Philippine Policies and Legislation And their Enforcement for the Protection of Migrant Workers in the Fishing Industry during Recruitment and Employment

- September 12-13, 2013
- Aston Hotel, Makassar, Indonesia
The Philippines presently enjoys a sense of leadership in developing and constantly improving the implementation of its migration management system, and because of this, the Philippines sends its workers to more than 160 countries all over the world, involving a big number of occupational categories.
Despite challenges at its home front as well as in the global market, Filipino workers have been able to fill up an average of 850,000 jobs each year globally for the past five (5) years.
Deployment (As of 2012)

- Land-Based Workers – 1.4 Million
- Sea-based Workers – 366,000
- 5,677 or 1.5% percent are fishermen
## Deployed Fishermen: 2008-2012

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Number</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>1,094</td>
<td>-</td>
</tr>
<tr>
<td>2009</td>
<td>1,477</td>
<td>35.0</td>
</tr>
<tr>
<td>2010</td>
<td>1,960</td>
<td>32.7</td>
</tr>
<tr>
<td>2011</td>
<td>3,368</td>
<td>71.8</td>
</tr>
<tr>
<td>2012</td>
<td>5,677</td>
<td>68.6</td>
</tr>
</tbody>
</table>

**Source:** POEA
National Policies and Legislation and their Enforcement for the Protection of Migrant Workers in the Fishing Industry during Recruitment and Placement

1. The Labor Code of the Philippines - Book 1 Chapter II on Regulations of Recruitment and Placement Activities

- Original law defining illegal recruitment. Illegal recruitment is essentially an offense committed by a non-licensee or non-holder of authority.
THE PROBLEM OF ILLEGAL RECRUITMENT

- Exist alongside legal migration
- May be committed by both licensed and unlicensed agencies
- Illegal recruiters take advantage of announced job opportunities as an opportunity to dupe unsuspecting applicants
Executive Order No. 797

- Creating the Philippine Overseas Employment Administration, An attached agency of the Department of Labor and Employment.
- To regulate licensed private recruitment agencies
- To spearhead the drive against illegal recruitment
- To serve as a focal point for all inter-agency efforts against illegal recruitment
Republic Act No. 10022

An Act Amending Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipino Act of 1995, as amended, further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for other purposes.
Republic Act 8042: Definition of Illegal Recruitment

Any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad for two or more persons shall be deemed so engaged in recruitment and placement.
Prohibited Acts

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

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

To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with POEA, which include the act of reprocessing workers through a job order that pertains to non-existent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA.
Prohibited Acts

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contracted or is supported by any union or workers’ organization;
(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separations from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;
(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;
(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;
(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulation;
Prohibited Acts

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

* Contracted worker refers to Filipino worker with employment contract already processed by the POEA for overseas deployment.
m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault; and
Prohibited Acts

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

* Head or manage refers to any of the following acts:

1. Control and supervise the operations of the recruitment / manning agency or branch thereof of which they are employed; or

2. Exercise the authority to hire or fire employees and lay down and execute management policies of the recruitment / manning agency or branch thereof.
1. Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;
Other Prohibited Acts

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

3. Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter’s employment contract has been prematurely terminated through no fault of his or her own;
4. Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;
5. Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;
6. For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers’ applications; and
Other Prohibited Acts

7. For a recruitment/manning agency or a foreign principal/employer to pass on to the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker’s insurance coverage.
Three (3) requirements before an agent or representative can lawfully engage in recruitment and placement activity, namely:

1. **The person or entity whom the agent represents has a valid license or holder of authority;**

2. **The agent or representative has been duly appointed by the licensee or holder of authority; and**

3. **The agent’s appointment was previously authorized by the POEA**
Kinds of Illegal Recruitment

1. Simple Illegal Recruitment – Absence of circumstance which will qualify the crime of illegal recruitment as an offense of economic sabotage

2. Illegal Recruitment Committed in Large Scale – if it is committed against three (3) or more persons individually or as a group

3. Illegal Recruitment Committed by a Syndicate – if it is carried out by a group of three (3) or more persons conspiring or confederating with one another
Penalties (Section 7, RA 8042)

1. **Simple IR:**
   Twelve (12) years and one (1) day but not more that twenty (20) years and a fine of not less than 1 M nor more than 2 M

2. **Illegal Recruitment which constitutes economic sabotage:**
   Life imprisonment and a fine of not less than 2 M nor more than five (5) million pesos

3. **Prohibited Acts:**
   Six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than 500 T nor more than 1 M
ANTI – ILLEGAL RECRUITMENT PROGRAMS

- Legal assistance to the victims of illegal recruitment and related cases
- Assistance in the prosecution of suspected illegal recruiters
- Special operations such as surveillance/entrapment of person and entities suspected to be engaged in illegal recruitment activities
- Closure of establishments engaging in illegal recruitment activity
WORKABLE STRATEGIES TO CONTROL ILLEGAL RECRUITMENT

- Two Pronged Nationwide Anti-Ilegal Recruitment Campaign
  - Information Dissemination
  - Law Enforcement and Prosecution

- Coordinative Efforts/ Inter-Agency Linkages
TWO-PRONGED APPROACH TO IMPLEMENT THE AIR CAMPAIGN PROGRAM
THE PREVENTIVE APPROACH

I. Conduct of Pre-Employment Orientation Seminars and AIR Information/Education Campaign Seminars nationwide

II. Dissemination of information and education materials down to the grassroots level (poster, brochures, leaflets, etc)

III. Publication of monthly travel advisories in newspapers of general circulation as mandated under R.A 8042 as well as regular press releases to warn the public against illegal recruiters, their modus operandi and other pertinent information
THE PREVENTIVE APPROACH

IV. Continuing AIR Multi-media campaign such as: Radio Programs/TV guestings in public service programs and AIR infomercial;

V. Conduct of conferences, seminars and training workshops for law enforcement groups, prosecutors, non-government organizations, LGUS and the academe

VI. More stringent requirements for issuance / renewal of license

VII. Stiffer penalties for recruitment violations committed by licensed agency
THE PREVENTIVE APPROACH

VIII. Local Alternative Action to increase accessibility to jobs – jobs fairs, provincial recruitment authorities, establishment of branch offices of licensed recruitment agencies

IX. Networking
The Remedial Approach

I. A mechanism for free legal assistance is provided to victims of illegal recruitment.

II. Prosecution of Illegal Recruiters - victims of illegal recruiters are provided legal assistance in the preliminary investigation stage.
The Remedial Approach

III. Special Operations – Conduct of surveillance, closure and entrapment operations on persons and entities suspected to be engaged in illegal recruitment.

IV. Administrative Prosecution of erring licensed recruiters and impositions of stiffer administrative penalties

V. Networking
COORDINATIVE EFFORTS / INTER-AGENCY LINKAGES

Coordination with government agencies such as the DFA, OWWA, PNP/CIDG, DOJ, NPS, NBI

Coordination with the private sector including Media, Non-government Organizations and Advocacy Groups
Membership in Inter-agency Committees such as the Inter-agency Committee on Passport Irregularities (ICPI), National Law Enforcement Coordinating Council (NALECC), Inter-Agency Committee Against Escort Services, Anti-illegal Recruitment Coordinating Councils (AIR-CC), Inter-agency Council Against Trafficking (IACAT)
COORDINATIVE EFFORTS / INTER-AGENCY LINKAGES

Coordination with *Local Government Units*

Signing of *Memorandum of Agreement / Memorandum of Undertaking* with concerned government agencies and other concerned organizations
Republic Act 9208 of 2003-Anti-Human Trafficking

- It institutes policies to eliminate and punish human trafficking, especially women and children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons. It aims "to promote human dignity, protect the people from any threat of violence and exploitation, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

- R.A. 9208 made the Philippines one of the few Asian countries in Asia that have enacted an anti-trafficking legislation.
POEA Standard Employment Contract

🌟 (to follow MCs issued on 1989 and 1993 is still being retrieved from poea)
POST OVERSEAS EMPLOYMENT

🌟 The National Reintegration Program promotes the delivery of responsive, productive and sustainable reintegration services to OFW returnees that will enable them to maximize the gains of overseas employment, mitigate the social costs of migration and cushion the impact of forced repatriation due to unexpected events.
The reintegration program was institutionalized in 1995 with the creation of the Re-Placement and Monitoring Center (RPMC) pursuant to R.A. 8042 and with the establishment of the National Reintegration Center for OFWs (NRCO) under the Department of Labor and Employment pursuant to R.A. 10022 and its Implementing Rules and Regulations.
COMPONENTS

COUNSELING

1. Counseling on values formation, family support, and importance of preparing for their eventual return and realization of their family goals as an offshoot of overseas employment.

2. Counseling on re-entry options such as wage employment, livelihood, entrepreneurship and business options.

3. Counseling on savings, financial planning, money management and investment options.
TRAINING AND CAPABILITY

1. Skills training, retooling and upgrading

2. Financial Literacy/Money Management

3. Entrepreneurship Training
1. Job search assistance for local or overseas employment
ENTREPRENEURSHIP/Micro-Enterprise Development

1. Assistance for business capital (or starter kits)

2. Assistance to obtain business loans and other credit facilities

3. Assistance for technology and product development and marketing
REINTEGRATION PROGRAM COMPONENTS FOR DISTRESSED OFW RETURNEES

1. Rescue and temporary shelter assistance
2. Legal assistance
3. Medical assistance
4. Repatriation assistance
   - Airport assistance
   - Transfer assistance to residence
5. Economic assistance
Thank You