7
3.2.4 The informal sector: Training for self-employment.....	11
3.3 Labour market information and public employment services .....	13
3.3.1 Institutional mechanisms.....	13
3.3.2 Job creation and availability and frequency of job opportunities.....	14
3.3.3 Search time and problems encountered.....	14
3.3.4 Search methods .....	16
3.3.5 Public employment services: Are they helpful?.....	16
3.4 Promoting freedom of choice and mobility: Institutions.....	18
3.4.1 Key issues.....	18
3.5 Protecting freedom of choice and mobility .....	23
4 Promoting and securing employment rights.....	24
4.1 Scope of employment rights.....	24
4.1.1 Minimum labour standards.....	24
4.1.2 Organizational rights and workers’ participation .....	24
4.1.3 Security of tenure: Protection against arbitrary dismissals .....	25
4.2 Employment rights in a changing context.....	26

	4.2.1	Administration and enforcement of minimum standards .....	27
	4.2.2	Promotion of trade unionism .....	30
	4.2.3	Dispute settlement .....	34
5		Critical labour market interactions .....	36
	5.1	Critical concerns .....	36
	5.2	The wage mechanism .....	36
	5.3	Minimum wage fixing .....	37
	5.3.1	Busy mechanism, but mixed reviews .....	37
	5.3.2	Institutional design and expectations: Balancing acts .....	38
	5.3.3	Compliance with wage orders .....	39
	5.4	Collective bargaining .....	39
	5.5	The market as an efficient mechanism .....	40
	5.6	An interplay of mechanisms .....	41
	5.7	Productivity as the Ultimate issue .....	42
	5.8	Employment flexibility: The debate .....	43
	5.8.1	Regular versus flexible employment .....	43
	5.8.2	Working time flexibility .....	44
	5.8.3	Pay flexibility .....	45
	5.9	“Flexicurity:” Is it possible? .....	45
	5.10	Participation outside the workplace: Tripartism .....	46
	5.10.1	How tripartism is practiced? .....	46
	5.10.2	Manner of creation and types .....	47
	5.10.3	Transforming tripartism for effective governance .....	48
	5.11	Social protection .....	50
	5.11.1	Institutional mechanisms .....	50
	5.11.2	Strengths .....	50
	5.11.3	Key issues .....	51
6		Forging a common agenda .....	52
	6.1	The case for labour market reforms .....	52
	6.1.1	From labour administration to governance .....	53
	6.2	Role of the social partners .....	54
	6.2.1	Opportunities .....	54
	6.2.2	Limitations and challenges .....	55
	6.2.3	What should the social partners do? .....	55

6.2.4	Beyond political representation: A shared agenda .....	56
6.2.5	Renegotiating the social contract.....	56
	Endnotes.....	58
	Appendix: Labour market institutions .....	63

## Table

Table 1:	Policy and product mix of labour market institutions.....	57
----------	---	----

## List of figures

Figure 1:	Philippine Labor Index Scorecard, 2001-2005.....	3
Figure 2:	Dimensions of the Philippine Labor Index, 2001-2005.....	3
Figure 3:	GDP and annual employment growth rate, Philippines, 2001-2006 (%) .....	5
Figure 4:	Persons trained in TVET programmes, Philippines, 2001-2005 .....	6
Figure 5:	TVET graduates, Philippines, 2000-2005 .....	6
Figure 6:	Registry of workers assessed and certified Under the TVET qualification and certification system, Philippines, 2000-2005 .....	7
Figure 7:	Enrolments by agency and fiscal year, 1998-2004.....	8
Figure 8:	Historical enrolment by sector, school year 1998–1999 to 2003–2004 .....	11
Figure 9:	Tertiary enrolment and graduates in government and private schools, academic year 1998–1999 to 2004–2005.....	11
Figure 10:	Summary statistics on employment by region, Philippines, 2004-2006 (‘000).....	13
Figure 11:	How employers search for workers .....	16
Figure 12:	Operational PESOs, Philippines, 2001–2005 .....	16
Figure 13:	Job vacancies solicited / reported, applicants registered, and applicants placed through Public Employment Service Offices, Philippines, 2001–2005 .....	17
Figure 14:	Job fairs conducted and job vacancies solicited through PESOs, Philippines, 2001–2005 .....	18
Figure 15:	Job applicants registered, job applicants hired on the spot, and job applicants reported placed/deployed through PESOs, Philippines, 2001–2005.....	18
Figure 16:	Deployed OFWs 2002-2006.....	19
Figure 17:	OFW remittances, 2002–2006.....	21
Figure 18:	Deployment of OFWs by skills categories, 2002–2006 .....	21
Figure 19:	Top ten sources of OFW remittances, 2006 (in thousand US\$).....	22
Figure 20:	OFW remittances by source region, 2006 (in thousand US\$) .....	22
Figure 21:	General labour standards inspection and compliance, Philippines, 2005–2007 .....	25
Figure 22:	Technical safety standards inspection and compliance, Philippines, 2005–2007 .....	25

Figure 23:	Amount of restitutions/awards/settlements, and the number of workers benefited by region, Philippines, 2005–2007 .....	27
Figure 24:	Number of workers benefited by restitutions/awards/settlements, Philippines, 2005–2007.....	27
Figure 25:	Original labour standard cases, Philippines, 2005–2007.....	28
Figure 26:	Original labor standard cases disposed and disposition rate, Philippines, 2005–2007.....	28
Figure 27:	Original labour standard cases by workers benefited and amount of benefits, Philippines, 2005–2007.....	29
Figure 28:	Appealed labour standard cases disposed and disposition rate, Philippines, 2005–2007.....	29
Figure 29:	Union members and wage salary workers in private establishments, Philippines, 2002-2006 .....	30
Figure 30:	Trade union density vis-à-vis existing Collective Bargaining Agreements, Philippines, 2002-2006 .....	30
Figure 31:	Strike notices, actual strikes, and preventive mediation cases, Philippines, 2002-2006 ..	31
Figure 32:	NLRC regular cases filed by nature, Philippines, 2002-2006 .....	31
Figure 33:	NLRC regular cases filed by industry, Philippines, 2002–2006 .....	35
Figure 34:	Average daily wage rates of unskilled workers and minimum wage rates in non-agricultural establishments by region, Philippines, August 2006.....	38
Figure 35:	Types of membership in the social security system, Philippines, 2000–2005 .....	51
Figure 36:	Total contributions and benefits granted by SSS, Philippines, 2000–2005.....	51
Figure 37:	Total contributions and benefits granted by the GSIS, Philippines, 2000–2005.....	51
Figure 38:	DOLE personnel by agency.....	53
Figure 39:	DOLE personnel by programme area.....	53

### **List of boxes**

Box 1	Supporting a key employment generator through training—The BPO industry.....	10
Box 2:	DOLE and workers in the informal economy: Potentials for partnership.....	14
Box 3:	Employment services in Quezon City—The PESO as a multi-service facility.....	20
Box 4:	What can unions do? Initiatives for seafarers’ welfare .....	33
Box 5:	Dispute resolution and local TIPC: The good offices of LGUs.....	49

## List of acronyms

ADB	Asian Development Bank
BITS	Bureau of Labor and Employment Statistics Integrated Survey
BRW	Bureau of Rural Workers
BWYW	Bureau of Women and Young Workers
CBA	Collective Bargaining Agreement
CBTED	Community-Based Training and Education
CDW	Children in Domestic Work
DBI	Doing Business Index
DOLE	Department of Labor and Employment
ECOP	Employers' Confederation of the Philippines
GCI	Global Competitive Index
GO	Government Organizations
LGU	Local Government Unit
LMG	Labour Market Governance
MTPDOP	Medium Term Philippine Development Plan
NMP	National Maritime Polytechnic
OFW	Overseas Filipino Workers
PESO	Public Employment Service Offices
PLI	Philippine Labor Index
PRESEED	Rural Employment for Self-Entrepreneurship and Development
SAP	Social Amelioration Program
TESDA	Technical Education and Skills Development Authority
TIPC	Tripartite Industrial Peace Council
TVET	Technical-Vocational Education and Training Programme
WEED	Woman Workers Entrepreneurship and Employment Development
WODP	Workers' Organization Development Programme

### **A note on spelling conventions**

*In accordance with the practice of the International Labour Organization (ILO) this document follows the general spelling conventions as laid out in the Oxford Dictionary. Where two or more alternative spellings are allowed we normally apply the first such spelling.*

*Exceptions are made for proper names. Thus we use the general term of “labour market” and “labour scenarios” but “Department of Labor and Employment” and “Labor Code of the Philippines.”*



# Labour market governance in the Philippines:

## Issues and institutions

By

*Benedicto Ernesto R. Bitonio Jr.*

### 1 Introduction

#### 1.1 Labour market governance institutions: A working definition

Generally defined, governance refers to the traditions and institutions by which authority in a country is exercised for the common good. It includes: (i) the process by which those in authority are selected, monitored and replaced; (ii) the capacity of the government to effectively manage its resources and implement sound policies; and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them.<sup>1</sup> This definition embodies the key elements of governance reflected in other definitions, i.e., a notion of authority, legitimacy, accountability and participation that extends outside of formal government structures, a foundation based on the rule of law, and a capacity to attain goals for the common good.<sup>2</sup>

In turn, labour market governance (LMG) refers to the totality of institutions—including policies, norms, laws, regulations, structures, mechanisms and processes—that influence the supply and demand for labour. This study focuses on what may be considered as core LMG institutions, namely: (i) labour policies and laws and how these are implemented; (ii) labour market players, their organizations, and their critical interactions; and (iii) authorities charged with the administration and management of these laws and interactions.

#### 1.2 Objective and organization of the study

Attaining a state of full, productive and decent employment is a shared development goal across countries. One of the pillars necessary to achieving this is a well-functioning labour market. A labour market is said to function well if it achieves the two primary objectives of efficiency and fairness. It is a situation where: (i) there is efficient resource allocation in that all workers willing to work are likely to find, in the least possible time and costs, the jobs that match their skills and qualifications; (ii) there is equitable income allocation in that workers are paid a fair wage in relation to their productivity or ability to create economic surplus; and (iii) there is adequate provision for worker protection in the event of income loss.<sup>3</sup> In the context of the Decent Work Decade of the International Labour Organization (ILO), a well-functioning labour market also means work that takes place under conditions of freedom, equity, security and human dignity. Putting these two formulations together, full, productive and decent employment then includes both formal and informal employment. And because freedom, equity, security and human dignity are not self-actualizing, appropriate public institutions that include a minimum set of guaranteed workers' rights are required in either type of employment.

The primary purpose of this study is to explore the performance and potential of labour market governance as a positive force in promoting efficiency and fairness or equity in labour markets. How do LMG institutions help create the conditions for a more dynamic environment for investments and employment creation, harness the skills and competencies of workers toward optimum productivity, and raise their incomes in that they may uplift their living standards? In addition to examining the policy, content and design of these institutions, the study will also touch on how the economic, political and administrative dimensions of governance are internalized into LMG institutions.

The study does not make prescriptions on how the labour market should be governed. It is more concerned with inviting serious stock-taking of gaps, opportunities and options arising from rapidly

changing economic conditions. The study is benefited by the robust statistical data now available, the breadth and quality of which has grown tremendously in recent years. It is also benefited by the views and insights of labour market players themselves, with whom the writer has had the privilege of conversation and learning for many years. It is hoped that by using the data and learning from experience, this study can contribute to pushing forward the frontiers of policy debate and to more enlightened policy choices.

The study has five substantive parts. This introductory section is Part 1. Part 2 covers the key characteristics and challenges in the Philippine labour market. Part 3 and Part 4 deal with promoting and securing labour market rights and employment rights, with focus on labour policies, laws and rights. Part 5 deals with the most critical points of interaction among labour market players, namely the pricing of labour, the issue of labour market rigidity and flexibility, and the mechanisms by which labour market players participate in decision-making in common areas of concern. Part 6 concludes with a framework to examine labour administration and governance and suggestions to forge a common future agenda for labour market reforms.

## 2 State of the labour market

### 2.1 employment and decent work challenges

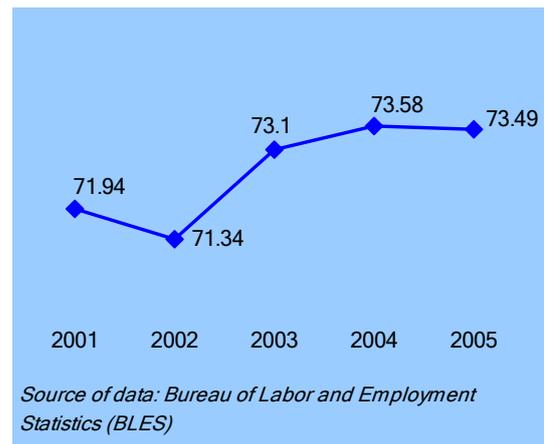
The fundamental story of the Philippine labour market is of a labour force growing faster<sup>4</sup> than the economy can create jobs. Its sub-plots are in the statistics:<sup>5</sup>

- Within a total population of around 90 million, 56.8 million are aged 15 years old and over.
- About 36 million are in the labour force, 21.9 (61.3 percent) million are men, 13.8 (38.7 percent) million are women, and over 11.8 million are between 15-30 years old.
- 33.3 million are employed, 2.8 million unemployed, and 7.3 million underemployed.
- 17.7 million are wage and salary workers, 10.4 million self-employed, 1.4 million employers, and 3.7 million unpaid family workers.
- 10.8 million (over 30 percent) of the employed are labourers and low-skilled workers. 5.9 million more work as farmers, forestry workers and fishermen.
- Of the unemployed, 1.4 million (51 percent) are from 15 to 24 years old and over 2 million are between 15-30 years of age.

Deeper challenges are also recognized:

- 10.1 million people, representing over a third of the labour force, are underutilized.<sup>6</sup>
- The nature of employment is dualistic, dichotomized almost evenly into a formal (wage and salary workers) and an informal (own-account and unpaid family workers) sector.
- LMG institutions are formal sector-centric. However, even the formal sector has increasingly exhibited elements of informality. Thus, the effectiveness of LMG institutions and instruments of workers' protection even in the formal sector is increasingly being challenged.
- The informal sector has limited institutional support and protection.
- Informal sector workers have much lower productivity, have limited income opportunities, and do not have effective social protection coverage.
- Youth participation in the labour force is high, but most unemployment is also among the young.
- Changing demographics is both a promise and a threat:

- Greater participation of young workers in the labour force can yield a demographic dividend if their skills can be put to productive use and active labour market measures to promote continuous skills upgrading are in place;
- Given high youth unemployment, and without adequate social protection, the young can become a demographic burden both in the short and the long run;
- Women remain under-represented in the labour force, with just over 52 percent of those 15 years old or over participating.
- Overseas employment is in many ways a boon, but the “brain drain” issue should not be ignored.

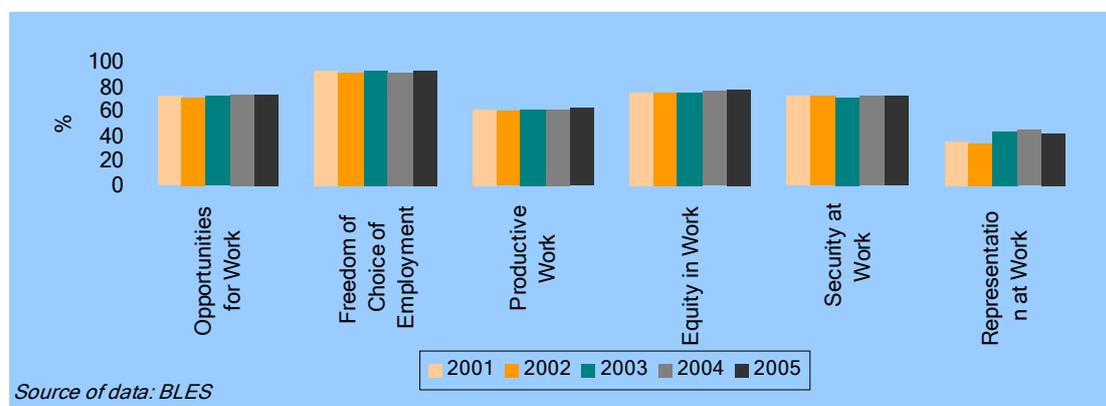


**Figure 1: Philippine Labor Index Scorecard, 2001-2005**

By internal measures and external perceptions, employment and decent work challenges remains more compelling than ever. The Philippine Labour Index (PLI), a tool designed to measure progress in achieving decent work goals, identifies specific labour market gaps. The index measures availability and acceptability of work in terms of opportunities for work and freedom of choice of employment. The other dimensions pertaining to decency or quality of employment are expressed in terms of productive work, equity in work, security at work, and representation at work.<sup>7</sup> The Philippines is also ranked in the lower middle range of international competitiveness by both the Global Competitiveness Index (GCI) and the Doing Business Index (DBI).<sup>8</sup>

While it has been argued that the GCI and DBI are more in the nature of perception indices, what cannot be ignored is that by external standards the competitiveness position of the Philippines is weak relative to other countries. This undermines its efforts to attract investments and to create employment.

A central part of the story is the persistence of all these trends and perceptions. How can LMG institutions help reverse these so that society can approximate the goal of full, productive and decent employment?



**Figure 2: Dimensions of the Philippine Labor Index, 2001-2005**

## 2.2 The strategy

The Medium Term Philippine Development Plan (MTPDP) 2004-2010 is straightforward in defining the challenge for LMG institutions: “unemployment has stayed high, as the number of jobs has not been adequate to absorb the influx of labour entrants. . . [it] stood at 7.35 percent in 2003,<sup>9</sup> which has barely changed from 2001. Unemployment would have to fall further in order to significantly reduce poverty” (MTPDP, pp. 4–5). The MTPDP envisions the domestic economy growing by at least seven percent annually by 2010 and total job generation for 2004-2010 reaching 9.7–11.5 million, for an average of 1.4–1.6 million new jobs each year. The services sector is expected to contribute 60 percent of the jobs to be created. By industry, tourism, agribusiness, housing, ICT, exports and mining are expected to be the key employment generators.<sup>10</sup>

Under the MTPDP, attaining the employment targets depends on economic growth under conditions of macroeconomic stability, financial and fiscal strength, robust trade and investment climate, continuing investments in agribusiness and infrastructure, and effective decentralization. Priority reforms are associated with economic, trade and investment policies. Reforms in social policies—including employment and labour market policies—are equally important but are generally considered not possible without meaningful reforms in economic, trade and investment policies.

Midway through the MTPDP, the country has made some headway in priority reforms as reflected in overall economic growth and stability. The country’s efforts at fiscal consolidation and deficit reduction through tax reforms and more efficient tax administration have potential paybacks, including opening the fiscal and policy space for more intensive attention to other constraints on higher growth and faster poverty reduction, especially for spending in public infrastructure, health and education.

To significantly reduce employment and decent work deficits, it is important for the GDP to grow beyond the range of 5–6 percent to provide productive employment for the rapidly growing and often underemployed workforce. Reforms must widen and deepen, and the low rate of investment must be reversed (ADB 2007)<sup>11</sup> if employment intensity of growth is to improve. Increase in labour productivity has also been minimal, growing by less than one percent from 2004 to 2005.<sup>12</sup> As the ILO notes, if the country’s poor productivity record continues, poverty reduction could be impeded. In addition, as the Philippines faces strong and growing competition from lower-cost producers, notably China, continued slow growth in productivity also carries the risk of losing more labour-intensive manufacturing capacity.<sup>13</sup>

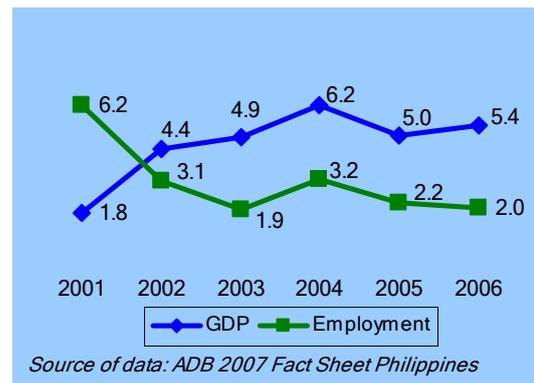
A second round of reforms building on recent gains and focusing on the social dimension of growth appears both necessary and timely. Growth must be fair and equitably shared so that it benefits a larger number of Filipinos in terms of more opportunities and choices as well as higher incomes.

## 2.3 Why and where governance matters: The heart of the debate

At the Asian Regional Meeting held in Busan, Republic of Korea, from 29 August to 1 September 2006, modernizing labour market governance, using the ILO’s international labour standards as reference points, was recognized as an imperative to make decent work a reality. There was a consensus in favour of labour market reforms, principally through a review of labour market institutions and labour laws. Since labour markets are far from perfect and competitive, there is a central role for public policy in promoting the efficient and equitable functioning of the labour market. What ought to be the direction of reforms? The debate revolves mostly on the issue of whether to have more or less labour market regulation.

Regulation is meant to ensure fairness and stability in the labour market. Since the Philippines became a member of the ILO in 1948, it has shaped its institutions along international standards with equity and social justice as guideposts. The Philippine Constitution places policy emphasis on protecting workers’ rights and promoting their welfare. Labour is recognized as a “primary social economic force.” The explicit policy of the State is to protect labour as the human component of the production process and as a partner with capital in a social and economic relationship (see ART. II, Section 18).

Under an overarching ideal of social justice, the State seeks to regulate the relations between workers and employers, recognizing the right of labour to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth. It also mandates the State to promote full employment and equality of employment, ensure security of tenure and just and humane conditions of work, promote and protect the right to self-organization and collective bargaining, promote workers' participation in decision-making processes directly affecting them, and promote shared responsibility and gain-sharing between employers and workers (ART. XIII, Section 3). The Constitutional provisions are sought to be implemented through the Labor Code and other labour and social legislation.



**Figure 3: GDP and annual employment growth rate, Philippines, 2001-2006 (%)**

The present state of labour market regulation sums up the polity's approach in institutionalizing labour protection. From this perspective, regulation is generally a positive force. But for some—especially neo-classical economists—regulation that puts emphasis on labour protection places the Philippines low in the scale of competitiveness. It is argued that regulation requires wages and other terms of employment to be determined by institutional forces different from those of supply and demand, such as minimum wages, trade unions, and a labour code.<sup>14</sup> These institutions make the labour market rigid and inefficient, take rules governing employment relations out of competition, and consequently undermine employment creation. Make the labour market more flexible, so the argument goes, and employment will rise. The implication is that LMG institutions are part of the problem, thus the need for reforms.

The neo-classical argument is a compelling one. However, the policy of labour protection shapes public expectations of what labour institutions should be and what reforms are politically acceptable. Placing workers, employers and governance institutions at the front and centre of the reform process is therefore necessary. As raised in Busan, the key questions are: What are the concerns or anxieties of workers and employers vis-à-vis labour law reform, and how can these concerns be addressed? What experiences and lessons learned can help find a balance between flexibility, stability and security? In addition to labour law reform, what are the essential elements for adapting or modernizing labour market governance? What is the role and importance of collective bargaining and social dialogue, effective social protection systems, active labour market policies, reform and improvement of labour administration, and corporate social responsibility initiatives in labour market governance? How can employers' and workers' organizations strengthen their capacity to play a more effective role in labour market governance? Accordingly, labour protection should still be the starting point. At the very least, this should imply the ability of LMG institutions to promote and secure minimum guarantees or safety nets to all workers. Classified as labour market rights and employment rights,<sup>15</sup> these guarantees are the focus of discussion in Parts 3 and 4.

## 3 Promoting and securing labour market rights

### 3.1 Scope of labour market rights

Labour market rights pertain to access and opportunities to training and human resource development, labour market information, and employment mobility. These rights apply to pre-employment situations as well as to work-to-work transitions. They are also central to the success of an active labour market policy. Under the terms of the PLI, labour market rights cut across several dimensions of decent work, specifically opportunities for work, freedom of choice, productive work and equity in work.

## 3.2 Training and HRD

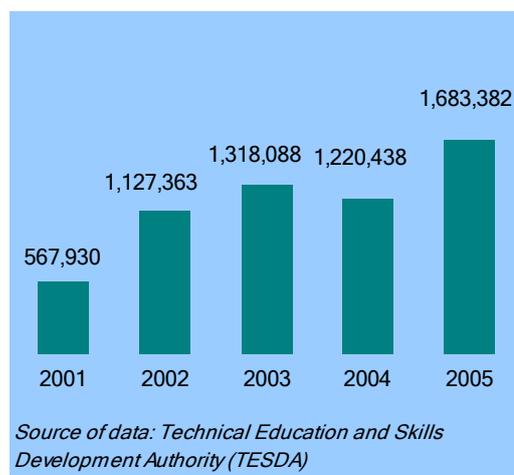
### 3.2.1 Institutional mechanisms

In both the MTPDP and in the mission of the Department of Labor and Employment (DOLE),<sup>16</sup> human resource development falls under the strategic area of employment enhancement, i.e., improving workers' competency, productivity and work values, and formulating or implementing plans and programmes for manpower development, training, allocation, and utilization. The Technical Education and Skills Development Authority (TESDA),<sup>17</sup> the training providers it administers and accredits, and the National Maritime Polytechnic (NMP) are the LMG institutions directly involved in HRD through technical and vocational training. Through TESDA, the State seeks to fulfil the policy objective of providing relevant, accessible, high quality and efficient technical education and skills development in support of the development of high quality Filipino middle-level manpower responsive to and in accordance with Philippine development goals and priorities. Toward this end, the active participation of non-government sectors, particularly of private enterprises, in the provision of technical and vocational training is encouraged.<sup>18</sup> As a member of the TESDA Board puts it, the vision is "to seek, train, certify and employ."<sup>19</sup>

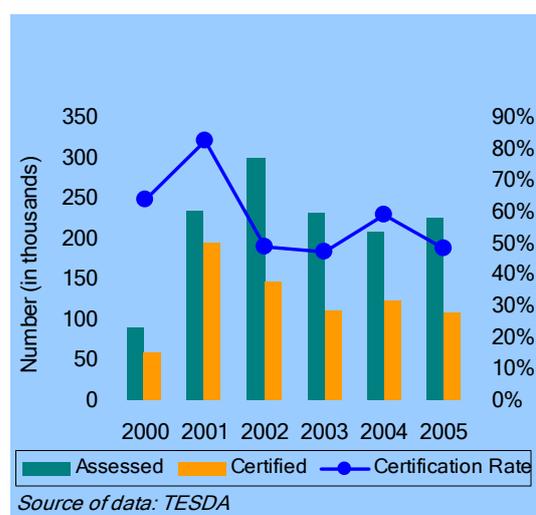
### 3.2.2 Training delivery and performance

The State's policy essentially involves provision of training facilities and expenditures through grants, subsidies and scholarships. In labour market terms, the task of TESDA and related LMG institutions is to develop human capital, help allocate it efficiently, and reduce labour underutilization. TESDA seeks to deliver training outcomes through its Technical-Vocational Education and Training (TVET) programme. The five distinct modes of delivering TVET are school-based,<sup>20</sup> centre-based,<sup>21</sup> dual training, enterprise-based and community-based training and education (CBTED).<sup>22</sup> TESDA trained 1.3 million in 2003, 1.2 million in 2004, and 1.68 million in 2005.<sup>23</sup> The three-year period from 2002 to 2004 indicates interesting shifts in TESDA's priorities and presumably in budget allocation as enterprise-based training and "other" trainings were given more priority over school-based, centre-based, dualtech (see <http://www.dualtech.org.ph/>) and CBTED.<sup>24</sup>

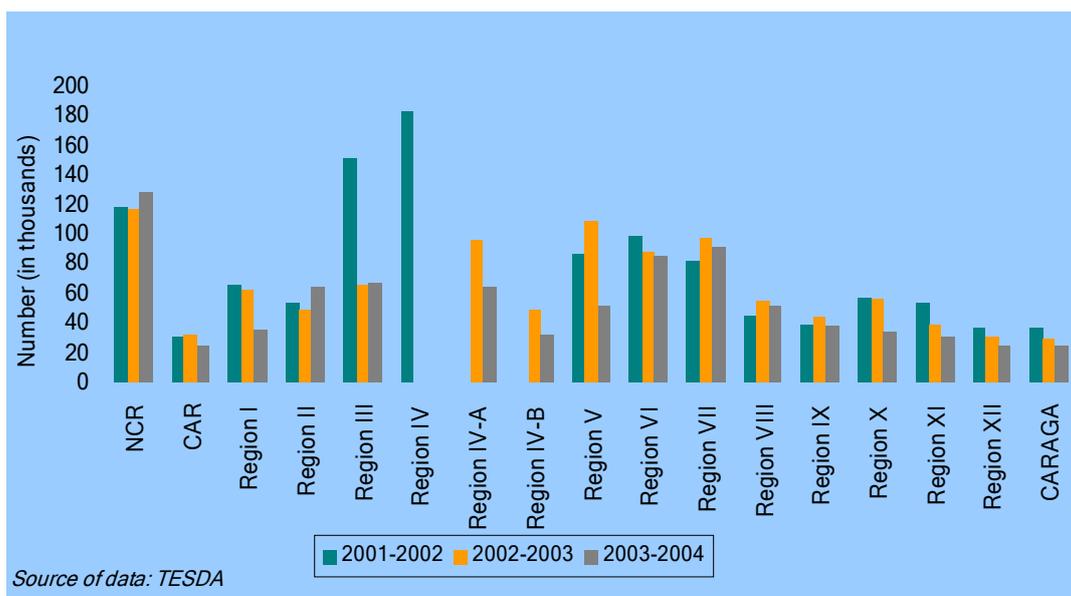
The performance of TVET is measured quantitatively by the number of persons trained, and qualitatively by the number of workers able to secure qualification or certification under TESDA's assessment testing. From 2001 to 2005, the number of persons trained increased almost threefold. But the number of persons actually assessed did not significantly increase. Further, the certification rate was lower than 50 percent in three out of the last four years covered by the data. Some improvements were registered in the first half of 2007 with TESDA certifying 101,207 out of 132,325 workers assessed in various sectors, or a certification rate of 76.5 percent.



**Figure 4: Persons trained in TVET programmes, Philippines, 2001-2005**



**Figure 5: TVET graduates, Philippines, 2000-2005**



**Figure 6: Registry of workers assessed and certified Under the TVET qualification and certification system, Philippines, 2000-2005**

The majority of these workers were in the health, social and other community development services sector (31.8 percent or 32,158). The NMP awarded certificates to 7,851 trainees over the same period.

The statistics provide an idea of the reach and efficiency of TVET, but not of its effectiveness or impact. Most school-based and centre-based training courses are pre-employment interventions. Their primary and direct impact is better employability. Enterprise-based training is training during employment. Among its primary and direct impacts are correction of jobs-skills mismatches and upgrading and widening of skills. These can reduce labour underutilization, improve productivity and enhance functional flexibility. They can also reduce training costs, both in actual expense and time. Theoretically, a participating worker will not have to suffer spells of unemployment or prolonged interruption of income in exchange for skills acquisition. CBTED includes training for self-employment. Its primary and direct impact includes, among others, encouragement of entrepreneurship activities. A more sophisticated performance monitoring system is needed to fully assess the effectiveness and impact of TVET's specific modes of training delivery.

### 3.2.3 Strategic choices: Pushing TESDA's limits

The persistent trends in the labour market—particularly the uneven participation of men and women, the dominantly young labour force, the high incidence of unskilled employed, and nominal increases in labour productivity—are daunting challenges. These also show that TESDA is only scratching the surface of its potential in enhancing the capacity of the labour force.

Among the labour administration institutions, TESDA has reached deepest and widest in decentralization of resources. It has three times the number of employees of DOLE. It has offices down to the provincial level with active linkages down to the municipal and community levels. Since the educational reforms, TESDA's budget has greatly increased. From PHP 29 million in 1998, the budget increased to over PHP 2.4 billion in 2004.

While the 2007 budget was still only 1.87 percent of the total education budget, this is higher than the budget for DOLE and all the other attached agencies combined.

#### Keeping focused

To maximize effectiveness, TESDA and other concerned LMG institutions must keep their policy focus. In any institutional intervention requiring public expenditures, limited resources ought to be channelled to those who, if left on their own, have no other means of access. In other words, the use

of resources should ensure priority for the poor and the marginalized. In addition, a resource focus on women and youth is critical if the country is to realize demographic dividends in the future. Care must be taken to avoid allocation choices that might appear pro-employed but are not necessarily pro-worker, pro-poor, pro-youth or pro-women.<sup>25</sup>

For instance, seemingly bad allocation and governance decisions were made in 2004. That year, the number of CBTED graduates declined to less than 10 percent of what it was three years earlier. CBTED is not only a bridge for the unskilled or low-skilled to move up the skills and productivity ladder. It is also a device to decentralize and democratize access to training to the rural areas where many of the youth and poor unskilled workers live. Moreover, it helps break down socially-embedded discrimination against the entry of women into the labour force. In this sense, CBTED is an anti-poverty measure, rather than a part of active employment and gender equality policy. CBTED all but disappeared in poorer regions like Regions IV-B and V, and was reduced to insignificance in most other regions. TESDA's recent reinstatement of CBTED as one of its priorities, from a policy standpoint, was a sound decision.

### Training for productivity

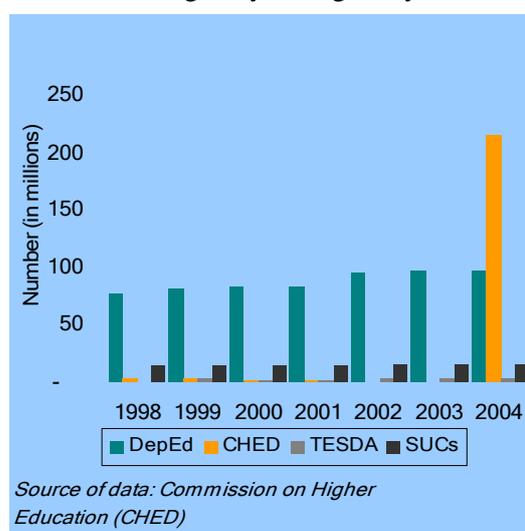
Low labour productivity drags down per capita productivity. Training ought to result in improved labour productivity. In turn, higher labour productivity pushes up both GDP and per capita growth. Training for productivity therefore helps promote a virtuous cycle of labour productivity, growth and jobs, thereby expanding the economic pie and helping speed up poverty reduction.

Two training modes critical in improving labour productivity are the German-based dualtech system and enterprise-based training. These modes can smooth out school-to-work transitions, customize skills acquisition with enterprise needs, and reduce or prevent mismatches. These approaches also support a demand-driven human resource development strategy especially for “hard”<sup>26</sup> skills and promote public-private sector partnership. However, dualtech has very few takers in the Philippines.

On the other hand, enterprise-based training is used less to develop specific skills needs and more to exhaust its potential in reducing labour costs. TESDA and the private sector should therefore look to improve on the use of these models. At the same time, there is a need for all training institutions to be more accountable in improving labour productivity, rather than simply assuming that provision of training courses will automatically deliver better productivity outcomes. Training institutions and industry partners should look for deliberate integration of productivity-enhancing indicators in all aspects of the entire training cycle, from the content of modules, setting assessment and certification standards, monitoring the performance of training providers, and quality and performance of graduates. TESDA, through training subsidies, can strategically target youth and low-skilled workers as part of its productivity advocacy.

### Providing less, devolving more

A key policy direction introduced under the 1994 educational reforms and in the TESDA law itself is for the State to veer away from a highly-centralized provision of training and toward devolution, decentralization and more active private sector and community participation. In line with this, TESDA has started to build networks of GOs, LGUs and NGOs. Still, TESDA remains very much a direct training provider. School-based training courses are run by TESDA-administered schools. Centre-based training courses are conducted in TESDA's own training centres. Given these, the relationship between TESDA and its “partners” remain a combination of State regulation, control and



**Figure 7: Enrolments by agency and fiscal year, 1998-2004**

paternalism rather than a partnership of equals. In this sense, TESDA has not moved far from the old tradition that characterized its predecessor, the NMYC, and which the educational reforms of 1994 intended to change in the first place.

While TESDA has done a lot, much still remains to be done.

First, national policy envisions TESDA shifting from “rowing” functions such as direct provision of training, to “steering” functions such as setting and administration of standards, curriculum development, accreditation and monitoring of training institutions, skills assessment, testing and certification, and support to strategic sectors through training grants and subsidies. Accelerating this shift can enlarge the impact of training interventions.

Second, a highly-sensitive and critical area is the politics of the budget. All State-appropriated training budgets are channelled through TESDA. Consequently, decisions on budget execution—where and to whom the funds should go and how these should be used—rest with TESDA. The centralization of decision-making over the budget is hardly conducive towards developing real partnerships. The current system also has implications for accountability. Even if TESDA acts as a conduit of funds, it is still primarily accountable for their proper use. Therefore, it has no incentive to devolve or decentralize. The policy challenge is to restructure the appropriation and execution of the training budget be restructured to promote broader-based participation and accountability in training outcomes?

Third, private markets play an important role in putting into effect the State’s demand-led strategy in skills training. Private training providers have sprouted across the country, much of it due to new demands and skills scarcities (for example, caregivers for overseas employment and massage therapists for wellness centres in urbanized areas).

Clearly, there is an emerging private market for training. Because private training providers have their own capital, their participation will allow TESDA to focus more of its resources to those areas where there are market failures, as in the case of the youth; the unemployed; the low-skilled, women and the rural workers. The growth of private markets should be encouraged by enlarging the space for private training providers to develop, providing strategic information on labour market trends and opportunities, and continuous enhancement of TESDA’s standards-setting, accreditation, teacher training and certification, and monitoring system.

In this regard, competition between government and private training providers ought to be avoided. Policies to restrict private participation to specified skills are counter-productive and may ultimately inhibit emerging private markets for training. A more proactive policy is to allow private providers the choice on what courses to offer, provided standards are in place and are effectively enforced. Assimilating market principles in the allocation of training funds and attainment of training outcomes can also be considered. For instance, TESDA and related LMG institutions can encourage bidding and contracting of training projects among private training providers and even by local government units.

### **Financing skills training and employer responsibility**

Are there other ways to finance training aside from State expenditures? Money for training is an investment and not a cost, so employers and human resource practitioners proclaim. Yet do employers really invest in training?

The 2006 BITS indicates that about 20 percent of employers in non-agricultural establishments employing more than 20 workers provide training for their managers and supervisors. But training provision for rank-and-file employees is almost negligible.

In establishments with CBAs, a study released by the Employers’ Confederation of the Philippines (ECOP) has inconclusive findings. The study reveals that 12.0 percent of the CBAs surveyed provide for education, scholarship and training support systems. According to ECOP, this does not mean that the companies surveyed do not have these at all, since many of them have annual training budgets.

### Box 1 Supporting a key employment generator through training—The BPO industry

Through its scholarship programmes, TESDA is placing more attention and resources to key employment generators such as business process outsourcing (BPO). The fastest growing industry in the last ten years, BPOs have created jobs for more than 235,000 workers and have earned US\$3.3 billion so far for the country. To respond to the increased demand for jobs, TESDA graduated about 37,300 call centre agents, 5,000 medical transcriptionists, and 230 software developers, most of whom were absorbed by the industry, over a 17-month period from May 2006 to September 2007. Government and industry planners hope to capture 10 percent of the global BPO market and quadruple the industry's revenues in coming years, projecting to create total direct employment of 900,000 persons and to create 1.2 million to 1.5 million more indirect jobs.<sup>a</sup> The industry received a boost recently when the Philippine President ordered TESDA to allocate PHP 350 million in scholarships for the training of some 70,000 call centre agents.<sup>b</sup>

The allocation of resources to the BPO sector may be justified in order not to lose investors and potential investors. But it is also a short-term measure. According to an ADB working paper<sup>a</sup> (Magtibay-Ramos, Estrada and Felipe 2007), a more reliable estimate of the BPO sector's employment generating capacity is from 500 to 600 thousand by 2010. The industry projections used to justify the allocation of resources are therefore overestimated. Further, the choice of the BPO sector tends to benefit workers and employers who are better off relative to TESDA's more needy constituencies (i.e., the unemployed, the low-skilled employed, the micro-entrepreneurs, and women).

Also, the skills gaps being addressed by technical and vocational training in BPOs are essentially communication and soft skills, which are supposed to be acquired through basic or tertiary education. It is neither wise nor efficient policy to have one part of the educational system compensate for the shortcomings of another.

<sup>a</sup> See Nedelyn Magtibay-Ramos, Gemma Estrada and Jesus Felipe (2007), *Working Paper Series No. 93, "An Analysis of the Philippine Business Process Outsourcing Industry," Economic Research Department, Asian Development Bank (2007).*

<sup>b</sup> *The President made the announcement during the November 4, 2007 launch of Off shoring and Outsourcing Philippines: Roadmap 2010 by the Business Processing Association of the Philippines (BPAP), Makati City. See also Paolo Romero, "P350-M Tesda scholarship fund set up," Philstar On-Line, 8 November 2007.*

By industry, one can note that half of the CBAs in the electronic sector have such provisions. In contrast, there are five sectors that are completely without schemes to support the education and training of their employees or dependents. These five sectors are automotive and automotive parts, footwear and leather goods, hotels and restaurants, metals and machinery, and paper and paper products.<sup>27</sup> Given this finding, it would be interesting to find more information on what employers put under their "training budget." This budget must refer to how much employers spend to equip their workers with skills that the enterprise needs for the short to the long term.

The law encourages employers to provide training for their own workers through tax incentives and through apprenticeship or learnership agreements. (In the labour market context, "learners" refer to persons hired as trainees in semi-skilled and other industrial occupations which are non-apprenticeable.) Learnership programmes must be approved by the TESDA (Section 4 (a), Republic Act No. 7796.). Training expenses are tax-deductible expenses. The evidence suggests that employers seek to benefit from tax incentives by focusing on trainings for firm-specific and managerial competencies. Employers do not provide as much training for rank-and-file employees with lower level or easily replaceable skills. For such workers, they prefer the use of flexible employment options like short-term contracts rather than make use of training incentives.

On the other hand, the law also encourages training by allowing quasi-employment relationships such as learnerships and apprenticeships, paid below the minimum wage. Anecdotal evidence from employers suggests an increasing use of these arrangements. But unions remain wary because these arrangements may be used to circumvent the minimum wage law and security of tenure, and to avoid social security obligations.

### Anticipating increased demand for technical-vocational training

There are also recent developments in tertiary education that can exert pressures on the demand for technical and vocational training. Starting from school year 2001–2002, overall enrolment in tertiary education has been declining. The drop has been exclusively in private academic institutions. The most dramatic one-year drop was between school years 2003–2004 and 2004–2005 when enrolment dropped from 2.4 million to 890,000.

The numbers indicate, on the one hand, the increasing importance of public educational institutions in providing tertiary education. On the other hand, those who dropped out of school altogether would have entered the labour force as unemployed with no experience, employed with little or no experience or skills, and in either case in a precarious situation, experiencing potentially the threat of long-term unemployment or low-paid employment. These workers add to the number of workers who can be considered for technical and vocational training.

#### 3.2.4 The informal sector: Training for self-employment

In addition to technical and vocational training provided by TESDA and other training institutions, the DOLE also has its own training programmes for informal sector workers.<sup>28</sup> These programmes are a combination of welfare and training which DOLE calls workers’ amelioration programmes. Beneficiaries are trained to engage primarily in self-employment or micro-entrepreneurship. Examples are entrepreneurship training for rural workers and women, programmes to combat child labour, and programmes to promote the welfare of domestic helpers. From a policy standpoint, these programmes can contribute to the MTPDP’s objective of promoting entrepreneurship and livelihood activities.

#### Who is responsible for the informal sector?

The DOLE’s flagship programmes for the informal sector are the Rural Employment for Self-Entrepreneurship and Development (PRESEED programme), the Social Amelioration Program (SAP) for workers in the sugar industry, the Workers’ Organization Development Program (WODP) and the Women Workers Entrepreneurship and Employment Development (WEED) programme. There is also a national programme against child labour which involves not only LMG institutions but also social welfare and law enforcement agencies. On top of these, there are also smaller sub-programmes with similar objectives. A repackaging of these programmes to promote efficiency and convergence led to the setting up of the

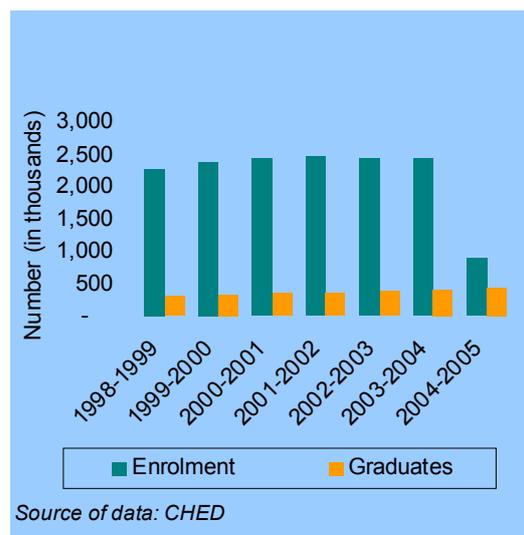


Figure 8: Historical enrolment by sector, school year 1998–1999 to 2003–2004

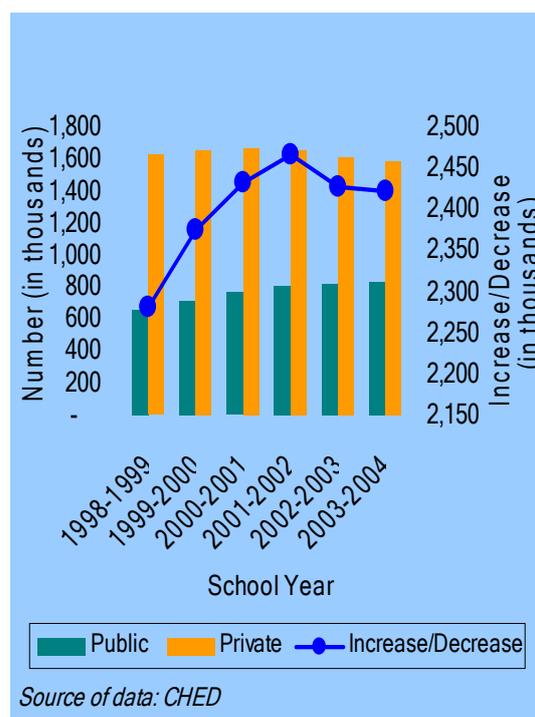


Figure 9: Tertiary enrolment and graduates in government and private schools, academic year 1998–1999 to 2004–2005

Poverty-Free Zone programme, which is targeted at enabling communities to tap and process their natural resources so final products can fetch more value in the external market.

These programmes follow the same model as the self-reliant communities programme in agricultural areas, the community-based and NGO-driven programmes in urban poor areas, and the one-town, one product (OTOP) concept being implemented through the Department of Trade and Industry.

As far as LMG institutions are concerned, public expenditure or provision of services is not a major policy instrument in the implementation of programmes for the informal sector. To illustrate the point: the Bureau of Women and Young Workers (BWYW), which is DOLE's focal agency in the National Action Program Against Child Labor as well as in other women empowerment initiatives, is the DOLE's smallest bureau in terms of personnel and budget. The programmes it implements are essentially donor-driven. Unlike other DOLE bureaus, BWYW does not have a counterpart division in regional DOLE offices. Women and rural workers are no better off when it comes to access to resources. The possible exception are workers in the sugar industry which, by law, has an institutionalized self-sustaining and self-help fund from which workers and their families can draw various forms of financial assistance, including for education and training for women and children in sugar-producing communities. The funds are administratively managed by the DOLE's Bureau of Rural Workers (BRW), with oversight functions being exercised by a Sugar Tripartite Council chaired by the DOLE secretary. A labour leader in the industry<sup>29</sup> says that if managed well, this fund can help foster links between unions and cooperatives toward creating more income and livelihood opportunities for people in sugar communities, especially women.

Without taking anything away from these programmes, the fact remains that client reach and social impact are both very limited. Neither are employment or income effects apparent. Why continue with them? On the other hand, to improve the effectiveness of these programmes, the idea of having a separate agency for the informal sector has at one point emanated from DOLE circles. But what should not be missed is that the informal sector is not the sole preserve of LMG institutions. Workers in this sector have multiple and varied needs too—welfare services, health services, training, access to micro-credit, and many more services—which no single agency can effectively provide. Consolidating the provision of services for workers in the informal sector in one monolithic bureaucracy will create bottlenecks that restrict their access to such services.

### **Role of LMG institutions: Maximizing impact by establishing connections**

LMG institutions can maximize the benefits of small programmes for the informal sector by treating these as part of a continuing process of human and social capital accumulation toward entrepreneurship and micro-businesses. Capability-building trainings and training-cum-production approaches, which are initially grant-driven or donor-driven, can be sustainable if eventually the beneficiaries are able to graduate into more market-driven types of micro-credit or financing. As an advocate of women's organizations and empowerment says,<sup>30</sup> women's organizations, community-based organizations and other people's organizations still find it difficult to secure micro-credit due to cumbersome procedures and requirements that practically make access impossible, as well as to the perception that these organizations are high-risk borrowers. LMG institutions are not providers of micro-credit but they can build networks with credit and development financing institutions in order to make it easier for such organizations to access credit facilities and achieve long-term sustainability.

LMG institutions can and should intervene in helping promote security for informal sector workers. One immediate area of attention is how to secure the tenure of workers in their workplaces, a matter that LMG institutions can work out with LGUs. On the other hand, a good practice is the opening up of windows for the enrolment of informal sector workers in the Social Security System (SSS) and Phil-Health. Advocacy for clearly-defined rights of informal sector workers should continue, but these rights should not mimic that of formal sector workers who are differently situated. Avenues for participation and social dialogue should be enlarged so that the sector can develop into a political force. Finally, since employers, private businesses and their organizations are in themselves LMG institutions, they can consider adopting organizations or communities as part of their advocacy for corporate social responsibility and public-private-community partnerships.

### 3.3 Labour market information and public employment services

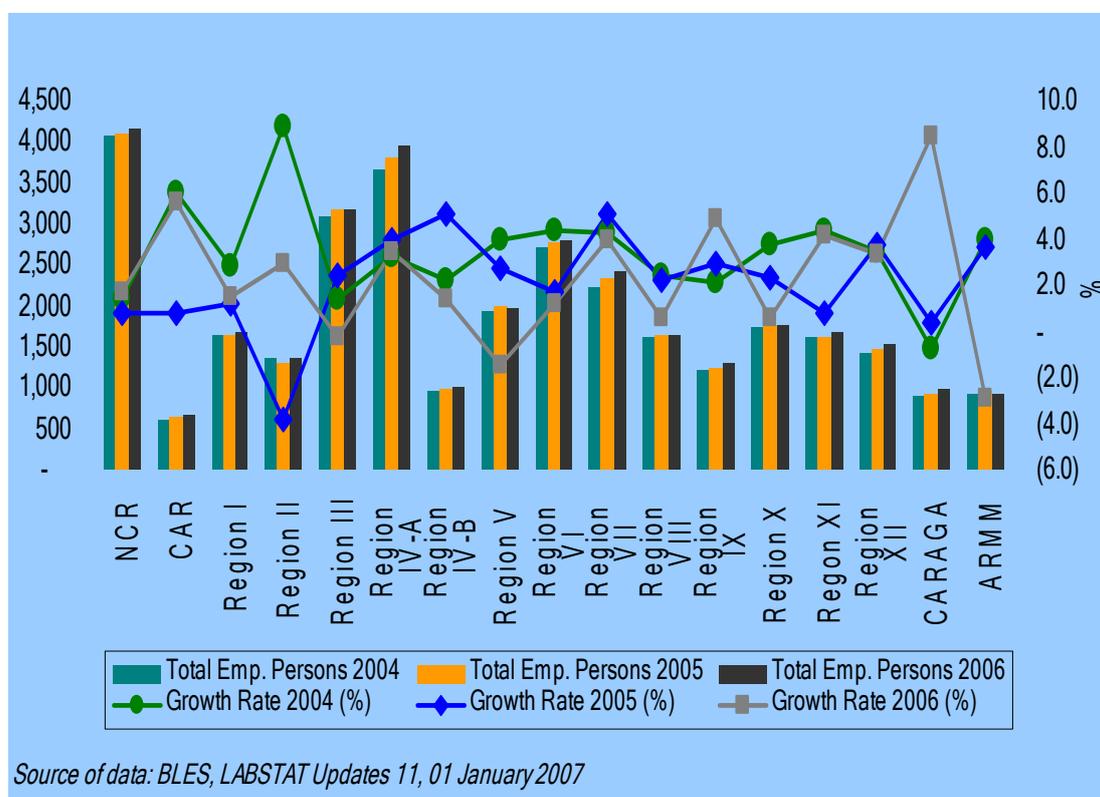
Free and accessible public employment services are a way to promote efficient functioning of the labour market. The design of the public employment service is based on ILO Conventions No. 88 (Employment Service) and No. 122 (Employment Policy).<sup>31</sup> It is organized into provision of labour market information (jobs and a skills registry), career counselling, and pre-employment testing. Policy encourages the participation of the private sector in recruitment and placement. Accordingly, the Labor Code regulates recruitment and placement activities with rules on charging of fees, licensing and accreditation, and on illegal recruitment and penalties for violations.<sup>32</sup>

#### 3.3.1 Institutional mechanisms

The DOLE through its bureau of local employment and regional offices, the public employment service offices (PESOs) in LGUs and accredited institutions, and the Philippine Overseas Employment Administration (POEA), is directly involved in providing labour market information and facilitating pre-employment and transitional mobility. Through the *Public Employment Service Office (PESO) Act of 1999*, provision of general employment services was devolved to PESOs in LGUs, schools and other accredited non-government organizations. The DOLE's role is to establish, administer, supervise and coordinate a network of employment service providers. The backbone of the network is the Phil-Jobnet, a computerized labour market information registry launched in 1998.

Apart from PESOs, services unique to overseas employment like contract processing and verification are performed by the POEA.<sup>33</sup> At various times of the year, especially during peaks in labour demand (i.e., prior to the Christmas season) and peaks in labour supply (i.e., during summer months when fresh graduates and school-leavers enter the labour market), the employment service network organizes jobs fairs<sup>34</sup> in centrally located areas to target job-seekers in both domestic and overseas markets.

The public employment service seeks to reduce job mismatches, high information and search costs, and the length of job and skills searches. To appreciate their performance, the following questions are



**Figure 10: Summary statistics on employment by region, Philippines, 2004-2006 ('000)**

relevant: (i) Are there available job opportunities and how frequently are these available? (ii) How long does it take to fill a vacancy? (iii) What search methods do employers and workers use with respect to available job opportunities? (iv) To what extent do public employment services contribute to the reduction of information and search costs?

### 3.3.2 Job creation and availability and frequency of job opportunities

There was net employment creation between 2001 and 2006, with the services sector registering the highest contribution at an annual average of four percent over the period. In real terms, Region IV-A (Calarbarzon, the area of Southern Luzon immediately south of Metro Manila) remained as the most robust employment generator, followed by Region VII (Central Visayas, including Cebu). In real terms, employment creation actually slowed down from 978,000 in 2004 to 700,000 in 2005 and 648,000 in 2006.

Frequency and availability of job opportunities are captured by the BLES labour turnover survey which measures employment growth in terms of accessions and separations.<sup>35</sup> For example, in the 2007 data from the National Capital Region (NCR), the accession rate was 11.31 percent while the separation rate was 7.75 percent, for a net employment growth of 3.57 percent.<sup>36</sup> While not impressive, the figures confirm that both employment growth and job availability are occurring.

### 3.3.3 Search time and problems encountered

Searching for a job takes time. New entrants to the labour force have a longer period of searching for jobs as most employers require at least six months relevant work experience from job applicants. For

#### **Box 2: DOLE and workers in the informal economy: Potentials for partnership**

Some illustrative cases on the positive outcomes of DOLE's programmes for workers in the informal economy (WIE) can be cited. In Benguet (Northern Luzon), 30 displaced mine workers organized themselves so as to qualify for the DOLE's PRESEED programme. Using a PHP 70,000 start-up capital for their training-cum-production and to acquire farm inputs for their individual small parcels of irrigated farmland in Tabuk, Kalinga province, they have succeeded in ensuring the viability of their revolving fund and in sustaining their livelihood. Their experience shows the importance of cooperation and unity among the members and demonstrates that it pays to channel the knowledge and experiences of displaced skilled workers into non-wage employment. The key is to give them access to training opportunities and resources that allow them to start anew.

In San Mateo, Isabela (also Northern Luzon), 52 women and their families ventured into the production of salted eggs with the help of their local government unit and the DOLE. Their livelihood project is enrolled under the "Geographic Convergence Program" with duck and poultry production as its flagship project, which the DOLE supported in terms of technical and financial assistance. With a start-up capital of PHP 60,000 for the production of salted eggs and an additional PHP 85,000 for the establishment of a duckery (layer type) to sustain the project's egg requirement, egg production in 2006 had reached almost 41,000 units from the initial 80 pieces of salted eggs produced in June 2005. Since then, the group has been regularly supplying 5,000 pieces of salted eggs to the Fish Cove in Quezon City. Their market has also expanded to cover balikbayans from the United States, Canada and Spain. From the original membership of 27, the organization has grown to 127 members covering five barangays with a capital build-up of more than PHP 80,000.

Access to resources and training opportunities is a critical element in empowering workers in the informal economy, especially in rural areas. The DOLE has also supported the initiative of the local government unit and the Department of Social Welfare and Development, focusing on empowering provided support to cooperatives and their members in partnership with local government units and other government agencies. Another beneficiary of its PRESEED programme is a federation of nine small farmers' cooperatives with 427 members in Dao, Capiz (Region 6, Visayas). The federation is actually a poverty alleviation small farmers and rural women to have access to resources and affirming their capacities to become productive members of the community.

*...see next page*

...from previous page

In 2003, the DOLE extended PHP 300,000 for the group's training-cum-production on garments and bags making for 50 unemployed women and men. In addition, the federation and local officials were able to seek other financial and technical assistance from the provincial government of Capiz, the Australian Embassy through its Direct Aid Programme, and the AusAid-PACAP.

For the past two years, the project generated an average annual income of over PHP 400,000, or an average monthly income of PHP 1,300 for each worker employed, which translates to additional annual income of PHP 20,000 to PHP 40,000 annually among each of the members. Indeed, the project has transformed the rural women into active entrepreneurs who now serve various institutional clients, such as regional government agencies, local government institutions, NGOs, academe, and even church-based groups such as the Knights of Columbus.

By design and intention, the DOLE's programmes for the WIE and their organizations seek to help ease poverty in the countryside. Efficiency in programme implementation and management is hoped to be achieved through convergence, an objective that actually gave birth to the Poverty-Free Zone (PFZ) programme in 2002.

One PFZ project involves a group of coconut farmers from a small town of Malimono in Surigao del Norte (Mindanao) who are engaged in the production of world-class social erosion prevention fibre, in particular geotextiles such as mattings and bio-logs. This project has already generated 150 jobs and accumulated gross sales of 1.5 million, equivalent to a PHP 3,500 monthly income for each direct worker as compared to the PHP 500 monthly income they were receiving before the project. The products have ready market from as far as Aklan and Cebu, with local traders already marketing and selling the products abroad. As such, it has become Surigao del Norte's pride in self-employment and organizational development as it has benefited the youth, women, coconut farmers and senior citizens not only in Malimono but also in nearby municipalities. It has now become a showcase of the convergence of poverty alleviation efforts of various government agencies, such as the DOLE, Philippine Coconut Authority, local government units and other stakeholders.

*Source: "DOLE Assisted Livelihood Projects: Making the Business of the Poor Grow", a pamphlet published in 2007 by the Bureau of Rural Workers, Department of Labor and Employment, Manila.*

employers, the main problem is finding a suitable candidate. According to the 2006 BITS, employers have difficulty filling positions falling under the occupational categories of accountants and auditors, professional nurses, technical and commercial sales representatives, computer programmers, and mechanical engineers. For these hard-to-fill positions, the median and mean search periods are three and 7.1 months respectively. In 70 percent of cases where employers experience difficulty, the reason given is the absence of qualified applicants rather than competition or overseas employment. High asking salaries by applicants ranks as the second reason (8.0 percent), while absence of qualified candidates due to overseas migration ranks third (7.3 percent).

In the NCR, an employment survey covering 448 large enterprises drawn from the top 5,000 enterprises in the country show that nearly one out of three enterprises experienced talent or skills shortages. While the survey results bear many similarities with the 2006 BITS, large corporations experience skills shortages across a very wide range of occupations with specialized skills. Nearly a hundred occupations are listed as having shortages, ranging from high-end jobs such as actuary, geologist, mall architect, environmental engineer, account executive, and HR manager to blue-collar jobs such as welder, tinsmith, machinist, driver and skilled labourer. Skills shortages are not limited to particular occupations but are spread out evenly across the main industry groups.<sup>37</sup> The average duration for filling vacancies was reported at four weeks, although the duration increased by one week in electricity, gas and water and social work, as well as for those who experienced shortage of qualified job applicants (5 to 8 weeks).<sup>38</sup>

Employers say that government should address the problem of skills shortages by improving the quality of education and providing further training. But interestingly, 80 percent of employers do not

see this difficulty as a constraint in their future operations. This may indicate a degree of confidence of availability of qualified candidates in the labour market who are simply difficult to find. This situation all the more argues for the strengthening of employment services.

### 3.3.4 Search methods

With respect to the local labour market, employers prefer informal means of search. Word of mouth is the most commonly-used method (over 80 percent).

There is also a high preference for disseminating information within the firm's internal labour market. Only 13.2 percent of employers use the PESOs or Phil-Jobnet as a search facility.

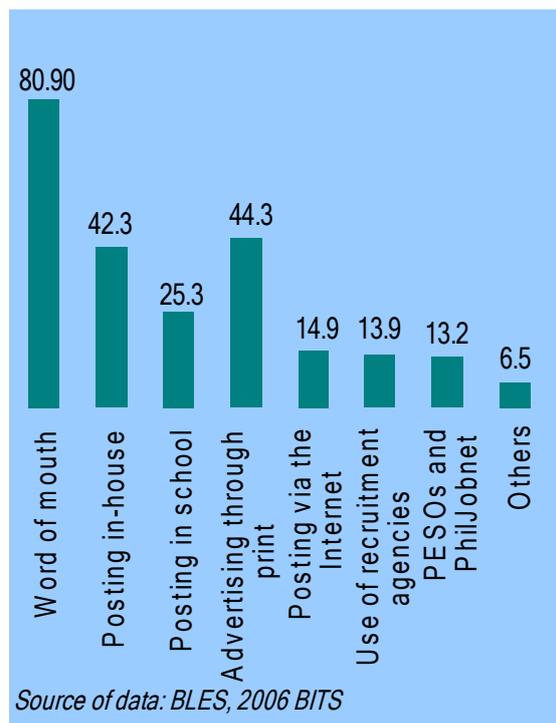
Human resource practitioners often argue that less formal means of disseminating job vacancies is efficient. Not only does it save on publication expenses but also tends to screen out candidates with poor track records as there is a good chance that the person making the referral will naturally try to protect his reputation by pre-screening his or her candidate. In this manner, word of mouth can become an instrument to negate information asymmetries which the worker initially has over the employer.

With respect to overseas employment, active overseas presence and marketing strategies, along with a huge network of recruitment agencies, have the Philippines hard-wired to labour market information overseas. This is a major reason why the Philippines is one of the world's leading sources of migrant workers, particularly temporary migrants who are more popularly known as overseas Filipino workers (OFWs). Mobility and welfare rather than information or search is the issue in overseas employment. This will be addressed in a later section.

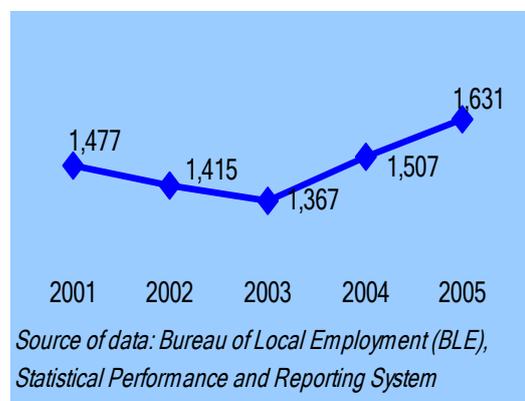
### 3.3.5 Public employment services: Are they helpful?

Over the years, there have been major investments in infrastructure for employment services, including acquisition of computer hardware and software and training programmes for PESCO managers and personnel. On record, there were 1,631 PESOs in 2005. Based on data culled from the statistical and performance reporting system of PESOs compiled by the DOLE's Bureau of Local Employment (BLE) covering the period from 2001-2005, the following core numbers are notable:

- The number of jobs solicited is increasing. In 2005 alone, PESOs solicited 1.37 million jobs while Jobs Fairs solicited 1.13 million;
- The number of applicants registered is also increasing. In 2005, PESOs registered 1.14 million while Jobs Fairs registered a further 435 thousand;



**Figure 11: How employers search for workers (Numbers indicate percentage of employers who use this method)**



**Figure 12: Operational PESOs, Philippines, 2001–2005**

- PESOs “placed/assisted” 748,000 and “referred” one million in 2005. Jobs Fairs had 35,000 job applicants hired on-the-spot and 39,000 “placed/deployed;”
- PESOs counselled 474,000 applicants and tested 51,000 in 2005.

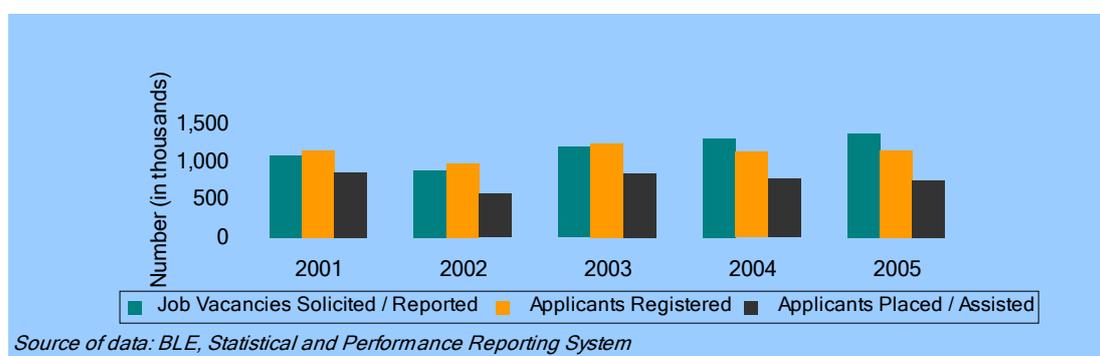
A large majority of employers do not rely on PESOs, jobs fairs or the Phil-Jobnet for their search needs. Further, in spite of having encountered difficulties in skills search, only a small fraction of employers recommend the strengthening of the public employment service. Given these factors, how may the usefulness of the public employment service be enhanced?

Lack of awareness may be a reason why many employers do not use the public employment service. Or even if employers are aware, the service may not be accessible to them. Either way, improving the dissemination of information on and access to the service should be helpful. In this regard, deepening labour market information networks, strengthening interconnections and enhancing institutional capacity down to community levels are important.

Further, PESOs and the Phil-Jobnet need to improve their data reliability. The numbers coming from the PESOs are not consistent with the statistical data. Jobs solicited through the PESOs and jobs fairs are formal sector jobs. Taking 2005 as an example, it appears that PESOs solicited more jobs (1.37 million) than there were new jobs generated (700,000 for both the formal and informal sectors). Putting these numbers together would mean a total of over two million jobs, three times the new jobs generated in 2005 and enough to wipe out unemployment.<sup>39</sup> There is obviously a discrepancy resulting from double-counting which, according to the Bureau of Local Employment (BLE), the DOLE has been trying to correct.

While confronting the issues of information, reach, access and reliability, other practical steps to improve public employment services may be considered:

- Maximize the value of the facility to the supply side. **Coaching job-seekers** for interviews, for instance, can be a regular PESO service;
- Make PESOs more attractive to employers. PESOs can expand their services, among others, by conducting pre-employment testing **to reduce employer costs on recruitment;**
- **Continue enhancing PESOs as a multi-service** facility, including facilitation in the issuance of pre-employment requirements;
- **Professionalize PESO staff.** Model PESOs exist in progressive cities and municipalities which have their own budget and dedicated professional managers. However, in many LGUs, personnel are assigned employment service functions in an ad hoc or add-on capacity without their own resources and budget;



**Figure 13: Job vacancies solicited / reported, applicants registered, and applicants placed through Public Employment Service Offices, Philippines, 2001–2005**

- In LGUs where it is not feasible to set up PESOs separately, **circuiting PESOs** to serve several towns or districts can be an efficient alternative.

### 3.4 Promoting freedom of choice and mobility: Institutions

Freedom of choice of employment subsumes equality of access to and non-discrimination in employment opportunities as pre-employment and employment rights. It also subsumes employment mobility. The Constitution promotes equality of all persons generally, and equality of employment specifically. The country is also a signatory to ILO Convention No. 111 (Non-discrimination in respect to employment and occupation). The general principles contained in these instruments are implemented through the Labor Code. There are also other laws that make reference to employment rights, such as the Magna Carta for persons with disabilities, the Magna Carta for women, and the child and the youth welfare code, among others.

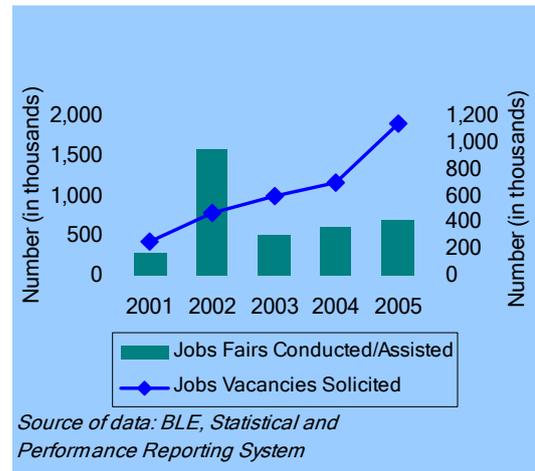
LMG institutions combine a mix of policy instruments to promote and facilitate freedom of choice and protect workers against wrong choices. With respect to pre-employment, the Labor Code has a hortatory provision that the State shall promote full employment, ensure equal work opportunities regardless of sex, race or creed.<sup>40</sup> It also employs a facilitative approach through the public employment service, as described in the previous section. Finally, it follows a regulatory approach, mainly by regulating recruitment and placement activities. With respect to employment rights, the same approach is employed with a focus on employee rights and employer obligations and liabilities.

#### 3.4.1 Key issues

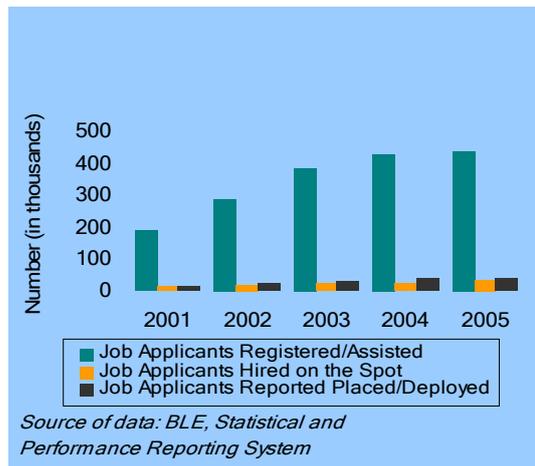
LMG institutions should continue to address outstanding issues on freedom of choice, access and mobility. The biggest issue is the low participation rate of women in the labour force. The main LMG intervention in this area is training and HRD. The problem is social in nature, resulting from the sum of discriminatory and gender-biased attitudes, sometimes subtle and unnoticed, embedded in the social, cultural and political structures. While LMG institutions work on specific areas of the problem, other institutions have a role to play in reducing exclusion or inequality arising from lower participation of women in the labour market.

On top of this, there are also very specific issues:

- Pre-employment discrimination particularly in job advertisements and employer practices;
- In the local market, employment arrangements disguised as training arrangements and perceived restrictions to employment termination;



**Figure 14: Job fairs conducted and job vacancies solicited through PESOs, Philippines, 2001–2005**



**Figure 15: Job applicants registered, job applicants hired on the spot, and job applicants reported placed/deployed through PESOs, Philippines, 2001–2005**

- In overseas employment, the diaspora of workers which leads to the Philippines losing out some of its best human resources to overseas markets.

### Pre-employment discrimination

In a seminal study on gender preferences in job advertisements,<sup>41</sup> findings show the persistence of sex preference or stereotyping in several occupations. Females continued to be preferred as cashiers, household helpers, office secretaries, nurses, teachers, waiters, and weavers. Males, on the other hand, dominated as drivers, engineers, managers, mechanics, messengers, security guards, and supervisors.

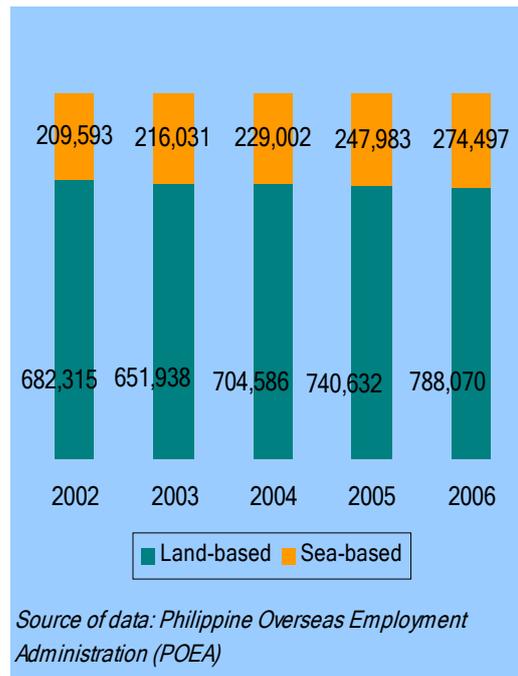
The study concludes:

*“Based on the declining proportion of advertisements indicating sex preferences for the seventeen occupations selected for this study, we may speak of decreasing pre-employment sex discrimination between 1975 and 1995. This does not mean, however, that sex discrimination has declined or been eliminated for each of the occupations. There are occupations that appear to have remained more or less “exclusively female, although the level of “traditional” sex preference for some of these occupations has gone down over two decades.*

*“While the results of this study raise hopes that sex discrimination in hiring employees is on a downward trend generally, studies still have to be done about the hiring practices of employers. Non discriminatory job ads do not guarantee that applicants will not be discriminated against on the basis of their sex when they actually apply for jobs. It is important to verify whether or not the implicit message of neutrality and fairness in job ads that do not specify the sex of applicants is sustained by actual hiring procedures.”*

A more recent survey conducted by the BLES in 2006 dealt with qualification criteria for recruitment. The survey covers various occupations including managers/executives, professional/technical, supervisors/foremen, sales/services, clerical, skilled operatives, and unskilled operatives. In many instances, non-objective factors such as age, sex and civil status were included in the advertised qualification criteria. A majority of employers (between 55 to 65 percent across occupations) had no age preferences. However, age alone neither connotes nor precludes a discriminatory practice. In many cases, it may be tied to experience, which is an objective criterion.

On sex and gender, no preference is expressed across occupations in 66 to 84 percent of cases. In cases where preferences are expressed, males are preferred in all occupations (ranging from 11 to 30 percent) except in clerical work where females were preferred in 27 percent of cases. This seems to validate the findings of the earlier study on traditional employer preferences for females in certain occupations. With respect to marital status, the large majority is status-neutral (75 to 92 percent) but a noticeable preference for singles is expressed in sales and services as well as in clerical work, and to a lesser extent among skilled and unskilled operatives. In clerical work, there seems to be a correlation between gender preference (females are preferred) and marital status (singles are preferred) but no similar correlation can be drawn in other occupations. For objective qualification criteria like educational attainment, training and experience, the trend is gender-neutral recruitment and this becomes more pronounced as the position gets higher. It can also be noted that job advertisements coming from unionized establishments are slightly more gender-neutral than those from non-unionized establishments.



**Figure 16: Deployed OFWs 2002-2006**

## Local labour market: Direct and indirect restrictions and some good practices

With respect to the local market, there are some indirect and direct limitations on mobility and access. One indirect limitation is lack of experience. Employers generally require, even if they do not express it in job advertisements, that applicants must have at least six months work experience. Many new entrants without experience actually get employed but the employment relationship is disguised as a training arrangement. The trainee often gets a nominal “training allowance” rather than a wage, even if he or she is made to perform regular functions and observe regular work hours. Workers agree to this type of arrangement if only to be able to earn experience. Policy action was taken by DOLE in response to this problem through a programme called KASH,<sup>42</sup> whereby workers engaged under apprenticeship agreements are given experience credits so as to later on satisfy the experience requirement. KASH appears to be an active labour market measure. Its effectiveness and impact should be assessed to determine whether it can qualify as a good practice that should be promoted.

A more direct limitation can be seen in growth industries experiencing skills and talent shortages and with high attrition rates. In the BPO industry, human resource managers complain of the lack of qualified candidates with good language and communication skills. Poaching employees is common. Employers complain of losing their employees to competitors before they can even recoup the costs for employees’ training.

The industry has responded by adopting non-compete or non-transfer clauses where, as a condition to hiring, an employee is made to commit not to transfer to a competitor (or handle specific accounts if he or she is allowed to transfer) within a certain period from the time he or she leaves his or her

### **Box 3: Employment services in Quezon City—The PESO as a multi-service facility**

The Public Employment Service Office (PESO) law enacted in 2000 institutionalizes public employment services down to the local government units (LGUs). Since 2001, the PESO of Quezon City—the country’s biggest city in terms of tax revenue—demonstrates how LGUs which are ready to commit financial resources can help make labour markets function more efficiently.

From 2001–2006, it facilitated the employment of some 35,430 local and overseas employment jobseekers primarily through the conduct of job fairs. All in all, it conducted 41 mega job fairs (at least 70 participating companies), 124 barangay job fairs (10–15 participating enterprises), and 237 mini job fairs or in-house recruitment. In 2006, it organized four livelihood and self-employment bazaars. It also partnered with the POEA in conducting a series of pre-employment orientation seminars for OFWs, and in strengthening inter-agency cooperation in curbing illegal recruitment.

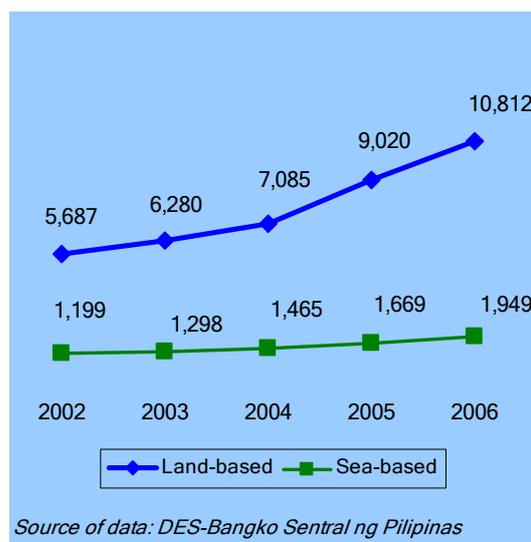
The PESO also implements a vocational and career guidance programme which has benefited close to 90,000 students. In 2007, it facilitated the enrolment of eight barangays (villages) as pilot areas of the DOLE’s “Skillista” programme. As an active participant in the fight against the elimination of the worst forms of child labour, it maintains a master list of children in domestic work (CDW) and has conducted rescue operations for CDW and commercially sexually exploited children (CSEC). It also regularly provides alternative education as well as institutional development and capacity-building services for these children.

As implementer of the city’s Kasambahay (house helpers) Programme, it has facilitated the registration of some 3,800 kasambahays. In 2006, in cooperation with concerned government agencies like DOLE, it rolled out a series of advocacy campaigns for house helpers and homeowners and set up desk officers in a number of barangays to ensure the implementation of the kasambahay programme. House helpers are among the primary beneficiaries of the city government’s health insurance programme wherein qualified city residents are enrolled in PhilHealth. In 2006, the programme benefited some 40,000 beneficiaries comprised of solo parents, indigent families, senior citizens, city government contractual employees, and barangay officials including barangay tanods (security officials) and health workers. Likewise, the PESO has partnered with concerned government agencies and the private sector in the implementation of a social protection programme which also aims to enrol workers in the informal sector (WIS) in PhilHealth.

Without funding from the national government, Quezon City has mobilized its own resources and has succeeded in setting up one of the most active PESOs in the country. The city government appropriated a budget of PHP 5.23 million in 2006 and PHP 7.67 million in 2007 for PESO operations.

previous employer. There is a threat of legal consequences if the condition is violated. Industry insiders say that non-compete clauses are usually included in supplemental contracts that take the form of company rules and regulations. Industry leaders should study whether a non-compete clause is an efficient measure to address poaching and skills scarcity.

A highly mobile employee, when subjected to an artificial restriction, would choose to get out of, rather than stay within, the industry. As a result, the industry would not be able to build its own pool of trained workers. By preventing intra-industry mobility, the industry in effect perpetuates a situation of scarcity that unnecessarily drives up wages. Likewise, the damages that an employee could be required to pay amounts to a tax on labour mobility. Further, the cost of enforcing a non-compete clause is high and it is even doubtful if the courts would allow it. All these make for a less competitive market which can hurt the industry in the long run.

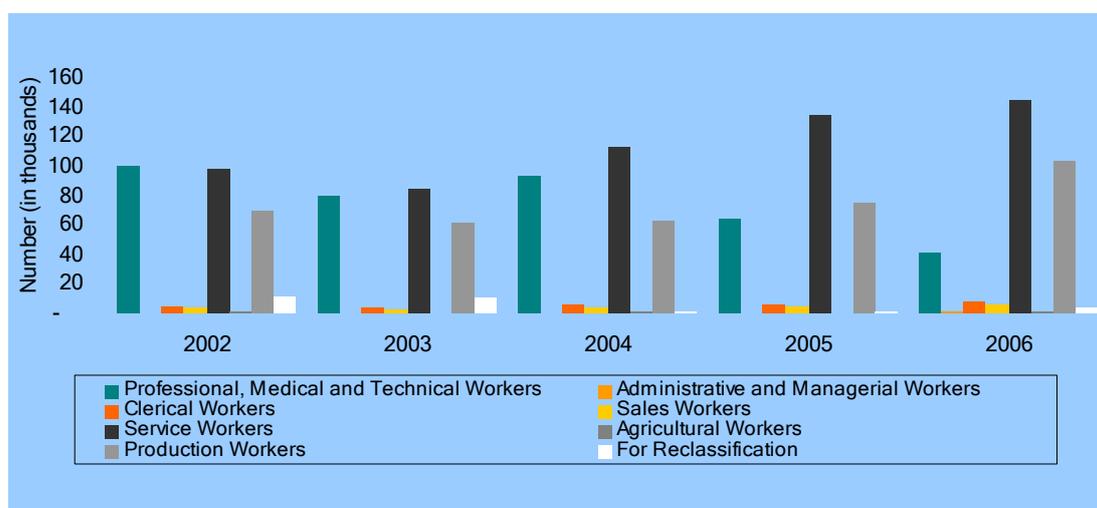


**Figure 17: OFW remittances, 2002–2006**

Some companies are more proactive. Once they get talented workers, they make extra efforts to keep them. In the survey of the top 5,000 companies in the Philippines conducted by BLES, nine out of ten of them realize that more than hiring the best and the brightest, good management practices are essential in keeping employees. Rewards and incentives are therefore important. Incentive pay or performance bonus for good performers is given in 35 percent of the participating companies. Training for career advancement is used by one out of four companies. Salary adjustments (23 percent) and regularization (16 percent) are also employed to pre-empt poaching. Performance recognition awards and other perks are also used.<sup>43</sup>

### Overseas employment issues

Overseas employment has been a major driver of the Philippine economy in recent years. About 2,700 OFWs leave for various destinations abroad every day and the number has been increasing. It is estimated that about seven million Filipinos are spread out in various jobs around the world at any



**Figure 18: Deployment of OFWs by skills categories, 2002–2006**

given time. The Philippines also remains as one of the world's leading sources of seafarers. In 2007, inward remittances from overseas Filipinos reached over US\$14 billion, or about 10 percent of GDP, and was higher than the value of manufacturing exports. Remittances contribute to macro-economic stability by driving local consumption, enabling families to send children to school, and fuel construction for housing projects. At the level of families, the distributional impact of remittances is undeniable. At the macro-level, remittances shore up the country's foreign exchange situation,

Government's main thrust in the last two decades has been to secure the welfare of OFWs through the setting up of laws and institutions, as well as through diplomacy. The DOLE, the Department of Foreign Affairs, dedicated institutions like the POEA and the Overseas Workers Welfare Administration (OWWA), and the Philippine Overseas Labor Offices in thirty-four countries, are built to provide facilitation and protection for workers throughout the migration cycle; from marketing, recruitment, contract processing, pre-departure, on-site, and re-integration services. These are supplemented by diplomatic efforts aimed at striking bilateral and multilateral agreements to ensure that OFWs enjoy decent conditions of work in receiving countries.

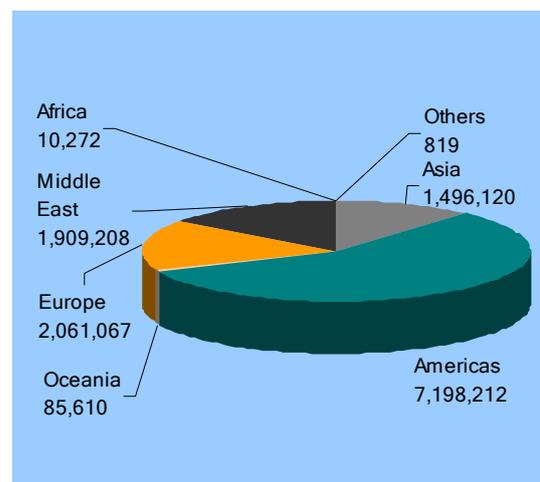
Building on the strength of the overseas employment programme, a considerable challenge for policy makers is how to maximize the benefits of overseas employment to further wealth creation and technology transfer within the domestic economy. Mobilizing and harnessing the financial resources of OFW families by encouraging entrepreneurship and business-mindedness, and exploring the potential of developing special financial vehicles and investment instruments for them, can maximize wealth creation. On the other hand, many OFWs who have decided to return to the Philippines permanently bring with them a wealth of knowledge and skills which can be used to support the country's development goals.

The downside in overseas employment arises from huge labour outflows. The Philippines is losing some of its best human resources to foreign labour markets. This is especially true of skills the country needs to modernize and to develop. Scarcity now exists in the so-called mission critical occupations, such as health professionals, engineers, geologists and pilots. The POEA, through a recent guideline (POEA Memorandum Circular No. 3, series of 2006), has required a six-month prior notice before a worker with mission-critical skills can resign from his or her job in the Philippines to get a job overseas.

The issue is one of policy choice: When does the State use regulation to restrict freedom of choice of employment and employment mobility? Certain bans against overseas deployment have been imposed in the past, based on the safety and welfare of the migrant worker in relation to the prevailing conditions in the receiving country. Even now, there is a ban against deployment of Filipino workers to Iraq because of the peace and order situation there. Some of the previous bans have been



**Figure 19: Top ten sources of OFW remittances, 2006 (in thousand US\$)**



**Figure 20: OFW remittances by source region, 2006 (in thousand US\$)**

challenged in the courts on the ground that they posed a restriction on the Constitutional right to seek employment and to travel. The Supreme Court has generally upheld deployment bans under the police power of the State and in the national interest.

Requiring advanced notices of resignation for persons with mission-critical skills before they can secure permission to assume employment overseas is not a ban. But any notice longer than what is required by law is an arbitrary restriction on mobility.<sup>44</sup> Furthermore, an overly lengthy notice period is effectively a ban, not to say that it will work to the utter disadvantage of the worker as the overseas opportunity would likely have been lost to another candidate from the large global labour pool. Policy-wise, the question is whether in a globalized environment, a vague notion of national interest can be superior to the specific right of the individual to seek the job they prefer. It also leaves government in an awkward position in relation to its campaign for a more open economy. Besides, workers have always complained that they are the last to benefit from globalization. In a case where workers, because of more open employment frontiers, are able to find employment which pays better and which they prefer, why should the State stand in the way? A more coherent policy response is needed to solve the problem of growing scarcity in mission-critical skills.

Another downside is the social costs associated with family separation. Much of overseas employment is temporary or circular migration, where the OFW leaves their family in the Philippines for the contract period, is briefly reunited with them, and thereafter leaves again for another contract. The social and psychological problems arising from long periods of separation should continue to be addressed.

Finally, with global financial markets roiling, currency volatility and exchange rate fluctuations have become a real concern for the government and OFWs alike. Most OFW contracts are denominated in US dollars. The recent weakening of the US dollar and the appreciation of the peso has had an adverse impact on OFWs and their families, disrupting their budgeting and spending patterns especially with respect to day-to-day expenditures, rentals or housing amortization and education. A bold measure to protect and insure OFW income from volatility is the hedging facility of the Development Bank of the Philippines, a government bank, where OFWs can exchange their dollars and be paid the peso equivalent at a later time but at the rate of exchange prevailing at the time of the transaction.

### **Inflow of foreign workers: Practice of professions**

Policies limiting the employment of foreign nationals and institutionalizing a preference for Filipinos, all things being equal, are enshrined in the Constitution. A tricky issue arises from the rule limiting the practice of professions to Filipino nationals. As the WTO regime moves to the last frontier of trade, i.e. movement of natural persons, the policy of nationalizing professions may constrain the Philippines' negotiating options in the cross-border flow of professional services.

## **3.5 Protecting freedom of choice and mobility**

Protecting workers in the exercise of their freedom of choice becomes a policy concern when individual preferences conflict with the police power of the State. On the other hand, the undeveloped line of protection appears to be in the area of pre-employment. Aside from illegal recruitment laws, which are in the nature of criminal statutes, there are no LMG institutions empowered to enforce rules against pre-employment discrimination. Policy discourse on these areas, therefore, should continue.

On the whole, LMG institutions, with affirmation from the courts, have not been hesitant to use instruments at their disposal to affirm freedom of choice, access and mobility, and to prevent employment discrimination. The following are examples:

- A Supreme Court ruling striking down a stipulation in an employment contract against marriage;
- A Supreme Court ruling striking down a company policy that when two employees in the same company get married, one of them has to resign, on the ground that it could create a disparate impact based on gender;

- A Supreme Court ruling applying Philippine labour laws to a Filipino employed by a Filipino corporation in its overseas branches;
- Enforcement of laws prescribing separate facilities for men and women and enacting affirmative measures to enhance the employability of persons with disabilities.

## 4 Promoting and securing employment rights

### 4.1 Scope of employment rights

The term “employment rights” includes minimum labour standards, the right to self-organization and collective bargaining and protection against unjust or unlawful termination.<sup>45</sup> Since social protection, employees’ compensation and social security are embedded in an employment relationship, it is deemed subsumed under employment rights.

The discussion in this Part revolves on how LMG institutions work to secure these rights.

#### 4.1.1 Minimum labour standards

Minimum labour standards are divided into general labour standards (GLS) and occupational safety and health standards (OSHS). Aside from wages, GLS includes working time, leave entitlements, gender-based standards such as separate facilities, standards relating to young workers such as minimum age of employment and prohibition against work in hazardous occupations for those under 18 years of age, labour only contracting, and social security contributions.<sup>46</sup> OSHS covers registration of workplaces to ensure proper and safe lay-out (entrances, exits, railings, etc.) and work environment (ventilation, lighting, etc), setting up of safety committees, accident prevention and response, first-aid, clinic and hospital facilities whichever is appropriate, personal protective equipment, and safety personnel especially in workplaces classified as hazardous.<sup>47</sup>

Internalized into the administration of standards is the mechanism to fund social protection for workers. Mandatory employer and employee contributions for social security, housing and health insurance are collected through payroll deductions. Mandatory employer contributions to the State Insurance Fund of the Employees’ Compensation Commission are also imputed as non-wage costs. Deductions are required to be remitted to the Social Security System.

Special measures are also prescribed to promote equality of access and to eliminate discrimination in employment, including measures for the employment of persons with disabilities and the setting up of committees on decorum to handle sexual harassment in the workplace. Very little information, however, is available to track progress in these areas.

#### 4.1.2 Organizational rights and workers’ participation

Unionism and collective bargaining have been established LMG institutions for over 50 years.<sup>48</sup> By Constitutional and statutory mandate; free collective bargaining is the preferred institution for regulating employment relations. A complex set of laws and rules exist to protect organizational rights and organize the process of collective bargaining.<sup>49</sup> In theory, the State adopts a policy of minimum intervention on trade union and collective bargaining matters. Its role is to facilitate bargaining by organizing the collective bargaining process and providing appropriate mechanisms for dispute settlement. Trade unionism and collective bargaining in the Philippines have the following main characteristics:

- Union membership and collective bargaining is premised on the existence of an employment relationship;
- Every employee, on the first day of his or her employment, is eligible to join a union or be covered by a collective bargaining agreement. However, managerial employees are not eligible to join unions;

- Union and collective bargaining structure is decentralized. Unions are first formed at the enterprise level among employees of the enterprise. Collective bargaining is also at the enterprise level. However, enterprise unions are free to join federations and other larger organizations;
- Membership and participation in trade unions and collective bargaining is voluntary, democratic and autonomous. Workers are free to choose whether to join or not to join an organization; unions are free to draw up the rules of their organizations; and unions and employers make their own independent decisions with a view of eventually reaching agreement on terms and conditions of employment;
- Legal status is a precondition to the exercise of trade union and collective bargaining rights. Unions acquire legal personality after registration with DOLE or issuance of a charter certificate by a federation. They acquire the right to bargain once they are certified by DOLE or recognized by the employer as the sole and exclusive bargaining agent of the employees in the enterprise;
- The rights of workers to strike and other concerted actions and the right of employers to lockout are regulated. Conciliation and mediation and, if unavailing, arbitration are the mechanisms to settle disputes.

The Constitution and the Labor Code encourage other forms of workers' participation in policy and decision-making processes directly affecting workers' rights and welfare. Within the enterprise, these include labour-management cooperation, open communication schemes and its variations.

#### 4.1.3 Security of tenure: Protection against arbitrary dismissals

The Labor Code classifies three types of employment: (i) regular employment; (ii) employment for a fixed period; and (iii) casual employment.

Employment is deemed regular if the employee is engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer. It is for a fixed period if it pertains to a specific project or undertaking the completion or termination of which has been determined at the time

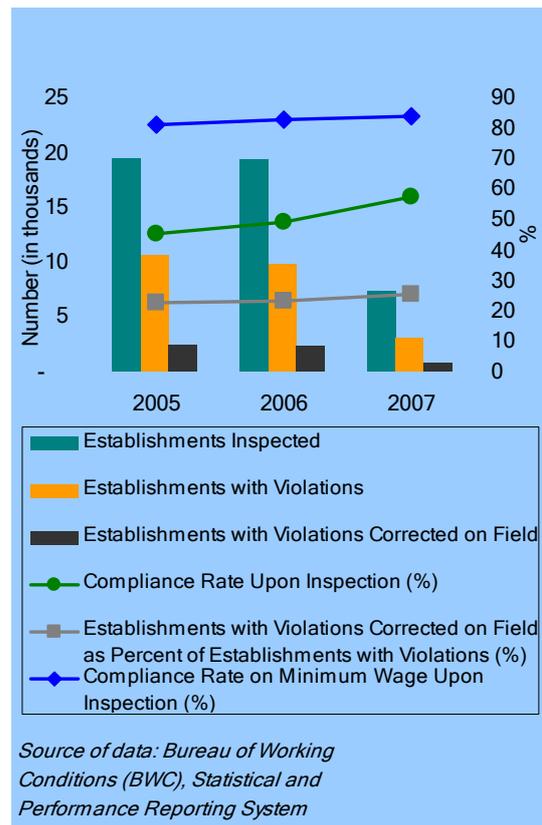


Figure 21: General labour standards inspection and compliance, Philippines, 2005–2007

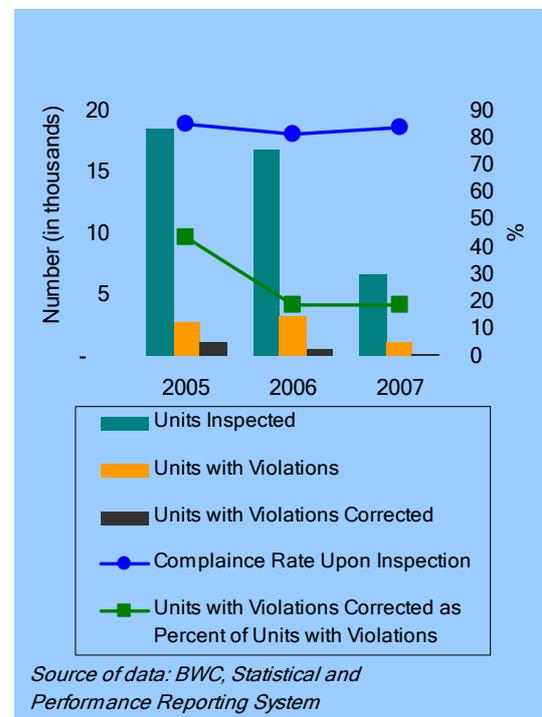


Figure 22: Technical safety standards inspection and compliance, Philippines, 2005–2007

of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. Employment is casual if it is neither regular, nor for a fixed period nor seasonal; however, a casual employee who has rendered at least one year of service shall be considered as a regular employee with respect to the activity to which he or she is employed and his or her employment shall continue until such activity exists.<sup>50</sup>

While all types of employment are protected, regular employment enjoys the most protection. It implies entitlement to all employment-related benefits. Stricter rules on involuntary termination also apply to regular employment. A contractual stipulation cannot change the nature of employment from regular to a less protected classification.

A regular employee may not be dismissed from employment except upon just or authorized cause. Just cause refers to a cause attributable to the fault of the employee, while authorized cause refers to those brought about by economic exigencies affecting the employer. Where there is authorized cause, the employer is required to give at least 30 days notice to the concerned employee, with a copy furnished to the DOLE. Prior approval by DOLE, however, is not required.

Every case of termination from employment may be contested, and the law places the burden of justifying that the termination is for just or authorized cause on the employer. In termination for just cause, the employer does not incur any liability to the employee except if there are procedural lapses committed in the process of termination. Termination for an authorized cause entitles the employee to separation or severance pay, unless the termination is brought about by closure due to proven serious business losses in which case the employer is exempt from liability. Termination of employment without just or authorized cause makes the employer liable for back wages, reinstatement of the employee and, in appropriate cases, damages.

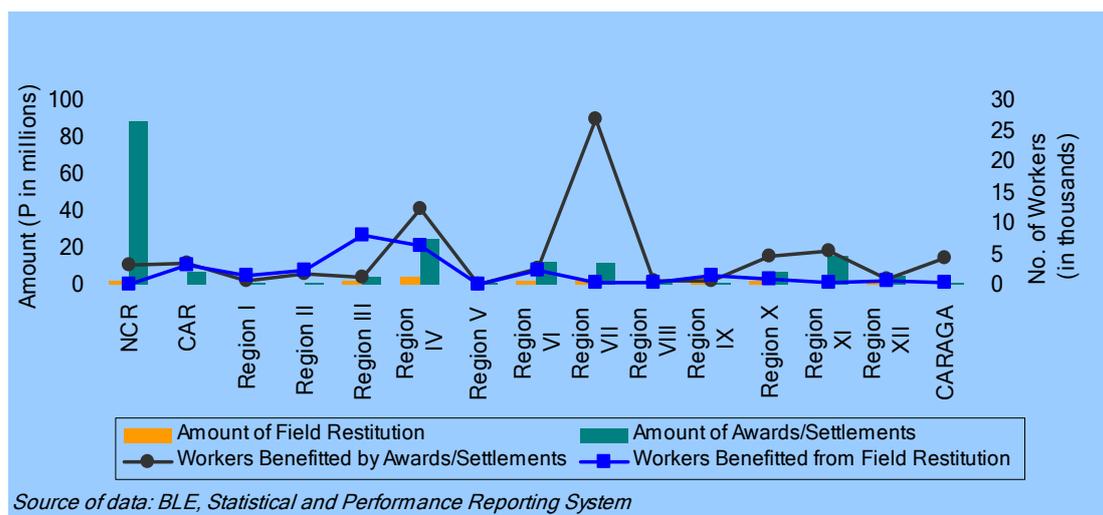
## 4.2 Employment rights in a changing context

The laws securing employment rights in the Philippines have substantially remained the same in the last two decades. In fact, except for procedural revisions, minimum labour standards for individual workers have been virtually unchanged over the last 30 years. Since standards are patterned after various international instruments, national issues and tensions arising from the application and implementation of standards replicate those in the international discourse, more specifically:

- Increasing inadequacy of existing standards to ensure workers' protection amid changes in employment and work patterns brought about by technological progress, globalization and more open economic borders;
- Compliance with standards constitutes additional non-wage costs and adversely affects the competitiveness of firms;
- More flexible forms of employment and economic liberalization have diminished the power of unions to take wages and other benefits out of competition, resulting in their declining numbers, weakened collective bargaining position and reduced influence on social and economic policy making;
- Limited leeway of governments to enforce or adopt policy responses considering that workplace changes are driven by forces outside national jurisdictions.

These issues frame the challenges in promoting and securing employment rights at the national level. These are particularly problematic to labour administrators, against whom public dissatisfaction is raised on the following specific areas:

- Low wages;
- Weak enforcement of minimum standards;
- Inefficient exercise of administrative authority, resulting in delays in union registration;



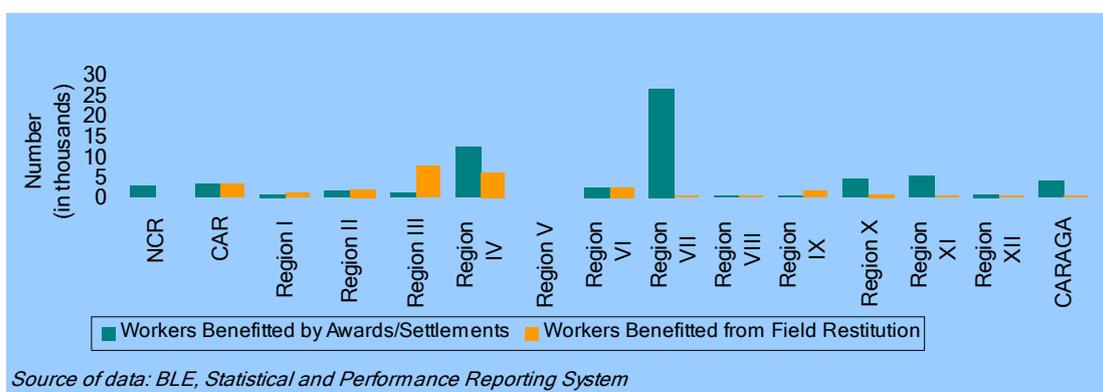
**Figure 23: Amount of restitutions/awards/settlements, and the number of workers benefited by region, Philippines, 2005–2007**

- Legalistic process in the certification and recognition of unions, thereby frustrating collective bargaining;
- Undue state interference in the exercise by workers of their collective bargaining rights, particularly with respect to industries involving the national interest;
- Ineffective dispute settlement machinery characterized by delays in the resolution of cases, ineffective enforcement of decisions, and perceptions of corruption;
- Overall rigidity of the system resulting in higher non-wage costs and reducing competitiveness.

The discussion below focuses on the performance of LMG institutions in the administration and enforcement of labour standards, promotion of trade unionism and collective bargaining, and dispute settlement.

#### 4.2.1 Administration and enforcement of minimum standards

The DOLE is primarily responsible for administering and enforcing minimum labour standards. As enrolled in the MTPDP, this falls under its mission to protect workers and promote their welfare, thereby enhancing employment. The DOLE's inspectorate is the primary mechanism to administer and enforce labour standards. In any given year, DOLE inspects about 19,000 establishments for GLS and about seven thousand for technical safety standards. Between 2005 to June 2006, compliance



**Figure 24: Number of workers benefited by restitutions/awards/settlements, Philippines, 2005–2007**

rates upon GLS inspection were at 45.1 percent, 49.2 percent and 57.6 percent between 2005 to June 2006. The Compliance rate with minimum wages is better than 80 percent.

In technical safety standards, the rate upon inspection is also better than 80 percent.

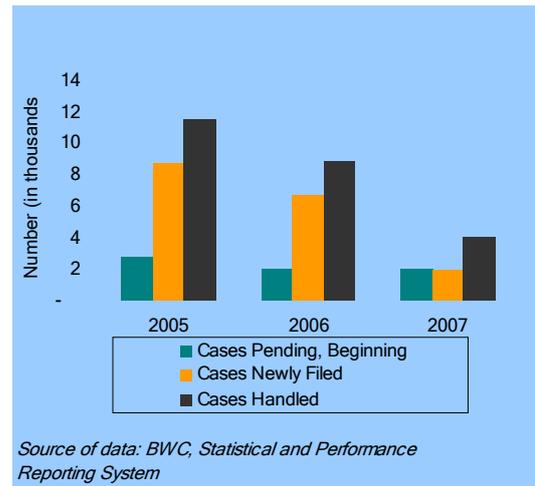
More than 20 percent of those with GLS violations immediately correct them upon inspection. In technical safety, more than 40 percent immediately corrected their violations in 2005, but less than 20 percent did so in 2006 and 2007, possibly due to relatively low priority given to technical safety and high costs of complying with technical safety requirements.

The statistics show only a slice of a much larger environment. The general universe in enforcing minimum standards consists of over 780,000 establishments all over the country. Only establishments with 10 or more employees, or about 10 percent of the total are targeted for inspection.<sup>51</sup> The inspectorate has virtually no deterrent effect on the 90 percent which employ nine or less workers as these are inspected only when there are complaints from individual workers.

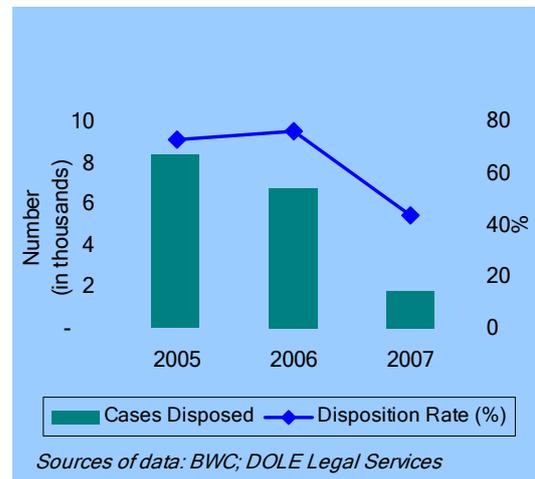
DOLE has 250 inspectors available to undertake GLS inspections,<sup>52</sup> a number that has not increased in recent years. It also has very few licensed professionals for technical safety and health inspections.<sup>53</sup> In order to expand its reach; DOLE has been experimenting with various inspection approaches. In 2004, it adopted what it calls a new Labor Standards Enforcement Framework (LSEF) “in order to build a culture of voluntary compliance with labour standards by all establishments and workplaces and expand the reach of the Department... through partnership with labour and employers’ organization as well as with other government agencies and professional organizations that also have a stake on the welfare and protection of our workers.”<sup>54</sup>

The LSEF employs the following approaches:

- Voluntary self-assessment, with subsequent spot-checking, for establishments with at least 200 workers and unionized establishments with CBAs;
- Inspection for establishments with 10 to 199 workers, with priority to those subject of complaints, imminent danger or imminent occurrence of accidents and illnesses/injuries; hazardous workplaces; construction sites; and establishments employing women/child workers;
- Technical advisory visits for establishments employing less than 10 workers and those registered as micro or small businesses in the form of providing advice at increasing productivity to facilitate their eventual compliance with labour standards;



**Figure 25: Original labour standard cases, Philippines, 2005–2007**



**Figure 26: Original labor standard cases disposed and disposition rate, Philippines, 2005–2007**

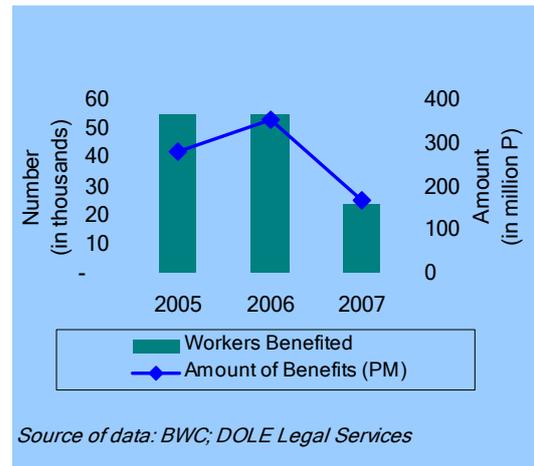
- Delegation of technical safety inspection pursuant to memoranda of agreements with LGUs.

DOLE has completed operating guidelines for the LSEF and conducted training courses for its inspectors. But according to sources from DOLE's Bureau of Working Conditions (BWC), there has been lukewarm employer response towards self-assessment. Furthermore, the BWC has not conducted spot-checking on participating establishments for fear that this may discourage employers from participation. DOLE still has to find the resources for technical advisory services required to implement the strategy effectively. Actual delegation of technical safety inspection to LGUs and accredited technical safety professionals still has to be done and clear lines of accountability for delegated functions have yet to be established. Thus, the self-assessment, and the entire LSEF for that matter, is still in the process of proving itself, or at least disproving one union leader's analogy likening it to "making the wolf guard the sheep."

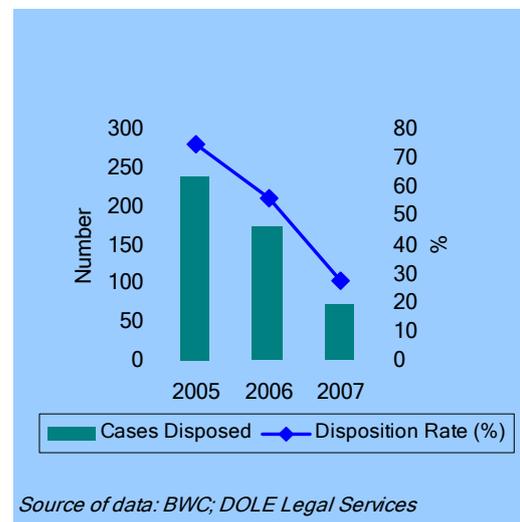
A majority of establishments choose not to immediately comply or abide with restitution orders once found to have committed violations of minimum labour standards, although data from the BWC show that it is much more economical to comply or make restitution immediately than to wait for an award or settlement through DOLE. On average, the cost of immediate restitution is about PHP 660 per worker, while the cost of an award or settlement is about PHP 2,600 per worker. In the NCR, the prime employment region where the majority of the inspectors are located the cost of settlement is about PHP 19,700 per worker while the cost of immediate compliance or restitution is about PHP 29,500 per worker.

The disposition of labour standards cases is not impressive especially as the inflow of new cases is decreasing. DOLE's disposition rate at regional offices was 72.8 percent in 2005 but by June 2007 the disposition rate had declined to only 43.5 percent. In relation to appealed cases, the disposition rate was 74.7 percent in 2005 but only 27.7 percent in June 2007.

DOLE is ambivalent as to settlements arising from minimum standards violations where the monetary liability corresponds to an amount to which the complaining worker is entitled as a matter of right. This is usually the case with respect to underpayment or delayed payment of wages. Even if DOLE has already determined the amount to which the worker is entitled, it still allows settlement for a lesser amount, even less than that to which the worker is entitled as a matter of right and what the employer would have paid had it not violated minimum standards. The effect of this ambivalence is to make immediate compliance more costly than non-compliance. It has also an effect similar to an interest-free loan extended by the worker to the employer. Given this, the employer has a perverse incentive not to comply immediately.



**Figure 27: Original labour standard cases by workers benefited and amount of benefits, Philippines, 2005–2007**



**Figure 28: Appealed labour standard cases disposed and disposition rate, Philippines, 2005–2007**

The slow disposition of cases, coupled with DOLE's ambivalence on settlements, weaken the deterrent effect of labour standards enforcement and undermine fairness and equity in the workplace.

#### 4.2.2 Promotion of trade unionism

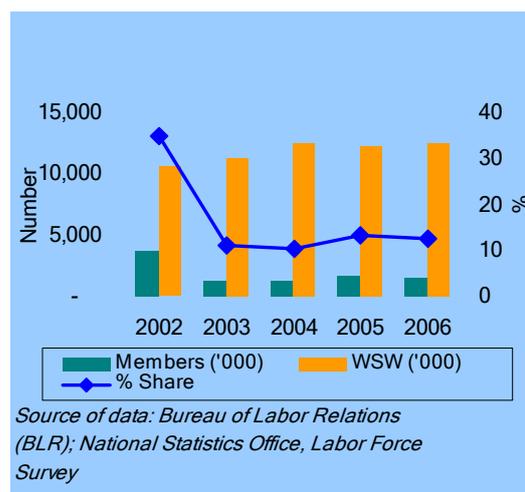
We now turn our discussion to those issues related to the promotion of trade unionism in the Philippines. These include a discussion of collective bargaining and other forms of workers' participation.

#### Trade union policy and performance

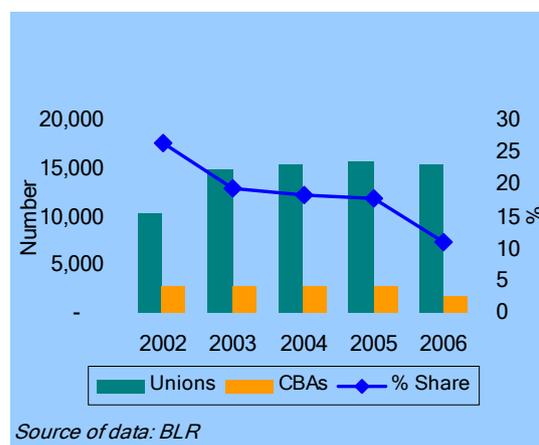
One of DOLE's commitments in the MTPDP is to maintain industrial peace and preserve employment by implementing programmes aimed at maintaining existing jobs through enhanced harmonious worker-employer relationships, greater access to grievance mechanisms and a just, equitable and speedy labour justice administration system. Its complete labour relations mandate is to: (i) promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation as modes of settling labour and industrial disputes; (ii) to promote free trade unionism as an instrument of social justice and development; (iii) to foster the free and voluntary organization of a strong and united labour movement; (iv) to promote the enlightenment of workers concerning their rights and obligations as union members and employees; (v) to provide an adequate administrative machinery for the expeditious settlement of labour and industrial disputes; (vi) to ensure a stable but just and dynamic industrial peace; and (vii) to ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.<sup>55</sup>

In the performance of its mandate, the DOLE conducts labour education and organizational capacity-building programmes, administers a system of registration for unions and collective bargaining, resolves representation issues, and generally supervises trade union activities. Administrative reforms by way of simplified procedures for registration, certification elections, and mandatory periods of dispute settlement have been introduced starting 1997, with a view of facilitating the exercise by workers of their organizational rights. A recent piece of legislation<sup>56</sup> elevated some of the reformed administrative procedures into law. It also introduced greater protection for unions which are at the stage of formation.

Notwithstanding the legal institutions in place, the overall climate for organizing has not fostered union growth. Total union membership in 2005 was 1.9 million which represented 11.7 percent of wage and salary workers. In the last decade, the trends in private sector unionism and collective bargaining have been in consistent decline. The decline has been particularly abrupt over the last two years (2005–2007). From 2,793 collective bargaining agreements (CBAs) and 556,000 members in 2005, the numbers have gone down to 1,573 CBAs and 222,000 workers covered as of June 2007. Anecdotal evidence from union leaders attributes this abrupt decline to company closures, particularly in manufacturing where unions have been traditionally most active.



**Figure 29: Union members and wage salary workers in private establishments, Philippines, 2002-2006**



**Figure 30: Trade union density vis-à-vis existing Collective Bargaining Agreements, Philippines, 2002-2006**

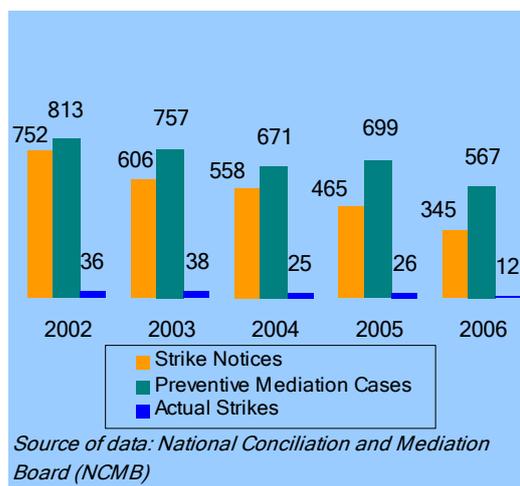
Assertion or defence of union rights through the legal process has also been declining as evidenced, for example, by the lower number of notices of strikes for unfair labour practices (ULP) reaching compulsory arbitration in the National Labor Relations Commission (NLRC). Notably, ULP cases represent only about one percent of all NLRC cases.

Unions are sometimes seen as creating rigidities and instability in the labour market as well as in the investment climate, thereby worsening the unemployment problem. This argument is becoming irrelevant. Unemployment levels and other problems in the labour market persist even as unions have been in decline.

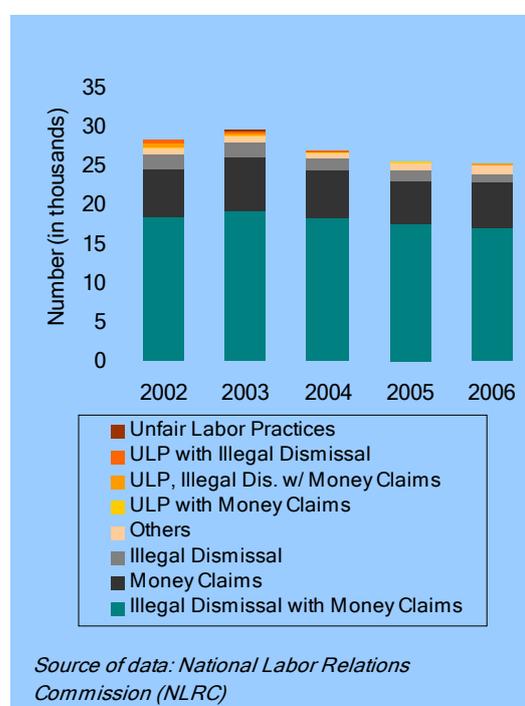
A variety of reasons can be cited for union decline. Unions typically blame strong employer resistance to union organizing, legalistic and cumbersome procedures in union registration and acquisition of certified bargaining status, and collusion between employers and administrative authorities to frustrate union organizing efforts. A veteran labour leader<sup>57</sup> points out that many of his trade union centre's affiliates have been affected by company closures, some of which have the character of illegal closures and unfair labour practice. While there is legal protection against these closures, slow quasi-judicial processes make legal recourse ineffective. Most of the time, workers end up holding an empty bag, unable to collect even the separation benefits due them.

Also a long-standing concern is the proper role of the State with respect to enterprises vested with national interest. While the explicit labour relations policy is to promote free trade unionism and collective bargaining, unions claim that the State is in fact unduly interventionist when it comes to the workers' exercise of their right to organize and to bargain. A major reason for this view is Article 263(g) of the Labor Code which empowers the Secretary of Labor, in his or her discretion, to assume jurisdiction over a dispute involving the national interest or certify it to the NLRC for compulsory arbitration. If the Secretary of Labor certifies or assumes jurisdiction over a dispute, any impending or actual strike or lockout that may arise out of it is automatically enjoined. To unions and workers, the device deprives them of their main economic weapon of strike, undermines their bargaining power, and leads to unfavourable collective bargaining outcomes. Proposals seeking to faithfully align the law with the principles of ILO Convention 87 and 98 have been in the pipeline for a number of years but no consensus on this issue is in sight.

Apart from these issues, higher cross-border mobility of capital driven by economic liberalization and information technology has made labour markets more globalized and elastic. This has



**Figure 31: Strike notices, actual strikes, and preventive mediation cases, Philippines, 2002-2006**



**Figure 32: NLRC regular cases filed by nature, Philippines, 2002-2006**

stripped unions of the monopoly power they once possessed, and has diminished their influence in economic and political decision-making. Further, the class consciousness that fuelled the rise of the union movement at the start of the 20th century has been replaced by more individualistic impulses of workers. Likewise, more cooperative and motivational human resource management approaches used by employers, through labour-management cooperation schemes, employer-employee dialogues, and more efficient rewards systems also tend to make unions' traditional role redundant.

### **Collective bargaining performance**

As indicated above, union membership and collective bargaining coverage have been declining.<sup>58</sup> Data on actions preparatory to collective bargaining suggest that this overall decline will likely continue. Petitions for certification of election filed with the Mediation-Arbitrer decreased from 517 cases in 2005 to 489 in 2006. In that latter year, only one out of 12 strikes involved a collective bargaining deadlock. On the other hand, one barometer of union insecurity—strikes due to unfair labour practice—accounted for 83 percent of all strikes in 2006 and 73 percent in 2005.<sup>59</sup>

Collective bargaining is an institution designed to reduce workers' insecurity. But there is now more insecurity and less collective action. This implies three but not necessarily mutually exclusive policy choices: (i) to further strengthen protection on the right to self-organization and collective bargaining; (ii) to strengthen the individual rights of workers so they can bargain individually; and (iii) since either individual or collective bargaining is desirable because it is more efficient, policy should always be structured in a way that makes bargaining an easy and cost-attractive option.

Where there is collective bargaining, four trends are consistent. First, the manufacturing sector still accounts for a very large share of CBAs—at over 60 percent in 2005. Second, CBAs cover mostly rank and file employees. Third, wage issues are still the focus of collective bargaining. And fourth, collective bargaining provisions are usually improvements of statutory benefits.<sup>60</sup> Based on the latest BLES study on collective bargaining agreements,<sup>61</sup> the following observations can be made:

- Wage increases are expressed either as a specific amount or as a percentage of the basic pay, and in daily or monthly rate;
- For the daily-paid, the minimum amount of increase in daily rates was generally between half a peso (manufacturing) to 45 pesos (mining and quarrying) per day. The maximum amount was between PHP 1 (fishing) to PHP 70 (transport, storage and communications, and manufacturing) per day;
- For those workers paid monthly, the minimum amount of increase was between PHP 16 (manufacturing) to PHP 1,300 (mining and quarrying; wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods). The maximum amount was between PHP 70 (community and personal and social services) to PHP 4,200 (transport, storage and communications);
- The most common welfare benefits provided are medical services and hospitalization assistance or medical re-imburement.

The wage concessions unions obtain in many CBAs are not significantly higher than the minimum wage rates granted by the regional wage boards. In another BLES survey, it was found that unionized establishments are less likely to agree to productivity or performance-based benefits than are non-unionized establishments. The CBAs also show that unions still bargain hard for job security clauses and against numerical flexibility, resulting in CBA provisions limiting the contracting out of jobs occupied by union members.

#### **Box 4: What can unions do? Initiatives for seafarers' welfare**

The Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) was organized in the 1960s from an amalgamation of two unions—the Associated Marine Officers' Union of the Philippines (AMOU) and the Associated Seamen's Union of the Philippines (ASUP). The main motivation was the concern for the licensed crew of three shipping companies where AMOSUP had members. At that time, those members working on board foreign vessels, received very low salaries and wages, had poor working conditions, and were unprotected from accidents, sickness and death. AMOSUP believed that providing seafarers with decent working conditions and benefits was necessary to keep them globally competitive.

To date, AMOSUP has 60,000 members and, through collective bargaining, has secured better working conditions and benefits for them. Aside from competitive wage rates, these benefits include health care for both the seafarer and his family as well as skills training. It has a Family Medical and Dental Care Plan made available through the **Seamen's Hospital** in Manila (100 beds), Cebu (50 beds), and Iloilo (40 beds). These tertiary hospitals offer qualified members and dependents free quality medical and dental services, including hospitalization, treatment and medicines.

Members may also avail of housing programmes through the **Seamen's Village**, AMOSUP's Pilot Medium Cost Housing Project located in Barangay Piela, Dasmariñas, Cavite, approximately 34 kilometres south of Manila. The housing project covers 19 hectares of land designed for a community of 900 dwellings. On-going projects inside the Village include a child-care centre, nature park and lagoon, multi-purpose hall, chapel and sports complex. This benefit is offered at cost, under a reimbursement scheme, that stretches over 15 years with no interest.

AMOSUP also established a **Provident Fund** for members, which is non-contributory. Participating companies contribute to the Fund of the seafarer's account. The Fund was set up through several CBAs negotiated with various ship-owners' associations. Participating companies directly remit contributions to designated depository banks. Contributions also vary in amount depending on the provisions of each CBA. The funds are invested and managed by different reputable financial institutions or fund managers, both locally and abroad, in accordance with the directives of the Provident Fund Board of Trustees. Each fund under each CBA has a different set of Trustees and is normally composed of a balanced number of representatives from the union and the participating companies/ship-owners.

AMOSUP also has a **Welfare and Mutual Benefit Plan (WMBP)** that provides members and their legal dependents welfare and financial benefits. Contributions for the upkeep and maintenance of the WMBP are not made by the seafarer but by the participating employers who sign CBAs incorporating this provision.

To improve the members' skills and competence and increase their acceptability for employment, AMOSUP offers free job-oriented upgrading courses at its own **Training Centre**. The centre also serves as a Maritime Graduate Institution to supplement and upgrade the training of Licensed Deck and Engine Officers.

Seafarers waiting to go on board or are on their way home to the province after serving onboard may also stay at the Sailor's Home which is intended to provide temporary residence for AMOSUP members. The home can accommodate a total of 160 qualified members in fully air-conditioned dormitory-style rooms. AMOSUP members may likewise enjoy lower prices for consumer goods through the Slop Chest or a "supermarket" where they can purchase items on credit, within designated credit limits. AMOSUP advances payment schemes to qualified members without interest. Qualified members and dependents may also purchase appliances at competitive prices, payable in six months without interest.

AMOSUP funds all its activities from union dues and other revenues that it generates through the investment of these dues. Its ability to provide such wide range of services for its members was the result of establishing a good organization, professional management and the prudent use of financial resources. All told, AMOSUP's experience illustrates the value of collective bargaining as a starting point, and how unions can potentially build upon collective bargaining gains to create even more value to their members.

Other forms of workers' participation come about through labour-management councils as well as some variations, like quality circles and other joint problem solving mechanisms. Based on the DOLE's statistical performance reporting system, the Bureau of Labor Relations (BLR) and the National Conciliation and Mediation Board (NCMB) are tasked to promote labour-management cooperation at the enterprise level. However, the numbers are not impressive. Only 339 LMCs were set up in 2006, with just over 7,000 workers covered. In 2005, 310 LMCs were set up with over 20 thousand members. Another source of data is the survey on labour organizations and forms of participation.<sup>62</sup> Among the workers' participation channels used in surveyed establishments were LMCs (20.2 percent), grievance mechanisms (26.3 percent), productivity and quality circles (29.5 percent), safety and health committees (46.9 percent), joint committees (18.4 percent), and suggestion schemes (39.2 percent).

While it does appear that many workers have access to "voice" and participation mechanisms, it is not clear from the data what level of participation these mechanisms afford. A potential area for further research is whether these mechanisms envision participation to be simply a means of informing workers of management decisions that have already been made, or of consulting with them, or of solving problems associated with the work process, or perhaps a forum for negotiation and even co-determination.

From a labour administration standpoint, it is notable that two agencies—BLR and NCMB—are apparently doing the same thing for a very small circle of potential clients. Although BLR is supposed to focus on non-unionized establishments and NCMB on unionized establishments, it appears that NCMB also promotes LMCs for the non-unionized. In any event, whether the establishment is unionized ultimately should not matter because LMCs have one fundamental purpose, which is to create channels of communication and cooperation which are less formal and more flexible than collective bargaining. In this regard, the efficiency of the promotional programme may be reviewed.

### **4.2.3 Dispute settlement**

The two major dispute settlement mechanisms are the National Labor Relations Commission (NLRC), which is the primary compulsory arbitration mechanism for cases involving employment termination, damages and other claims arising from employee-employer relations, whether these involve individual or collective rights, and the NCMB which conciliates and mediates collective disputes. With respect to other disputes, the venue may be through compulsory arbitration in the NLRC or with the Secretary of Labor in national interest cases, voluntary arbitration, mediation-arbitration and resolution of small money claims in the DOLE. Resolution of labour standards disputes arising from the enforcement power takes place within the DOLE regional offices.

The clear-cut trend in dispute resolution is that there are more individual than collective disputes to resolve. Individual disputes filed with the NLRC continue to be high and the agency is perennially burdened by case backlogs. Labour Arbiters handled a total of 47,519 cases in 2005 and 50,971 cases in 2004. Appeals to the NLRC proper reached historic highs in 2004 at 17,156 cases and in 2005 at 17,984 cases. The average amount awarded by the labour arbiters was about PHP 150,000 per worker in 2004 and PHP 98,000 in 2005. In appealed cases, average amount awarded by the NLRC proper was about PHP 95,000 in 2004 and PHP 124,000 in 2005. In the other dispute settlement mechanisms involving individual cases, such as labour standards enforcement cases (see discussion above) and small money claims, the volume was not as heavy but the problem of case backlogs is also present. In collective disputes, mediation-arbitration cases, as already mentioned, and notices of strike are decreasing, as are voluntary arbitration cases.

There are two common problems in labour dispute settlement agencies. The first relates to performance. Delayed disposition of cases results in backlogs, uneven quality and unpredictability of decisions. Ineffective execution and enforcement of decisions are also nagging problems. With respect to execution or enforcement, labour leaders consider as especially problematic the enforcement of decisions and workers' liens against companies that have ceased operations or are under receivership or bankruptcy proceedings.<sup>63</sup> They call for the clarification of the rules on workers' liens as it relates

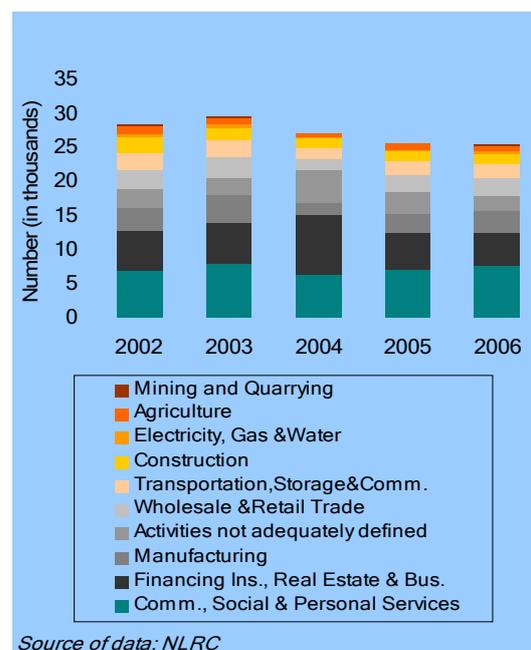
to bankruptcy or liquidation proceedings and, if necessary, the amendment of the pertinent provision of the Labor Code (Article 110).

Poor performance begets the second problem; that is, the perception of corruption. This is particularly serious in enforcement (i.e., labour inspections) and arbitration (i.e., NLRC cases). Enforcement and arbitration procedures tend to mimic court procedures. This makes labour proceedings unduly technical and legalistic while giving dispute settlement functionaries wide discretion in the management and resolution of disputes. Although the NLRC is not part of the judiciary, labour arbiters and commissioners are required to have the same qualifications, and therefore enjoy the same degree of job security, compensation and retirement benefits as their counterparts within the judiciary. In this sense, the NLRC is in a unique situation. It is part of the executive branch, but without clear lines of accountability to the President or to the Secretary of Labor. Furthermore, while vested with the powers and characteristics of judicial courts, it is not a part of the judiciary and therefore not accountable to the Supreme Court or to the Chief Justice. Further, the NLRC is a virtual monopoly as it has exclusive jurisdiction of almost all cases subject to arbitration. Kirkgard’s formula of “monopoly plus discretion minus accountability equals corruption” is a useful starting point for the NLRC and enforcement agencies to address the problems of performance and perception of corruption.

The idea of reforming the entire dispute settlement system has been on the tripartite agenda for years. Recent DOLE initiatives are focused on administrative intervention for dispute prevention and avoidance at the enterprise level<sup>64</sup> and on strengthening voluntary arbitration. Toward this end, DOLE Regional Directors may now act as arbitrators who can directly compete with private arbitrators. These initiatives seem to point to a more active role of government in labour-management relations at the workplace.

Other administrative measures that can be explored include how to internalize the principles of modern alternative dispute resolution (ADR) into the existing system. Grievance procedures, conciliation and mediation, and voluntary arbitration are already well-developed when it comes to collective or union-related disputes. But there are untapped areas with respect to cases involving individual and collective claims falling under the jurisdiction of compulsory arbitration at the NLRC. Figure 33 shows the distribution of cases by industry.

Among the industry sectors with a high incidence of cases is that of “community, social and personal services.” Most cases under this classification actually involve security agencies, which are subject to specialized rules. The incidence of cases is also high in “construction,” which is, again, also subject to specialized rules. A third classification, “not elsewhere classified,” includes compensation claims for seafarers covered by CBAs. This is a growing concern and is also subject to specialized rules. Outside of the industry classification system, employers groups have also been pointing out that the rules on termination should be applied differently on managerial and rank-and-file employees. Without changing the law, the case can be made for the setting up of effective ADR arrangements for industries or areas which are subject to specialized rules. Such arrangements might consider expanded private sector participation in the settlement of disputes. This will not only lessen the cases going to government mechanisms; it is also a means of realizing the Constitutional principle of shared



**Figure 33: NLRC regular cases filed by industry, Philippines, 2002–2006**

responsibility between workers and employers in adjusting their differences.

Apart from these, there is a long-standing, albeit erratic, policy debate on how the system should be structured. One view blames the long period of labour case resolution on too many specialized agencies handling very specific disputes and a multi-level appeal system that naturally prolongs dispute resolution. Proponents of this view argue for simplification of both the structure and the process, starting with having a single conciliation and mediation agency as the sole entry point into the labour dispute resolution system.

Another view argues that the structure is adequate as it is. But the capacity and resources of dispute settlement agencies should be improved and expanded to enable them to cope with the rising number of disputes. It is this argument which led to a recent amendment of the law increasing the number of divisions in the NLRC.

An unexplored area in the debate is the design of the entire labour dispute mechanism. Why are so many labour disputes being submitted for resolution using government mechanisms? To begin with, free and open access to courts and administrative agencies to redress grievances is part of the Filipinos' sense of justice. If this is considered with codified legal rights that guarantee labour protection, complainants have a natural incentive to simply invoke government mechanisms to enforce their rights. Viewed from this perspective, the high incidence of cases being filed with government mechanisms should not be taken negatively.

More importantly, the potential pay-offs in filing cases are very high. With respect to labour standards cases, stiff penalties such as double indemnity do encourage workers to file cases. But they also encourage inspectors and other functionaries toward rent-seeking behaviour. Coupled with DOLE's ambivalence on settlements (see discussion on administration and enforcement of minimum labour standards—section 4.2.1), the design and use of the mechanism can create a situation where the worker is encouraged to file a case, but at the same time, the employer can very well undermine him or her by working through labour administrators.

With respect to NLRC cases, particular attention should be given to illegal termination cases with monetary claims. These account for almost 70 percent of cases filed every year. In such cases, the incentives for workers to file cases and for arbiters to collude with either party are even higher. Ironically, this is an unintended consequence of the provisions of the Labor Code on unjust or unauthorized termination, under which an illegally dismissed employee has a right to immediate physical or payroll reinstatement, full and unlimited back wages (even if it takes years for the case to be resolved), as well as damages in certain instances. The law's intent is undoubtedly sound. But given an inefficient mechanism and large backlogs, a party will naturally seek to maximize its pay-offs and minimize its costs. Since the decision depends almost entirely on the arbitrator, the possibility for the latter to collude with either side again cannot be ignored.

## 5 Critical labour market interactions

### 5.1 Critical concerns

The most critical concerns among tripartite players are wages, employment flexibility and tripartism. This part aims for a more focused discussion on these three issues.

### 5.2 The wage mechanism

Wage is the primary consideration in any employment relationship<sup>65</sup>. The right to work and the right to wage are property rights that must be protected by law.<sup>66</sup> Based on new data from the 2006 Occupational Wage Survey (OWS), workers in the electricity, gas and water supply industry have the highest average basic pay at PHP 12,734 compared to the (then) national median basic pay of PHP 8,035. Wages in the sectors of financial intermediation, private education services and mining and quarrying are also above the national median. On the other hand, community, social and personal

services, construction, wholesale and retail trade, repair of motor vehicles, motorcycles and personal and household goods, manufacturing and hotels and restaurants are all below the median.

Because the labour market is imperfect, institutions should be in place to ensure fairness in wage determination. As a matter of labour relations policy, the State encourages a free and democratic method of regulating wages and other terms and conditions of employment through collective bargaining agreements between workers and their employers.<sup>67</sup> The preferred institution therefore is collective bargaining. In enterprises that are non-unionized, the institutional mechanism is minimum wage fixing by the State. So what is the situation in the Philippines? How is minimum wage fixing, collective bargaining and the market contributing to an efficient and fair pricing of labour? How do these mechanisms interact with each other?

### 5.3 Minimum wage fixing

Minimum wage fixing as performed by the regional tripartite wages and productivity boards has a direct and immediate impact on labour market players. This is magnified by expectations that the wage boards can help achieve fair social and labour market outcomes. On this, five points may be noted:

- Wage levels remain low;
- Collective bargaining as the preferred institutional mechanism for fixing wage is weak;
- Wage boards have multiple objectives to satisfy, thereby raising great social expectations;<sup>68</sup>
- A wage increase has a wide impact on total labour costs. It automatically leads to an increase in other wage-related benefits including the 13<sup>th</sup> month pay, overtime, holiday, rest day and leave pay, as well as social security contributions. It also has a direct impact on efficiency, productivity levels and other investment decisions;
- Coordinated wage action affects a large segment of the economy. The National Wages and Productivity Commission (NWPC) estimates about 2.6 million minimum wage earners who stand to directly benefit from wage orders. As many as 3.7 million more workers may be indirectly benefited because every wage round exerts upward pressures on the wage scale, necessitating further adjustments to prevent wage distortions. Thus, as many as 6.3 million workers benefit directly or indirectly from every wage round. This is over 39 percent of all wage and salary workers (including government workers) or about 43 percent of all wage and salary workers in the private sector as of end of 2006.<sup>69</sup>

The NWPC and the regional boards were created to serve both efficiency and equity. Since wage determination is a highly technical exercise that requires the gathering and analysis of complex economic data, the new wage mechanism was expected to perform this technical function more efficiently. The tripartite structure allows democratic participation of workers and employers on a decision directly affecting their rights and welfare. This is meant to ensure fairness and equity. Finally, regionalized wage determination is an effective way to decentralize and to allow more localized responses to regional differences. This is meant to ensure effectiveness. In sum, good governance principles are at the foundations of the wage mechanism.

#### 5.3.1 Busy mechanism, but mixed reviews

The first wage order under the wage rationalization act was issued in 1990. As of September 2007, the 17 boards<sup>70</sup> across the country have issued 190 wage orders, either in the form of wage increases or cost of living allowance. The most active regional boards have issued as many as 15 wage orders. More than half (over 58 percent) of these were issued by the boards on their own initiative without waiting for a petition for wage increase. Since wage orders differentiate by geography, sector or industry, it follows that a region has several minimum wage levels.

From the number and frequency of wage orders alone, it cannot be said that the current wage mechanism is passive or unresponsive. ECOP, the organization which represents employers in the

NWPC and the regional boards, consistently holds the view that the mechanism is more efficient than legislating wages nationally. Workers also support the mechanism to the extent that it can provide immediate economic relief. For unions, increases in the minimum wage can also leverage their wage demands during collective bargaining.

Nevertheless, employers sometimes criticize minimum wage fixing for setting what they perceive as unduly high wages that tend to impair the viability of firms as well as the country’s competitiveness. The ECOP president points out that one of the main premises of the wage boards in calculating family needs—i.e., that there are (on average) six members to a family—is flawed because statistics show that the average family is only four.<sup>71</sup> The Trade Union Congress of the Philippines (TUCP) and the Federation of Free Workers (FFW), the labour organizations from which workers representatives to the boards usually come, publicly support the mechanism but also do not oppose the possibility of nationally-legislated wages. Labour organizations not represented in the boards welcome wage increases but are oftentimes dissatisfied with the amount, sometimes labelling the mechanism as a capitalist device to keep wage levels down.

In Congress there is always a bill threatening to abolish the wage mechanism, or at the very least to legislate national minimum wages on top of that granted through the boards. Given this interplay of economic and political interests, the public attitude toward the mechanism is that it should remain until a better alternative is in place.

### 5.3.2 Institutional design and expectations: Balancing acts

The NWPC categorizes the ten specific criteria for minimum wage fixing into four headings: (i) needs of workers; (ii) capacity to pay of employers and industry; (iii) comparability of wage rates; and (iv) requirements of national development.

The first category includes the demand for a living wage, wage adjustment vis-à-vis CPI, changes in the cost of living, and the need to improve standards of living. The experience shows that adjustments vis-à-vis the CPI and costs of living are the most commonly used justification by the wage boards. However, statistics show that even then, wage orders have not been able to preserve the purchasing power of workers in relation to inflation.

The three other categories figure less significantly in the actual wage fixing process. Under the second category, fitting the minimum wage to employers’ capacity to pay where employers have wide differences in capacity is not practical even under conditions of perfect information.



**Figure 34: Average daily wage rates of unskilled workers and minimum wage rates in non-agricultural establishments by region, Philippines, August 2006**

The third category, comparability of wages, is not at all straightforward. For instance, CAR and Region VIII have the second and fifth highest wage rates in spite of being two of the country's least developed regions. On the other hand, cost of living allowance, which is conceptually tied to higher costs of living, is higher in Region IX, also a less developed region, than in NCR where costs of living are supposed to be highest.

Under the fourth category, the policy expectation is to spread out development opportunities to regions with lower wage levels. High minimum wages in one region may discourage investors from going there. But a lower minimum wage does not automatically attract investors. While important, more crucial for investors are such things as basic infrastructure, transport facilities that facilitate materials sourcing and flow of goods, and peace and order. If at all, it is a combination of urbanization and higher minimum wage that attract workers. This explains why workers tend to move to urbanized centres with higher wage rates like NCR, Region III, and Region IV-A. Consequently, these regions also have the highest unemployment rates.

Given the diverse parameters for wage-fixing, the boards have walked a fine line trying to strike a balance, introducing what might be termed as “flexible” approaches. Thus, in one region there may be:

- Differentiated minimum wage rates based on nature of the industry or sector (for example agricultural and non-agricultural), company size or company location;
- An allowance instead of a wage increase, thereby unbundling it from the guaranteed wage and avoiding additional wage-related costs;
- Increases on a staggered basis;
- Exclusion from coverage of educational institutions and work performed under forward contracts;
- Exemptions on grounds of financial distress.

A flexible approach widens the boards' range of action. But it has also given rise to a multiplicity of wage rates even within regions. At one point, there were over 600 wage levels across the country. As early as 1997, at a national tripartite conference, one of the agreements reached was to simplify the criteria for wage determination. This is a process that NWPC and the wage boards continue to pursue.

### 5.3.3 Compliance with wage orders

In 2005, DOLE inspected almost 20,000 establishments employing from 10 to 199 workers. Fifty-four percent were found with violations. The most common (at an average of 18.7 percent) was underpayment of the minimum wage. Other wage-related issues together accounted for 40 percent of all violations. Rates of non-compliance may actually be higher than suggested by the inspection results. As pointed out in the section on employment rights, the inspectorate does not target establishments with less than ten workers for routine inspection. Further, in a recent survey involving non-agricultural enterprises, the average actual daily wage rates of unskilled workers in 10 out of 16 regions were actually lower than the highest minimum wage rates.<sup>72</sup> Could this be the market's way of preventing the dis-employment effects of wage increases? Also, among the 10 regions are those with the highest unemployment rates—NCR, Region III and Region VII.<sup>73</sup>

## 5.4 Collective bargaining

The labour relations preference for collective bargaining as the State institution to fix wages is constrained by declining union membership and collective bargaining coverage.<sup>74</sup> In addition to the latest BLES study on collective bargaining agreements,<sup>75</sup> a survey of 214 CBAs conducted by the ECOP<sup>76</sup> also raises some points of interest.

Focusing on first year increases, which are usually the highest over the three to five-year CBA cycle, the following can be observed on daily-paid workers:

The minimum increase is zero while the maximum increase is PHP 70 per day.

Food, beverage and tobacco and automotive and automotive parts posted the highest increases for the first three years of the CBA (front-loaded wage package). Paper and paper products, general trading, marketing and merchandising, and hotel and restaurants had the highest increases in the fourth and fifth years of the CBA (back-loaded package).

- The mean increase is PHP 10.48 while the median increase is PHP 6.00.
- Thirty-six percent of those surveyed had a daily wage increase of between zero to PHP 10; while 25 percent received between PHP 11.00 and PHP 20.00.
- Unions affiliated with federations received higher increases (about 20–25 percent more) than independent unions.
- The size of the bargaining unit has no bearing on the amount of increases.

In relation to monthly-paid workers, the following are notable:

- The minimum increase is PHP 180 while the maximum increase is PHP 2,800 per month.
- Food, beverage and tobacco followed by energy resources and utilities (corresponds to electricity, gas and water) have the highest monthly increases for the first year at PHP 1,900 and PHP 1,456 respectively.
- The mean increase is PHP 920 while the median is PHP 810.
- Among all workers, 5.6 percent had a monthly increase of between PHP 180 and PHP 630; while 90 percent received between PHP 631 and PHP 1,081.
- Unions that are not affiliated with federations received higher increases than those that were so affiliated.
- Bargaining units with 200 or more members received higher increases than others.

It would appear that generally, wage increases through minimum wage fixing and collective bargaining are not far apart. With respect to the daily-paid in the ECOP survey, mean and median increases are in the same range as, and at times lower than, minimum wage increases.

## 5.5 The market as an efficient mechanism

The law defines wage by what it includes.<sup>77</sup> Aside from this legal definition, wage may also be defined as the price an employer pays to an employee in exchange for the latter's skills, qualifications, time and output.<sup>78</sup> Thus, the primary determinants of wage are skills, qualifications and time for time-rated work, or output for piece-rated work. The other important market determinants are supply and demand conditions such as employment shifts or turnover of employees in occupations and industries. Institutional factors like law and collective bargaining are not among the market determinants but do exert influence on the market (see discussion on this topic in section 5.6).

Using this definition of "wage", data from the 2006 OWS indicate that the market mechanism is working efficiently.<sup>79</sup> The surveys indicate that:

- *Skills and qualifications matter most:* Based on minimum-maximum ranges, the highest maximum wages are in occupations with high degrees of skill and qualifications such as technicians and associate professionals (particularly aircraft pilots, navigators and flight engineers in air transport), professionals, plant and machine operators and assemblers and supervisors.
- *By industry, the highest average pay rates are found in "electricity, gas and water;" "financial intermediation;" "private education services; and "mining and quarrying."* These industries inherently require specialized skills, qualifications and professional licensing. Other

supply and demand factors pushing up pay levels in these industries are the monopoly or oligopoly nature of the industry (electricity, gas and water), the fiduciary nature of financial intermediation, the scarcity of qualified professionals and fast turnover rates in education due to overseas migration, and the hazardous nature as well as relatively long hours in mining and quarrying.

- Correlating the OWS data with the labour turnover survey, the intuition that higher pay is correlated with lower turnover is validated in mining and quarrying and electricity, gas and water, which have the lowest separation rates of 1.14 percent and 1.59 percent. A different picture is presented in private education where the separation rate is very high (12.24 percent) in spite of the relatively higher wage in this sector. This is because the geographical market for education professionals is global. The pull of better-paying overseas jobs is obviously stronger here than elsewhere.
- The reverse logic—that lower pay is associated with higher turnover—is also validated by the high separation rate in construction which has the highest separation rate (17.44 percent; due also to the nature of employment, i.e., project or fixed period employment), wholesale and retail trade and related services (14.70 percent).
- Wages of unskilled workers are not widely differentiated, whether among or within occupations.
- The highest paid technicians and associate professionals are paid eight times more than the lowest paid in the same occupational group. For unskilled workers across occupations, wages are not widely differentiated. The highest paid get 1.6 times more than the lowest paid, with length of service possibly the main differentiator.

On the whole, the data indicate that the pricing mechanism is consistent with market principles and is actually working efficiently. However, this is not to say that the outcomes are perfect. Further the market mechanism has to be related to the institutional mechanisms of determining wage.

## 5.6 An interplay of mechanisms

How do such things as the market mechanism, collective bargaining and minimum wage fixing interact? The debate on wages is at two levels. One is procedural—how should wages be raised? The other is substantive—by how much should wage levels be increased?

In a survey involving 25,110 establishments released in 2007, BLES gives a snapshot of the methods involved in determining wages and how frequently these are used.<sup>80</sup> For rank and file employees, 12,400 (49.3 percent) relied on the minimum wage mechanism, 6,240 (24.8 percent) on employer's decision, and 2,453 (9.7 percent) on collective bargaining. Since mandatory minimums also constrain employer decisions, the responses suggest a major role for minimum wage fixing in the pricing of labour. With respect to the procedural issue, some options have been mentioned:

- *Reduce the criteria for wage fixing.* Since increases in the consumer price index (or adjustments for inflation) and in costs of living have been the consistent factors in decision making, the boards may wish to simply focus on these criteria;
- *The minimum wage should target the lowest tier of the wage scale.* This is consistent with the safety net concept. In such a case, exclusion or exemption from coverage and industry differentiations within regions can be done away with;
- *Ensure that the boards are independent.* In terms of output, it is not enough that participation and voice of the social partners is assured. Quality of output is directly dependent on quality of representation. A review of how representatives are selected and how their integrity and independence as decision-makers is protected will be important (see discussion on tripartism, section 5.10);
- *Provide free flow of reliable information* so that the market can find its clearing levels.

On the substantive issue of wage levels, several concerns are raised:

- In the manufacturing sector, which has the most CBAs and belongs to the non-agriculture sector where wage boards have historically granted rates higher than the average minimums, the actual average wage is lower than the national median;
- Unskilled workers in 10 regions have average wage rates that are lower than the minimum wage rates. This means that they are being paid at rates lower than the prevailing minimum wage;
- Where actual wage rates are above the minimum wage, minimum wage fixing may have its biggest impact and influence not on unskilled or low-skilled wage workers on the lowest tier of the wage scale, but on a second tier of workers, i.e., skilled or better educated workers who accept the minimum wage as entry level pay. If this is the case, it suggests that minimum wage-fixing is failing to protect the very group of workers which it is intended to protect. It also crowds out the space for more efficient plant-level agreements tailored to the capacities and needs of employers and workers, and further weakens workers' motivation to organize and bargain.

Unions generally concede that minimum wage fixing can leverage their wage demands at the negotiating table. This argument is premised on the labour relations objective that collective bargaining should improve on minimum standards. Thus, the tactical connection between minimum wage increases and wage bargaining can be expressed as:

“Minimum Standard + Collective Bargaining Concession = Collective Bargaining Outcome”

The idea is for collective bargaining to complement minimum wage fixing.

Does this happen? The answer is that “It may,” but wage orders also have a crediting rule where collective bargaining concessions can be credited as compliance with a wage order if the concession is made within a specified period before or after the wage order is issued. The crediting rule thus reverses the equation, that is:

“Collective Bargaining Concession – Minimum Standard = Collective Bargaining Outcome”

The effect of this formula is that minimum wage fixing depresses collective bargaining outcomes regardless of how high the union's wage demands are. Thus, it has a substitution effect on collective bargaining.

One therefore can make the case that while the institutions of minimum wage and collective bargaining receive most of the attention; it is really the market mechanism that holds sway at the enterprise level. The statistics suggest that in a very subtle way, the market is not only trumping these institutions, it is also trumping labour administration (due to non-compliance). Ultimately, minimum wage fixing and collective bargaining as currently practiced may actually have less influence in determining the actual price of labour than previously acknowledged.

## 5.7 Productivity as the ultimate issue

An efficient process of wage determination and a balanced total compensation structure are important. But ultimately, it is the bottom line of employers and the take-home pay of workers which matter. The wage pricing mechanisms may help achieve this but would not of itself bring it about. Total factor productivity must rise. LMG institutions should therefore focus more on labour productivity. Well-crafted policies and programmes on training and HRD, with impact on both the short and the long terms, are crucial. More investments from employers in enterprise-based training and in technology can accelerate productivity gains, although the apparent reluctance of employers to do either, and the seeming preference of unions for guaranteed rather than productivity-based pay, can pose obstacles in the process.

## 5.8 Employment flexibility: The debate

At the Asian Regional Meeting held in Busan in 2006, two key labour market governance issues surfaced—the concerns or anxieties of workers and employers alike vis-à-vis labour law reform, and efforts to find an effective balance between flexibility, stability and security, otherwise referred to as “flexicurity.”

Labour market flexibility refers to the ability to change the quantity, quality and price of labour inputs to reduce production costs and make output more adjustable to changes in market demand (Felipe and Lanzona 2006; Sardana 1998). Labour market flexibility is characterized by the relaxation of State or legal controls on employment contracts and other terms and conditions of employment. Flexible employment refers to any form of employment which is not full-time employment for an indefinite duration (Ozaki 1999).<sup>81</sup> The flexibility debate usually covers employment contracts (numerical flexibility), pay, working time, and work organization (functional flexibility).

In the Philippines, the most controversial area is that of short-term employment contracts. This includes such working arrangements as temporary work or work for a fixed period, casual work, part-time work, seasonal work, work under apprenticeship contracts, and work carried out under subcontracting arrangements. Working time flexibility has also commanded some attention of late. Pay flexibility, especially pay for output or performance, and functional flexibility and multi-skilling are buzzwords among human resource practitioners. But the dearth of shared enterprise-level experiences and best practices makes it difficult to determine the extent to which these practices have spread.

### 5.8.1 Regular versus flexible employment

The Constitution and the Labor Code guarantee security of tenure to all workers. As noted earlier, employment is classified as regular, employment for a fixed period (also referred to as term or contractual employment) or casual. From a strict legal standpoint, regular, fixed period or contractual and casual employment are mutually exclusive. Given the general policy of protection accorded to labour and the provisions of the Labor Code, the policy preference is toward regular employment that is: (i) full-time; (ii) secure, i.e., terminations must always be for cause; (iii) performed daily, presumably at eight hours a day; (iv) has a predictable schedule; and (v) provides a guaranteed wage.

Casual employment, employment for a fixed term involving a bilateral contract, as well as employment for a fixed term under a subcontracting arrangement or trilateral contract are forms of flexible employment. There is evidence that these forms of flexible employment are on the rise. The BITS estimates that the incidence of non-regular or temporary work in establishments employing twenty or more workers is 25 percent of the total workforce. It appears from the survey that there is no distinction between the work being performed by regular workers and that of non-regular workers. More importantly, the statistics suggest neither a positive nor negative correlation between the incidence of non-regular work and growth in employment levels.

Firms are motivated to employ non-regular workers so as to cut costs and to have a buffer to market fluctuations, thus giving them numerical flexibility. At the same time, it enables them to take advantage of labour surpluses in lower-skill categories by allowing them to recycle entry level pay and avoid the carrying costs of employing regular workers, such as seniority pay. It also enables them to avoid paying separation pay which is obligatory in the case of regular employment (Bitonio 2004).

One practice that may require immediate policy attention is the use of five-month employment contracts. The typical example is a salesperson in a retail store. If he or she is employed directly, he or she should be classified as a regular employee because he or she performs work necessary and desirable to the business of the employer. As such, he or she should be made a regular employee right away or after successfully completing a probationary period not exceeding six months. Under a five-month contract, employers make the case that termination is justified because the employment is for a fixed period and this period expires within the period of probation when the employee has not yet attained regular status. By fixing the period of employment, employers attempt to get such employment out of the classification of regular employment. If it turns out that the employment is

indeed regular, they will then claim that in any event, the termination was within the period of probation and therefore could not subject them to a legal liability. A variation is to source out the salesperson from a cooperative. He or she is given a five-month contract which is not denominated as an employment contract. The salesperson is instead classified as a member of the cooperative, for which he or she shall be entitled to dividends but not to wages even if to all intents and purposes, he or she is under the control and supervision of the owner of the store.

Contracts of this nature circumvent labour laws. Nevertheless, they have become pervasive. The practice actually masks a larger policy problem. Employers try to avoid employing regular workers as much as possible because it is more costly and firing them is more difficult.

Theory also suggests that keeping workers in a state of insecurity makes them more productive. In fact the reverse can also be argued: that the fixed term contract dampens motivation to excel. The fact that practices like this persist and appear to be on the increase in spite of the law can simply indicate that: (i) the law itself is becoming ineffective; and (ii) under a condition of labour surplus, buyers (employers) are forcing sellers (workers) to bid for short-term contracts that do not have the carrying costs and risks of regular employment contracts.

An equitable solution must be found to address this issue.

### **5.8.2 Working time flexibility**

The Labor Code defines work hours as including all time during which an employee is required to be on duty or to be at the prescribed workplace; and all time during which an employee is suffered or permitted to work.<sup>82</sup> The provisions on work hours were formulated with regular employment in a shop-floor setting as the main premise. Payment is time-rated and it is based on daily, not hourly rates. There are rules on overtime and against offsetting of under time work on any particular day by overtime work on another day. While the employer has a wide latitude of discretion in scheduling work hours, one restriction is that no woman shall be permitted or required to work between 10 o'clock at night and six o'clock in the morning in any industrial, commercial or non-industrial, or agricultural undertaking.<sup>83</sup> This restriction is pursuant to ILO Convention No. 89 (Concerning night work of women) which the Philippines ratified in 1963. An indirect restraint on night work is the provision of night shift differential at 10 percent of the regular daily wage if work is performed between 10 at night and six in the morning.<sup>84</sup>

The design of the rules on work hours does exhibit inflexibility in certain areas. The night work prohibition, although virtually no longer observed except in agricultural settings, is one of the indications of inflexibility in the DBI. The definition of work hours, to the extent that it includes all hours that a worker cannot leave his or her workplace, can be a restriction on the adoption of staggered working hours in situations where the workday has alternating busy and idle phases. The prohibition against offsetting of under time and overtime should have not been included in the law as this can be more efficiently addressed through company policy.

Based on surveys<sup>85</sup> at the micro-level, however, there is evidence that working time is not as inflexible as the laws may project. DOLE has actually initiated some relaxation of controls on work hours. In 2005, the DOLE issued guidelines on the adoption of a compressed work week whereby employers and workers can agree to adopt longer daily working hours with no overtime expense in exchange for more rest days, but without reducing the total number of hours of work per week.

The heaviest user of the compressed work week is now the hotels and restaurant industry (43.2 percent). In addition, some enterprises have started using a sliding work schedule where workers may report to work not necessarily on a specified time, but within an agreed period of time (flexitime). The sliding work schedule is used by as much as 69.4 percent in financial intermediation services. On the other hand, the same survey shows that flexibility measures relating to scheduling days of work in consideration of promoting work-life balance are also being practiced. Among the common arrangements are flexible work hours (33.8 percent), extended maternity leave with pay (26.5 percent) and without pay (55.5 percent), leave benefits for sick relatives (40 percent), extended paternity leave (22 percent), and leave due to family situations (62 percent). The BWC has also

started expediting action on applications for exemption from the night work prohibition against women, especially in call centres where work opportunities for women are available.

The data does not indicate whether these practices are informal arrangements or are institutionalized practices contained in company personnel policies or CBAs. But the fact that these are practiced at all is a manifestation that there are “voice” channels in establishments which effectively translate into more flexible conditions of work. From a policy standpoint, the data seems to suggest that if left to their own devices and provided they recognize common interests, the parties can reach alternative but efficient and acceptable arrangements with regard to working time.

### 5.8.3 Pay flexibility

Except to the extent affected by payment for results and the compressed workweek guidelines, there is very little development in the Philippine labour market on pay flexibility. As noted in the section on wages, pay structures are patterned after that mandated by the Labor Code. This is true even in unionized establishments with CBAs. Be this as it may, the law also allows for flexible approaches in determining pay by expressly excluding workers who are paid by results as well as field personnel whose working hours cannot be determined with reasonable certainty. To support these options, the DOLE provides technical assistance to employers in evolving pay for results through time and motion studies and exchange of best practices in performance-based pay. Administrative policy-making has also tested the extent to which a customized treatment on work hours, based on industry differences, can be evolved.

### 5.9 “Flexicurity:” Is it possible?

Flexicurity is derived from the idea that in a rapidly-changing world, job security (or the assurance that one will keep his or her job for an indefinite period) will be replaced by employment security where one can move from employment to employment without income discontinuity and without impairing social protection. For flexicurity to work, three basic conditions must be present: (i) employment is being created at a reasonably fast pace; (ii) the worker who moves from one place of employment to another is multi- and highly-skilled; and (iii) there is an efficient administrative machinery that promotes the free flow of information and portability of social protection benefits. These conditions do not exist in the Philippine labour market.

Without in any way abandoning the idea of flexicurity as a longer term objective, in the first instance, smaller ideas targeted at specific issues can be addressed instead. There is a need to review the design of labour laws on classification of employment, security of employment and termination of employment from a fresh perspective if for no other reason than that the economic and political assumptions behind existing laws have been drastically altered. One starting point is to recognize the need to assimilate flexible or alternative practices into these laws. For instance, the current classification of employment as regular, casual or for a fixed period is based on the nature of the tasks being performed in relation to the employer’s main line of business. Thus, there is regular employment if the work being performed is necessary or desirable to the usual business of the employer. But market forces and changes in work organization have blurred the distinctions and have made the classifications difficult to apply.

An alternative approach can be to distinguish employment simply as one for an indefinite period (regular employment) or definite or fixed period. Employment for an indefinite period should still be presumed as a rule. In employment for a definite period, a maximum period (say one to two years) can be prescribed. An option for renewal can be recognized. But a second renewal would mean a continuing need for the task being performed, and therefore by operation of law the employment should be classified as one for indefinite period. A longer period for a fixed-term contract has two advantages. It makes for greater stability and security both on the part of the employer and the worker. It is also less costly and more productive because it lessens search and replacement costs and reduces the time a new worker spends for learning the job.

## 5.10 Participation outside the workplace: Tripartism

Tripartism is the participation by representatives of workers and employers in the functions of the State or any of its instrumentalities, either by means of consultation, policy-making or decision-making. It is one of the institutions expected to promote the State objective of guaranteeing the rights of workers “to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law” (ART. XIII, Sec. 3, Philippine Constitution).

Conceptually, tripartism is a process, a structure, and an output. It is a primary labour market institution because its principal players are representatives of government, workers and employers whose interactions are then expected to affect labour market outcomes.

Tripartism as participation is a form of democratic governance. It has characteristics of both direct and representative democracy. On one hand, it allows the sectors themselves to directly participate in governmental functions, as opposed to simply being governed. In the process, governance is also being decentralized. On the other hand, participation of workers and employers is through their representatives. Participating organizations should in principle be the peak or most representative organizations. Centralization or concentration is necessary to ensure political legitimacy of participants and thereby make tripartism truly effective.

Not all forms of participation involving workers and employers can be called tripartism. In a pluralist society like the Philippines, there are numerous mechanisms where workers representation is mandatory. But some of these mechanisms are designed as multi-sectoral rather than tripartite institutions.<sup>86</sup> Only when workers and employers as distinct sectors and with their distinct interests drive the agenda or subsume the other participating sectors’ agenda can there be tripartism as a labour market institution.

The Labor Code provides statutory recognition to tripartism, as follows:

*“Article 275. Tripartism and tripartite conferences.*

*a) Tripartism in labour relations is hereby declared a State policy. Towards this end, workers and employers shall, as far as practicable, be represented in decision and policy-making bodies of the government.*

*b) The Secretary of Labor and Employment or his duly authorized representatives may from time to time call a national, regional, or industrial tripartite conference of representatives of government, workers and employers for the consideration and adoption of voluntary codes of principles designed to promote industrial peace based on social justice or to align the labour movement relations with established priorities in economic and social development. In calling such conference, the Secretary of Labor and Employment may consult with accredited representatives of workers and employers.”*

### 5.10.1 How tripartism is practiced?

Tripartism in the Philippines is a statutory creation.<sup>87</sup> Tripartism is achieved either through: (i) the direct involvement of workers’ and employers’ representatives in policy or decision-making processes; or (ii) the opportunity to be consulted on social and economic policies affecting labour and employment. The output in the first is policy action or decision. The output in the second is policy or programme advice. The Labor Code and other laws specify the policies and decisions which have authoritative or binding effect. With respect to advisory outputs and voluntary codes of industrial harmony, these are persuasive rather than authoritative.

In terms of subject matter, the Labor Code specifies labour relations. But the Constitution, ILO Convention No. 144, and subsequent legislative and executive issuances have given tripartism a flexible scope. The Labor Code affords the Secretary of Labor discretion whether or not to consult (“as far as practicable”) but it can be assumed that the areas identified in Convention 144, and such other areas specified in various legal provisions (like minimum wage-fixing), are mandatory subjects of tripartite engagement.

In terms of process, policy and law do not specify a standard rule on how decisions are arrived at, whether these are through majority rule or consensus. There is no rule that gives workers or employers veto power over each other.

In terms of determining representation, the Labor Code affords the Secretary of Labor discretion with whom to consult (“accredited representatives of workers and employers”). With ILO Convention No. 144, however, it can be assumed that at least as a norm for all tripartite bodies, the “most representative” requirement applies.

In terms of administrative structures, the Labor Code speaks of national as well as regional and industry conferences. It thus envisions both centralized and decentralized structures. In terms of the nature of authority of decentralized structures, Art. 275 implies delegated authority (from the Secretary of Labor to his or her “authorized representatives”) but other tripartite structures can also be decentralized and independent (for instance, the wage boards).

### **5.10.2 Manner of creation and types**

The implementation framework of the foregoing policies is found in various provisions of the Labor Code, other laws, executive orders, and memoranda of agreements. As a result, several tripartite mechanisms have emerged. Some are actually tripartite-plus or simply multi-sectoral mechanisms, where sectors or organizations distinct from workers and employers organizations are also represented. A convenient typology that can be used to classify the mix would be the manner of creating the mechanism, i.e., either through legislative or executive action.

#### **Mechanisms created by legislative mandate**

These mechanisms may either be policy-making, decision-making or advisory in nature. Among the mechanisms with primarily policy-making functions are included human resource and employment promotion agencies such as the boards of the TESDA and the POEA ) and social protection agencies such as the NWPC, the OWWA, Social Security Commission (SSC), the PHIC, the ECC), and the Pag-IBIG board. In varying degrees, these mechanisms exercise decision-making functions, sometimes quasi-judicial in nature, as an incident to their policy-making functions. Generally, they also subsume gender representation under workers and employers representation. In the case of POEA and OWWA, representatives from workers and employers come from specialized industry groups within the respective sectors. The policies arrived at by these mechanisms are in the nature of public rules and regulations and are enforceable through administrative authorities.

Among the mechanisms with primarily decision-making functions are NLRC whose main function, as previously discussed, is quasi-judicial and which has policy and rule-making as incidental functions; and the Regional Tripartite Wages and Productivity Boards whose main function is quasi-legislative in nature. Once final, decisions arrived at by the NLRC are binding on the parties and are enforceable through legal processes. Wage orders arrived at by the wage boards are in the nature of laws, enforceable through administrative authorities specifically through inspection.

One mechanism that performs purely advisory functions is the TVAAC, which provides advice to the Secretary of Labor and the NCMB on the specific area of dispute settlement through voluntary arbitration. On the other hand, all the mechanisms mentioned above perform residual advisory functions for the Secretary of Labor, Congress or the President of the Philippines, to whom they are also generally accountable.

#### **Mechanisms created by executive orders or actions**

Tripartite mechanisms of this type can be created by the President, such as the Tripartite Industrial Peace Council (TIPC); by the Secretary of Labor such as the industry tripartite councils (ITCs) and regional TIPCs; or by local government executives such as provincial, city or municipal TIPCs. These councils perform primarily advisory functions to the President, the Secretary of Labor, or to the office to which they are accountable. The national TIPC has a special function in relation to Convention No. 144, in that it is the recognized tripartite mechanism that considers, evaluates and recommends for the ratification or renunciation of ILO Conventions.

A notable feature of these types of mechanism is that their creation was preceded by voluntary agreements of the tripartite partners. These agreements were usually brought about by some external stimuli leading to an actual or potential labour problem. For instance, the banking industry tripartite council was formed in response to the restructuring, mergers and consolidation taking place in the industry, as a result of which workers can be displaced and unions can be dissolved. Another is the garments and textile tripartite council, which was motivated by the impending expiration of the multi-fibre agreement that tended to affect overseas market access of Philippine products. Without market access, production slows down, thereby leading to business closures and retrenchment of workers. In these cases, the process that takes place becomes synonymous with the notion of social dialogue.

While government is usually the initiator of these agreements, buy-in by the sectors is an indication of their future commitment to participate. Another practical value of formalizing the creation of these mechanisms through the appropriate executive or administrative order is that formalization provides a legal basis to mobilize resources, particularly government funds, to support the activities of the mechanism. In some instances, especially at the local levels, some tripartite mechanisms are self-sustaining and use local rather than national government funds.

### 5.10.3 Transforming tripartism for effective governance

What is the value of tripartism as a governance mechanism? Across the board, tripartite mechanisms have become useful venues to exchange information and views.

#### **Breadth and depth**

Tripartism has both widened and deepened. The broadening has enabled the mechanism to become decentralized and distributed. From a governance perspective, diffusing authority avoids monolithic structures, specifies accountabilities and speeds up decision-making. The corresponding mechanisms are then able to build specialization and focus on specific policy areas like training and employment promotion (for instance, TESDA and POEA), social protection (for instance, NWPC, OWWA, SSS and PHIC) and labour relations (for instance, NLRC). Instead of simply discussing (and sometimes complaining about) macroeconomic issues, the potential is also there for tripartite structures such as national industry councils to focus on specific problems that need to be solved. On the other hand, the deepening of the wage fixing mechanism through the regional wage boards allows a more localized—and arguably more efficient—response to geographical and developmental differences. Similarly, the setting up of advisory mechanisms such as municipal and city TIPCs also leads to localization and a more hands-on orientation in solving specific problems.

#### **Authority and degree of influence**

The net effect of the broadening and deepening of tripartism should be to expand its authority and influence. But is this happening? Authority and degree of influence can be evaluated in terms of the mandate of the mechanism, the policy instruments it uses, and the impact of its outputs on the labour market. For policy and decision-making bodies, the main policy instruments used are provision (as in direct provision of training by TESDA), promotion (as in employment facilitation by POEA for overseas workers) and regulation (as in wage-fixing by the regional wage boards, licensing of recruitment agencies by the POEA, and adjudication of rights by the NLRC). Regulatory outputs are in the form of rules, guidelines or decisions that are legally enforceable, violation or non-observance of which have well-defined consequences.

The outputs resulting from the exercise of authority by these agencies have straightforward downward effects on individual labour market players. For instance, training subsidies authorized through TESDA ought to benefit a desired number of targeted individuals (see discussion under human resource development) with the view of bringing about outcomes including reducing job mismatches, bridging the gap between unskilled to skilled employment, or reducing the period of job search.

With respect to advisory mechanisms, authority and influence is measured in terms of its upward effects. If the resulting tripartite recommendation or advice has no channel to reach the final decision-maker, or is otherwise ignored or not taken into account, then tripartism will not have any influence regardless of how robust the processing of the recommendation had been. In the past ten years, the influence of advisory bodies to the top level of decision-making, i.e., the President or Congress has been minimal if largely non-existent. Notably, no national tripartite conference has been held for ten years, denying a mechanism like the TIPC a forum to muster national attention and consensus on matters directly affecting the labour market.

Channels of communication to top-level decision-making have also been largely unavailable. For instance, the recommendation of the TIPC for an executive order to ensure that all sectoral nominations to tripartite bodies should be processed through the sectors has not been acted upon. A DOLE official rationalizes that labour representatives are periodically called by the President of the Philippines for informal discussions on matters of common concern. While informal channels are

#### **Box 5: Dispute resolution and local TIPCs: The good offices of LGUs**

Local government units (LGUs) can play a useful role in labour dispute management, Primarily through local tripartite industrial peace councils (TIPCs) or local workers' affairs offices, LGU officials have started to assume a more direct hand in resolving workplace conflicts to prevent costly and unnecessary work stoppages.

A case in point is the Mandaue City TIPC on Cebu Island. On 1 May 2006, it joined the TIPCs of the cities of Cebu, Lapu Lapu, and Talisay to found the Metropolitan Cebu TIPC whose primary goals include the promotion of social cooperation toward industrial peace and economic development. The tripartite group also advocates alternative dispute resolution (ADR) mechanisms, including conciliation and mediation and voluntary arbitration.

Just recently, the Mandaue TIPC settled labour disputes in two companies engaged in the manufacture of biscuit and rattan products. In the biscuit company, the new management refused to recognize the union, pay signing bonus and separation pay, and deduct union dues. In the rattan company, the issue involved delayed payment of salaries, non-remittance of SSS and Philhealth contributions, and non-implementation of CBA-mandated pay adjustments. By providing an alternative venue to settle the parties' differences, the Council succeeded in settling the disputes and averting work stoppages.

Another example is Marikina City where social dialogue and tripartism underpin its industrial peace agenda and development strategy. With the institutionalization of the Workers' Affairs Office (WAO) to handle industrial relations concerns, Marikina has transformed its image from a strike-prone city to one characterized by industrial peace and social cooperation. The city has been strike-free since 1994 except in the years 1995 (two strikes), 1998 (one strike) and 2002 (two strikes). From 2002-06, the WAO handled a total of 47 disputes, 31 or almost two-thirds of which were settled and the rest referred to the DOLE for resolution. The cases mostly involved termination issues, non-payment or under-payment of wages and other monetary claims. For this transformation, Marikina was adjudged "best LGU" in 1996 and "most competitive city" in 2003 by the Asian Institute of Management. It has also been cited by the DOLE for its contribution in the promotion of industrial peace in the country.

The role of LGUs and local TIPCs in dispute management to ensure industrial peace has institutional basis in the local government code of 1991 which mandates the LGUs to ensure community peace, including industrial peace. In 2003, the DOLE and the Department of Interior and Local Government (DILG) which has jurisdiction over LGUs, forged a memorandum of agreement (MOA) to encourage LGUs to provide conciliation and mediation services to interested parties in their respective jurisdictions.

Beyond the formalities of laws and MOAs, the increasing participation of LGUs and local TIPCs makes good and practical governance. Businesses, after all, are part of the community; good labour-management relations are also good community relations for both sides. It is important for workers and employers to first "localize" their disputes and try to reach amicable settlement at the local level rather than employ formal and legalistic procedures like compulsory arbitration. Under an atmosphere of trust and cooperation, workers and employers tend to look at the good offices of LGUs as an appropriate and inexpensive venue to resolve their differences.

useful, they can also become simply political meetings. There is no substitute for an institutionalized form of tripartism that encourages broad-based participation, open debates, and transparent decision-making.

### **Representation, quality and accountability**

There must be consistent rules on representation, quality and accountability for tripartism to become an effective governance instrument. The political dimensions of selection should consider whether a sectoral nominee to a tripartite body comes from an organization with a sufficiently inclusive base. On the other hand, qualification standards should not be ruled out especially for decision-making bodies like the wage boards. Further, accountability can be increased if the representatives are given a fixed term, not a lifetime tenure.

## **5.11 Social protection**

### **5.11.1 Institutional mechanisms**

Social protection refers to the set of policies and programmes designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people's exposure to risks, and enhancing their capacity to protect themselves against hazards and interruption or loss of income (ADB 2007). In its most comprehensive sense, social protection includes five major areas of activity, namely: (i) policies and programmes to facilitate employment and promote efficient operation of labour markets; (ii) social insurance for unemployment, sickness, disability, work injury and old age; (iii) assistance and welfare services for vulnerable groups with no other means of support; (iv) micro and area-based schemes to address the vulnerability at the community level; and (v) child protection. This section deals mainly with social protection through social insurance and other related schemes.

The Philippines has several, interrelated social insurance mechanisms. The Government Service Insurance System (GSIS) and the SSS compulsorily cover all public and private sector employees, respectively. The GSIS and the SSS have a comprehensive range of benefits for their members, including provision for social needs like housing, contingencies such as sickness, maternity, disability and death, and pension benefits for those who retire. The ECC provides compensation for work-related sickness, injuries, disabilities or death.

The PAG-IBIG is another window for housing needs while the Philippine Health Insurance Commission provides for health care benefits. Other than GSIS, specialized social insurance and pension schemes are also provided by some government agencies (i.e., the armed forces, the judiciary, some government-owned or controlled corporations and government financial institutions).

In the private sector, additional benefits are provided by some companies as a result of company personnel policies or collective bargaining agreements.

Aside from the foregoing social insurance mechanisms, the Labor Code has a provision for separation pay in situations of termination of employment due to economic causes. Separation pay ranges from one-half month to one month pay multiplied by the number of years in service. Where separation is due to the closure of the company on account of business losses, the company may be exempted from separation pay. The Labor Code also has a provision for retirement pay, which allows qualified beneficiaries one-half month (actually equivalent to 22.5 days based on DOLE guidelines) pay for every year of service.

### **5.11.2 Strengths**

The range of needs and contingencies covered by the various social insurance schemes are broad and comprehensive. The policies and laws are clear. While coverage is membership-based, membership is open to all workers, employed or self-employed, except in the GSIS where public employment is a prerequisite. Portability of membership at least between the GSIS and the SSS is recognized. Thus, the enabling institutional framework for universal coverage and mobility across schemes is present. Further, structures are in place to ensure that these schemes are administered properly. Moreover, at

the policy-making level (for instance, the governing boards of the GSIS, SSS, ECC, PAG-IBIG and PHIC), there is representation from workers, employers and government.

From a conceptual standpoint, it can therefore be said that the present institutions for social insurance are comprehensive, complete and well-developed.

### 5.11.3 Key issues

Given the totality of social protection institutions as discussed above, many issues nevertheless remain to be addressed. Among the most critical are:

#### Administrative efficiency

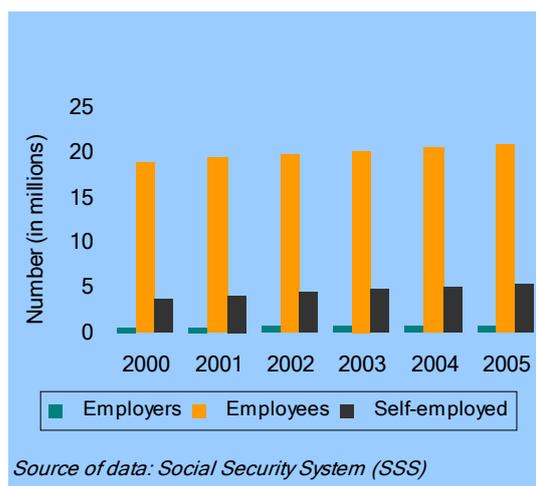
Many members complain that their records are not updated, at times resulting in delayed payment or undue restriction of access to certain benefits. Effective portability from one system to the other, as well as continuity of membership for those with frequent interruptions of employment and income (e.g. employees on short-term contracts), are also recurring issues of concern to many. On-going systems improvement and adoption of IT-enabled services should help address the problem.

#### Enforcement

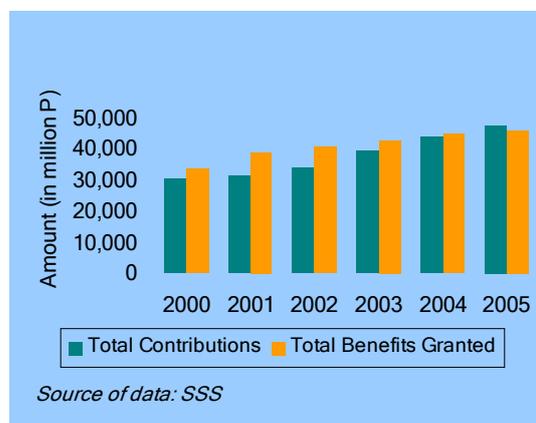
As reflected in inspection reports, many employers do not register as members of the system, or do not remit contributions. With respect to the right to separation pay and retirement under the Labor Code, a point of interest is the fact that these rights are enforceable through the quasi-judicial proceedings of the NLRC, usually as incidents to an illegal termination or money claim. An option that can be explored is to integrate these rights as part of social insurance. In this manner, a claim for separation or retirement benefit becomes enforceable simply through an administrative claim in the nature of unemployment insurance rather than through the more protracted compulsory arbitration process.

#### Adequacy

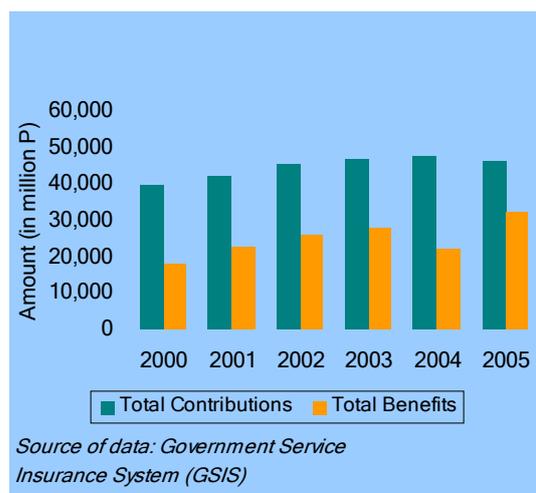
As comprehensive as the range of benefits is, the amount of actual entitlement is usually inadequate to cover the costs of contingencies in any substantive way. The amount of entitlement is principally a function of structure of the mechanism, expansiveness of membership, and amount of contributions. Also crucial are the inflation rate and the fact that life expectancy is increasing, which means that beneficiaries particularly retirees and pensioners will be members of the system for a relatively longer period of time. The GSIS and the



**Figure 35: Types of membership in social security system, Philippines, 2000–2005**



**Figure 36: Total contributions and benefits granted by SSS, Philippines, 2000–2005**



**Figure 37: Total contributions and benefits granted by GSIS, Philippines, 2000–2005**

SSS are designed as pay-as-you-go schemes where current members pay for current beneficiaries. While membership and amount of contributions collected are increasing, the two systems will not be in a position to increase entitlements or benefits unless there is a corresponding dramatic increase in membership, increase in contributions from current members, or limitations in the amount of entitlement to current beneficiaries. Increasing contributions from current members will be realistic only if incomes rise.

Limiting or curtailing benefits is politically costly, not to mention that it can actually lead to negative welfare effects. On the other hand, imputing the additional costs on employers will result in higher non-wage labour costs, thereby weakening their competitiveness. In this regard, the nexus between productive and better remunerated work and competitiveness again surfaces as a major part of the equation. In whatever combination, the policy choices are extremely limited.

### **Inclusiveness**

The policy objective is to have a universal social insurance scheme for all workers. The formal-informal sector duality, however, is a major obstacle to this objective. About half of labour force participants are not members of any system and most of them cannot pay their way to becoming members. Using the value expectation model expressed as:

$$\text{“Threat x Severity x Powerlessness = Insecurity”}$$

In order to evaluate their situation, it is obvious that the capacity of the informal sector to mitigate risk is extremely limited.

Although government-led efforts to subsidize the enrolment of informal sector workers are laudable, the long-term sustainability of such subsidies cannot be assured. Also particularly worrisome is the combination of high youth unemployment and the ongoing prevalence of unpaid or low-paid employment. The youth will be in the labour force for the next 35 to 50 years. Without meaningful interventions, the unpaid and the low-paid will also remain in jobs of the same nature, without any margin for saving on contingencies. Again, the key is still to increase the opportunities and choices for people to have productive and decently remunerated work so they can provide for their current and future needs. If formal institutions are not prepared to assimilate the entire informal sector, LMG institutions should nevertheless look toward supporting self-sustaining micro-insurance schemes at the community levels.

## **6 Forging a common agenda**

### **6.1 The case for labour market reforms**

The fundamental problems of the Philippine labour market and the larger economy are structural in nature. Coordinated measures by all concerned sectors are necessary to address these problems in order to bring about better social outcomes. LMG institutions can positively contribute by making sure that the labour market is functioning well under an overarching policy of social justice and labour protection.

Reforming LMG institutions can start with a general review of existing policy areas for which they are accountable, the policy instruments used in discharging these accountabilities, and the programmes or products which they implement or provide. At present, LMG institutions employ four main policy instruments—exhortation, promotion, regulation and provision.

The softest policy instrument is exhortation, which simply encourages the attainment of desired outcomes without committing resources and identifying accountabilities. Promotion commits resources primarily to advocate for or facilitate greater involvement, responsibility and accountability among workers and employers toward a particular goal. Regulation commits resources to the formulation, administration and enforcement of standards through which the State tries to control the behaviour of labour market players toward the most productive and equitable outcomes. Provision commits resources toward the setting up of infrastructure and facilities to enable labour market

players to help themselves, make informed choices, protect them from or mitigate their risks, and enforce rights or adjudicate their conflicts under a rule of law. With some products overlapping across policy areas, Table 1 at the end of this section locates the general policy and programme or product mix of LMG institutions.

As presently arranged, is the policy and product mix the optimal combination to promote the efficient and fair functioning of the labour market? Is there a need to rearrange DOLE's policy and product mix? If one policy is changed for another, what will be the effect on the product? Will the product be dropped or will another institution be needed? What levels of accountability, partnerships and networks can DOLE create with the present policy and product mix? What levels of accountability, partnerships and networks will be needed if the policy and product mix changes?

### 6.1.1 From labour administration to governance

Beyond policy review, LMG institutions can review their mandates, structures and capacities to ensure a policy fit. This can start from the labour administration machinery composed of DOLE and its attached agencies. The weight given to each of DOLE's specific missions and strategic objectives is indicated by the distribution of its human resources. The entire labour administration machinery has a personnel complement of 9,426.<sup>88</sup> As the general labour administrator, DOLE and its central offices, regional offices, bureaus and services have 1,939 personnel. In terms of distribution and deployment, 64 percent of DOLE's personnel are in the regional offices. Among regional offices, however, there is some degree of regional concentration as only one quarter of regional personnel are dispersed in local field offices. DOLE's rationalization plan is for the further diffusion of its central and regional offices in order to strengthen field offices.

The larger portion of human resources is distributed among the attached agencies. The focus of specialization is in the areas of training and overseas employment, which pertain to labour market rights, as well as standards and dispute settlement, which pertain to employment rights. Training and dispute settlement are the most human-resource heavy areas. Among the attached agencies, TESDA has reached the most advanced stage of decentralization. It has offices down to the provincial level and has established networks down to the community level. NLRC, NCMB, POEA, OWWA and NWPC have offices down to the regional level. The personnel distribution in the attached agencies is illustrated in figures 38 and 39.

While LMG institutions continue to undergo internal adjustments, substantive changes have also been taking place outside the core LMG institutions. Some of these can be mentioned:

- Passage of parallel pieces of legislation. These are legislative enactments technically outside the area of core LMG institutions but which have a direct effect on the latter. For instance, the law seeking to promote micro and small

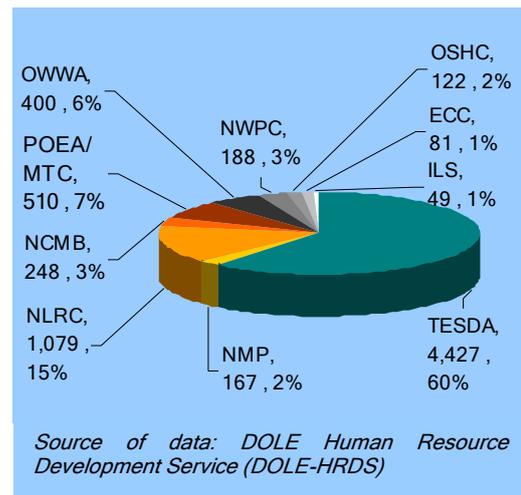


Figure 38: DOLE personnel by agency

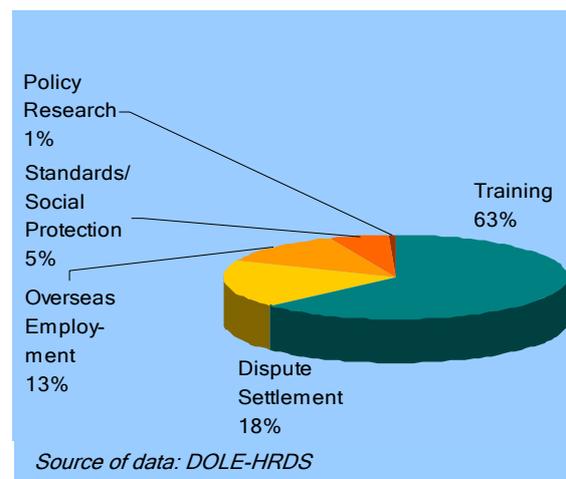


Figure 39: DOLE personnel by programme area

business enterprises is a piece of economic legislation. Yet it impacts on LMG institutions because it is meant to stimulate job creation and exempts small businesses and micro and small business enterprises from minimum wage;

- Diffusion of regulatory authority. The Local Government Code confers autonomy to local government units. LGUs also have police and tax powers within their jurisdiction. In this regard, among the powers LGUs can exercise is regulation of establishments, among others, on general labour and safety and health standards;
- Statutory delegation of labour administrative powers. Laws creating economic zones affirm the applicability of labour laws within the zones. By statute, the zones may set up industrial relations and safety divisions in their respective areas which, at the very least, can exercise supervisory or monitoring powers over zone companies and workers on matters concerning the implementation of labour laws;
- Judicial discipline. LMG institutions must also subscribe to the discipline of the courts with respect to the application and interpretation of labour laws. In general, the Supreme Court has legitimized many of DOLE's policy initiatives (for instance, deployment bans, amendments to the rules on Book V of the Labor Code, amendments to liberalize the rules governing subcontracting).

Appropriate measures, therefore, must be taken within LMG institutions, primarily DOLE, so as not to undermine their effectiveness and strategic focus. In this regard, the long-term challenge for DOLE is how it can serve as the principal coordinating mechanism not only of LMG institutions but also of other institutions which perform interrelated or interlocking functions. In the process of asserting this expanded coordinating role, DOLE may have to decide which of its current powers to devolve, decentralize, delegate or totally give up.

## 6.2 Role of the social partners

Social partnership should underpin efforts toward policy, legal and structural reforms affecting DOLE. As distinct sectors and as primary social partners which are DOLE's direct constituents, workers, employers and their organizations should participate and be effectively engaged in the reforms process. They should also have ownership of the results. But as discussed in the section on tripartism, there are problems that arise from the apparently diminished authority and degree of influence of tripartism and the social partners, as well as from issues of representation, quality of representation and accountability. How then can meaningful participation and engagement happen? What are the opportunities, limitations and challenges? What areas of cooperation can yield immediate results?

### 6.2.1 Opportunities

Three factors can help move the Philippines forward.

1. First is the existence of a strong policy and legal framework. Social partnership and workers participation are concepts enshrined in the Constitution and the Labor Code, and as such have policy legitimacy and prominence in the realm of governance.
2. Second, the Philippines has a tradition of engaging workers, employers and their organizations, primarily through tripartism. Many of the organizations and leaders who remain active in tripartite circles have decades of experience, having witnessed the evolution of tripartism from authoritarian to democratic rule in the local front, and from the dynamics of the cold war to the global economy in the international front. These organizations and their leaders know the workings of the tripartite process and have played a part in its successes and failures. This tradition—and the institutional knowledge that goes with it—is a positive force that can pave the way for wider avenues of participation and engagement.

3. Third, in partnership with the ILO, the Philippines has completed two cycles of its national programme of action for decent work. Among the key action points for decent work are promoting employment, pursuing legislative reforms to strengthen labor standards, the right to self-organization and social protection, and advocacy for ratification of relevant ILO conventions. The programme of action is itself a product of tripartite consultation and is therefore a useful directional instrument forward. It has also generated some consciousness on decent work principles that the social partners can continue to build on.

### **6.2.2 Limitations and challenges**

Historically, participation and engagement of the social partners in policy and decision-making has always been State-led. Mostly through the DOLE, the State plays a central function in initiating as well as determining the terms and agenda of participation and engagement. The State usually reaches out to the sectors when there are pressing economic concerns which might lead to social restiveness or unrest, crisis situations, or the need to consolidate political support for government. There is nothing intrinsically wrong if the State uses formal mechanisms of participation and engagement for political ends. What should cause concern is the tendency of State authorities to pre-select participating organizations on the basis of their political sympathies and to exclude others who are not like-minded. Historical evidence shows that in the course of time, some organizations have become more preferred than others. The State's undeniable preference is to engage moderate organizations while eschewing the radical or the contrarian ones. This not only perpetuates a condition of limited representation and an orientation to preserve the status quo. In the long run, it co-opts the social partners and undermines their independence.

Further, given existing policies, laws and institutions, social partnership and tripartism in the Philippines remain industrial relations-centric. Representation is through the most representative unions and employers' organizations that operate in the formal economy, even if statistical trends show that such organizations are increasingly difficult to identify and are in themselves beset with issues of diminishing membership and continued fragmentation. With half the labor force in the informal sector, the last two decades have also seen the emergence of a number of NGOs, whose core membership comes from the informal rather than from the formal economy, particularly rural workers, women's organizations and the urban poor. It has become clear that as far as political clout is concerned, unions are deeply challenged. A clear proof of their relatively weak political clout is the fact that no pro-labour party has ever won a party-list seat in Congress. In contrast, parties made up of multi-sectoral coalitions among NGOs and unions have enjoyed remarkable success in gaining political representation.

On the other hand, employers and business organizations prefer to play a tactical game in the political arena. Except for their involvement in tripartite activities, they are not seen as direct players nor do they set up their own candidates or political parties. By supporting parties and particular candidates, however, they can have covert but effective representation through proxies or through lobby groups. They also tend to work more closely with various public institutions on a day-to-day basis, especially those in the executive branch which regulates specific areas of business activity. In this manner, their influence as a sector is maximized regardless of the nature of their participation in more formal or institutionalized mechanisms.

### **6.2.3 What should the social partners do?**

How can political representation of the social partners be made more effective?

The first priority of the social partners should be to expand their political base. Legitimacy of claims that unions represent all workers is doubtful if their numbers continue to decline, or if they remain insistent on a narrow, industrial relations-centric agenda and do not effectively carry informal sector concerns as well. Similarly, the claim of big employer organizations that they also represent small and micro enterprises will gain credence only if they put their own resources to helping support and develop these enterprises.

Related to this, the social partners must make sure that their voice is genuinely inclusionary. Past practice of tripartism indicates that sector representatives tend to consult with the rest of their sector only when government calls for consultations and provides resources for mobilization. Sectors should develop the capacity to be able to go to their constituents as often as needed, independently of the government. They should be able to mobilize on their own and in the process craft an independent but realistic agenda. Becoming broadly inclusionary should also lead to intra-sectoral consolidation of forces. It is not necessary for the various organizations to become a single entity. It is enough that each sector is able to put up a united strategic front.

The social partners should also mature in terms of statesmanship. At certain levels, it is understandable for them to project or advocate certain positions. At some point, however, hard-line sectoral and political positioning should give way to compromise and consensus for the good of the greater number. Only in this manner can the social partners improve their credibility and image toward participating in political and economic policy and decision-making.

#### **6.2.4 Beyond political representation: A shared agenda**

Strengthening the capacity of the social partners for political representation and participation is not an end in itself. The imperative remains for them to have a shared agenda. The experience of implementing previous tripartite accords and more recently the national decent work programmes shows the ease with which social partners can enter into motherhood-style agreements and the difficulty of following up on these agreements with concrete actions. A different kind of shared agenda is needed, one that is driven by the social partners themselves, has concrete and measurable targets, and is results or impact-oriented. This agenda, which may reserve a coordinating and facilitating role for the State, should focus on what the social partners can do together not so much as political but more so as market players. With this focus, they can contribute more effectively to the efficient and fair functioning of the labor market.

Workers and employers can start by taking cooperative measures in areas over which they have direct control, such as building a labour market information exchange; simplifying the wage-fixing process and giving premium to enterprise-level agreements; promoting both labor and capital productivity and incentivizing productivity through flexible pay policies; sharing responsibility in the administration and enforcement of contracts with disputes preferably to be resolved at the plant level; and promoting portability of social insurance systems and developing alternative social insurance schemes. These areas of cooperation, by no means exhaustive, directly contribute to the functioning of the labour market because they support efficient resource allocation by promoting employability, equitable income allocation, and protection of workers in the event of income loss. They also have outputs that are relatively easy to measure, as well as impacts that are directly felt at the micro-level.

#### **6.2.5 Renegotiating the social contract**

Following the principles of tripartism and social dialogue, LMG institutions need to renegotiate their mandates, objectives and purposes, as well as the social contract that binds them together. With a shared agenda, social partners will be in a better position to actively participate in this process. But it should be stressed that the renegotiation must be as inclusive and as broadly participatory as possible, and must have a systematic approach to core issues.

In this regard, it may be worthwhile for the tripartite partners to consider setting up a high-level, dedicated, non-partisan and independent group to lead in the reform process. For purposes of inclusiveness as well as diversity, this group can be made up of persons who are not like-minded to ensure an uninhibited and broader sphere of debate and possible consensus. Finally, it is important that the group as a whole be eventually assured access to the political process in order to help move the reform process forward.

**Table 1: Policy and product mix of labour market institutions**

<b>Policy area / Policy Instrument</b>	<b>Pre-employment</b>	<b>Employment</b>	<b>Post-employment</b>
Exhortation	<ul style="list-style-type: none"> <li>• Full employment;</li> <li>• Equality of access to employment opportunities;</li> <li>• Freedom of choice of employment;</li> <li>• Acquisition of new skills through self-help;</li> <li>• Self-employment, livelihood, entrepreneurship.</li> </ul>	<ul style="list-style-type: none"> <li>• Freedom of choice;</li> <li>• Social partnerships;</li> <li>• Corporate social responsibility;</li> <li>• Skills training/multi-skilling;</li> <li>• Living wage;</li> <li>• Social security coverage for the self-employed;</li> <li>• Personal savings.</li> </ul>	<ul style="list-style-type: none"> <li>• Self-help, self-employment, livelihood. Entrepreneurship.</li> </ul>
Promotion	<ul style="list-style-type: none"> <li>• Mobility and freedom of choice;</li> <li>• Skills training;</li> <li>• Pre-employment testing;</li> <li>• Skills standards;</li> <li>• Registration of OFWs;</li> <li>• Counselling.</li> </ul>	<ul style="list-style-type: none"> <li>• Capability building and technical assistance for enterprises to improve productivity and promote voluntary compliance with labour standards;</li> <li>• Promoting company-financed in-house training through tax incentives and training arrangements;</li> <li>• Labour-management education to promote worker's participation, social dialogue, trade unionism and collective bargaining;</li> <li>• Technical assistance to improve productivity.</li> </ul>	
Regulation	<ul style="list-style-type: none"> <li>• Skills standards-setting, assessment and certification;</li> <li>• Regulation and supervision of training institutions;</li> <li>• Regulation and supervision of recruitment and placement;</li> <li>• Regulation of child work and prohibition against child labour.</li> </ul>	<ul style="list-style-type: none"> <li>• Regulation of child work and prohibition against child labour;</li> <li>• Minimum working conditions;</li> <li>• Safety and health standards;</li> <li>• Protection of the right to organize and bargain collectively;</li> <li>• Security of tenure / protection against unfair dismissal;</li> <li>• Social security;</li> <li>• Employee's compensation.</li> </ul>	
Provision (including grants and subsidies)	<ul style="list-style-type: none"> <li>• Free labour market.</li> </ul>	<ul style="list-style-type: none"> <li>• Employment subsidies;</li> <li>• Income subsidies;</li> <li>• Administration and enforcement mechanisms;</li> <li>• Dispute settlement mechanisms.</li> </ul>	<ul style="list-style-type: none"> <li>• General social security administration.</li> </ul>

## Endnotes

1. World Bank Website, <http://go.worldbank.org/MKOG258V0>).
2. For instance, governance has also been alternatively defined to include the exercise of political authority and the use of institutional resources to manage society's problems and affairs, or the use of institutions, structures of authority and even collaboration to allocate resources and coordinate or control activity in society or the economy. The UNDP, on the other hand, defines it as the rules of the political system to solve conflicts between actors and adopt decision (legality). It has also been used to describe the proper functioning of institutions and their acceptance by the public (legitimacy), as well as the efficacy of government and the achievement of consensus by democratic means (participation).
3. Jesus Felipe and Rana Hasan (2006), "Labor Markets in a Globalizing World," Chapter 3, Labor Markets in Asia: Issues and Perspectives, Asian Development Bank, Palgrave MacMillan, New York, pp. 68-70.
4. The labour force grew between 600 to 700 thousand from 2004 to 2006, and by 317 thousand since July 2006.
5. Figures from the July 2007 Labor Force Survey (LFS), 2006 LFS and LABSTAT 11/10 May 2007.
6. An estimate of labour underutilization can be obtained by adding the unemployed and the underemployed.
7. **Opportunities for work** means that persons who need work are able to find work in all forms of economic activity including self-employment, unpaid family work and wage employment in both formal and informal sectors. **Freedom of choice of employment** means work should be freely chosen and not forced on individuals. **Productive work** means workers should have acceptable livelihoods that deliver fair incomes for themselves and their families while ensuring sustainable development and competitiveness of enterprises and countries. **Equity in work** means women and men have equality of opportunity and treatment in work. It encompasses absence of discrimination at work and in access to work and ability to balance work with family life. **Security at work** means safe workplaces should be ensured and workers' health, livelihoods and pensions should be safeguarded. There should be provisions for workers and families for adequate financial and other protection in the event of health and other contingencies. It also recognizes workers' need to limit insecurity associated with the possible loss of work and livelihood. **Representation at work** means workers should be treated with respect at work. They should be able to join organizations to represent their interests collectively, be free to voice their concerns and participate in decision making on their terms and conditions of work.
8. The World Economic Forum's Global Competitiveness Index (GCI) 2007-2008 ranks the Philippines 71st out of 131 countries. In the area of efficiency of labour market, it is ranked 100th. The World Bank's Ease of Doing Business Index (DBI), which measures the conduciveness of the regulatory environment for doing business, ranks the Philippines 132nd out of 178 countries. In the area of employing workers, it is ranked 122nd.
9. This is based on the ILO definition of unemployment. Using the official methodology before the ILO definition was adopted, the unemployment rate stood at 11.4 percent in 2003 despite the 3.2 million jobs reportedly generated in 2001-2003.
10. Based on the MTPDP, the employment targets are services, 5.8–7 million; agriculture, 2.0–2.3 million; and industry, 1.9–2.2 million. By industry, the targets are: tourism, 3.0 million; agribusiness, 2.8 million; housing, 1.0 million; ICT, 0.8 million; exports, 0.7 million; and mining, 0.2 million. One million OFWs are also expected to be deployed each year.
11. ADB 2007 Fact Sheet Philippines, [www.adb.org/philippines](http://www.adb.org/philippines).
12. At current/constant prices, labour productivity was at PHP 153,697/P36,446 in 2004 and PHP 167,698/PHP 37,430 in 2005 (BLES, Key Labor Statistics at [www.bles.dole.gov.ph](http://www.bles.dole.gov.ph)).
13. ILO (2007). Labour and Social Trends in ASEAN 2007: Integration, Challenges and Opportunities, Bangkok, p. 15.
14. On this point see Jose Felipe and Leonardo Lanzona Jr. (2006), in "Unemployment, Labor Laws and Economic Policies in the Philippines," Labor Markets in Asia: Issues and Perspectives, Asian Development Bank, Manila, pp. 372-373.
15. This typology is taken from Pietro Ichino (1998). "The labour market: a lawyer's view of economic arguments," International Labour Review, Vol. 137, No. 3, pp. 299-311, International Labour Office, Geneva.
16. As enrolled in the MTPDP, the mission of DOLE is to promote gainful employment opportunities, develop human resources, protect and promote workers welfare, and maintain industrial peace. Its core strategies are supporting employment generation, facilitating employment, enhancing employment and preserving employment.

17. TESDA was created through Republic Act No. 7796 otherwise known as the Technical Skills Development Authority Act (1994) to replace the National Manpower and Youth Council. TESDA is attached to DOLE. The creation of TESDA was part of larger reforms in the country's education and training system, which also involved the Department of Education for basic education and the Commission on Higher Education for tertiary education. The objective of reforms was to clarify responsibilities, strengthen programme focus and accountabilities, and promote coordination and complementation between these three institutions. TESDA is governed by a tripartite board chaired by the DOLE secretary and whose members include representatives of workers, employers, industry and women.
18. Sec. 2, RA 7796. Under Sec. 4 of the same Act, technical and vocational training refers to the education process designed at post-secondary and lower tertiary levels, officially recognized as non-degree programmes aimed at preparing technicians, para-professionals and other categories of middle-level workers by providing them with a broad range of general education, theoretical, scientific and technological studies and related job skills training.
19. Ranulfo Payos, TESDA board member representing ECOP, Interview.
20. At present, there are 57 TESDA-administered schools—19 agricultural, 7 fishery and 31 trade.
21. These are the TESDA training centres, of which there are 15 regional and 45 provincial centres.
22. Modes not elsewhere classified are lumped into a sixth mode called "others."
23. NSO. Statistical Yearbook 2006.
24. More recent reports show CBTED activities to have increased.
25. Yunus recognized a similar dilemma when he said that wherever a poverty alleviation programme allowed the non-poor to be co-passengers, the poor would soon be elbowed out of the programme by those who were better off. In the world of development, if one mixes the poor and the non-poor in a programme, the non-poor will always drive out the poor, and the less poor will drive out the more poor, unless protective measures are instituted right at the beginning. In such cases, the non-poor reap the benefits of all that is done in the name of the poor. See Muhammad Yunus (1999). *Banker to the Poor: Micro-Lending and the Battle Against Poverty*, Public Affairs-Perseus Books, New York, p. 42.
26. Hard skills are those which require training of six months or more. Soft skills are those which can be acquired within a shorter training period.
27. ECOP (2005). *Collective Bargaining Agreements: Survey Report 2005*, Makati, pp. 154-155.
28. The findings in this section are based on DOLE's Statistical Performance Monitoring Report contained in BLES Current Labor Statistics. Information on BWYW and BRW budget and resources is based on the DOLE Rationalization Plan (unpublished).
29. Zoilo dela Cruz, president, National Confederation of Unions in the Sugar Industry of the Philippines (NACUSIP-TUCP), interview.
30. Olive Pajarilla, founding president of the women's organization PATAMABA, interview.
31. The Philippines has ratified both Conventions.
32. Arts. 25-39, Labor Code.
33. The POEA is attached to DOLE. Its Board is chaired by the Secretary of Labor.
34. Jobs Fair is an employment facilitation strategy aimed to fast-track the meeting of jobseekers and employers/overseas recruitment agencies in one venue at a specific date to reduce cost, time and effort particularly on the part of the applicants. This is open to all unemployed, skilled and unskilled workers, fresh college graduates, graduates of training institutions, displaced workers and employees seeking advancement. During the Jobs Fair, applicants select vacancies suited to their qualifications and employers could interview and hire on the spot qualified workers. The services offered during jobs fairs are employment facilitation assistance, employment information assistance, and employment enhancement/training referrals and self-employment assistance.
35. Accessions are additions to employment during the quarter (accession rate is derived by dividing total accessions by total employment). Separations are termination of employment that occurred during the period (derived by dividing total separations by total employment).

36. Based on the June 2007 NCR data, the real estate, renting and business activities sector recorded the highest accession rate (18.59 percent). This was followed by construction (18.27 percent), wholesale and retail trade and related services (17.82 percent), hotels and restaurants (15.69 percent), and health and social work (15.31 percent). Electricity, gas and water (1.91 percent) had the lowest accession rate. Accession due to replacement of separated workers and job quitters (9.14 percent) was higher than accession due to expansion of business activities (2.17 percent). During the same period, separation rate was at 7.75 percent. The highest separation rate was reported in construction (17.44 percent) followed by wholesale and retail trade and related services (14.70 percent) and private education services (12.24 percent). The lowest separation rates were noted in mining and quarrying (1.14 percent) and electricity, gas and water supply (1.59 percent). Employer-initiated separation (3.93 percent) slightly exceeded employee-initiated separation (3.82 percent). Overall, subtracting separation from accession, enterprises covered in the survey posted a net employment growth of 3.57 percent. This means that employment in the sample enterprises increased by about 36 for every 1,000 employed. Growth in employment was noted in all but two sectors. High growth rates were recorded in hotels and restaurants (10.61 percent); health and social work (9.55 percent); and real estate, renting and business activities (9.30 percent). On the other hand, employment declined in private education services (9.96 percent) and other community, social and personal service activities (1.46 percent).
37. LABSTAT 11/11 June 2007.
38. LABSTAT 11/12 June 2007.
39. Further, the data aggregates indicators that should not be lumped together because they refer to entirely different labour market outcomes (for instance, “placed” means the applicant is eventually hired; it cannot be lumped with “assisted” although it can be interchangeable with “deployed”; “assisted” can be lumped with referred). Improving data quality and integrity is the first step to promoting the PESOs.
40. Art. 3, LCP.
41. Hector B. Morada and Lani Q. Santos (1999), “Sex discrimination in job ads,” *Philippine Journal of Labor and Industrial Relations*, Vols. XIX-XX, School of Labor and Industrial Relations, University of the Philippines, Quezon City, pp. 89-99.
42. Kasanayan at Hanapbuhay, or literally training and livelihood.
43. LABSTAT 11/13, June 2007.
44. The Labor Code requires a 30-day prior notice for employee-initiated voluntary separation.
45. Book VI, LCP. Provisions on unlawful termination are captioned as post-employment rights.
46. The specific provisions on GLS are found in Book III, LCP.
47. The specific provisions on OSHS are found in Book IV, LCP. There is also a separate and more comprehensive set of occupational safety and health rules that forms part of the regulatory framework. These rules are patterned after the OSH rules of the United States Occupational Safety and Health Authority.
48. The Philippines ratified ILO Conventions No. 87 and 98 in 1953.
49. The specific rules on trade unionism and collective bargaining are found in Book V, LCP.
50. Art. 280, LCP.
51. Employment size of establishments with 10 employees or over is broken down as follows: 10–19 workers, 40,704; 20–49 workers, 18,103; 50–99 workers, 5,604; 100–199 workers, 2,980; 200–499 workers, 1,917; 500–999 workers, 634; 1,000–1,999 workers, 222; and 2,000 up workers, 103 (BLES Current Labor and Employment Statistics, July 2007).
52. DOLE tries to overcome this constraint by training other personnel to perform as inspectors.
53. DOLE’s inability to attract licensed professionals, such as engineers, doctors and safety practitioners, is attributed to the low pay in government.
54. DOLE Department Order No. 57-04, Series of 2004.
55. Art. 211, LCP.

56. Republic Act No. 9481 (June 2007).
57. Democrito Mendoza, president of the Trade Union Congress of the Philippines (TUCP), interview.
58. Union and collective bargaining decline is also discussed more generally under “Employment Rights.”
59. LABSTAT 11/27, September 2007.
60. Non-statutory supplementary benefits include signing bonus, longevity pay, merit increase, perfect attendance bonus, incentive pay, and performance bonus.
61. LABSTAT 11/18, July 2007.
62. NSO. 2006 Yearbook of Statistics.
63. Victoriano Balais, president of the Philippine Transport and General Workers Organization (PTGWO), Zoilo Dela Cruz, president of NACUSIP, Democrito Mendoza, president of TUCP, and Allan Montano, president of the Federation of Free Workers (FFW) shared this concern in separate interviews.
64. DOLE calls this “Administrative Intervention for Dispute Avoidance” (AIDA).
65. The authority to fix minimum wages for all workers in the private sector is exercised by the regional tripartite wages and productivity boards, under the supervision of the National Wages and Productivity Commission (NWPC), an agency attached to the DOLE. There are currently 16 regional boards across the country. The legislation that confers this authority and sets up the structures through which it is exercised is Republic Act No. 6727, otherwise known as the Wage Rationalization Act, enacted in 1989. The NWPC is composed of the DOLE Secretary as chairman, the Director-General of the National Economic and Development Authority (NEDA) as vice-chairman, and two members each from workers and employers sectors. The Executive Director of the NWPC Secretariat is also a member. On the other hand, each regional board is composed of the DOLE Regional Director, the Regional Directors of the NEDA and the Department of Trade and Industry (DTI) as vice-chairmen, and two members each from the workers and employers sectors. The workers and employers representatives in the NWPC and in the boards are appointed by the President upon nomination by their respective sectors and recommendation of the DOLE Secretary. They serve for a term of five years.
66. The wage protection provisions of the Labor Code are Arts. 97-129.
67. Art 211.B, LCP.
68. Under Art. 124, LCP, the full mandate of the boards are: Standards/Criteria for Minimum Wage Fixing. The regional minimum wages to be established by the Regional Board shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development programme. In the determination of such regional minimum wages, the Regional Board shall, among other relevant factors, consider the following: (a) the demand for living wages; (b) wage adjustment vis-à-vis the consumer price index; (c) the cost of living and changes or increases therein; (d) the needs of workers and their families; (e) the need to induce industries to invest in the countryside; (f) improvements in standards of living; (g) the prevailing wage levels; (h) fair return of the capital invested and capacity to pay of employers; (i) effects on employment generation and family income; and (j) the equitable distribution of income and wealth along the imperatives of economic and social development. The wages prescribed in accordance with the provisions of this Title shall be the standard prevailing minimum wages in every region. These wages shall include wages varying with industries, provinces or localities if in the judgment of the Regional Board conditions make such local differentiation proper and necessary to effectuate the purpose of this Title.
69. Per NSO, there were 16.08 million wage and salary workers in 2006. Preliminary data as of 2007 places the number at 17.914 million.
70. Including the regional board at the Autonomous Region of Muslim Mindanao, which is technically outside DOLE jurisdiction.
71. Sergio Ortiz-Luis, Interview.
72. LABSTAT 11/22, September 2007.
73. LABSTAT 11/1, January 2007.

74. Union and collective bargaining decline is also discussed more generally under “Employment Rights.”
75. See BLES, LABSTAT Updates, 11/18, July 2007; see p. 35
76. Employers Confederation of the Philippines (2005). *Collective Bargaining Agreements: Survey Report 2005*, Makati City.
77. Wage paid to any employee shall mean the remuneration, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee (Art. 97[f], LCP).
78. For an enlightening framework on wage as the price for an exchange transaction, Rein Huiskamp, et al., eds. (1995). “Regulating the employment relationship: an analytical framework,” in **Comparative Industrial and Employment Relations**, pp. 16-37.
79. The findings relate to non-agricultural establishments in 60 industry groups employing at least 20 workers who are time-rated and full-time.
80. BITS, June 2007.
81. Muneto Ozaki, ed. (1999). *Negotiating Flexibility: The Role of the Social Partners and the State*, International Labour Office, Geneva, p. 6.
82. Art. 84, LCP.
83. Art. 130, LCP.
84. Art. 86, LCP.
85. See 2006 Yearbook of Statistics.
86. In the hierarchy of political institutions, the bicameral Congress is the country’s highest policy-making body. In the House of Representatives, the labour sector can participate through the party-list system. This is also the case in the National Anti-Poverty Commission, where the labour sector is one among many sectors constituted as a consultative body whose outputs are to recommend measures and undertake advocacy toward poverty reduction and growth.
87. For a very informative discussion on the same issue, see Institute for Labor Studies (2004), *Labor Representation in Government Institutions in the Philippines*, Monograph Series No. 13 (ISSN 0118-3877).
88. Actual warm bodies as of end of October 2007. Information was provided by the Human Resource Development Service, DOLE.

## Appendix: Labour market institutions

### Primary Labour Market Agencies

Department of Labor and Employment (DOLE)

#### Institutions within DOLE:

Bureau of Local Employment (BLE)  
Bureau of Labor and Employment Statistics (BLES)  
Bureau of Labor Relations (BLR)  
Bureau of Rural Workers (BRW)  
Bureau of Women and Young Workers (BWYW)  
Bureau of Working Conditions (BWC)  
Employees' Compensation Commission (ECC)  
Institute for Labor Studies (ILS)  
Maritime Training Council (MTC)  
National Labor Relations Commission (NLRC)  
National Maritime Polytechnic (NMP)  
National Wage and Productivity Commission (NWPC)  
Occupational Safety and Health Center (OSHC)  
Overseas Workers Welfare Administration (OWWA)  
Philippine Overseas Employment Administration (POEA)  
Regional Tripartite Wage and Productivity Board (RTWPB)  
Technical Education and Skills Development Authority (TESDA)  
Tripartite Industrial Peace Council (TIPC), including network of regional and local TIPCs

#### Agencies outside DOLE:

Civil Service Commission (CSC)  
Commission on Higher Education (CHED)  
Department of Education (DepEd)  
Government Service Insurance System (GSIS)  
International Labour Organization (ILO)  
Philippine Health Insurance Corporation (PHIC)  
PAG-IBIG  
Social Security System (SSS)  
University of the Philippines – School of Labor and Industrial Relations (UP SOLAIR)

### B. Other Labour Market Agencies

Department of Agriculture (DA)  
Department of Health (DoH)

Department of Interior and Local Government (DILG)  
Department of Social Welfare and Development (DSWD)  
Department of Trade and Industry (DTI)  
National Economic Development Authority (NEDA)  
National Housing Authority (NHA)  
Presidential Anti-Poverty Commission

## **Major Employers, Workers Organizations and Other Non-Government Organizations**

### Employers<sup>1</sup>

Employers Confederation of the Philippines (ECOP)  
Federation of Philippine Industries (FPI)  
Philippine Chamber of Commerce and Industry (PCCI)  
Filipino-Chinese Chamber of Commerce and Industry (FCCCI)  
American, European and Japanese Chambers of Commerce  
Philippine Business for Social Progress (PBSP)

### Workers (Major Labor Centers <sup>2</sup> and National NGOs)

Alliance of Progressive Labor (APL)  
Federation of Free Workers (FFW)  
Lakas Manggagawa Labor Center (LMLC)  
Pinag-isang Diwa ng Manggagawang Pilipino (PDMP)  
Trade Union Congress of the Philippines (TUCP)  
PATAMABA  
Visayan Forum

## **Major Policy Instruments and Laws**

1987 Philippine Constitution  
Labor Code of the Philippines, as amended  
ILO Conventions, including all eight core labour conventions ratified by the Philippines  
GSIS Law  
SSS Law  
Philippine Health Insurance Act

---

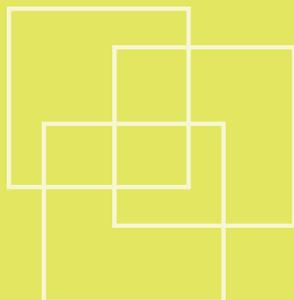
<sup>1</sup> Only national-level organizations are included in this list. These organizations also have their regional and local counterparts.

<sup>2</sup> Federations, enterprise level unions and local NGOs are also major labour market institutions but are not included in this list.

**ILO Subregional Office for South-East Asia and the Pacific**  
**LIST OF WORKING PAPERS**

<b>No.</b>	<b>Title</b>	<b>Author(s)</b>	<b>Year published ISBN No.</b>
1	The impact of the Asian crisis on Filipino employment prospects abroad	W. R. Bohning (with the assistance of Robert Stryk)	1998 ISBN 92-2-111058-3
2	Managing the Papua New Guinean Labour Market for the 21 <sup>st</sup> Century	Don Fraser	1998 ISBN 92-2-111567-4
3	Protecting Indonesian migrant workers, with special reference to private agencies and complaints procedures	W. R. Bohning Carmelo Noriel	1998 ISBN 92-2-111568-2
4	Indonesia: a gender review of globalization, legislation, policies and institutional frameworks	Medelina K. Hendytio Vidhyandika Moelyarto Arya B. Gaduh Tubagus Feridhanusetyawan	1999 ISBN 92-2-111917-3
5	Gender dimensions of globalization and modern sector employment in Indonesia	Haryo Aswicahyono Raymond Atje Tubagus Feridhanusetyawan	1999 ISBN 92-2-111863-0
6	Gender dimensions of the economic crisis and employment in urban informal and rural sectors in Indonesia	Sri Moertiningsih Adioetomo Dwini Handayani Nurhadi Wiyono Sri Harijati Hatmadji (with the assistance of Naoko Otake)	2000 ISBN 92-2-112090-2
7	Providing information to outgoing Indonesian migrant workers	Graeme Hugo W. R. Bohning	2000 ISBN 92-2-112234-4
8	Globalization, gender and employment in the informal economy: the case of the Philippines	Leopoldo J. Dejillas	2000 ISBN 92-2-112233-6
9	Occupational safety and health in Indonesia	Pia K. Markkanen	2004 ISBN 92-2-015760-8
10	The challenge of informal work in the Philippines	Edited by Sandra Yu	2004 ISBN 92-2-113456-3
11	Extension of social security coverage for the informal economy in Indonesia: surveys in the urban and rural informal economy	John Angelini Kenichi Hirose	2004 ISBN 92-2-016862-6
12	Equality at work: Philippines	Gert A. Gust	2006 ISBN 92-2-117278-3
13	Lifelong learning in the Philippines	Federico M. Macaranas	2007 978-92-2-120523-4 (print) 978-92-2-120524-1 (web pdf)
14	Implementation of the labor standards enforcement framework in the Philippines	Kenichi Hirose Benjamin C. Vitasa	2007 978-92-2-120541-8 (print) 978-92-2-120543-2 (web pdf)
15	Philippine labour market outcomes and scenarios: 2000-2015	Dante B. Canlas	2008 978-92-2-121293-5 (print) 978-92-2-121294-2 (web pdf)
16	Labour market governance in the Philippines: Issues and institutions	Benedicto Ernesto R. Bitonio Jr.	2008 978-92-2-121552-3 (print) 978-92-2-121553-0 (web pdf) 978-92-2-121554-7 (CD-ROM)

# Labour market governance in the Philippines: Issues and institutions



The Philippines is widely acknowledged, within Asia, as having one of the most advanced labour codes in the Region, affording worker protection and right to organize. This basic law is supported by institutional mechanisms and institutions designed to promote best practice in labour market governance.

Why is it then that the labour market outcome in the Philippines has not matched expectations of providing decent work for all? In the Philippines, the labour force continues to grow more rapidly than the economy is able to create jobs. Out of a population of 90 million only 56.8 million are of working age (15 years and above); while some 36 million—or just 40 percent of the total population are actually in the labour force. Yet 10.1 million of these are underemployed and only 17.7 million—fewer than 50 percent of the labour force—are working in formal employment as wage and salary earners.

Attaining a state of full, productive and decent employment is a shared development goal across countries. As Mr. Bitonio notes in this comprehensive study, one of the pillars necessary to achieving this is a well-functioning labour market. A labour market is said to function well if it achieves the two primary objectives of efficiency and fairness.

In this paper the author outlines the present state of the labour market, the mechanisms available to support the attainment of full, productive and decent employment, and he examines critically the institutions, processes and capacity of the market as well as the manner of their interaction. He concludes that there are multiple problems that need to be addressed including the weak enforcement of standards, the need for greater employment flexibility to address the needs of the knowledge economy as well as reform of the National Labor Relations Council. The author suggests that the time has come for LMG institutions to renegotiate their mandates, objectives and purposes, as well as the social contract that binds them together. In this regard, it may be worthwhile for the tripartite partners (labour, employers and government) to consider setting up a high-level, dedicated, non-partisan and independent group to lead in the reform process. Finally, it is important that the group as a whole be eventually assured access to the political process in order to help move the reform process forward.

International Labour Organization  
Subregional Office for South-East Asia and the Pacific  
Manila, Philippines  
Tel. (63-2) 580-9900, Fax. (63-2) 856-7597  
E-mail: [manila@ilo.org](mailto:manila@ilo.org)  
[www.ilo.org/manila](http://www.ilo.org/manila)