

**Consultation Forum with Private Recruitment and
Placement Agencies for Domestic Workers on
ILO Convention No. 189**

Bayleaf Hotel, Intramuros, Manila
October 27, 2011

I. The consultation forum started with the presentation of video which showed the different faces of domestic work with a background music followed by an opening prayer led by Mr Kenneth D. Liza of the Bureau of Local Employment (BLE).

II. Director Maria Criselda R. Sy of the BLE delivered a short but inspiring message to the participants which were composed mostly of about 60-80 owners/representatives of private recruitment and placement agencies catering to domestic workers for local employment. She said that domestic work in any country is considered undervalued and invisible. And no less than DOLE Secretary Rosalinda D. Baldoz is spearheading the advocacy for the ratification of ILO Convention No. 189 and the overall advocacy with multi-sectoral stakeholders. The Department of Labor and Employment (DOLE) is simply engaging, making everyone aware of this issue so as to come up with policy environment that is conducive for the equal treatment of domestic workers in the country. As she ended her message, she encouraged the participants to engage speakers in the discussion of issues/concerns of domestic workers.

III. Ms Dianne Respall, Senior Programme Assistant of the International Labour Organization (ILO), Manila was the first speaker. She presented an overview of International Labour Standards. Initially, she described ILO as specialized agency of the United Nations with 40 field offices, including Philippines. She went on to say that ILO has a tripartite structure which means that employees and employer have equal voice in the policy and decision making in the organization. Currently promoting decent work agenda based on the pillars namely social dialogue, social protection.

Ms Respall shared that ILO promotes social justice through the formulation and adoption of international labour standards. It also helps other countries in promoting the ratification of convention and defined several key terms particularly adoption and ratification. She said that adoption is the acceptance of a convention as the minimum global standards while ratification means that the convention becomes legally binding as official commitment of a member State. Denunciation on the other is canceling the commitment of a member State if it is not responsive to the labour market situation. Finally, she said application in law and practice means that the national law must be consistent or adjusted to the convention.

Ms Respall also discussed the types of international instruments however, she cited only two important instruments, that of convention and recommendation. She also mentioned protocol which must be accompanied by a ratified convention. The difference between convention and recommendation is that the former is legally binding subject to ratification while recommendation is not legally binding but contains details of certain principles of the convention, measures or technical guidance that can be taken. She informed the participants that there are 189 conventions that were adopted and 200 recommendations. She said that the adoption of international labour standards constitute a process involved in the national level covering 183 member States and ILO Convention No. 189 was adopted by a 2/3 majority vote, through single, corporate or double discussions.

She also cited the three characteristics of international labour standards, namely: universality; flexibility and tripartism. Universality means that ILO convention and ratification must be applicable to any types of context and to any country, while flexibility should not change the objective of the convention but only details and measures taken in national context, applying in measures but firm in rights. Tripartism reflects the tripartite commitment of ILO which is employee, worker and government, it is a worldwide consensus. She indicated that not all convention are up-to-date, those that are up-to-date are promoted for ratification. Out of the 189 conventions, 77 convention are actually up-to-date.

As to ratification, it is an official commitment, a sovereign decision by the member State to commit to apply all the articles of the convention in law and in practice and cannot involve reservation. Once ratified all the articles must be applied. If there are reservation, it must be indicated in the convention subject to oversight ILO supervisory mechanisms. Just to emphasize, all international labour standards are considered to be minimum standards.

IV. The ILO Convention No. 189 were discussed by Ms Amy King-Dejardin. Ms King gave a brief background that brought the adoption of Convention No. 189 in 2011. She disclosed that the minimum number of domestic worker in the world is 53 million. Asia accounts for 41 per cent, the biggest share in the world and simultaneously the biggest origin of migrant domestic workers. It is minimum because it counted only those domestic workers that are 15 years old and above. Not counted are those below 15 and those having secondary job as domestic workers. So she said domestic work is work and domestic workers are workers and just like us have they have rights and they have a right to decent work. They need standards to assure that they get benefits. In the convention, domestic work is defined as the work performed in and for a household/s. It did not enumerate tasks, it is any kind of work. Across the world, there are different domestic work: part-time and full-time.

The scope is all domestic workers and there is no exclusion at the global level but like any other conventions there is always exclusion clause

depending upon each country and there are few conditions. Domestic workers are entitled to fair terms of employment and decent working and living conditions. There are four fundamental rights of a domestic worker: (a) right to organize and bargain collectively; (b) elimination of forced labour; (c) abolition of child labour; and (d) elimination of discrimination. There are important principles of making sure working conditions and standards are effective measures. They can participate in setting standards but organization is important for effective implementation and continuous improvement of work conditions. Social dialogue is very important. There was a reiteration of child labour which is a big problem in the country. Live-in workers are vulnerable because they stay with employers and they incur a greater risk because they are open to abuse due to close proximity, susceptible to abuses by the employers, so there must be protection against abuse, harassment and violence by the ratifying state. The terms and conditions of work must be clear preferably written contract. In the employment relationship, working hours, remuneration, occupational safety and health and social security are also important. Hours of work must be clear especially with the live-in workers as they have longer hours of work. In giving good treatment, domestic workers must have consecutive 24 hours weekly rest day. Live-in workers is expected to be stand-by, but must be given protection. As to wages, the Labour Code set the minimum wage of Php800.00 a month in 1992 but others are receiving about Php1,000.00 a month. Under the Convention, if there is minimum wage by legislations, the minimum wage for domestic workers must be given. As to the fees, the private employment agencies must not deduct fees from the remuneration for the workers. There is also the modalities of payment. As to occupational safety and health, domestic workers have the right to safe and healthy environment. There are risks but there must be measures to lessen the risks.

V. Director Teresa Peralta presented a profile of persons employed in private households. She stated that based on statistics obtained from a Labour Forced Survey from July to October 2011, there were 1.9 million workers employed in a private household aging 15 years and over, 85 per cent of which are women who are 34 years old. While 32.1 per cent of those employed in a private household belong to the 15-24 age bracket. There are 178,000 workers who are 15-17 years old that are employed in a private household, 87,000 were live-in domestic workers.

Ms Peralta presented several graphs which showed the percentage distribution by age group and the percent distribution by marital status which showed that live-in domestic workers were single. She also showed that 66 per cent of live-in domestic workers have obtained secondary education. As to the weekly hours of worked, the live-in domestic workers have an average of 10.3 hours of work weekly, 19.5 per cent of persons employed in private household were found in National Capital Region (NCR). As to the basic pay, the Autonomous Region in Muslim Mindanao (ARMM)

gives the lowest daily pay in the amount of Php49.00 while NCR gives the pay of Php180.00.

VI. Ms Katherine Brimon basically discussed the readiness of the Philippines to ratify the ILO Convention No. 189 based on the existing applicable law and guidelines. She presented a matrix which showed that out of 18 provisions of the Convention, Articles 3, 9 (local domestic workers), 13 and 15 (local domestic workers) are not compliant in view of the existing guidelines and practice in the country as far as domestic workers are concerned. She specifically discussed each every provision of the convention and showed compliance thereto by citing the relevant provisions of the Labour Code, implementing guidelines and Civil Code. Ms Brimon showed the major gaps between the convention and the labour code as well as the relevant guidelines and policies in monitoring of compliance.

VII. After the presentation of all the speakers, an open forum was followed. Hereunder were the issues and concerns raised during the event and corresponding response of DOLE officials:

A. Ms Rosita Alias, President of Kasambahay Providers Association, Inc. stated that the problem of the association are unlicensed agencies that are proliferating within Metro Manila as well as the absence of inspection or governing body to regulate the operation of recruitment agencies. The licensed agencies are surrounded with so many unlicensed agencies or those violating rules. Ms Alias asked how the unlicensed agencies shall be eradicated. She also asked the Bureau if they have the power to police because whenever they report unlicensed agencies, the Bureau cannot act on it. She also suggested for frequent monitoring of unlicensed agencies and closed agencies.

Mr Jose S. Sandoval, Division Chief of BLE answered the questions raised by pointing out that DOLE is currently strengthening its measures or structure to fight illegal recruitment and trafficking in persons. Thus, the issue on unlicensed agencies shall be resolved. If it will not be totally eradicated but minimized.

Undersecretary Hans Leo Cacdac added that DOLE had a three-day workshop on anti-human trafficking in persons attended by labour inspectors/technical staff of regional offices and had an understanding on the implementation of trafficking in persons and illegal recruitment will be mainstreamed and policy of DOLE. It is true the criminal case is within the Department of Justice (DOJ), but we are thinking that the DOLE has also the power to inspect or close unlicensed agencies. Like in the overseas employment where there is an inspection of agencies, it might be also applicable to the local agencies. There is a plan and action to be undertaken to minimize illegal recruitment and programme on public awareness and consultation to be undertaken.

Usec Cacdac stressed that in the ILO Convention No. 189, it recognizes the legitimate practices of private employment agencies however, it was also recognized the exploitative/abusive practice of recruitment agencies. He also informed the body on the prioritization of President Benigno Aquino Jr on the Kasambahay Bill and was articulated during the Legislative Executive Development Advisory Council (LEDAC) meeting. In the formulation of Kasambahay Bill, there is the portion on the fight against illegal recruitment and the filing of cases against the violators. On the overseas side, where the agencies are regulated in the local side, there will be regulation for the violators, because the principle is to allow the legitimate agencies and punish the violators.

B. Mr Jem, another agency owner stated his appreciation on the ILO Convention No. 189 but ratification is not easy. He cited the provision on weekly 24 hours rest day. Employers will stop getting workers from them and resort to unlicensed recruitment agencies. This would result to bankruptcy, the programme will be defeated so it is a lose-lose situation. He also reiterated the eradication of unlicensed agencies is a manifestation of problem. He also observed that the environment where the risks are very minimal to the benefit, unless the risks is being minimized for the benefit of those operating unlicensed agencies that will be the time the problem will be solved. He suggested that DOLE and the Association should sit down for consultation and define the actions taken either through legislation or policy change.

Director Maria Criselda R. Sy emphasized the importance of partnership. She mentioned the ongoing programme of organizing PRPA. But there is already a separate association for PRPA on domestic workers being organized. She said that they would be calling a separate meeting to know the projects that can be done together so as to help strengthen the association. Ms Sy mentioned that what is done today is the establishment of a clear partnership with DOLE for the purpose of creating a policy environment.

In addition, Usec Cacdac said that the legitimate sector and DOLE must be united in the activities, enforcement and advocacy. If we strengthen the standards, we must also strengthen the cooperation enforcement working together with other enforcement agencies and advocacy like distribution of flyers.

Ms Amy King pointed out that the partners of the agencies are also the workers. Thus, the standards of the agencies must be raised to gold mark, ISO standards for the workers to patronize such agencies. Domestic workers are partners in promoting agencies with gold mark.

C. Mrs Benedict of Valle Verde, Pasig disclosed that in 2005, the ILO lectured on such standards which the agencies followed and upgraded their status, however, the problems are the unlicensed agencies. What is the benefit since illegal it does not pay taxes or anything? Why the illegal

agencies cannot be removed? Where does the employers go when they are being harassed by the workers placed by the agencies?

Usec Cadac discussed the illegal recruiter's issue that from the DOLE's side they are looking into the programme of regional offices and central office how to work together to eradicate illegal agencies. Additional powers like labour inspection to close down the agencies, where to file cases against employer or illegal agencies. These should be strengthened to address these problem of illegal recruitment and human trafficking. As to obligation, notwithstanding the convention state the rights of workers, the workers have the obligation and the aspect of obligations, these may be discussed. Suggestion may be heard and to provide feedback to the legislators in the formulation of Kasambahay Bill.

D. Another agency owner opined that the Philippines is ready to ratify the ILO Convention No. 189 because these are already indicated in the standard contract of POEA. The problem lies with the monitoring and stricter regulation of employment agencies as well as the workers. The questions raised are common problems already raised with DOLE, but these were not acted upon, thus, there is a need to help together. If the employer is unable to pay a worker, what is the liability of the employment agency in the unpaid salary of the domestic worker?

Mr Jose S. Sandoval stated under the existing rules, that the agency has no liability. Unlike in the overseas employment, it is indicated in the rules. The employer is liable. In the local employment, the government can go after the agency. The worker can avail of the barangay official to resolve the claim. Meanwhile, these issues will be addressed in the workshop on the formulation of standard operating procedures on illegal recruitment and anti-trafficking in persons. It was also suggested that the agency helps the worker to be paid by the employer.

One of the agency owner replied that they actually help the workers get their pay. In Alabang or Valle Verde, the barangay captain cannot enter the subdivision. If a replacement is provided by the agency, they withheld the same until the employer pays her dues. However, if the employer will not pay and will not seek for replacement in the same agency, they are without any remedy even with the assistance of police, first class subdivision cannot enter. How can they be helped?

Director Agravante of NCR stated that can enter in the subdivision pursuant to DOLE enforcement power on the actual operation. There must be a complaint with complete address and important details to be filed with the DOLE Field Offices.

E. A similar case of unpaid salary of a domestic worker was also shared. The applicant is a replacement and under the rules, it is free-of-charge of the placement fee from the employer, but the agency is entitled to

20 per cent service fee. The worker was not paid for three months, so a complaint was filed with the barangay, but the employer did not appear. The compliant went to the DOLE, but they were told that the agency is liable to pay the salary of the worker, otherwise, the case shall be brought to the DOLE Central Office. They complied with report requirements but they were told that they would be inspected. Is this the standard procedure?

Director Agravante said that is not the procedure. In case of simple money claims, DOLE will issue compliance order based on the claim of the worker. If they will not personally pay, they will look for bank accounts. If there are no bank accounts, properties can be levied or garnished to answer for the unpaid salary of the domestic workers.

PALSCON President suggested that the agency owners must strengthen its partnership with homeowners association of the subdivision.

F. The forum-consultation ended at 12:00 noon.

Prepared by:
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