

**The Recruitment Industry in the Philippines: Government-Business Relations in the
Overseas Employment Program**

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A thesis submitted for the degree of Doctor of Philosophy of The Australian National
University

I certify that this thesis is my own original work.

A handwritten signature in black ink, appearing to read "Nathan Doherty". The signature is fluid and cursive, with the first name "Nathan" and the last name "Doherty" clearly distinguishable.

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Abstract

No major country in the world is as reliant on migrant remittance flows as is the Philippines, with some 8-11 million workers overseas sending \$17 billion back home each year. As important as these flows are to the Philippine economy, the export of labor has never been part of a coherent development strategy. At least 13 major government agencies are involved in matters pertaining to overseas Filipino workers, but the result is more of a patchwork of overlapping roles than a systematic regulatory regime. My thesis examines relations between these agencies and the approximately 1,500 recruitment agencies that are the key private-sector actors in facilitating overseas migration from the Philippines. Despite the importance of these agencies, no previous research has examined their role, their associational ties, or the nature of their relations with a range of government actors. Theoretically, my research contributes to debates within political economy on what roles the private sector and government have in pursuing and achieving national economic development objectives. Beyond this primary contribution, my research also provides insights into debates on alternative development strategies in developing states, the politics of international labor migration, and bilateral labor relations between states. The research for my thesis was gathered primarily across five months of fieldwork in the Philippines. While there, I was able to utilize multiple methods of investigation including interviews with politicians, bureaucrats, NGOs, business leaders, and international organizations as well as significant archival research. My thesis topic intersects with many research areas, including not only the politics of development and government-business relations but also state-society relations, structures of governance, foreign policy making, and international diplomacy.

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List of Abbreviations

APEC	Asia-Pacific Economic Cooperation
APMRN	Asia Pacific Migration Research Network
ASEAN	Association of Southeast Asian Nations
BES	Bureau of Employment Services
BLA	bilateral labor agreement
BLES	Bureau of Labor and Employment Statistics
CEPD	Council on Economic Planning and Development
CFO	Commission on Filipinos Overseas
CMA	Center for Migrant Advocacy
COA	Commission on Audit
COMELEC	Commission on Elections
COWA	Committee on Overseas Workers Affairs
DBM	Department of Budget and Management
DFA	Department of Foreign Affairs
DOF	Department of Finance
DOLE	Department of Labor and Employment
DTI	Department of Trade and Industry
ECB	Economic Planning Board
EDSA	Epifanio de los Santos Avenue
EOI	export-oriented industrialization
EPB	Economic Planning Board
EPS	Employment Permit System
EPS-KLT	Employment Permit System – Korean Language Test
FAME	Filipino Association for Mariners’ Employment Inc.
GATT	General Agreement on Tariffs and Trade

GDP	gross domestic product
ILO	International Labour Organization
IOM	International Organization for Migration
IOs	international organizations
ISI	import substitution industrialization
JICWELS	Japan International Corporation of Welfare Services
JSL	Joint and Solidary Liability
MITI	Ministry of International Trade and Industry
MOA	Memoranda of Agreement
MOU	Memorandum of Understanding
NCPAG	National College of Public Administration and Governance
NEDA	National Economic Development Authority
NGO	non-governmental organizations
NIC	newly industrializing economy
NLRC	National Labor Relations Commission
NSB	National Seamen Board
NSO	National Statistics Office
OCW	overseas contract worker
OEDB	Overseas Employment Development Board
OFW	Overseas Filipino worker
OPAP	Overseas Placement Association of the Philippines
OWWA	Overseas Workers Welfare Administration
PASEI	Philippine Association of Service Exporters Inc.
PDIC	Philippine Deposit Insurance Corporation
PDOS	Pre-departure Orientation Seminars
PHILHEALTH	Philippine Health Insurance Corporation

PMRW	Philippine Migrant Rights Watch
POEA	Philippines Overseas Employment Administration
RA	recruitment agency
RTAs	regional trade agreements
SWAK	Spinners and Weavers Association of Korea
TESDA	Technical Education and Skills Development Authority
UNIFIL	United Filipinos in Hong Kong
WelFund	Welfare Fund for Overseas Workers
WTO	World Trade Organization

Chapter One: Introduction

Importance of Migration in the Philippines

When arriving at the Ninoy Aquino International Airport in Manila it only takes a few minutes to figure out that the Philippines takes overseas labor migration very seriously. There are exclusive processing areas in the customs departure and arrival areas dedicated for the sole use of Overseas Filipino Workers (OFWs). The international airport is also equipped with OFW-only waiting rooms and a special Labor Assistance Center where the Philippines Overseas Employment Administration (POEA), the Overseas Workers Welfare Administration (OWWA), and the Philippine Health Insurance Corporation (PHILHEALTH) all provide departure and arrival services for workers on their way to, or coming home from, jobs overseas. Once beyond the airport there are constant reminders of the 'migration culture' that exists in the Philippines today. From the billboards advertising international calling plans and mobile phone remittance schemes to the thousands of taxi cabs emblazoned with advertisements for OFW web portals, there are frequent reminders that this is a country geared for the international labor market. While there may be other countries that send more migrant workers overseas (specifically, China, India and Mexico) no major country is more dependent on the export of labor than is the Philippines.

The objective of this thesis is to explore the interaction between government and business in the overseas employment program in the Philippines. There will be a strong emphasis on program policies, the policy-making process, and how various program actors interact with each other. This thesis will straddle several disciplinary fields and sub-disciplinary areas including politics, international political economy, public administration, international relations, migration studies, and development studies. It is anticipated that the arguments,

discussions, and findings of this thesis will be particularly valuable to policy makers and bureaucrats in the Philippines as well as scholars and non-governmental organizations (NGOs) working on migration or remittance issues in the Philippines. Despite the focus on the Philippines it is also expected that the findings of this thesis will contribute to understanding of similar issues in other states engaged in overseas labor migration. A key component of the argument put forward in this thesis is that the overseas employment program is being under-utilized for national economic developmental outcomes and that, by studying the interaction between government and business, recommendations can be made to improve program efficiency and integration into the national economy. This can thereby enhance the program's relative effects on national economic development. The approach proposed to accomplish this (in Chapter Two) is a strategy that derives a certain inspiration from the development model pioneered by the East Asian tigers, namely Japan, Korea, and Taiwan.

This thesis is very much a macro view of the current Philippine economy, the overseas employment program, and the plan for national economic development. By looking at the convergence of these three elements, at the macro level, a clear understanding will emerge of how these three areas must be brought together if meaningful progress is ever to be made. This chapter is arranged to provide an introduction to overseas labor migration from the Philippines, to introduce the key players involved, to briefly introduce the parameters set for the scope of this thesis, and to set forth the structure of the subsequent chapters. Because this thesis adopts a very different approach to studying overseas labor migration in the Philippines as compared to those that have traditionally been utilized by scholars, a

section in this chapter has been dedicated specifically to explaining what issues will not be explored at length in subsequent chapters.

The Philippines is distinct in its approach toward international labor migration for a number of reasons. Unlike many labor sending countries, overseas migration in the Philippines developed with official government encouragement rather than simply as a spontaneous organic phenomenon. More history will be provided later in the chapter, but suffice it to say the Philippine government has actively encouraged overseas migration since the early 1970s. Proof of the importance the government places on overseas migration from the Philippines can be seen in the size and scope of the bureaucracy tasked with managing various aspects of the program (see Chart 1.1 below). Over the program's nearly 40-year history what was once intended to be a temporary option for unemployed and underemployed workers has become a major contributor to the Philippine economy through the remittances that workers send home.

Scope of Philippine Migration

Although concrete statistics on the scope of how many Filipinos are involved in overseas labor are hard to pin down, one cannot overstate the massive scale of the phenomenon. Estimates of the total stock of OFWs usually range between eight and twelve million, depending on the source. The POEA put the total at 8,187,710 as of December 2008, with other groups estimating that this excludes an additional three million illegal (undocumented) OFWs.¹ The numbers of workers deployed has risen steadily each year

¹ Yvette Collymore, "Rapid Population Growth, Crowded Cities Present Challenges in the Philippines," *Population Reference Bureau*, last modified June 2003, <http://www.prb.org/Articles/2003/RapidPopulationGrowthCrowdedCitiesPresentChallengesinthePhilippines.aspx>.

with the annual totals exceeding one million each year since 2006.² In 2008, the number of deployed newly hired or re-hires reached a staggering 1,236,013 which, according to the POEA, meant an average of 3,377 deployments per day.³

In discussing the scope of migration from the Philippines it is useful to explore labor statistics, especially those related to the national workforce in comparison with the deployment figures given above. In order to truly understand the importance of the overseas employment program to the Philippines, some review of relevant statistical data is necessary to put the scale of the issue into the national context. The National Statistics Office (NSO) specifies two figures when referring to the national workforce. First the total number of individuals over the age of fifteen who are included as qualifying for the workforce, currently at 59,327,000 people for 2009. Secondly, one must consider the 'Labor Force Participation Rate,' which for 2009 stood at 64 percent. From these two numbers the actual labor force total given for 2009 equals 37.9 million.⁴ Other important figures to consider when looking at the labor picture in the Philippines are the unemployment rate (7.5 percent in 2009) and the underemployment rate (19.1 percent in 2009).⁵ What is not clear from these figures is where exactly OFWs are counted in the process, if at all? If the POEA's 2008 figure of 8,187,710 legal OFWs is used and divided by the estimated 2008 total labor force, 37.1 million, we see that if OFWs are included in the formulations for the latter statistic, they account for 22 percent of the total labor force. If OFWs are not counted then they represent an additional 22 percent on top of the official labor force statistic and are

² Philippines Overseas Employment Administration, *Table 1. Deployment of OFWs by Type of Hiring, 2008 – 2007*, http://www.poea.gov.ph/stats/2008_stats.pdf.

³ Ibid.

⁴ Carmelita N. Ericta, *2009 Annual Labor and Employment Status*, National Statistics Office – Republic of the Philippines, last modified January 21, 2010, <http://www.census.gov.ph/data/pressrelease/2010/pr1038tx.html>.

⁵ Ibid.

artificially skewing domestic labor figures, especially the unemployment rate. Because of the large number of OFWs abroad, this causes some amount of ambiguity in reported national labor statistics.

Another area of considerable importance to an overall understanding of the scope of migration in the Philippines is the issue of remittances. Worldwide remittances are playing an ever increasing role in the economic strategies adopted by people trying to build a better life for their families. The importance of remittances to Filipinos and the Philippines can hardly be overestimated, and is one of the very things that has attracted me to Philippine migration politics as a research topic. The Philippine economy today is one designed to exploit the constant stream of foreign currency entering the country. Everywhere one can see billboards and advertisements for newer, faster, and more secure ways of receiving money from friends and loved ones overseas. The proliferation of malls selling imported goods and foreign based fast food chains are just two examples of how increased access to foreign currency has changed the nature of the Philippine economy.

Chart 1.1 Top Ten by Country: Workers' remittances, compensation of employees, and migrant transfers, credit in US Dollars (as of November 2009)

		2008 Remittances (millions)	2008 GDP (millions)	Remittances as % of GDP	Population (2008 Estimates in millions)
1	India	\$49,977	\$1,215,992	4.11%	1,139
2	China	\$48,523	\$4,521,827	1.07%	1,324
3	Mexico	\$26,035	\$1,094,480	2.38%	110.6
4	Philippines	\$18,642	\$173,602	10.74%	90.1
5	France	\$16,596	\$2,831,794	0.59%	64.1
6	Spain	\$11,835	\$1,593,912	0.74%	45.5
7	Germany	\$10,884	\$3,623,686	0.30%	82.1
8	Korea, Rep.	\$10,732	\$931,402	1.15%	48.6
9	Poland	\$10,447	\$529,400	1.97%	38.1
10	Belgium	\$10,285	\$507,020	2.09%	10.7

*Source: World Bank: Key Development Data & Statistics

As seen above in Chart 1.1, at 18.6 billion dollars in 2008 the Philippines ranks fourth worldwide in terms of total remittances behind India, China, and Mexico, but ahead of France, Spain, and Germany. Although India and China both take in over double the annual remittance revenues of the Philippines, it is conceivable that in the coming years, especially considering its rapid population growth, the Philippines could catch up with and even displace Mexico. Once one moves to beyond the '2008 remittance' column of Chart 1.1, some interesting discrepancies in the picture begin to emerge. In terms of 2008 GDP for example, there is a massive discrepancy between the top three annual GDP figures and the Philippines, at \$173 billion. Population figures add value to the picture as well, where we can see that the top two countries for remittances receiving also happen to be the world's two most populous countries. Perhaps the most telling figure from Chart 1.1, in respect to the scope of migration's importance to the Philippines, is what we see when remittance figures are compared as a percentage of national GDP.⁶ None of the top ten remittance receiving countries come close to the Philippines in terms of how important remittances are to the state's total GDP. Nigeria, Romania, and India come in at less than five percent. Other countries in the world beat the Philippines when comparing remittances as a percentage of GDP, but these states are usually small, with Samoa, Lesotho, and Tonga cited as frequent examples (see Chart 1.2 below).

⁶ Remittances into the Philippines accounted for 10.74 percent of GDP in 2008.

Chart 1.2 25 Countries with highest remittance income as a % of GDP in 2008

Rank	Country Name	Remittances as % of GDP	GDP (current US\$ in Millions)	Population
1	Tajikistan	49.3	5,161	6,691,416
2	Lesotho	37.3	1,600	2,127,412
3	Moldova	31.3	6,054	3,570,107
4	Tonga	27.1	348	102,910
5	Bermuda	26.3	6,067	64,200
6	Kyrgyz Republic	24.0	5,139	5,277,900
7	Lebanon	23.9	30,079	4,166,915
8	Samoa	23.8	568	181,809
9	Nepal	21.7	12,572	28,905,358
10	Haiti	21.4	6,407	9,736,332
11	Honduras	20.6	13,881	7,302,742
12	Kosovo	18.5	5,641	1,795,000
13	El Salvador	17.5	21,431	6,129,628
14	Jordan	16.7	22,696	5,787,000
15	Jamaica	15.3	14,245	2,687,200
16	Bosnia and Herzegovina	14.8	18,512	3,774,164
17	Guyana	14.5	1,922	751,578
18	Nicaragua	12.8	6,372	5,635,577
19	Albania	11.5	12,968	3,181,397
20	Guatemala	11.4	39,136	13,690,846
21	Bangladesh	11.2	79,554	145,478,300
22	Senegal	11.2	13,210	11,787,123
23	Philippines	10.7	173,602	90,173,139
24	Togo	10.7	3,163	5,776,837
25	Cape Verde	10.0	1,550	487,371

*Source: World Bank: Key Development Data & Statistics

Why Focus on the Recruitment Industry?

Year after year the numbers of Filipinos seeking work abroad continues to increase, resulting in a remarkable proliferation in the number and size of recruitment agencies wishing to be involved in the lucrative business of placing workers around the globe. Ever since the late 1970s, private recruitment agencies have been the enablers of overseas labor migration from the Philippines. Recruitment agencies are normally classified as either land-

based or sea-based (manning), although some recruiters are involved in both areas. All recruitment agencies regardless of specialization are required to hold the relevant operating licenses obtained through the POEA. Despite the perception of the comparatively high start-up capital requirements, foreign ownership rules, and strict licensing guidelines implemented by the POEA, in April 2009 the number of licensed land-based agencies stood at 1,010, and sea-based 361.⁷ In addition to these licensed agencies, there are an unknown number of unlicensed recruiters who operate outside the rules of the POEA. Many take advantage of prospective OFWs looking for job opportunities, who are willing to pay fees up-front in order to secure employment abroad, by taking their money and failing to deploy them abroad as agreed. Because they operate outside of the legal system, prosecution in such cases is nearly impossible.

When discussing Philippine migration policy making there is a small group of key actors involved in the process: the President, Congress, the POEA, Department of Labor and Employment (DOLE), Department of Foreign Affairs (DFA), National Economic Development Authority (NEDA), the recruitment industry, civil society groups, and the migrants themselves. In addition to domestic policy making there are also multilateral and bilateral policy processes and negotiations between the DFA, the POEA, DOLE, the Overseas Worker Welfare Administration (OWWA), the recruitment industry, and equivalent organizations in migrant worker destination states. Despite the variety of actors involved in policy processes, both foreign and domestic, the recruitment industry more than any other group

⁷ POEA newspaper list of licensed recruiters; the required escrow deposit for anyone wishing to legally participate in the overseas employment program is 1 million pesos (approximately US\$23,000). While this figure might seem like a relatively low sum by international standards for starting up a business, this amount is significant because this cost does not contribute in any way toward the setup of the new business but instead sits in an account waiting to compensate OFWs that are deployed by the agency and then file suit against them with the National Labor Relations Commission.

is responsible for interpreting policy and turning those policies into workable business realities. In other words, they make migration from the Philippines possible. In spite of their key role in making migration happen, the recruitment industry is a convenient scapegoat for the long list of problems and abuses that occur under the umbrella of the Philippine overseas labor program. Some of the consternation is no doubt deserved, but in an industry of nearly 1,500 licensed businesses and an unknown number of illegal agencies there are of course both good and bad apples. Throughout this thesis, interviews and archival records will show that despite the many examples of mistreatment and abusive policies there are indeed agencies that place a great deal of importance on the wellbeing and happiness of the workers they deploy abroad.

It is perhaps the negative image that is portrayed in the Philippines of abusive recruitment agencies exploiting hapless destitute would-be laborers and the popular idea that the industry has a cabal-like control over policy makers, ultimately shaping policies which reinforce their position as the enabler of overseas labor migration, which, from the perspective of the industry's critics, allows them to continue abusing the OFW while enriching themselves. Does the recruitment industry really wield as much power in the policy-making process as is commonly believed? Throughout the subsequent chapters, the clear answer that will emerge is "no." Philippine migration policy is in fact shaped by a diverse range of interests and tension arising from a variety of actors. While it does have some influence, the recruitment industry does not have any more clout in policy-making circles than do the NGOs, who are their most ardent critics. If for no other reason, the recruitment industry in the Philippines is important to study because of the important role it

plays in a pre-eminent element of the Philippine economy today and into the foreseeable future.

Primary Focus: Government-Business Relations

For the purposes of this thesis the term 'business' is specifically referring to the recruitment industry in the Philippines. This paper will focus specifically on the relationship between the recruitment industry and the government in overseas labor migration policy making. More precisely, 'government' for the purposes of this thesis will be divided into two discussions: the relationship between the recruitment industry, the Congress, and the executive branch as well as the relationship between the recruitment industry and the overseas migration bureaucracy (POEA, OWWA, DOLE, DFA). Thus, future references to 'government' are referring to the executive, the Congress, and the bureaucracy, unless otherwise specified. Although other actors in policy-making process are certainly important, the tension between the recruitment industry, which is affected greatly by policy and directly impacted by its implementation, versus the policy-making politicians and those in enforcement roles, is central. This analysis will prove valuable to our understanding of how policies have been shaped previously, and what forces will prevail on migration policies in the future.

There is a rich literature on the topic of government-business relations, particularly in regard to national economic development. Since the program's inception the standard position taken by national politicians has been to deny that overseas migration is a primary development strategy, but instead a 'stop-gap, short-term' measure. In this thesis the framework used in national development focused studies of government-business relations will be applied to the Philippine overseas employment program. A more detailed discussion

of the theoretical underpinnings of government-business relations and how they are to be applied to this thesis will be given in Chapter Two.

Unsurprisingly, during the Marcos years the executive branch took the lead in shaping Philippine migration policy. President Corazon Aquino, Marcos' immediate successor, basically continued to exercise control of the program, though with more input from Congress and civil society. However beginning with the Flor Contemplacion affair of the mid-90s until today, the Congress has taken over as primary law-giver on overseas migration policy matters. The president does still issue executive orders related to overseas migration from time to time, but not to the same extent they were used by President Marcos and President Corazon Aquino. The discussion related to the relationship between the executive, legislative branch and the recruitment industry will focus primarily on national migration policies, specifically, how they are created, what input is given from the industry, and how the interactions between the government and private sector influenced the direction policy has taken. Some secondary issues to be explored under this topic include: clientelistic politics in recruitment as well as in legislative and executive migration policy making, cronyism and corruption in migration policy making, and the place of migration in national development policy.

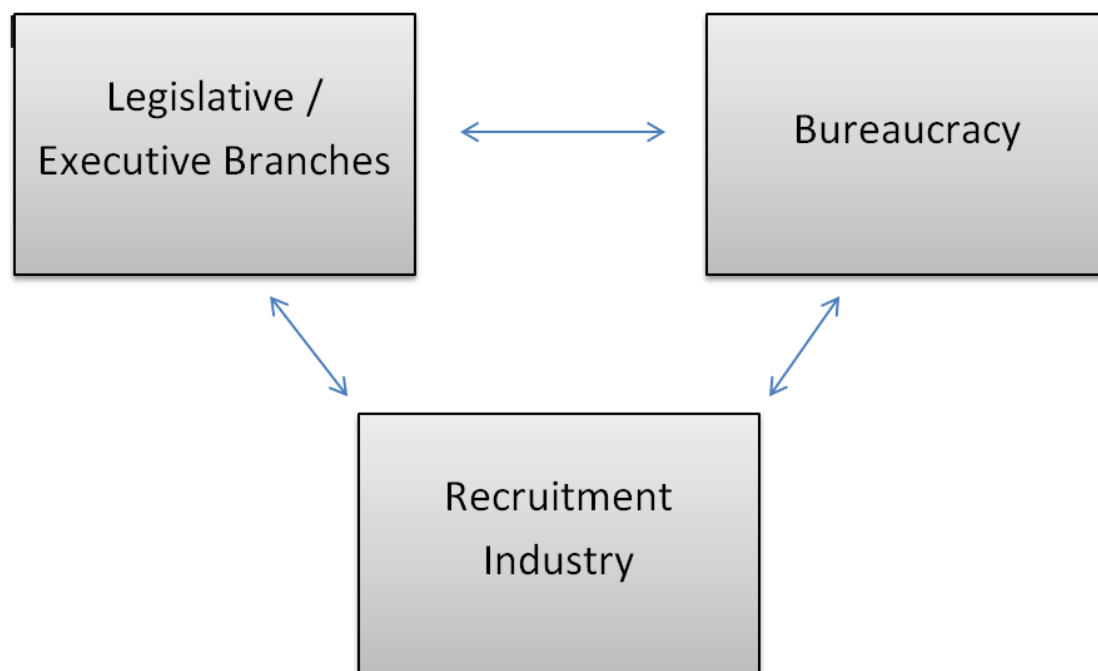
Since the 1970s there have been dedicated bureaucratic entities in place to manage the overseas employment program in the Philippines. These organizations do not of course write the laws which govern the overseas employment program, but they do enforce those laws as well as enact specific policies and guidelines which allow the program to be implemented successfully. In essence organizations like the POEA, OWWA, and the DFA are the gatekeepers of overseas migration through which both the recruitment industry as well

as individual prospective migrants must pass if they wish to deploy workers and seek job opportunities abroad. In this context my government-business relationship discussion will focus on the interaction and tensions between the recruitment industry and the government bureaucracy that governs them and the program under which their business operates. The rules and policies of the POEA for example require that specific organizational and structural components be in place in order for individual recruiters to participate in the program. Lately, additional tensions have arisen between the bureaucracy and the recruitment industry over the movement toward more state-to-state 'government controlled' employment schemes, which the recruitment industry sees as a conflict of interest for the POEA as well as a direct threat to their livelihood. As one of the bureaucracy's primary responsibilities is to protect OFWs, this thesis will also explore the predatory practices that exist in the recruitment industry and how policies, as well as regulatory practices and capacity, either encourage or discourage predatory behavior.

By utilizing this dual approach of exploring government-business relations through executive/legislative branch vis-à-vis the recruitment industry and also the bureaucracy vis-à-vis the recruitment industry, a diverse picture emerges as to how migration policy is formed, what the objectives of policy initiatives are, and who ultimately benefits (see Figure 1.1 below). Ultimately, whether looking at the larger national picture or at cases of individual migrants, overseas employment migration from the Philippines is a program in which people are placing their hopes of building a better life. With some planning, these efforts could be harnessed to pursue national economic development through both individual and collective initiatives. The Philippine government has been slow to admit that the overseas employment program has any relation to the national development plan, but

loudly proclaim pride when the Philippine program of overseas labor migration management is held as a model to be emulated by other countries wishing to establish a labor migrant sending program.⁸ It is also for this reason that the development-focused nature of the government-business relations literature seems particularly applicable to the Philippine overseas labor migration program.

Figure 1.1: Government-business relations research design matrix



Research Focus

Because of the massive scale of overseas labor migration from the Philippines, there are a long list of problems and abuses throughout the system and at virtually every step in the process. Consequently, policy makers are continually refining the program and making subtle or even drastic changes to aspects of the program itself. Throughout the many

⁸ Center for Migrant Advocacy, "The Philippines: A Global Model On Labor Migration?," *Friedrich Ebert Stiftung*, 2nd ed., June 2009, http://www.pinoy-abroad.net/img_upload/146b2f7c97a50d42d52e607766f52aff/AJG_09.doc.

efforts made to improve the program over the years, the underlying premise motivating reforms has been the need to provide protection for workers through all stages in the process. That is, workers should be protected during the recruitment process, during the sending process, for the duration of their overseas labor contract, and during the repatriation stage after the completion of their contract. With this in mind there has been an arms race of sorts among the various actors in the policy-making process, as they try to prove that their 'worker protection' credentials are the most impressive. Each group has tried to identify themselves as the friends and protectors of the OFW and the one most able to pursue their best interest. If all parties involved in policy making are looking out for the protection of the OFW, who is left to approach policy making from an alternative perspective, such as leveraging overseas migration for national development, or the goal of one day eliminating the need for workers to go abroad for work at all? In other words, can the pursuit of worker welfare based overseas labor migration policy be viewed in part as a noble distraction from meaningful policy steps that could utilize this remarkable program for the benefit of the entire country?

In this thesis I argue that in order for the overseas employment program, and the policies which guide the program, to be successful in contributing to national development there needs to be a shift in policy. Most crucially there needs to be a new cooperative effort between government policy makers, economic development planners, and the recruitment industry in situating the overseas employment program within the national economic development strategy without diminishing from important policy strides that have been taken in the field of worker welfare. Furthermore, I argue that consultation, cooperation, and strategic planning between government and business is a vital component in an

effective national development strategy. I also argue that despite its bad reputation the recruitment industry is not solely to blame for the many problems with the overseas labor program, but is a politically convenient scapegoat for the government and other actors to blame.

Beyond the Scope of this Thesis

There has been a great deal of academic attention in recent years given to the issue of gender as it relates to Philippine overseas migration. James Tyner, Dierdre McKay, and Katherine Gibson, for example, have all addressed various aspects of gender politics as related to Philippine overseas migration. Discussions of the ‘feminization’ of migrant labor from the Philippines have rightly been a topic for exploration by political scientists, sociologists, and geographers. Some such as Katherine Gibson have focused on economic development through using migrant remittance investments to form community based businesses, often run by returned female migrants. McKay has done extensive research with OFW women’s groups in destination locations such as Hong Kong and Singapore. Generally speaking the numbers paint a fairly balanced gender picture of deploying OFWs. In 2008, of the 338,266 OFWs deployed as ‘new hires,’ 174,928 were male and 163,338 were female.⁹ Thus the number of newly deployed workers is roughly split fifty-fifty between the genders. There are of course numerous social, economic, and familial implications to both men and women leaving the country each year, as they often do so at the expense of those they are leaving behind in their roles as fathers and mothers.

⁹ Philippines Overseas Employment Administration, *Table 17. Deployed Overseas Filipino Workers - New hires, 2008, Top Ten Skills by Sex*, accessed June 26, 2012, http://www.poea.gov.ph/stats/2008_stats.pdf.

Although this dimension to the broader issue is tremendously important, it will not be the focus of this research.

Numerous studies have been undertaken on overseas labor migration from the Philippines by a cross section of scholars from a variety of disciplines. With very few exceptions, the vast majority of these studies have focused on the human and social costs of the program. Without any desire to belittle or diminish in any way the value of these studies, in essence, these studies are looking at various aspects of the immensely important issue of worker welfare. One cannot discuss overseas labor migration in any depth without encountering the issue of worker welfare, which perhaps explains (beyond its more obvious importance) the widespread academic interest in the topic. What makes this thesis unique among previous studies of overseas labor migration in the Philippines is that worker welfare does not have a central role in the primary veins of inquiry being undertaken. Yes, worker welfare will be explored here and there, but only as it relates to the policies governing the program or the actors (which includes OFWs themselves) involved in that policy-making process itself.

This distinctive approach will offer a different perspective on many issues that have been often researched, but always from a worker welfare perspective. It is hoped that, by exploring the policy-making process from government-business and economic development perspectives, new options will emerge for policy makers to chart an alternative course for both the overseas employment program and the national economy as a whole. In anticipation of criticism of this new approach, it is important to be absolutely clear that in approaching these issues in this way I do not diminish the importance of enhancing welfare for workers. I share the view of many advocates and scholars alike that OFWs deserve

better protection than they now enjoy, and hope that through my distinctive approach to the central questions of this thesis meaningful progress toward correcting those welfare deficiencies will be rectified. In the following section a brief overview of the history of overseas labor migration from the Philippines will be given.

Brief Chronology of Overseas Migration from the Philippines

Early Philippine Migration (Pre – 1974)

Although this thesis focuses on government-business relations in Philippine migration policy during the past 35 years, the Philippines has a rich overseas migration history prior to the Marcos administrations revision of the Philippine labor code in 1974, which established the foundation for current policy. From 1521 when Ferdinand Magellan ‘discovered’ the Philippines and claimed the archipelago for Spain, Filipinos had a tradition of working abroad. After Miguel López de Legazpi established the first permanent Spanish settlement in 1565, Filipinos worked for the Spanish as shipbuilders, as able seamen and ultimately powered what came to be known as the Manila Galleon Trade. These early Filipino migrant laborers made two round trips annually bringing silks and spices from Asia to Acapulco, New Spain (present day Mexico) for transfer on to Europe, and returning with tons of raw silver, and minted silver and gold coins.¹⁰ The Manila Galleon Trade continued for over two hundred years from 1565 until Mexican independence in 1815.¹¹

In 1898 the U.S. annexed the Philippines from Spain following the Spanish-American War.

Joaquin Gonzalez has classified external Philippine migration into three distinct waves, 1900

¹⁰ Benito Legarda Jr., “Two and a Half Centuries of the Galleon Trade,” *Philippine Studies Historical and Ethnographic Viewpoints* 3, no. 4, (1955).

¹¹ Richard H. Dillon, “The Last Plan to Seize the Manila Galleon,” *The Pacific Historical Review* 20, no. 2 (1951): 123.

to the early 1940s, late 1940s to early 1970s, and early 1970s to today. During the first wave President McKinley's policy of "benevolent assimilation" provided scholarships for young Filipinos to pursue college educations in the U.S., although these scholarship programs were targeted specifically at wealthy youths and were intended to curry favor with powerful elite families.¹² After the initial wave of students Filipinos came as agricultural workers primarily to Hawaii, Alaska, and the Pacific coast. Gonzalez explained:

Between 1900 and 1930, Hawaii-based plantation owners were recruiting thousands of Filipino *manongs* [working men] to harvest sugar and pineapple. At America's most northern frontier, approximately 5,000 Filipino workers were contracted yearly for Alaska's flourishing fish canneries. Later on, the demand for Filipino contract labour shifted to agribusiness-related assignments in the states of California and Washington. Close to 50,000 left the Philippines for the U.S. mainland's Pacific coast to work as fruit and vegetable pickers. In the vast orchards and fields of California and Washington, they harvested and packed apples, grapes, oranges, lettuce, tomatoes, etc.¹³

Prior to 1974 the primary piece of domestic Philippine overseas labor migration legislation was Act 2486, passed in 1915, which established an arrangement where by recruiters paid fees to both national and provincial governments for the right to recruit adult Filipinos. The recruiters primary obligation to contracted Filipino workers was to provide return passage home after the contract terms had been filled, or in case of accident or illness.¹⁴

The second wave consisted primarily of workers bringing their families and relatives to the U.S. and Filipino war veterans who were allowed citizenship in the U.S. due to their military service. By the 1950s and 1960s, there began to be a demand in East Asian neighbor countries for artists, barbers, musicians, and loggers in addition to the continued migration

¹² Joaquin L. Gonzalez III, *Philippine Labour Migration: Critical Dimensions of Public Policy*, (Singapore: Institute of Southeast Asian Studies, 1998): 61.

¹³ Ibid, 29.

¹⁴ International Labour Office, *Bulletin of the International Labour Office* (London: The Pioneer Press, 1916): 314.

to the U.S.¹⁵ Smaller numbers of workers also left during this period for Western Europe, Canada and Australia. The Philippine government, both before and after the American period, had very little involvement in the sending of migrant workers. During these early years overseas migration from the Philippines was an informal affair and highly subject to individual choice. In the 1960s and 1970s Filipino seamen began to deploy in great numbers for a variety of international shipping companies. Land-based migrants also began to deploy as contract workers, commonly referred to as overseas contract workers (OCWs), with large batches of deployments processed through DOLE in 1971, 1972 and 1973. Between the late 1960s and 1974 increasing numbers of private recruitment agencies came into existence to fill the growing demand for overseas employment opportunities. By 1974 most Filipinos who went abroad for work found employment and deployed overseas through recruitment agencies.

Modern Philippine Migration: The Third Wave (1974- present)

The post-1974 period has seen migration take center stage in many aspects of Philippine social, financial, cultural, and political life. Two years after the declaration of martial law in 1972, a new national labor code established a formal government-controlled framework for sending contract workers overseas. Initially the 1974 labor code banned recruitment agencies from deploying workers, whose deployments were instead to be managed by the three new public agencies established in the labor code: the Overseas Employment Development Board (OEDB), the Bureau of Employment Services (BES), and the National Seamen's Board (NSB). By 1978 the new agencies proved unable to keep up with the exponential growth in the numbers of contract workers deploying overseas. Consequently

¹⁵ Gonzalez, *Philippine Labour Migration*, 31.

that same year Marcos issued Presidential Decree 1412, which re-authorized the private recruitment industry to participate in sending contract workers abroad.

In 1982, President Marcos consolidated the three agencies originally created in the 1974 labor code, into the Philippine Overseas Employment Administration (POEA). This new agency took on the combined roll of its three predecessors with a mandate of “promoting and monitoring the overseas employment of Filipino workers...and to protect their rights to fair and equitable employment practices.”¹⁶ The POEA thus became the lead agency in charge of overseas labor migration, though other agencies such as the DFA, and DOLE maintained a role. Following Marcos’ ouster in 1986, President Corazon Aquino issued Executive Order No. 247, or *Reorganizing the Philippine Overseas Employment Administration and For Other Purposes* (July 1987), through which the POEA was to “enhance its effectiveness in responding to changing market and economic conditions and to the call of the national development plan for the strengthening of the worker protection and regulation components of the overseas employment program.”¹⁷ It was widely perceived that President Aquino’s issuance of EO 247 was also an attempt to overturn what were seen as corrupt Marcos-era policies (more on this in Chapter Three) related to the governance of the overseas worker program.

The next major milestone in the evolution of the Philippine overseas worker program came after the execution of OFW Flor Contemplacion in Singapore March 17, 1995. In response to public outcry over her death the Philippine Congress pushed through Republic Act 8042, which was aimed squarely at increasing protections for OFWs. This legislation redefined

¹⁶ Ferdinand Marcos, *Executive Order No. 797*. Manila, Philippines, May 1, 1982.

¹⁷ Corazon C. Aquino, *Executive Order No. 247*. Manila, Philippines, 1986.

many aspects of the process but had particular emphasis on the structures and resources of support that needed to be implemented to serve OFWs in destination states. The long-term implications of RA 8042 will be discussed at length in Chapter Four.

Further reform came in 2010 with a new law introducing a new liability insurance scheme for OFWs as well as revisions of many parts of RA 8042.¹⁸ In March 2010 President Arroyo failed to sign Republic Act No. 10022, which meant that it automatically became law. RA 10022 amends much of RA 8042 and introduces new programs like mandatory insurance for newly hired OFWs. The circumstances surrounding the creation of RA 10022 were particularly important because by the end of the policy-making process both civil society groups and the recruitment industry, who traditionally oppose each other, united in opposition to its adoption, albeit for somewhat different reasons. In the lead-up to the bill's passage, opposition centered around the program which requires OFWs to have overseas worker insurance while working abroad. The process and debates associated with mandatory OFW insurance, and the passage of RA 10022, provide an excellent case study for how Philippine migration policy is planned, shaped, and implemented, and will be dealt with at length in Chapter Five.

Overview of Chapters

The structures of chapters in this thesis explore government-business relations through both contemporary and historical migration policy-making case studies. Throughout the chapters are embedded discussions of institutional arrangements, key interests of relevant

¹⁸ The full name of the law is (full caps in original): AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES.

actors, policy arrangements, and current policy initiatives. Chapters One through Five are arranged chronologically with Chapter Five covering the most recent events. In Chapters Six and Seven case studies of government-business relations are used, while Chapter Eight ties together findings and proposes future areas of research inquiry. Throughout all the chapters there is a strong focus on both policy, and how the often antagonistic dynamic of government-business relations impacts particular policy developments over time and into the future. In addition to the afore-mentioned explanation of the multi-disciplinary nature of this thesis, the issues surrounding the overseas employment program are complex and require analysis at multiple levels. Unlike some government programs and policies, the overseas employment program is a domestic program that is inherently international, which means that on some matters the language of international relations and diplomacy will be useful to implement, while on other matters the language of public administration would be more appropriate. The unique challenge this domestic-yet-international program creates will be overcome by exploring each part (the foreign and domestic) of the program individually, following this with macro level analysis of the program and national policy as a whole.

Chapter Two provides the theoretical foundations for the study, based on analysis of the government-business relations framework. This chapter will explore the historical centrality of external resources in the Philippines, and how modern remittances gained through overseas migration accords with this traditional reliance. A brief discussion on the distinctiveness of the recruitment industry in the Philippine economy will be undertaken with a comparative look at other sectors of the economy. In the process of exploring previous scholarship conducted on the relationships between government and business in

national economic development, some comparative examples of the developmental paths taken by Japan, Taiwan, and Korea will be explored. From the case studies in this chapter, the acute need in the Philippines for a well-trained, empowered, central economic planning authority will become clear. Lastly this chapter will situate this thesis within the broader discussion of government-business relations and the political economy of development.

In Chapter Three a discussion is undertaken of the policy and legal framework of Philippine migration policy between 1974 and 1995. It further explores the roles and actions of both the government (as previously defined) and the recruitment industry in creating and implementing the migration policies of that era. The legal foundations for current migration policies are explored with special emphasis on the policy approaches pursued during the Marcos years and the immediate post-Marcos years. This chapter will further discuss the institutional development of the migration bureaucracy, and how these institutions impacted both the program generally, and further complicated the government-business relationship. There will also be a discussion of the role of sending agreements, as well as a brief discussion of other policy actors and their impact on policy.

Chapter Four examines the period roughly from 1995 to 2001. A great deal of attention will be given to the policy/legal framework of the Migrant Workers Act of 1995, a bill designed to better protect OFWs while working abroad. A discussion of circumstances surrounding its creation and the various actor interests pursued during its rapid movement through the legislative process will illustrate the complexities of migration policy making in the Philippines. As a case study, the 1995 act will illustrate a moment in time when government-business relations were under considerable strain as the government sought to shift blame away from themselves due to the public outcry over the execution of OFW Flor

Contemplacion in Singapore. The ramifications of the act's passage will be reviewed, as will the subsequent legal challenges made against the law in the Supreme Court.

Covering 2002 to the present, Chapter Five explores the inception, creation, negotiations, and passage of a major revision to the Migrant Workers Act of 1995. Although the material covered is the final chapter in the chronology of the thesis, this bill will be used as a case study to understand how current migration policies are being pursued, what interests are being manifested, whose policy perspectives are being adopted, whose are being ignored, and what motivates the current policy direction. This case study demonstrates how far the migration policy-making process has come since the program's inception in the early 1970. It further suggests what policy directions might be anticipated in the future. The chapter also examines the impact of the global financial crisis on overseas migration and how policy makers have responded.

Chapter Six deals with government-business relations on the international side of migration policy making. Internationally, policy is being pursued through the signing of bilateral labor agreements between the Philippines and destination states. This chapter will use several bilateral labor agreements as case studies to explore how government-business relations impact both the position of the Philippine government and their approach to these agreements. The complex state of the Philippines' negotiating position will be explored as well as the position of destination states in ongoing efforts to forge new bilateral labor agreements. As the overseas employment program is inherently international, an explanation of both government and business responsibilities abroad will be provided, exploring how these responsibilities are tied to specific domestic or bilateral policies.

In Chapter Seven I will conduct a comparative analysis of government-business relations in migration policy by using the Republic of Korea as a case study. Background of Korea's migrant sending program will be given with special emphasis on the reasons for starting the program and how it was ultimately discontinued. Beyond Korea, further comparisons will be made to the migrant sending programs in Indonesia. By comparing the migration policies, and their place within the wider national economic development strategy, a model will be provided for how migration programs can be utilized for developmental outcomes.

I will conclude my remarks in Chapter Eight by drawing together points discussed in all previous chapters, in order to draw broad actionable possibilities as well as to highlight areas of possible future research. My conclusions will illustrate the dire need for policy makers to place the overseas employment program into the larger context of national economic development in the Philippines. Policy recommendations provided in previous chapters will be condensed into a series of "necessary steps" for the policy makers. The future of migration from the Philippines will be discussed in addition to prospects for either ending or enhancing the program and the structures which govern them. Final conclusions will be placed within the context of the global debate on both migration for development, as well as the role of government-business relations in development. In the end Chapter Eight offers recommendations for the future of overseas labor migration in the Philippines and how this remarkable program can work to the benefit of the entire nation.

Chapter Two: Maximizing Migration: Theoretical Approaches to Government-Business

Relations in the Philippine Overseas Employment Program

While conducting research for this project in Metro Manila I visited the Bureau of Labor and Employment Statistics (BLES) in Intramuros, the ancient Spanish walled fort city. During the Spanish colonial era only Spaniards or mixed race ‘mestizos’ were granted entry to Intramuros, but on the day of my visit no one objected to my entry. My goal was to retrieve any available statistical data on the recruitment industry in the Philippines, specifically sectoral data on revenues generated in the recruitment/manpower sector of the domestic economy. I knew that recruitment industry data related to the sending and receiving of migrant workers was maintained by the Philippine Overseas Employment Administration (POEA), but I wanted domestic data on the recruitment industry as it related to the national economy, or in other words as a sector of the national economy. I presumed that a large industry, with approximately 1,500 licensed companies responsible for substantial direct and indirect (remittances) contributions to the national economy, will be tracked by the nation’s leading labor and employment statistical body. After spending the better part of a day searching the archive, however, I was informed by the archivists that BLES did not have what I was looking for. They recommended that I return to the POEA. As Filipinos were denied entry into Intramuros during the Spanish era, a large sector of the domestic economy which employs thousands of Filipinos has been denied entry into official calculations of national employment and labor statistics.

Premise for using the Government-Business Relations Framework

This exclusion problem highlights confusion in the Philippines over how to classify the recruitment industry, or manpower sector as it is sometimes called. Part of the confusion

likely comes from the two-level nature of the industry. Most researchers, politicians, NGOs, and average citizens focus on what the industry does, but not what they are. There are approximately 1,500 licensed land-based and maritime licensed recruiters operating in the Philippines.¹ In addition to providing jobs abroad to over one million Filipinos per year, the industry provides thousands of jobs domestically as well as contributing to the national economy through taxes on revenues and profits. This thesis will approach the recruitment industry in the same way other researchers have approached the study of key industrial sectors in other states. Just as a development scholar might focus on the political economy of the high-technology manufacturing sector or sugar cultivation to understand their role in national economic development, I will focus on the recruitment industry's role in national development through the lens of the government-business relations framework.

As mentioned in Chapter One, the modern program of overseas worker migration did not start as a national development plan, although as of 2012 it has the appearance of such a plan. Some have even gone as far as referring to the Philippines as a global model in using migration for national development.² Research on remittances in the Philippines has proliferated in recent years, and with good reason. In 2008, for example, remittances accounted for over 11 percent of national GDP. The importance of migration and the resulting remittances to the national economy was brought into sharp focus in December 2008 when President Arroyo, facing the global financial crisis, issued an administrative order instructing that "the POEA should be challenged by the challenging overseas employment

¹ Philippine Overseas Employment Administration, "Status of Recruitment Agencies," last modified May 30, 2012, <http://www.poea.gov.ph/cgi-bin/agList.asp?mode=all>.

² Center for Migrant Advocacy, "The Philippines: A Global Model On Labor Migration?," *Friedrich Ebert Stiftung*, 2nd ed., June 2009.

environment into crafting aggressive overseas employment strategies that defy the trend of a constricting job market.”³ She further instructed that the POEA to “execute a paradigm shift by refocusing its functions from regulation to full-blast markets development efforts, the exploration of frontier, fertile job markets for Filipino expatriate worker.”⁴ These statements are significant in that the official line from the presidential palace and other government sources generally denies the permanence or development-focus of the program. Rather overseas migration is typically treated as one of many options available to Filipinos. The ‘migration-is-a-choice’ framing is particularly exasperating to the millions of Overseas Filipino Workers (OFWs) who would prefer to earn good wages without needing to go abroad to work. This thesis will be approached with the view that the overseas employment program is an integral component of the larger national development strategy.⁵

Why should the government-business relations framework be used to explore the relationship between migration and development? The key argument of the government-business relations framework is that cooperation and coordination between the private and public sector is necessary for economic prosperity and developmental outcomes. Scholars such as Peter Evans and others have argued that this collaborative relationship between the private and public sectors is a necessary component of what he calls the “developmental state.”⁶ Throughout the late 1980s and 1990s a great deal of academic attention was paid to this topic. Scholars interested in comparative political economy have argued that the fast

³ Ferdinand E. Marcos, *Executive Order No. 797 May 1, 1982*, http://www.lawphil.net/executive/execord/eo1982/eo_797_1982.html.

⁴ Ibid.

⁵ National Economic and Development Authority, *Medium-term Philippine Development Plan 2004-2010*, <http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/MTPDP%202004-2010%20NEDA%20v11-12.pdf>.

⁶ Peter Evans, “The State as Problem and Solution: Predation, Embedded Autonomy, and Structural Change,” *The Politics of Economic Adjustment* 3, no. 3 (1992): 151.

industrializing states in East Asia, namely the Republic of Korea, Japan, Taiwan, Singapore and less often Hong Kong, are quintessentially developmental states. Through a combination of careful coordination, high level communication, and state management, these states have achieved remarkable economic progress in the years since World War II. Evans described the objective of government-business relations as an attempt to unravel the “state’s role in the earlier developmental agenda-industrial transformation and... to provide an analytical portrayal of the institutional characteristics that separated states which were more successful at this task from those that were less successful.”⁷ With a few minor adjustments I wish to apply this framework to my examination of government-business relations within the overseas employment program as well as the relationship between the overseas employment program and national development. While the government-business relations theorists equate ‘development’ with industrialization, for my purposes ‘development’ will be conceptualized as any improvement in the national economic outlook of the state especially in regard to improved economic ‘options’ for economic planners. This will allow for the overseas employment program to reach its fullest potential. To be clear, this project will not argue that migration in the Philippines is or is not a viable development strategy, but instead that as a program already in place it could be better utilized for developmental outcomes. The application of the government-business relations framework helps to elucidate the case.

Defining Government

Government for the purposes of this research refers to the legislative, executive, and judicial branches of the national government as well as the bureaucracy. The executive

⁷ Ibid, 141.

branch has historically taken a lead role in policy formulation of the overseas employment program. Since the introduction of the labor code in 1974 by President Marcos, the program was managed largely by presidential decree and executive orders. It was not until 1995, nearly ten years after the removal of Marcos, that the legislative branch took over the lead role in migration policy making. The judicial branch has had very limited involvement in migration policy, although they have weighed in from time to time in a few important cases involving migrant workers.

For the purposes of this thesis the primary bureaucratic entity of concern is the POEA, although the Department of Labor and Employment (DOLE), Department of Foreign Affairs (DFA), Overseas Worker Welfare Administration (OWWA), National Economic Development Authority (NEDA), BLES, Commission on Filipinos Overseas (CFO), and the Central Bank also have important roles related to the overseas employment program. Chart 2.1 below provides additional information on how bureaucratic responsibilities in the implementation of the overseas employment program are dispersed. As seen in chart 2.1, the POEA takes on the role as primary body in charge of managing the overseas employment program. Despite its role as 'lead agency' the POEA's advice and expertise is often ignored by the legislature as we will see in the case study described in Chapter Six.

Much attention in the literature has revolved around the nature and quality of the bureaucracy. Evans has argued that "the state's ability to support markets and capitalist accumulation depended on the bureaucracy being a corporately coherent entity in which individuals see furtherance of corporate goals as the best means of maximizing their

individual self-interest.”⁸ Japan, Korea, and Taiwan are frequently cited as having competent and developmentally oriented bureaucracies. These states all share a tradition of a highly professional bureaucracy able to “pick its staff from among the most talented members from among the most talented members of the most prestigious universities.”⁹ Evans takes the importance of the bureaucracy one additional step, emphasizing the importance of the informal networks created among those coming up the bureaucratic ranks. He argues that “meritocratic recruitment via elite universities and the existence of a strong organizational ethos creates the potential for constructing...solidary interpersonal networks within the bureaucracy.”¹⁰ Professionalism and competence seem to be key determinants in the bureaucracy’s ability to act independently. Citing the example of the Japanese Ministry of International Trade and Industry (MITI) Evans argues:

If MITI were not autonomous in the sense of being capable of independently formulating its own goals and able to count on those who work within it to see implementing these goals as important to their individual careers, then it would have little to offer the private sector. MITI’s relative autonomy is what allows it to address the collective action problems of private capital, helping capital as a whole to reach solutions that would be hard to attain otherwise, even within the highly organized Japanese industrial system.¹¹

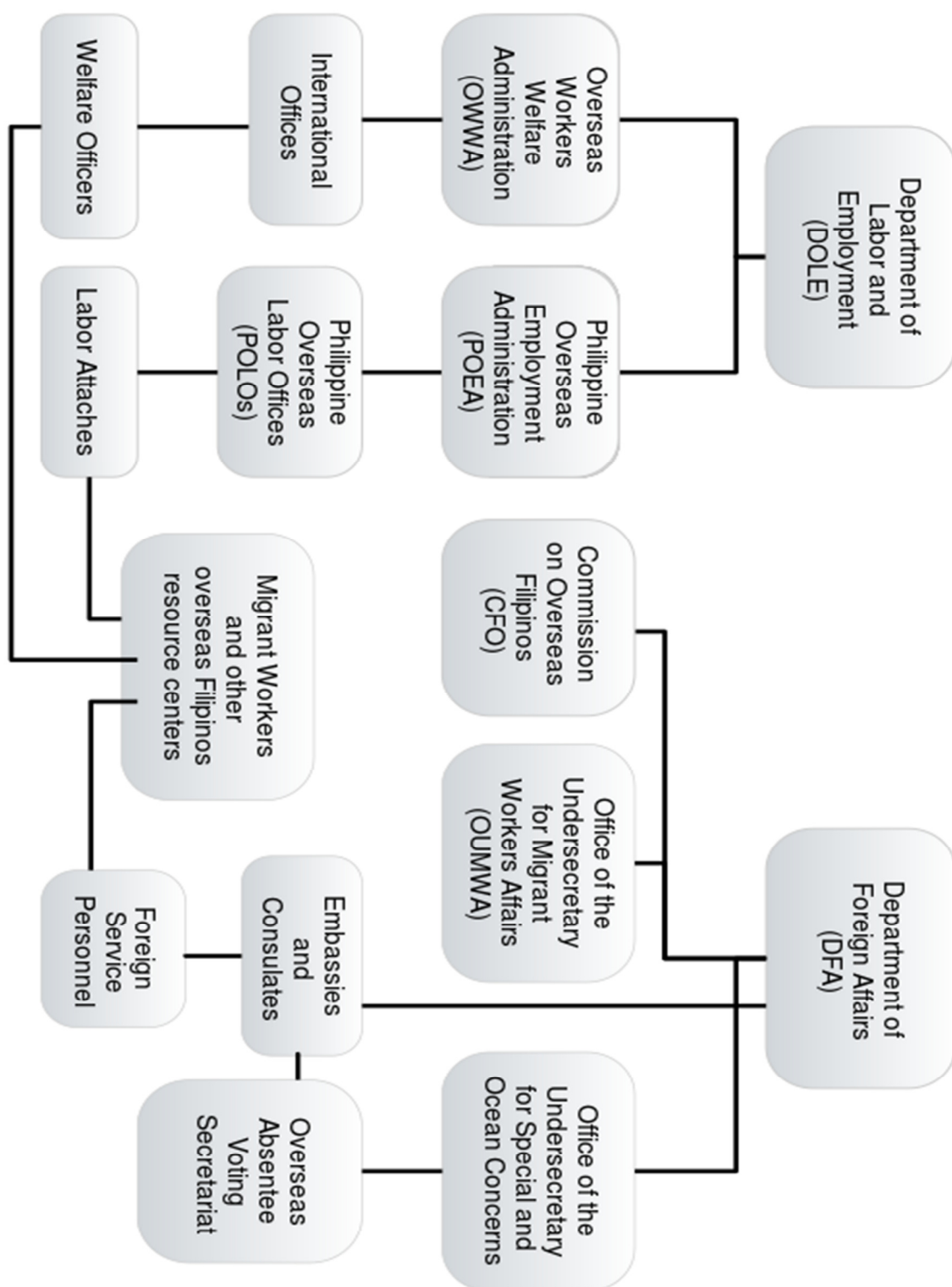
⁸ Evans, “State as Problem,” 146.

⁹ Ibid, 155.

¹⁰ Ibid.

¹¹ Ibid, 154.

Chart 2.1: Philippine Overseas Employment Program Organizational Chart

Source¹²

¹² Adapted from: Niel G. Ruiz, "Managing Migration: Lessons from the Philippines," *The World Bank*, August 2008, http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MD_Brief6.pdf

Whether discussing the POEA or any other part of the national bureaucracy, the Philippines has a long way to go in order to achieve the same level of competence. Exactly what steps should be taken to improve the Philippine bureaucracy are beyond the scope of this research, though some examples of structures in place in Japan, Korea, and Taiwan will be given hereafter and might serve broadly as a useful role model.

Beyond its lack of a meritocratic recruitment system, the Philippine bureaucracy is plagued by even more basic structural problems which act as impediments to reaching the levels of competence emphasized by Evans. Paul Hutchcroft explains that “while all states possess patrimonial features to some degree, it is clear that there is a particularly large gap between the Philippine state and the archetypal bureaucratic state, where there is one objective law for all and administration is conducted without respect for persons.”¹³ Both Hutchcroft and Evans draw upon Weber’s notion that “advanced forms of capitalism require an administrative and legal structure able to promote ‘political and procedural predictability’.”¹⁴ Overall it would seem that the Philippine ‘oligarchy-dominated bureaucracy’ is burdened by the patrimonial nature of politics in the Philippines.

However, the POEA has made great strides at managing the overseas employment program in a coherent and focused way. There are three contributing factors to the relative success the POEA has achieved since its formation in 1982. First, it could be argued that the POEA had little choice but to improve its own operation as the overseas employment program has grown bigger year by year, seeing an ever greater number of workers processed through its doors. This motivation-by-logistics has seen the responsibilities of the agency increase in

¹³ Paul D. Hutchcroft, “Booty Capitalism: Business-Government Relations in the Philippines,” *Business and Government in Industrializing Asia*, ed. Andrew MacIntyre (Ithaca, New York: Cornell University Press, 1994), 218.

¹⁴ *Ibid*, 219.

addition to the rapid rise in workload requisite with the ever increasing numbers going abroad for work. Second, the program is a highly visible area of government policy that touches the lives either directly or indirectly of tens of millions of Filipinos, and is thus a motivating factor for politicians to demand a more responsive bureaucracy. News stories of worker abuses abroad, or program mismanagement domestically, generally reflect badly on Malacañang and the legislature rather than the POEA itself. Politicians in the legislature and executive then apply pressure to the POEA and related bureaucratic entities to improve processes. Evidence of this can be seen in the behaviors of politicians seeking office. A few senators have even taken to campaigning overseas in addition to taking firm positions on related issues that are important to OFWs. The recent efforts to extend voting rights to OFWs also highlights the ever increasing political clout the overseas employment program has in Philippine politics. Public perception thus motivates politicians into action which generally means new operating policies for the POEA. A third reason for the POEA's success has been institutional expertise developed through a clearly mandated set of responsibilities. The POEA is good at what it does, because it has a narrow set of defined responsibilities. Many of the failings in the program as a whole happen in the policy overlap areas, or the areas between which the POEA shares responsibility with related agencies. This third point will be discussed later in the chapter.

Defining Business

Many of the case studies described in the government-business relations literature deal with industries or economic sectors with relatively few participants, but private sector participants in the overseas employment program in the Philippines are both diverse and numerous. In the case of the overseas employment program, as previously mentioned,

there are approximately 1,500 licensed recruitment agencies of all sizes actively deploying contract workers around the world. In order to approach this large industry I will draw upon the 'typology of business' for government-business relations study developed by Haggard, Maxfield, and Schnieder.¹⁵ Their typology breaks down five distinct framings or classifications that help theorize 'business' as a concept. The categories of their typology include capital, firm, sector, association, and network.

The first category, business-as-capital reviews how and by whom investment is made, how the government can be affected by said investment and how government policies can encourage or discourage further investment. Some scholars have focused intensely on "the constraining effects of uncoordinated private-investment decisions on government decision making."¹⁶ The capital aspect involved in the recruitment industry should not be understated. It is ultimately investment by the recruitment industry in developing new job markets for overseas workers that generates growth both in industry revenues as well as in terms of total workers deployed overseas, ultimately affecting national remittance figures. Recruitment agencies profits are not only determined by the number of deployments they make, thus their perpetual search for new markets for workers, but also by finding better paying jobs for OFWs, as they are more profitable than low-skill, low-pay jobs. Haggard et al. describes the strategic dilemma of cooperation between business-as-capital and government when the aforementioned lack of 'political and procedural predictability' exists in a state.

¹⁵ Stephan Haggard, Sylvia Maxfield and Ben Ross Schneider, "Theories of Business and Business State Relations," *Business and the State in Developing Countries*, ed. Sylvia Maxfield and Ben Ross Schneider (New York: Cornell University Press, 1997), 38.

¹⁶ Ibid.

If business and government are able to cooperate and reach stable compromises, the restraining effects of private control over investment decisions and capital movements can be mitigated. One problem in reaching such understandings is that each player is uncertain about the other's future behaviour. If government makes concessions with respect to taxation, regulation, or wages, investors may not respond. Conversely, private agents may fear that political calculations will prevent the government from keeping its commitments to sustain a profitable business environment.¹⁷

This uncertainty sentiment, especially from the recruitment industry as we will see in future chapters, is a particularly potent motivating factor in how recruiters conduct business and approach investment. The industry generally views policies as punitive to business, thus fostering an atmosphere of fear. This may ultimately be a contributing factor to many of the less generous or attractive aspects of industry practices.

The next model, business-as-sector, emphasizes the "structural sources of divergent business interests" when viewing single sectors within the economy or multiple economic sectors within economies as a whole.¹⁸ Haggard et al. explains that "the implicit model of politics in most sectoral approaches is one of rent seeking, lobbying, or "vulgar" pluralism in which policy favors are exchanged on the political market for various forms of support; institutional mediations are of limited significance."¹⁹ Although difficult to uncover, these conditions exist between the recruitment sector and government much in the same way they exist throughout the Philippine bureaucracy, and all levels of government. One difference however in the recruitment sector compared with other economic sectors studies by scholars is the high number of actors. With approximately 1,500 recruitment agencies there is a wide range of competing interests, and sector consensus toward

¹⁷ Ibid, 40.

¹⁸ Ibid, 42.

¹⁹ Ibid, 44.

government policy is rarely universal. The large and fragmented pool of participants in the sector creates a collective-action obstacle to the methods employed by sectors with a lower number of large participants who each exercise a greater share in the collective sectoral will. Low entry barriers are the primary reason for the high number of participants in the recruitment industry. Many returned OFWs use their overseas earnings, and newly acquired overseas connections, to set up their own agencies when they return home.

The Business-as-firm model deals with the “size, horizontal diversification, and patterns of financing” of the business research subjects. This mode of inquiry has its roots in the large conglomerates that exist in East Asian economies, such as the Korean chaebol.²⁰ These mega-firms are diversified across a broad range of industries, not all of which are necessarily related or complementary. Because these large firms account for significant portions of a state’s economy they also can wield tremendous political power. Size then is also key to this research model. I have already discussed how the lack of key powerful firms in the recruitment sector can be attributed to the high number of participant firms which acts a control over any one agency becoming dominant or excessively large.

In light of the fragmentation within the recruitment sector and the subsequent collective action challenges this fragmentation causes, the business-as-associations approach is particularly useful. Haggard et al. provides two reasons for adopting an ‘association’ based focus to the study of government-business relations:

First, business associations can maximize the positive effects of government-business collaboration by limiting the pursuit of particularistic benefits. Second, associations can promote collective self-governance of business, or

²⁰ Ibid, 45.

private-interest governance, that can be equally if not more efficient and effective than direct state intervention or regulation.²¹

There are two main recruitment (manpower) associations in the Philippines, Filipino Association for Mariners' Employment Inc. (FAME), and the Philippine Association of Service Exporters Inc. (PASEI). Fame focuses exclusively on maritime (sea-based or 'manning') recruitment agencies while PASEI focuses primarily on land-based recruitment. Although these two associations account for the bulk of the industry, not all recruiters have chosen to join them. PASEI, for example, has around 700 members leaving nearly 300 land-based licensed recruitment agencies unaccounted for.

Haggard et al. utilize Mancur Olson's work to address the issue in that "common interests do not necessarily lead to effective organization or concerted political action because of the free-rider problem."²² In understanding business-as-association relations between the recruitment sector and the state the issue of free riders within associations is particularly important. The issue of size and scope once again become key to our understanding. In contrast to the situation within the recruitment industry scholars have argued that small associations are best for successfully translating collective will into collective action. In contrast to the large number of firms in the recruitment industry,

Smaller numbers of firms, especially large firms, can monitor each other and either sanction free riders or absorb the costs of organization...however, the relationship between size and business organization may not be linear. Where business is highly concentrated, economic ministers and capitalists

²¹ Ibid, 49.

²² Ibid, 49.

controlling a large proportion of gross domestic product (GDP) can all sit at the same dinner table.²³

This is clearly not possible with the recruitment industry as it exists today, nevertheless, the associations could potentially overcome the free-rider problem and achieve more effective policy outcomes through their collective-action efforts with the state.

One drawback to the business-as-association approach is its failure to include coverage for informal networks, otherwise known as the business-as-network model. This model is highly appropriate to be used in a Philippine context as it focuses on 'social constructions of trust and collaboration'.²⁴ The Philippines has complex social networks of kinship ties, patrimonial relationships, and reciprocity that exist across all spectrums of Philippine society from political and business relationships to family social contexts.²⁵ Hutchcroft has explored the clientelistic nature of politics in the Philippines, though his conclusions fit just as easily beyond the political spectrum into business and social situations.²⁶

It is important next to bring in Evans' second attribute necessary for developmental state bureaucracies after Weberian structures, what he calls 'embedded autonomy'.²⁷ Evans' "notion of embedded autonomy encompasses both the networks linking bureaucrats and capitalists (thus "embedded") as well as the internal organizational characteristics of the bureaucracy that give it independence."²⁸ Embeddedness then is synonymous with network (in this sense government-business), and a vitally important concept when seeking to

²³ Ibid, 49.

²⁴ Ibid, 53.

²⁵ Hutchcroft, *Booty Capitalism*, 232.

²⁶ Paul D. Hutchcroft, "Oligarchs and Cronies in the Philippine State: The Politics of Patrimonial Plunder," *World Politics* 43, no. 3 (1991).

²⁷ Peter Evans, *Embedded Autonomy: States and Industrial Transformation*, (New Jersey: Princeton University Press, 1995).

²⁸ Haggard et al., "Theories of Business," 55.

understand both the bureaucracy and the private sector. Both must be given a sufficient level of autonomy to conduct their affairs according to their best ability, but both need to be embedded in networks that bind them together. When embedded autonomy is present in the bureaucracy and business “trust and cooperation can emerge where interaction is repeated, information on participants is abundant, relations are multifaceted, and participants do not discount the future too much.”²⁹ Successful network relationships:

can promote the two-way flow of information between government and private sector, which in turn enhances policy design and subsequent adjustment. To the extent that networks build reciprocity and trust, they benefit the economic policy process by lowering transactions costs between government and business and minimizing the likelihood of policy stalemates. Networks are also beneficial to the extent that they increase transparency because this raises the costs of individual rent seeking.³⁰

Trust is seriously lacking in government-business relations in the overseas employment program, much in the same way that predictability is lacking. The politically sensitive nature of a government-controlled program that deploys workers beyond the scope of its own jurisdiction is a persistent obstacle to changing the nature of the government-business relations from one that is highly adversarial to one of cooperation and communication.³¹

Of the five models described by Haggard et al, this research will rely heavily on a combination of the business-as-association and the business-as-network models. To a lesser extent the business-as-capital and the business-as-firm models will be used primarily in their focuses on firm size and investment decision making. As the business-as-sector

²⁹ Ibid, 55.

³⁰ Ibid, 56.

³¹ An exception to this rule (described in Chapter Seven) is Korea which did not contract Korean laborers to non-Korean firms to the same extent or scale that the Philippines has. Consequently the Korean government had a greater ability to coordinate with business, as those businesses were primarily based in Korea.

approach seems geared more toward sectors with a few very large key players, the model for this project seems less useful.

Situating the Philippine State: Predatory, Developmental, or Intermediate

In conjunction with the government-business relations literature, scholars have attempted to create a typology of how state structures and practices interact for developmental outcomes.³² Evans argues that there are three distinct types that the states fall into when assessing how 'developmental' they are structurally and procedurally. He cites Zaire (modern day Democratic Republic of the Congo) under Mobutu as a "textbook case of a predatory state in which the preoccupation of the political class with rent-seeking has turned society into its prey."³³ As Hutchcroft demonstrates, the Philippines clearly has some common characteristics with the "kleptopatrimonial" nature of Mobutu era Zaire, but to a much less severe extent with the possible exception of the Marcos era.³⁴ On a kleptocracy scale with zero representing a totally un-kleptocratic state, and ten representing Mobutu era Zaire, the Philippines would likely fall somewhere in the 5-7 range. The post-Marcos era has seen kleptocratic activities decentralized and accessible by a broader set of elites, but unfortunately not completely removed from political life, as we saw with the Presidency of Joseph Estrada.³⁵ For Evans, predatorily structured states are antithetical to development as leaders have little motivation in organizing the state to meet development objectives rather than self-enrichment.

³² Evans, *State as Problem* / Meredith Woo-Cumings, ed., *The Developmental State*, (New York: Cornell University, 1999).

³³ Evans, *State as Problem*, 149.

³⁴ Ibid, 151. & Hutchcroft, *Booty Capitalism*.

³⁵ In late 2000 and early 2001 President Joseph Estrada was impeached for corruption and ultimately resigned as President of the Philippine Republic.

The Evans typology refers to the ‘ideal-type’ arrangement of state structures as ‘the development state’. Developmental states are those with a balanced mix of provident governance, national economic goal setting, and strict adherence to the rule of law in conducting both public and private affairs between business and government. In his case studies on Japan, Korea, and Taiwan, Evans emphasizes the need for provident governance in order to truly be a model developmental state. These three states have enacted policies over a series of decades with an eye to overall national development goals. In other words, there has been consistency over a long period of time in economic development policy which has informed the actions of both the state apparatus as well as the business community. In the Korean case, Evans points to the

relatively privileged position held by a single pilot agency, the Economic Planning Board (EPB). Headed by a deputy prime minister, the EPB was chosen by Park [Chung Hee] to be a “superagency” in the economic area. Its power to coordinate economic policy through control of the budgetary process is enhanced by mechanisms like the Economic Ministers Consultation Committee and by the fact that its managers are often promoted into leadership positions in other ministries.³⁶

Similar situations existed in Japan with the Ministry of International Trade and Industry (MITI) and Taiwan with the Council on Economic Planning and Development (CEPD). Evans argues that “the existence of a given agency with generally acknowledged leadership in the economic area allows for the concentration of talent and expertise and gives economic policy a coherence that it lacks in a less clearly organized state apparatus.”³⁷ The importance of having a central economic planning agency with sufficient power to keep the state on a firm developmental track is a crucial component of truly developmental states.

³⁶ Ibid, 156.

³⁷ Ibid, 157.

The Philippines has the National Economic and Development Authority (NEDA), which holds a similar mandate to the equivalent bodies in East Asia, but wields far less power over policy. Gerardo P. Sicat, Marcos-era NEDA head, has expressed concerns about its relative decline in prominence under the Arroyo administration, during which

the agency's independence and integrity have been compromised. At the very least, it seems that under Arroyo, NEDA and its director general are again being sidelined, if not marginalized, on matters that fall within their mandate, particularly seen as being less important in relation to the president's economic team — which consists of the secretaries of the Department of Finance (DOF), Department of Trade and Industry (DTI), and Department of Budget and Management (DBM).³⁸

In NEDA's 2004-2010 medium-term development plan, a 315-page document, the overseas employment program is only mentioned briefly in two short paragraphs despite the fact that remittances resulting from the program account for over 11 percent of national GDP in 2008.³⁹ NEDA's planning and research capacities may be of the highest caliber, but if the agency lacks the autonomy to control the direction of national economic policy developmental outcomes will likely be fragmented. Likewise if the central economic agency like NEDA is not sufficiently embedded within the government and business alike, another crucial developmental component will be missing.

It is in his analysis of the Japanese, Korean and Taiwan case studies that Evans finds the strongest support for his idea of the importance of embedded autonomy. He highlights the traditions shared among all three developmental states of a professional bureaucracy that is

³⁸ Alecks P. Pabico, "Has NEDA Gone Nada?," *Philippine Center for Investigative Journalism*, October 10, 2007, accessed July 21, 2010, <http://pcij.org/stories/has-neda-gone-nada/>.

³⁹ NEDA, "Confronting the Global Economic Crisis," accessed June 20, 2012, http://www.neda.gov.ph/plans_and_reports/MTPDP/Updated_MTPDP%202004%20to%202010.pdf, 144-145.

autonomous structurally with authority to make decisions, but also embedded with business and other government areas. As mentioned previously, these bureaucracies are also able to pick from among the brightest graduates of top universities.⁴⁰ Evans explains that:

This embedded autonomy is the mirror image of the incoherent absolutist domination of the predatory state and constitutes the organizational key to the effectiveness of the developmental state. Embedded autonomy depends on an apparently contradictory combination of Weberian bureaucratic insulation with intense immersion in the surrounding social structure. How this contradictory combination is achieved depends, of course, on both the historically determined character of the state apparatus and the nature of the social structure in which it is embedded.”⁴¹

So what benefits then come from this ideal mix of embedded autonomy? In the case of the three Asian tigers the central economic planning bodies have been able to collaborate with business in achieving national development goals by supporting private sector efforts to break into new markets, or expand capacities. The miraculous economic growth seen in East Asia is the result of careful planning by central economic authorities with the full cooperation of the private sector who together achieved more than either could have possibly hoped to achieve individually. The state in the East Asian case studies used numerous methods of encouragement, threat, enticements, to motivate business into moving in the direction they wanted. In describing government-business relations in Korea, MacIntyre highlighted various methods of government influence on business. He described government licensing control over entry into certain industries, “the state’s role in

⁴⁰ Evans, “State as Problem,” 155.

⁴¹ Ibid, 154.

negotiating price levels for a wide range of key commodities”, and even threats of punitive ‘reviews’ of paid taxes.⁴² Beyond these MacIntyre argues that:

the single most important economic instrument in the hands of planning authorities was the control over access to credit facilities. With capital markets largely undeveloped, business in South Korea has relied very heavily on the banking sector for the procurement of long-term finance. An important consequence of this is that Korea’s industrial conglomerates have been very highly leveraged, with debt-equity ratios unimaginable in Western economies. This extraordinary level of dependence rendered business highly vulnerable to government arm-twisting as all the major commercial banks were government controlled. With off-shore borrowing prohibited unless specially approved, no company could afford to earn the displeasure of the government.⁴³

Thus we see that the lesson to be learned from the ‘developmental state’ type of state structure is that selective intervention by the state is common, by highly specialized autonomous economic planning bodies in an effort to steer the private sector in a direction that matches desired national developmental outcomes.

The third category described by Evans fall into a category that he calls “intermediate cases.”⁴⁴ He uses the examples of Brazil and India and explains that these cases “are neither purely predatory nor consistently developmental.”⁴⁵ The Philippines, in the post-Marcos era, but before the Asian financial crisis in 1997, likely fit this type of structural framing. As described earlier, the Philippine state faces continual challenges with patrimonialism, clientelism, and corruption, but has many of the structural requirements necessary in developmental states in place. Like Brazil, in the Philippines “the efficiency of

⁴² Andrew MacIntyre, *Business-Government Relations in Industrialising East Asia : South Korea and Thailand*, (Nathan, Queensland : Griffith University, 1990), 11.

⁴³ Ibid, 11.

⁴⁴ Evans, “State as Problem,” 166.

⁴⁵ Ibid, 166.

government...was dependent...on the cooperation of the landed oligarchy.”⁴⁶ Evans highlighted an aspect of Brazil’s ‘intermediate’ case that applies to the situation in the Philippines when he said that:

Problems created by divisions in dominant economic elites were reinforced by the nature of state structures. The lack of a stable bureaucratic structure also made it harder to establish regularized ties with the private sector of the administrative guidance sort and pushed public-private interaction into individualized channels.⁴⁷

Some of the individualized channels that have developed as result of this situation within the overseas employment program will be highlighted in Chapter Four.

A final important point in discussing the ‘developmental’ nature of the Philippine state involves exploring the targeted developmental outcomes the state sets out to achieve. The problems of the Philippine bureaucracy come not from a lack of necessary institutions but instead a problem of capacity within these institutions. Evans again offers insight into the mistakes made by states seeking to become more developmental in this regard:

Almost all Third World states try to do more than they are capable of doing. The contrasting balance of capacity and tasks that separates India and Brazil from the East Asian developmental states illustrates the point. The developmental states not only had higher levels of capacity but exercised greater selectivity in the tasks they undertook. They focused on industrial transformation and their strategies of promoting industry were designed to conserve administrative resources.⁴⁸

This characterization often reflects the nature of economic planning in the Philippines, as well as planning within the overseas employment program, where grand overarching goals are articulated over more realistic incremental goal setting. It is this point about capacity

⁴⁶ Ibid, 169.

⁴⁷ Ibid, 170.

⁴⁸ Ibid, 177.

and economic development planning that supports the argument for better utilizing the overseas employment program for development. The program is already tremendously important to the national economy, and relatively sophisticated in terms of implementation and achieving program objectives both in the private sector as well as state management of the program. Why then should national economic development goals not include overseas migration? I am arguing that the overseas employment program can be better utilized through improved government-business coordination in order to contribute to national development. This in turn would give planners the ability to move toward increased domestic industrialization and possibly even the eventual discontinuance of the program entirely—or at the very least making overseas labor migration an ‘option’ rather than a necessity.

Overall Characterization of Government-Business Relations and Development Policy (or lack thereof)

As mentioned earlier the primary objective of the government-business relations framework is to specify the necessary ingredients within a state for successful industrialization. This research is instead applying the theoretical framework to improving the overseas employment program for greater developmental outcomes. The jury is clearly still out on utilizing migration for national development purposes, but there is strong research support for the case that when overseas labor migration can be leveraged for developmental outcomes, such efforts can contribute to those ends. This thesis is not seeking to contribute to this ongoing debate, but instead to focus on making improvements to a large national labor program. This program has all of the appearances of a development strategy, with the goal that program improvements would result in economic developmental benefits that

could provide Philippine economic planners with greater flexibility in the future to pursue multiple developmental options. The idea then is to supplement the goal of ‘industrialization’ with ‘maximized overseas migration potential’ for national development. This makes sense considering the capacity to achieve this goal is already in place, as opposed to the capacity for rapid industrialization, which is most certainly not in place. As we learned from Evans above, states must not be overly ambitious in unrealistically setting their economic developmental agenda. Today other states are seeking to emulate the overseas employment program management structures used in the Philippines.⁴⁹ While working in Manila researching this project, I encountered more than one person who spoke with pride in describing the Philippines as a ‘model migrant sending country’. It would therefore be prudent to take this development-strategy-like program and make the most of it.

The story shared at the beginning of this chapter highlights the challenge to thinking about the recruitment industry as a contributing sector of the economy. The reality, however, is that few industrial sectors contribute as much to national GDP as does the recruitment industry. In fact the industry has more than one method of contribution, with the industry providing jobs and revenues domestically in addition to the enormous impact of remittances generated from the services they offer. One of the first steps then is convincing statistical data organizations like BLES to track the contribution of the recruitment sector to the economy. NEDA must also address the recruitment industry in its economic development plans in the same way it would any other national sector of the economy. Ignoring the

⁴⁹ Dovelyn Rannveig Aguinas, “Managing Temporary Migration: Lessons from the Philippine Model,” *Migration Policy Institute*, October 2008.

industry in economic planning and statistical reporting presents an incomplete picture of the national economy.

Government-Business Relations in Migration and the Challenges of Regulation

In any comprehensive analysis, it is important to identify the strengths as well as the challenges to a particular theoretical approach. In applying the government-business relations framework to the employment program a number of challenges become apparent. One of the first challenges to utilizing this approach is the fragmented nature of governance structures tasked with overseeing the overseas employment program. Ostensibly, the overseas migrant worker program is managed domestically by the POEA, which falls under the Department of Labor and Employment (DOLE). However a number of aspects of the program are managed by related government agencies which include the Department of Foreign Affairs, the Overseas Worker Welfare Administration, the Department of Justice, the National Reintegration Center, the Commission on Filipinos Overseas, and the Bureau of Customs. Migrant workers wishing to work overseas face a dizzying array of agencies that they must deal with and ultimately pass through in order to achieve their objectives. The fragmented nature of program governance is thus a hindrance to maximizing efficiency within the program. The complex governance structure also hinders communication and efforts to build networks between business and government. Recruitment industry leaders may build strong networks with the POEA, but they also must navigate this bureaucratic maze if they wish to influence all of the program's constituent parts. Even after one has considered the many aspects of governance for the overseas employment program, it must be remembered that unlike the autonomy in policy making enjoyed by the central financial planning agencies described earlier in the chapter in Taiwan, Korea, and Japan, neither the

POEA nor any of the other related agencies have anything approaching the same level of policy-making autonomy to shape the direction of the program. In the early days the policy direction of the program was controlled exclusively by the president. In the post-Marcos period the Senate and House of Representatives have taken a larger policy making role. In the Senate, the Committee on Labor, Employment and Human Resource Development takes the lead in developing new program policies, with the Committee on Foreign Relations also playing a role. In the House of Representatives the more specialized committee on Overseas Workers Affairs is dedicated to program policy formulation. More information on the relationships between the House and Senate committees who oversee the overseas employment program, and how they interact with the bureaucracy and business, will be provided in the case study in Chapter Five.

Economic planning organizations like MITI (Japan), EPB (Korea), and the CEPD (Taiwan) enjoyed higher levels of autonomy to enact policies. This command-and-control authority seems to be one of the primary missing features of the overseas employment program. Those who are most likely to have expertise in the program itself are not the ones honing policy to meet goals and objectives, instead this task falls to politicians in the legislature and executive. NEDA, as previously mentioned, has seen its ability to fill the central economic planning role diminished in recent years, as for the POEA, it has never had broad authority to manage the policy direction of the program.⁵⁰ Clearly, questions of jurisdiction and policy-making authority within domestic program governance structures are a hindrance to more developmentally oriented government-business relations.

⁵⁰ Although NEDA's planning role has diminished in recent years, since its creation under Marcos, NEDA never has been influential in shaping national economic development planning (more on this in Chapter Three).

Another challenge is the international aspects of the program. As the overseas employment program is inherently multinational in nature, government and business must deal with multiple regulatory regimes in each country in which workers are deployed. For the recruitment industry this usually involves either being licensed to operate in that state, or partnering with local placement agencies. The second option is more common than the first and includes an obvious loss of control for the recruitment agency. The issue of partnering with foreign placement firms is risky for recruitment agencies as they can be held financially liable for the mistreatment of workers deployed through their agency. Foreign governments can also complicate the process for the recruitment industry by requiring paperwork to be translated into local languages, or even establishing laws that require Philippine recruiters to partner with placement agencies operating in the destination state. This forced middle-man set-up increases the cost for the recruiters, and these costs are often passed along to the migrants themselves in the form of additional fees. Chapter Five will elaborate this point, and include some of the strategies through which the recruitment industry has attempted to address these issues. It can be said that the recruitment industry as an element of business must then deal with two government structures, the Philippine government and the government of the foreign state.

Likewise, the unique challenges posed by the international aspects of the overseas employment program must be considered when applying the government-business relations framework to the issue of leveraging the program for developmental outcomes. Of primary concern to the Philippine government is the lack of jurisdiction it has over its citizens while working in destination states. The demand from OFWs and their families back home that the government protect Filipino workers while abroad has heavily influenced

program policy making for the past 15 years. The Philippine government has had only limited success in pursuing OFW protections through a variety of diplomatic means (as examined in Chapter Six). The Philippine government is thus not only dealing with state-to-state diplomatic efforts to manage migration, but they also must adjust to government-foreign private employer relations in destination states. This is true for both migrants who deploy from the Philippines through recruitment agencies, but especially for those workers who deploy through the POEA's direct hire program (more on this in Chapter Six). The government, like business, becomes dependent on the governments of destination states to fulfill their obligation to OFWs. Needless to say this does not always happen.

Limited government resources and distance also play a role in complicating the application of the government-business relations framework to the overseas employment program.

The Philippine government has spent millions of dollars in setting up mechanisms to support overseas workers, but despite its efforts the number of problems faced by OFWs has not diminished. Although this problem is serious, it is likely that once progress has been made maximizing the developmental impact of the program in other areas, the issue of limited resources to support OFWs will begin to resolve itself. Through program maximization-for-development, additional resources could be allocated to the programs that support OFWs while abroad.

In order to overcome these difficulties the government-business relations framework will be assisted by the application of two-level game theory. In his classic 1988 piece, Robert Putnam described two-level game theory as follows:

The politics of many international negotiations can usefully be conceived as a two level game. At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians

seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign.⁵¹

In context of this project, government-business relations must thus be explored at both levels, domestic and international.

A final challenge to the application of the government-business relations framework is the non-industrial, non-commodity, service nature of the overseas employment program. Unlike the case studies used throughout the government-business relations literature, industrial manufacturing plays no role whatsoever in the overseas migration from the Philippines. This however does not mean that the principles of the framework are not applicable. The same developmental state structures described by Evans, Haggard and others have the potential to be broadly inspirational in enhancing developmental outcomes from the program to the nation as a whole. After all few scholars would argue that the services offered at call centers in India have not been economically beneficial for developmental purposes. Millions of Indians are now employed in the outsourcing sector of the Indian economy, which is clearly a service-based industry. The government-business relations framework should not be constrained or limited by the nature of the industry or sector to which it is applied as the principles outlined coincide with sound principles of communication, coordination and cooperation, which have the potential to improve efficiency across a diverse range of economic sectors. For the purposes of this research the notion that the overseas employment program, and especially the recruitment industry,

⁵¹ Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42, no. 3 (1988): 434.

engage in a 'commodification' of OFWs will be acknowledged as an important perspective to consider, but not the primary means by which industry practices should be viewed. This instead is a service based sector of the economy, which connects skilled and unskilled laborers to employers abroad facing labor shortages. It does not appear that in the body of government-business relations literature anyone has argued that the theoretical principles outlined can only be applied to tangible goods-producing industries and not those which are service-based. Concerns over the treatment, hiring, and firing of workers exist regardless of what sector of the economy is under review, be it service or manufacturing. It seems then that analysis of government-business relations in the developmental state don't necessarily focus on worker welfare, hence analysis of government-business relations in the Philippine overseas employment program don't necessarily need to focus on worker welfare.

Contributions to the Literature

The government-business relations framework was a dominant perspective in research regarding the political economy of development from the late 1980s until the late 1990s. It seems that attention was diverted somewhat by the ravages of the Asian financial crisis in 1997, in an attempt to understand what caused the crisis. There have been a few additional contributions to the literature in the post-financial crisis years by scholars such as Ravenhill, MacIntyre, and Haggard. Throughout the body of literature there appears not to have been any attempts to apply the government-business relations framework to migration programs or even service-based economic sectors. This new approach will test the adaptability of the framework to an untried set of variables and circumstances. Key among the groundbreaking approaches to this theoretical application is the notion of achieving developmental

outcomes through non-industrial means. This research will clearly test the robustness of the framework in handling service-based sectors.

The business typologies outlined by Haggard et al. will also be tested for applicability in a sector quite different than those described in East Asian economies, namely the extraordinarily high number of participants in the recruitment industry in the Philippines. In applying the government-business relations framework to the overseas employment program in the Philippines it is likely that additional applications for the framework will become clear. In other words, by testing the framework in an untried, if not unusual, way it may be discovered that the framework has a plethora of applications not all of which need be necessarily directly tied to national developmental outcomes. They can instead be applicable to making improvements in program effectiveness across a range of government plans and programs.

A further contribution of this research is in bridging the gap between government-business relations literature and the literature looking at out-migration as a development strategy. There is a hotly contested debate raging among migration and development scholars over how migration should best be utilized, or if it should be approached as a development strategy. This research falls neatly between the original premise of government-business relations in understanding how states can achieve industrialization and the notion that states can achieve developmental objectives through effective out-migration programs. My argument does not advocate that out-migration is or should be the Philippines national development strategy. Rather, as previously mentioned, I assert that it has all of the appearances of a development strategy and is a major source of national income and should therefore be maximized for the best possible benefit for those involved, and, if possible, for

the nation as a whole. Clearly a better understanding of government-business relations in Philippine migration can only serve to increase our understanding of what national developmental outcomes can or cannot be accomplished through an efficient out-migration program.

An additional approach of this research project, which may or may not have previously been utilized by scholars, is the combination and collaboration of two research methods: the government-business relations framework and two-level game theory. While the government-business relations framework clearly has its roots in comparative political economy studies and two-level game theory has a firm foundation in International Relations, they seem to complement each other very nicely when applied to the unique circumstances of the overseas employment program. The Philippines clearly can benefit from comparative analysis of how other Asian states have achieved developmental outcomes, and the inherently international nature of the overseas employment program demands attention from an International Relations perspective. This combination may have further applicability with research on export industries as well as international trade relations.

Contributions to the Political Economy of Development in the Philippines

Migration from the Philippines, as mentioned in Chapter One, has been going on since the time of the Spanish, but in the years since 1974 it has become an integral part of Philippine economic, social, and political culture. There are many voices involved in the debate over the overseas employment program, from NGOs advocating for its end, to recruitment agencies calling for de-regulation and an end to the government's 'anti-business' policies. Whether overseas migration is or is not a choice for the millions of Filipinos involved, the

reality is that they work overseas and there are not a sufficient number of jobs being created domestically to meet demand or population growth rates.

As already mentioned the Philippine state has a historical dependence on external resources, with remittances taking on the dependency mantle since the 1991 closing of U.S. military bases and the subsequent reduction in foreign aid.⁵² Remittances in 2005 accounted for nearly 14 percent of national GDP, before dropping back to just over 11 percent in 2008. Remittances have increased steadily since the inception of the overseas employment program.

The importance of remittances to the Philippine economy has grown tremendously since 1974, and seems to be showing no signs of decreasing. Even in the face of a global financial crisis, the overseas employment program, despite initial fears that OFWs would face layoffs overseas, has seen growth continue in both numbers of workers deployed as well as the remittances they send home.⁵³ The IMF has even attributed the record high remittance inflows into the country in 2009 as a reason the Philippines has been sheltered from some of the worst aspects of the global financial crisis.⁵⁴ These points all illustrate the need for greater understanding and research effort into maximizing program benefits for national development purposes. This research will thus contribute to the literature on the political economy of development in the Philippines.

This project is motivated greatly by the prospect of offering meaningful recommendations to policy makers on how the overseas employment program can be maximized for greater

⁵² Paul D. Hutchcroft and Joel Rocamora, "Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines," *Journal of East Asian Studies* 3 (2003): 275.

⁵³ Lawrence Agcaoili, "OFW inflows hit record \$17.35 billion in 2009," *The Philippine Star*, February 16, 2010, <http://www.philstar.com/Article.aspx?articleId=549911&publicationSubCategoryId=66>.

⁵⁴ Ibid.

efficiency as well as possible contributions to national developmental objectives. Through the case studies undertaken, this research will identify opportunities for improvements in collaboration and cooperation between business and government in managing the overseas employment program. Once the program is operating at peak efficiency the next steps on the road to national development will clearly fall beyond the scope of this project, but it is hoped that at this point there will truly be choices available to national economic planners. In Chapter Three, the government-business framework will be applied to government-business relations in the overseas employment program from its inception in the early 1970s to 1994.

Chapter Three: Government-Business Relations in the Migration Industry, 1974 to 1994

This chapter examines the foundations of the modern Philippine overseas migration program through the lens of the government-business relations framework introduced in the previous chapter. The evolution of the overseas employment program will be explored primarily through the policy foundations and major policy shifts that have taken place over the first twenty years of the program's existence. Major policy developments and shifts will be placed into the context of relevant developments in Philippine society and politics from the promulgation of the overseas employment program in 1974, through the post-Marcos era to 1994. By exploring program trajectories at key policy moments across the program's first two decades, insight will be gained into how government and business interacted in efforts to improve program and developmental outcomes. In the subsequent review it will become clear that government-business relations in the early years of the overseas migration program were often contentious in contrast to the more coordinated efforts among the East Asian tigers as described in Chapter Two. It will also become clear that the program has evolved piece by piece with no single objective or overarching goal as to what the long-term objectives should be.

Policy/Legal Framework for the Overseas Migration Program

As described in Chapter One, the Philippines as a nation has a long tradition of its people going abroad to find new opportunities. Prior to 1974 migration from the Philippines occurred organically without any well-established governmental program. From 1970 the number of migrant laborers leaving the country began to steadily increase (see Table 3.1 below). It was during the early 1970s that the so-called 'oil boom' occurred in the Middle East with enormous infrastructure projects that required large numbers of laborers.

Economic conditions in the Philippines during this time were also highly conducive to laborers seeking employment elsewhere. Martial law had been imposed in September 1972, and there was growing armed insurgency in the countryside, an exploding population growth rate (3.1 percent annually between 1965 and 1974), high unemployment and underemployment, low rates of savings and investment, ever increasing reliance on foreign aid and external loans, high inflation and recurring government budget deficits.¹ Clearly there were many problems in the country during the early 1970s which provided ample rationale for workers to leave.

Prior to 1974, as opportunities were identified in the Middle East and elsewhere, recruitment agencies began to spring-up in order to find workers to fill overseas labor contracts. Precise numbers of recruitment agencies during the early 1970s were not kept as no formal licensing process or regulatory agency yet existed. Interviews with industry leaders has shown that there were perhaps somewhere between 20 and 50 recruitment agencies during early years.²

The 1974 Labor Code

On May 1, 1974 President Marcos issued Presidential Decree 442, otherwise known as *The Labor Code of the Philippines*. Secretary of Labor Blas Ople, who served from 1967-1986, is widely acknowledged as having been a key contributor to the creation of the new law. Although the labor code had wider implications for labor and employment across the country, of primary interest for this project was its formalization of overseas migration within the realm of government oversight. Instead of an organically grown phenomenon,

¹ Joaquin L. Gonzalez, III, *Philippine Labour Migration: Critical Dimensions of Public Policy*, (Singapore: Institute of Southeast Asian Studies, 1998): 61.

² Although no records were kept during this time, this figure was corroborated by several recruitment industry owners whose businesses were operating during the pioneering years of the overseas labor program.

overseas migration would instead be the prerogative, at least supposedly, of government planners and regulators. It is unclear why Marcos decided to regulate this promising new industry. Considering the high unemployment and underemployment figures, it seems logical that increased overseas worker migration could act as a pressure relief valve. It was during this early stage of formalizing the overseas migration phenomenon into a government-managed program that it was described as a temporary 'option' for Filipino workers. This program, originally intended to be temporary, has now become a permanent fixture in Philippine political, economic, and social culture, and shows no signs of drawing to a close anytime soon.

As explained in Chapter Two, one of the key ingredients of the successful convergence between government and business in achieving meaningful progress in national economic development is coordination and cooperation in both planning and implementation of economic policy objectives. Unlike the dedicated government agencies in Japan, Korea, and Taiwan, which facilitated long-term economic planning and coordinated with business and industry leaders in achieving national economic objectives, the Marcos administration established developmentally focused institutions only to ignore them while he and his cronies plundered the nation. In order to achieve national economic development Marcos ostensibly embarked on a program of export-oriented industrialization (EOI) to which overseas migration was only perceived as a 'stop-gap', 'temporary' measure to relieve unemployment until demand for Philippine exports picked up (more on this below). It would thus be discontinued once exports met their targets. The lack of focused program objectives and target outcomes has proved problematic since the program was conceived. Philippine labor scholar Rene Ofreneo explained that "the argument for the migration-EOI

transition was seductively simple – the turning point would occur once the EOI succeeded in pushing domestic employment and wages upward.”³ It will be shown throughout this chapter and thesis that each successive administration has followed this same basic strategy of viewing migration merely as a ‘side-show’ to EOI, proclaimed to be the ‘main event’ in national economic development policy. Unfortunately, as argued by Emmanuel de Dios, the EOI strategy was merely a ruse to enable Marcos to continue accessing international loans while, “the issue of the development strategy could be essentially avoided.”⁴ In hindsight, it is clear that cronyism was the ‘main event’.

The 1974 labor code turned what had been an informal, mostly unregulated industry into a fully government-run program. New agencies were created within the bureaucracy to manage various aspects of the program. New fee structures were imposed on prospective workers under the guise of protecting their rights and expanding their opportunities. Of particular importance was Marcos’ decision to nationalize overseas migration, sidelining the recruitment agencies who had achieved such remarkable growth in the industry in the years preceding 1974 (Table 3.1 below). Marcos, and his inner circle of cronies, may have thought that government control would give them freer access to the spoils associated with placing workers overseas. A more benevolent rationale could have been that it was done in order to ensure better protection for workers from the abuses that were already common within the recruitment industry. Gonzalez explained that “Marcos thought that he could use the Philippines’ surplus manpower and the high demand labor from oil-producing countries.”⁵

³ Rene Ofreneo, “Migration and Development: When Will the Turning Point Come?,” in *Philippine Institutions: Growth and Prosperity for All*, ed. Filomeno S. Sta. Ana III (Anvil Publishing, 2010), 264.

⁴ Emmanuel S. de Dios, “A Political Economy of Philippine Policy-Making,” *Economic Policy-Making in the Asia-Pacific Region* (1990), 116.

⁵ Gonzalez, *Philippine Labour Migration*, 34.

Some insight into how Marcos saw migration within the larger national developmental economic context can be found in certain of his speeches. In 1982 Marcos said:

For us, overseas employment addresses two major problems: unemployment and the balance of payments position. If these problems are met or at least partially solved by contract migration, we also expect an increase in national saving and investment levels. In the long run, we also expect that overseas employment will contribute to the acquisition of skills essential to the development of the country's industrial base.⁶

Tigno explained that “there was a large (and growing) section of the population discontented with the local situation and a government that wanted to dissipate this discontent by projecting a possible alternative, i.e., overseas employment.”⁷ Considering the ongoing separatist and communist insurgencies in the countryside, rising unemployment and rampant inflation could have further exacerbated the situation. Marcos must have understood how the benefits of an overseas labor migration program outweighed the risks, and his gamble seemed to pay off.

Regardless of the rationale for excluding the private sector from participating in overseas labor migration, it seems clear that the Marcos administration felt that the government was better equipped to facilitate overseas labor migration. It is also clear from the language used in his presidential decree that he viewed overseas labor migration as part of his comprehensive ‘industrialization focused’ national development strategy. The amended 1974 labor code says that the overseas labor migration program and those groups and agencies serving within the program structure “serve national development objectives.”⁸

⁶ Ferdinand Marcos, 1982 Speech, quoted in Jorge V. Tigno, “International Migration as State Policy: The Philippine Experience as Model and Myth,” *Kasarinlan* 6, no. 1 (1990): 76.

⁷ Jorge Tigno, “The Philippine Overseas Employment Program: Public Policy Management from Marcos to Ramos,” *Public Policy*, (2000): 44.

⁸ Ferdinand E. Marcos, President of the Republic of the Philippines, *Presidential Decree No. 442: Labor Code of the Philippines*, (Manila, Philippines 1974) Section 1, Article 12.

This language is important to our overall understanding of where overseas labor migration fits into national development objectives. Clearly the original intention of the program was to act as a component of an overall plan, despite denials of this in years since (as described in Chapter Two). Whether or not Marcos' economic development plans have succeeded or were misguided to begin with, as argued by Ofreneo, does not diminish the intended component role the overseas labor migration program was created to fill.⁹

In regard to Marcos' command style of managing the overseas employment program, Tigno explained that "the Philippines under Marcos initially attempted a corporate style strategy of exporting Filipino labor similar to what the Koreans did, while at the same time encouraging private sector participation."¹⁰ With the introduction of the 1974 new labor code three new state-run corporations monopolized the fledgling overseas employment program. These included the Bureau of Employment Services (BES), the Overseas Employment Development Board (OEDB), and the National Seaman Board (NSB). With the introduction of these state-owned corporations to run overseas labor migration, private sector recruitment and placement agencies were effectively banned from participation. The ban, however, was short-lived. By 1978 worker deployments overseas had risen 170 percent from 1974 and the newly created state-run corporations were no longer able to cope. Thus in 1978 President Marcos issued Presidential Decree 1412, which once again allowed for private sector recruitment and deployment of Filipino workers. From 1978 the three government corporations took on instead an enforcement, management, and promotion role in overseas labor migration. This basic framework of private-sector-driven labor migration overseen by government bureaucracy has persisted from 1978 until today.

⁹ Ofreneo, "Migration and Development," 2010.

¹⁰ Tigno, "The Philippine Overseas Employment Program," 44.

Although direct hiring by government corporations was de-emphasized in the PD 1412 amendments to the labor code, it was not banned altogether. Consequently the government has never fully abandoned direct-hire programs and still directly places workers overseas in 2012. Chapter Six offers more detail on how state-to-state direct hiring programs impact government-business relations in overseas labor migration policy making.

Once the private sector was allowed to participate in overseas labor employment the number of annual deployments began a remarkable growth streak that has not stopped for over 35 years. Growth in both overseas Filipino worker (OFW) deployments and remittances has been nothing short of remarkable (See Table 3.1 over page).

Along with the astounding growth in deployments of OFWs, there was a corollary rise in the number of licensed and illegal recruitment agencies all wishing to get in on the action. Many early OFWs returned home after working overseas for several years with enough savings to start a business. Rather than starting manufacturing businesses or retail ventures, many OFWs stuck with what they knew, namely overseas labor migration. They choose to start their own recruitment agencies. In essence the quote from Marcos' 1982 speech proved true, but instead of utilizing their newly acquired skills "to the development of the country's industrial base", they applied those business and organizational skills into an expansion of the overseas employment program.

Table 3.1 Annual Deployment of Filipino Workers, 1970-1994*

Year	Land-based	Sea-based	Total	% change
1970	-	-	1,859	-
1971	-	-	1,863	0.2%
1972	-	-	14,366	87.0%
1973	-	-	36,418	60.6%
1974	-	-	32,764	-11.2%
1975	12,501	23,534	36,035	9.1%
1976	19,221	28,614	47,835	24.7%
1977	36,676	33,699	70,375	32.0%
1978	50,961	37,280	88,241	20.2%
1979	92,519	44,818	137,337	35.7%
1980	157,394	57,196	214,590	36.0%
1981	210,936	55,307	266,243	19.4%
1982	250,115	64,169	314,284	15.3%
1983	380,263	53,594	434,207	27.6%
1984	300,378	50,604	350,982	-23.7%
1985	320,494	52,290	372,784	5.8%
1986	323,517	54,697	378,214	1.4%
1987	382,229	67,042	449,271	15.8%
1988	385,117	85,913	471,030	4.6%
1989	355,346	103,280	458,626	-2.7%
1990	334,883	111,212	446,095	-2.8%
1991	489,260	125,759	615,019	27.5%
1992	549,655	136,806	686,461	10.4%
1993	550,872	145,758	696,030	1.4%
1994	564,031	154,376	718,407	3.1%

*No land-based, sea-based data available prior to 1975. Figures from 1975 to 1983 refer to number of contracts processed; figures for 1984 to 1994 refer to number of workers deployed abroad.
Source: Gonzalez p. 32, Abella p. 8,
<http://www.migrationinformation.org/USFocus/display.cfm?ID=364>

In its medium-term development plan covering 1978-1982, NEDA emphasized the key role the overseas employment program would play within the larger export-oriented national development strategy.

The Development Plan seeks to harness the tremendous human resources potential of our country and it is a matter of national policy that economic

activities be designed to promote the greater utilization of our human resources...Recognizing the problems of unemployment and underemployment, the Plan has set as one of its goals the creation of productive employment opportunities...[T]he export of manpower will be allowed only as a temporary measure to ease unemployment and underemployment...Overseas employment will be better organized to ensure that exported manpower will be accorded equitable and just compensation and treatment in foreign lands.¹¹

With the rise in the number of licensed recruitment agencies, through competition, ever more employment opportunities (referred to as 'job orders' in the industry) were being created for OFWs to fill. One might initially suppose that this was a supply-side phenomenon where a booming population in the Philippines contributed to ever more Filipinos going overseas to work, but this does not represent a complete assessment of the picture—whether during the early years of the program or today. Demand for Filipino manpower was not driven by the number of workers available in the country, but the recruitment agencies creating opportunities for overseas employment and thus more positions to be filled by the ever increasing pool of laborers back home. The point raised in Chapter One must again be considered; if the overseas labor migration program was only intended to be a stop-gap measure or temporary option then why has not any administration from Marcos to present discontinued the government's active promotion of overseas labor migration both inside and outside of the country?

The 1978 presidential decree emphasized that the state-run corporations in charge of the overseas employment program would assume a regulatory role over the re-authorized participation of the private sector in the program. From 1978 until today, regulation has persisted as the primary function of government regarding overseas labor migration

¹¹NEDA, *Five-Year Philippine Development Plan of 1978-1982*, quoted in Dean Tiburcio Alegado, "The Political Economy of International Labor Migration from the Philippines," Ph.D. dissertation, University of Hawaii, (1992): 137.

although the perspective of what can be included under the 'regulation' umbrella has changed from pure 'program promotion' to 'promotion combined with protection'. The introduction of Welfare Fund for Overseas Workers (WelFund) in 1977 was one of the first signs of the pending return from state-monopolization of the program to private sector participation and the new government-as-regulator role. From the earliest days of the program, migrant workers encountered difficult situations that required a policy adaptation. The inevitable problems that come with overseas contract labor agreements meant that workers were sometimes left stranded overseas or without the means to either fulfill their contract, among many other problem possibilities. In response to such issues, and especially the question of who would pay for them, the government introduced a fund into which workers would pay to cover eventualities such as becoming stranded or unexpectedly unemployed in a destination state. The WelFund brought stranded workers back home, or, in the case of unexpected death abroad, return of their body for burial.

Although the new labor code provided for new agencies to manage what was certain to become a large and complicated program, little thought was given to establishing the necessary regulatory infrastructure that would be required to manage such a far-reaching program. Domestic bureaucratic structures were established with clear obligations yet somewhat poorly delineated responsibilities. Most if not all of the foreign side of the program's infrastructure was conspicuously absent from planning guidelines during the program's early days. The Department of Foreign Affairs, although a competent and capable foreign service, had no prior experience in dealing with the unprecedented numbers of Filipino citizens who were now spreading out across the globe. The lack of clear planning for how the program would be managed in destination states is the primary reason that current

safety-net mechanisms in place for the welfare of workers while abroad are so ad-hoc, a veritable patchwork of programs run by government agencies never intended to fulfill such a role.

During the inception of the overseas labor program Marcos may have been attempting to emulate Korea, as described previously by Tigno, but there were key differences in the planning, arrangement, and implementation of the program in comparison to the managed industrialization that took place in Japan, Korea, and Taiwan, as described in Chapter Two. Marcos did not have an independent, skilled central economic planning organization like Japan's Ministry of International Trade and Industry (MITI), Taiwan's Council on Economic Planning and Development (CEPD), or Korea's Economic Planning Board (EPB) to coordinate his multipronged export driven industrialization strategy with overseas labor migration as a component piece.¹² The National Economic and Development Authority (NEDA) was created in 1973, a year before the overseas labor program was introduced, and had little real power to impose coordinated economic development policy outside of the plans laid forth by Marcos. Like the rest of Philippine institutions, NEDA during the Marcos era was simply an agency designed to portray an image of a competent development planning agency on par with those driving economic policy decision in the newly industrialized East Asian countries. Thompson refers to Marcos' reform efforts under martial law as "[p]seudo reform" explaining that Marcos tried "to justify authoritarian rule by claiming that the Philippines required drastic reforms and that the state needed stronger institutions."¹³ Predictably "[p]rivate businesses and technocrats found their interests subordinated to those of Marcos' cronies" while "economic growth in the Philippines fell to become the

¹² See Chapter Two for more information on these agencies.

¹³ Mark R. Thompson, *The Anti-Marcos Struggle: Personalistic Rule and Democratic Transition in the Philippines*, (New Haven: Yale University Press, 1995): 56.

lowest in Southeast Asia.”¹⁴ The contrast between the well-coordinated, and most importantly consistent, long term development plans of Japan, Korea, and Taiwan and Marcos’ Philippines could not be clearer. Even if his plan had been fully implemented and consistently pursued, the personalistic nature of his administration and the cronyism that pervaded the economy would have stymied any sincere efforts of achieving meaningful national economic development.

1980 - 1994: Program Reform and Post-Marcos Labor Migration

Overseas labor migration from the Philippines began the 1980s in much the same way the 1970s ended, with rapid increases in the number of Filipinos going abroad to work as well as in the amount of money they were sending home as remittances. In 1982, to meet the rising number of worker deployments, the BES, OEDB, and NSB were consolidated into the Philippine Overseas Employment Administration (POEA). This was accomplished through the issuance of Executive Order 797 in which Marcos consolidated all of the responsibilities previously divided between the BES, OEDB, and NSB with the POEA. He further created a three-person executive board over the POEA with one seat reserved for the president’s direct appointee. The newly established POEA could not afford to take its time in slowly absorbing its three predecessors, as the number of OFWs to process was increasing rapidly from year to year (see Table 3.1 above).

Due to increasing demand for OFWs, the recruitment industry was also experiencing phenomenal growth with an explosion in both licensed and unlicensed (illegal) recruiters in the 1980s. One point that illustrates the growth in the recruitment industry was the creation of new industry associations. There were two recruitment agency associations in

¹⁴Ibid, 57.

existence during the 1970s, the Filipino Association for Mariners' Employment, Inc. (FAME) and the Overseas Placement Association of the Philippines (OPAP). FAME started as an informal group of maritime recruiters in 1971 who discussed industry development over meals. By 1974, with the introduction of the formal overseas labor program FAME formalized their group into an association representing the interests of maritime recruitment industry.¹⁵ OPAP, on the other hand, was organized by land-based recruiters specifically to fight the 1974 Labor Code provision banning private sector involvement in the new government-managed overseas employment program.

By 1980 a third recruitment agency, the Philippine Association of Service Exporters Inc. (PASEI), was founded by ten private recruitment agencies with four guiding objectives. These objectives provide insight into what recruitment agencies in the Philippines hoped to gain through combining their resources. These objectives include:

1. To make proper representation with government agencies, divisions, branches and other instrumentalities, with foreign governments through their respective Embassies and Consulates and also with private and non-government entities, for the purpose of promoting and protecting the welfare of its members consistent with the national interest and the common good.
2. To aid government in its campaign against illegal recruitment and other problems that concerns the overseas employment industry.
3. To upgrade the skills of Filipino workers thereby uplifting work standards and conditions in overseas employment and to aid our Filipino workers in their fight against harsh and exploitative foreign employers.
4. To establish and maintain closer and harmonious relationships among its members; to encourage healthy competition among its members through the formulation, adoption and enforcement of appropriate rules and procedures governing its activities; to build the reputation of PASEI to a level where it will acquire recognition in both government and private

¹⁵ The Filipino Association for Mariners' Employment Inc., "History," accessed on June 20, 2012, <http://www.fame.org.ph/history.php>.

sectors that it participates and get consulted in all matters involving overseas employment.¹⁶

The roots of early organizational efforts within the recruitment industry were not born of a desire for cooperation with government, but instead because they felt threatened by it. During the first four years of the program, and in the years after recruiters were allowed back in, some recruiters felt that their positions were not being addressed, or that they were being unfairly dealt with. Consequently some agency owners chose to organize themselves for strength in numbers while others chose to withdraw from the legal framework and operate their business illegally. It seems clear, that whether intentional or not the decision by Marcos to exclude recruiters from the program in 1974 deserves a large share of the blame for the ongoing tensions between government and business within the context of the overseas labor program.

In the case of the East Asian tigers, business associations cooperated with government which had mutual benefits for both sides in addition to greater benefits toward national developmental outcomes. For example Park described the remarkable cooperation that took place in Korea between the Spinners and Weavers Association of Korea (SWAK), and government economic planners, cooperation that persisted even through periods where government objectives meant less profitability for industry association members.¹⁷ It should be noted that Korean economic planners first pursued an export oriented development strategy, with overseas labor migration as a component, that Marcos ostensibly attempted to imitate.¹⁸ The effects of early antagonism between government

¹⁶ Philippine Association of Service Exporters Inc., "History," accessed on June 20, 2012, <http://pasei.com/about/history/>.

¹⁷ Sub Park, "Cooperation between business associations and the government in the Korean cotton industry, 1950-70," *Business History* 51, no. 6 (2009): 835-853.

¹⁸ Chapter Seven comparatively explores the similarities and differences between Korea and the Philippines overseas labor programs, and what part they have played in national economic development.

and business within the overseas labor program have rippled through the years and shape policy approaches and decision-making relationships today. Though the roots of government-business antagonism were born during the early days of the program, the uncooperative nature of these relationships will feature prominently in succeeding chapters.

As the 1980s progressed overseas labor migration seemed to show no signs slowing down, while in the program's eighth year (1982) there were no signs at all that Marcos' faux export oriented industrialization strategy was succeeding. In fact quite the opposite was true; unemployment was rising and inflation reached even higher levels. In 1978 there had been 0.8 million unemployed, but by 1983 that number had risen to 1.2 million.¹⁹ Even worse were underemployment figures that increased from 1.6 million in 1978 to a staggering 5.6 million in 1983.²⁰ What began in as a recession in the late 1970s in developed countries spread its way around the world ultimately affecting developing countries. This financial downturn began to affect the Philippines in the early 1980s, with domestic issues (as discussed below) leading into a full-blown national economic crisis. Clearly without the overseas labor migration program the domestic employment situation would have been made even worse. As it was, Marcos faced a raft of problems in the early 1980s, many of which were of his own making. In addition to the problems of unemployed and underemployed workers, by mid-1983 the total amassed foreign debt reached \$18 billion (U.S.), while "lower-than-expected exports resulted in the continuation of the problem with balance-of-payments deficits."²¹ Unable to meet its debt obligations the Marcos

¹⁹ Dean Tiburcio Alegado, "The Political Economy of International Labor Migration from the Philippines," (Ph.D. dissertation, University of Hawaii, 1992):138.

²⁰ Ibid.

²¹ Sydney G. Silliman, "The Philippines in 1983: Authoritarianism Beleaguered," *Asian Survey* (1984): 152.

administration sought help from the IMF, which eventually granted assistance contingent upon certain austerity measures being adopted.²²

Describing foreign exchange rates from Marcos' EOI program as 'lower-than-expected' perhaps does not project an adequate image of how bad the situation really was. Bello referred to the EOI strategy as "the foreign exchange mirage" explaining that "export-oriented industrialization had been promoted as an expeditious way to acquire substantial foreign exchange for internal development...but by the late 70s, EOI was earning many fewer dollars than originally promised."²³ It did not take long for the rapid rise of workers remittances to equal those of manufactured exports:

Central Bank figures show that in 1983, the salary remittances of Filipino workers overseas have contributed about US\$955 million to the country's foreign exchange reserves, equaled only by the dollar earnings of the export manufacturing sector.²⁴

It should be noted that Marcos' primary political opponent Benigno Aquino II was assassinated in August 21, 1983 which set off a chain of events eventually leading to Marcos' removal from office in 1986. After Aquino's assassination opposition to Marcos' rule intensified with daily protests and more importantly a gradual withdrawal of support for his regime from the United States. The Catholic Church, which had long attempted to push for political change through dialogue, began to take a harder line against Marcos and proved instrumental in the organizational efforts to encourage his ouster.²⁵ Even Marcos'

²² Ibid.

²³ Walden Bello, David Kinley and Elaine Elinson, *Development Debacle: The World Bank in the Philippines*, (Institute for Food and Development Policy, 1982): 151.

²⁴ POEA Annual Report 1984, quoted in Katherine Gibson and Julie Graham, "Situating Migrants in Theory: The case of Filipino migrant contract construction Workers," *Capital and Class* 10, no 2. (1986): 51.

²⁵ Robert L. Youngblood, *Marcos Against The Church: Economic Development and Political Repression in the Philippines* (Manila: New Day Publishers, 1993).

traditional allies began to abandon him en masse. Much of the business community and organizations, including members of the recruitment industry, withdrew support following the assassination. Silliman pointed to the withdrawal of support from business and industry leader as a primary contributor to the economic fallout, especially in regard to the rapid withdrawal of foreign currency. He explained that:

The key to the actions of Filipino businessmen is that the aftermath of the killing of Aquino produced domestic and international lack of confidence in the ability of the government to cope with its political and economic problems. One index was a flight of capital from the Philippines. In the weeks after August 21, there was an estimated \$700 million capital outflow because of the nonrenewal of short-term revolving credits and exits through the black market. International reserves slumped from \$2.4 billion to just about \$600 million in the eight weeks following the assassination.²⁶

As elite support for Marcos evaporated following the assassination, he found himself increasingly isolated.²⁷

It was into this climate that Marcos issued Executive Order 857 in December 1982. EO 857 mandated that a majority percentage of overseas worker remittances be returned to the Philippines through official government channels, including government-controlled banks. Gibson and Graham explained that workers were required to remit their earnings through government controlled channels “where exchange rates are manipulated to the government’s benefit.”²⁸ This argument seems plausible considering the difficult financial situation Marcos was in, and his need to support the large-scale corruption he presided over. Gibson and Graham further argued that:

²⁶ Silliman, “The Philippines in 1983,” 156.

²⁷ Paul D. Hutchcroft and Joel Rocamora, “Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines,” *Journal of East Asian Studies* (2003): 277.

²⁸ Katherine Gibson and Julie Graham, “Situating Migrants in Theory: The Case of Filipino Migrant Contract Construction Workers,” *Capital & Class Summer* 10, no.2 (1986): 40.

Remittances from these contract workers abroad have become over the last few years the most stable source of foreign exchange in the Philippine economy, especially as the growth of local export processing zones faltered through lack of business confidence in the Marcos regime.²⁹

The amount of money which would have been removed through taxes and fees from OFW remittances sent home through official channels would have equaled ten percent.³⁰ This order would have represented a massive government grab of OFW money, and meant a bigger piece of the remittance pie for Marcos. Even if Marcos did not issue EO 857 in order to enrich himself or his cronies, there are glaring problems with the mandates set forth within it. The most controversial portions are found in section 2, which set forth the required ratios of OFW salaries that were required to be remitted via government-controlled channels.

- a) Seamen or mariners: Seventy (70) percent of basic salary;
- b) Workers of Filipino contractors and construction companies: Seventy (70) percent of basic salary;
- c) Doctors, engineers, teachers, nurses and other professional workers whose contract provide for free board and lodging: Seventy (70) percent of basic salary;
- d) All other professional workers whose employment contracts do not provide for free board and lodging facilities: Fifty (50) percent of basic salary;
- e) Domestic and other service workers: Fifty (50) percent of basic salary;
- f) All other workers not falling under the aforementioned categories: Fifty (50) percent of basic salary.

Unsurprisingly OFWs were incensed at being told what to do with their money, especially by a government whose failure to produce a sufficient quantity of domestic jobs had required them to seek employment abroad far from their families in the first place. EO 857 also brought in a new player into the dynamics of government-business relations within the overseas employment program context, namely the banks.

²⁹ Ibid. 39-40.

³⁰ Nicole Constable, *Maid to order in Hong Kong: Stories of Filipina workers* (New York: Cornell University Press, 1997): 207.

In essence EO 857 illustrates that government and business (banks in this case) can cooperate within the context of the overseas labor program, but is it really a surprise that the banks would cooperate with a policy that forced OFWs to increase their usage of Philippine banks?³¹ In regard to government-business relations between the Marcos administration and the recruitment industry at first glance it seems that the agencies would have little cause to be alarmed by EO 857, however when one studies the penalties for non-compliance some troubling issues come to light. The enumerated penalties in section 9 are as follows:

Contract workers who fail to comply with the requirements of this Order shall be suspended or excluded from the list of eligible workers for overseas employment. In cases of subsequent violations, he shall be repatriated from the job site *at the expense of the employer* or at his expense, as the case may be. *Filipino or foreign employers and/or their representatives who fail to comply with the requirements under this Order shall be excluded from the overseas employment program.* In the case of local private employment agencies and entities, *failure to comply with the provisions hereof shall be a ground for cancellation of their license or authority to recruit workers for overseas employment, without prejudice to their liabilities under existing laws and regulations.* [emphasis added]³²

In other words, the recruitment agencies could be held responsible if workers did not remit their savings at the required levels, and through the appropriate government-controlled channels. It seems clear that Marcos was not prepared to acknowledge his failure with EOI, nor fully embrace his “temporary” overseas employment program. By the time EO 857 was issued the economic and political situation in the country become more tenuous.

³¹ In the case of the government-controlled banks (Philippine National Bank and Development Bank of the Philippines), this was not government-private business cooperation, but instead a case where government cooperated with itself.

³² Ferdinand E. Marcos, *Executive Order 857, Section 9, December 13, 1982* (Manila, 1982), accessed on June 20, 2012, http://www.lawphil.net/executive/execord/eo1982/eo_857_1982.html.

EO 857 had further implications for government-business relations beyond the roles of the banks or recruitment sector. Unsurprisingly the migrant workers were fearful of what the order meant for them. Beyond those punitive implications of the order mentioned above, another penalty enumerated was the threat to revoke OFW passports. The specific clause that alarmed OFWs stated that:

The passport shall be renewable every year upon submission of usual requirements and presentation of documentary proof of compliance to the remittance requirement in the percentages provided for in this Order. The Ministry of Foreign Affairs shall not extend or renew the passport of any contract worker unless proof of his compliance with the mandatory remittance requirement is submitted.³³

Overseas workers NGOs, as well as formal and semi-formal OFW associations in Hong Kong, were so incensed by the mandatory remittance rules and passport threats in EO 857 that they began to publically oppose the order and by association the Marcos regime. Loosely affiliated groups and NGOs banded together forming the umbrella alliance called United Filipinos against Forced Remittance. Gibson, Law, and McKay explained that:

The alliance was instrumental in having the Executive Order revoked and, with such success to their credit, the coalition renamed itself United Filipinos in Hong Kong (UNIFIL). This intervention was a clear indication that many migrant workers did not see the Philippine state or its banks as acting in their national interest.³⁴

In February 1984, fourteen months after its introduction, the indignation and revolt against the order reached such a level that Marcos issued Executive Order 935 which amended parts of EO 857 and watered down the remittance requirements simply to require workers to remit their savings home without specifying an amount or percentage requirement nor

³³ Marcos, *Executive Order 857*.

³⁴ K. Gibson, L. Law and D. McKay, "Beyond Heroes and Victims: Filipina Contract Migrants, Economic Activism and Class Transformations," *International Feminist Journal of Politics* 3, no. 3, (2001): 369.

mandatory modes of transmittal. Increasingly beleaguered, Marcos could not contain his disdain for the OFWs and groups who had defied his edicts. In the preamble to the repeal, Marcos placed blame for his leadership failings and economic mismanagement on the OFWs themselves:

contract workers while complying with the requirement of submitting a confirmed bank (foreign) remittance form, have been able to evade the actual remittance to the Philippines of their foreign exchange earnings, through fraudulent and ingenious means, to the detriment of the country's economic development program.³⁵

In May 1985, fifteen months after EO 935, Marcos issued Executive Order 1021, which repealed all punitive measure contained in EO 857. In their place he created an inter-agency committee tasked with finding ways to incentivize OFWs into sending a larger portion of their remittances through official channels. In justifying the government's policy change from a penalty-based structure to one focusing on incentives he recognized the increasingly important role OFWs and their remitted savings were playing in the Philippine economy. He acknowledged that "Filipino contract workers overseas have by way of the inward remittance of their earnings through the years contributed tremendously to the stabilization of the national economy."³⁶

The issuance of Executive Orders 935 and 1021, which repealed EO 857, were an important milestone in the evolution of the overseas employment program. Overseas workers for the first time stood up for themselves and found that through organization their voices could shape policy outcomes. The events surrounding EO 857 also signify the arrival of civil society groups, including worker associations and NGOs, into our framing of government-

³⁵ Ferdinand E. Marcos, *Executive Order 935, February 9, 1984*, (Manila, 1984), accessed June 2, 2012, http://www.lawphil.net/executive/execord/eo1984/eo_935_1984.html.

³⁶ Ferdinand E. Marcos, *Executive Order 1021, May 1, 1985*, (Manila, 1985), accessed June 20, 2012, http://www.lawphil.net/executive/execord/eo1985/eo_1021_1985.html.

business relations. Although the primary focus of this project is to explore the relationship between the recruitment industry (as business) and government, other groups such as banks, NGOs, and OFW associations (and, as we will see in Chapter Six, insurance agencies) play important roles in the implementation of the overseas labor program as well as ongoing program policy debates. On this point Gibson et. al. explained that “the revoking of the Executive Order clearly reshaped the power relations around control of remittance flows into the Philippines, demoting the state and repositioning migrants as important agents in charge of their own economic destiny.”³⁷ While this is clearly true it is important to remember the two-level game that is the overseas employment program. Politicians in the Philippines can legislate and issue executive orders as often as they wish, but there are major limitations in enforcing these rules on citizens residing and working abroad under the sovereign laws of destination states. This issue will arise repeatedly in all future policy debates and initiatives discussed in this chapter and throughout the remainder of this thesis.

Throughout the latter half of 1985 domestic and foreign pressure on Marcos increased, culminating in his November call for elections in early 1986. The elections were held on February 7, 1986 amid widespread allegations of fraud, violence, and voter intimidation. When the official Commission on Elections (COMELEC) results identified Marcos as the winner on February 15, widespread protest erupted across the capital. In excess of a million protestors gathered on Epifanio de los Santos Avenue (EDSA) outside a major Philippine military base (which happens to be across the street from POEA headquarters). By February 26, Marcos had fled the country conceding the presidency to Corazon Aquino, wife of assassinated opposition leader Ninoy Aquino.

³⁷ Gibson et. al., “Beyond Heroes and Victims,” 369.

The tumultuous time between Aquino's assassination and Marcos' departure did seem to temporarily impact the number of workers deploying overseas. As seen above in Table 3.1, 1984-1986 saw a dip in the overall number of OFWs deploying, with 1987 numbers moving back where they had left off in 1983.³⁸ A further explanation could have simply been a drop in the demand for contract laborers overseas. Once Marcos had gone, President Corazon Aquino established the Presidential Commission for Good Government which was tasked with investigating Marcos' crony abuses. In essence a period of spring cleaning was underway across the board within the bureaucracy as well as the institutions of government. A new constitution was written and efforts were made to safeguard against the possibility that another dictator would be able to repeat the abuses perpetuated by Marcos and his cronies. The overseas employment program leadership and bureaucracy were also included in the across-the-board corruption review process. The post-Marcos era brought a period of greater focus on the negative side of overseas labor migration, and how government might ameliorate some of these problems.

In 1977, and ever after, the number of land-based deployments exceeded the number of sea-based deployments. By the early 1980s there was a shift in the gendered make-up of OFWs deploying overseas. While early overseas contract labor had been dominated by male seaman and construction workers, male dominance was giving way to low-skilled female domestic workers. This new cadre of domestic workers filled needs for domestic helpers in Hong Kong, Singapore and the Middle East. Unlike male workers on the construction sites throughout the Middle East, these women worked in people's homes and faced a large variety of difficult issues and challenging circumstances. There are issues of

³⁸ Some of this could also be attributed to the accounting mechanisms in place as prior to 1983, as deployment statistics were counted by the number of contracts processed by the POEA and its forerunners, while after 1983 new methods of counting each deployment rather than their processed contract were implemented.

status, subservience, etc. that are often associated with hired domestic labor, all of which made this an especially challenging line of work for OFWs. The well documented plight of OFW domestic workers, and the multitude of problems associated with this type of work is beyond the purview of this research project, but are important to mention as they have changed the way that policy makers have approached the overseas labor program. As soon as domestic workers started to deploy from the Philippines there began to be reports of problems--including cases of violence and sexual assault. The frequency of these negative reports increased with the rise in the number of female domestic workers deployed overseas. Complaints reached record highs by the mid-1980s in conjunction with President Aquino's ascension to the presidency. It was within this context that her administration embarked on its across-the-board review of Marcos-era programs and policies, which led to several policy outcomes in the first years of her presidency.³⁹

While the Marcos regime had been isolated and exclusive in its policy making related to the overseas labor program, Aquino took a more open and inclusive approach to policy formulation. Tigno explained:

One significant change in the conduct of the overseas employment program is in the decision-making process that now allowed for a more inclusive participation through the greater involvement of non-governmental organization (NGOs) and other representatives of migrants. Consultative meetings became a key feature of the Aquino administration. Under Marcos, there was great reliance on the expertise of technocrats. With Aquino, there was a greater reliance on legislators and the opening up of the democratic space to civil society groups through popular consultations. The process of decision-making now became open to basic sectors, including the migrants themselves.⁴⁰

³⁹ For more information on President Corazon Aquino's review of Marcos era programs, policies, and structures see Executive Order No 5, issued March 12, 1986.

⁴⁰ Tigno, "The Philippine Overseas Employment Program", 44-45.

In addition to civil society groups and NGOs the recruitment industry was also allowed to have input into the policy-making process. By December 1987 there were 665 licensed recruitment agencies operating in the Philippines as the total number of workers deployed that year reached nearly 550,000.⁴¹

With the inclusion of NGOs and OFW associations worker welfare became increasingly important in policy approaches to the program, especially considering the rising number of reports of female domestic workers experiencing hostile working conditions. Aquino also sought to improve program efficiency by eliminating overlapping responsibilities across agencies and more clearly defining the limits of each agency's role in implementing and overseeing program activities. Tigno explained that "there existed unclear lines of command among agencies responding to crisis situations" and that "each agency had its own 'turf' to protect in order to justify its existence."⁴² As mentioned earlier many problems arose due to the international nature of the program. The Department of Foreign Affairs (DFA) holds responsibility over international relations issues, as well as responsibility for assisting citizens overseas. However the POEA, within the structure of the Department of Labor and Employment DOLE, was tasked with promoting the overseas employment program as well as assuring worker welfare.

The first major piece of post-Marcos policy, Executive Order 247, was issued in July 1987 and attempted to tackle the dual challenge of enhancing worker protections while improving efficiency through better delineated responsibility guidelines among agencies. This was done by reforming the responsibilities, powers, and structures of the POEA. Within EO 247 the Executive Board of the POEA was restructured and new regional POEA offices

⁴¹ Figures gathered during archival research at the POEA library, October 2009.

⁴² Tigno, "The Philippine Overseas Employment Program," 45.

were opened in the provinces to expand access to overseas employment opportunities. EO 247 outlined four “powers and functions” for the POEA in an attempt to eliminate disputes:

- (a) Regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system;
- (b) Formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements;
- (c) Protect the rights of Filipino workers for overseas employment to fair and equitable recruitment and employment practices and ensure their welfare;
- (d) Exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including the disciplinary cases; and all pre-employment cases which are administrative in character involving or arising out of violation or requirement laws, rules and regulations including money claims arising therefrom, or violation of the conditions for issuance of license or authority to recruit workers.⁴³

Though made with the best intentions, these enumerated “powers and functions” did not achieve either of the dual objectives of the Aquino administration. They have helped, but the same disputes over government agency jurisdiction and the issues related to the mistreatment of workers continue to be central problems in the overseas employment program today. An opportunity was missed here to define the “powers and functions” of other agencies involved in the overseas employment program. Problems with jurisdiction should have been predicted with clause (c) above, as the POEA may be tasked with ‘protecting the rights of Filipino workers’ and to ‘ensure their welfare’, but how can a domestic agency hope to fulfill these obligations for a program that is inherently international?

⁴³ Philippine Overseas Employment Administration, *Executive Order 247* (Manila, 1986), accessed on June 20, 2012, <http://www.poea.gov.ph/rules/eo%20247.pdf>.

In 1988 Aquino coined the term ‘Bagong Bayani’ (New Heroes) while speaking to OFWs in Hong Kong. She was drawing reference to traditional national heroes from the struggle for independence from Spain, which included Dr. Jose Rizal, Emilio Aguinaldo, and Andres Bonafacio, among others. This term has been repeated and referred to by all presidents as well as many Philippine politicians in the years since she first mentioned it. The notion in the modern sense was that OFWs were the new financial heroes of Philippine economic development. This OFW-as-hero discourse, started by Aquino, has highlighted the sacrifice and hard work of Filipinos working overseas. Although this discourse has been widely criticized by scholars, NGOs, and OFWs themselves, it is clear that the ever increasing remittances sent home by OFWs year by year helped the country tremendously during the economically tumultuous post-Marcos years over which Aquino presided. From her perspective, they were indeed heroes. Alegado explained that “in her weekly radio program ‘Magtanong sa Pangulo’ (Ask the President) in March 1988, President Aquino recognized the critical role played by overseas Filipino labor migrants when she told the country, “‘Malaki talaga ang foreign exchange na ipinadadala nila sa ating bansa at malaking tulong ito (the foreign exchange they send home is really of tremendous help to us) because without them it will be more difficult for us.’”⁴⁴ The problem with the ‘bagong bayani’ discourse is that it ignores the inherently personal nature of the decision to become an OFW. Filipinos do not become OFWs to contribute toward any grand national economic development objectives, but instead for highly personal economic reasons that will directly benefit either themselves or their family. In other words, the decision to become an OFW is inherently oriented to the economic needs of the workers and their families, motivated by a desire to improve their own opportunities and circumstances.

⁴⁴ Alegado, “The Political Economy,” 143.

The issue of US foreign aid and US military bases in the Philippines are important points to raise while discussing the overseas labor program between 1974 and 1994. Though the issues of aid and military bases seem unrelated to the overseas labor program at first glance, there are remarkable similarities that must not be overlooked. Scholars have argued that US aid related to continued access to military bases have acted as a crutch that all post-independence administrations have relied on to prop up the national economy and compensate for the absence of a sustainable policy of domestic economic development.⁴⁵ In the early 1990s, due to a variety of factors, the Philippine government decided against renewing its base agreements with the United States military. Was the ever increasing amounts of foreign capital flowing into the Philippines through remittances an enabling factor in the decision to ban the US from further use of its bases in the Philippines? The primary explanation for the expulsion of the US military from its Philippine bases had much to do with post-Marcos new nationalism in the country, but with remittances increasing year to year the economic spillover from having US bases in the Philippines was no longer absolutely vital. In effect, although not by design, remittances replaced US aid as the new crutch for Philippine leaders to hobble on.

The issue of the overseas employment program and how it (as well the resulting remittances) acts as a pressure valve for social and economic tensions within the Philippines deserves further analysis. Some scholars have perceived evidence of Marcos' cronyism embedded into the very fabric of the overseas labor program. The fact that the program changed so little during the administrations of Aquino and Ramos seem to make them guilty

⁴⁵ David Wurfel, *Filipino Politics: Development and Decay* (Ateneo De Manila University Press, 1988). (Also see Hutchcroft, *Booty Capitalism*, 1998).

by association of the same nefarious role that Marcos may have originally designed the overseas labor program to fill. Alegado argued that:

While seemingly seeking a solution to the impoverished masses' problem of unemployment and underemployment – not to mention pitifully low wages, terrible working conditions, and lack of democratic rights – Marcos appeared, as the same time, to be offering the services of the regime's state machinery through the POEA to the multitude of unemployed and underemployed. By monopolizing the labor trade and by appearing to crack down on unscrupulous labor recruiting agencies, the state integrates the Filipino workers into its machinery under the conditions of domination.⁴⁶

Neither Aquino nor Ramos (elected to the Presidency in 1992) significantly changed the Marcos era structures or institutions that operated the overseas employment program, nor did they re-align or re-purpose its role within a comprehensive national economic development strategy. Neither of them elevated its status beyond its original 'temporary', 'stop-gap' intended use and most shockingly maintained Marcos' official faux export oriented development strategy. Although national discontent with conditions during the Aquino and Ramos years were far different than those in effect during the Marcos years, it could be argued that societal and economic 'pressures' were relieved through the 'safety valve' of the overseas employment program. Alegado again explains that, "By sending this huge number of workers ... out of the country, the state is able to ... achieve a measure of political stability however temporary that may be."⁴⁷ The reality is that whether or not the program was a 'temporary option', and not part of a larger development plan, both the problems of Aquino and Ramos would have been made much worse if not for the influx of foreign capital from remittances and the 'pressure valve' effect that migration had on

⁴⁶ Alegado, "The Political Economy," 143-144.

⁴⁷ Alegado, "The Political Economy," 145.

national unemployment and underemployment. Consequently, what incentive did the post-Marcos administrations have to adjust the program or make significant changes to it?

Perhaps most surprisingly of all is the fact that both the Aquino and Ramos administration maintained Marcos' failed export oriented development strategy, which as mentioned above was not really much of a strategy in the first place. Meanwhile, the 'temporary' overseas employment program achieved ever increasing levels of participation from workers and the resulting remittances from their labor abroad. In this case the side-show truly came to eclipse the main event. Throughout the period examined in this chapter, successive leaders failed to position the overseas employment program squarely within the national economic development plan or to set achievable goals and targets for how the overseas employment program could contribute to developmental outcomes. It is upon these foundations that overseas labor migration from the Philippines has become "permanently temporary."⁴⁸

⁴⁸ Ofreneo, "Migration and Development," 264.

Chapter Four: The “Humanization” of Labor, 1994-2001

As discussed in Chapter Three, Siracusa and Acacio describe the period between 1978 and the mid-1990s as the *Commodification of Labor*, in which labor was viewed as a mere export commodity.¹ In the wake of a high-profile tragedy in 1995 they have labeled the era from the mid-1990s to the present as the *Humanization of Labor*, in which human elements of this trade have come to the fore.² This characterization is appropriate, considering the scale and impact of the tragedy to be described shortly, but more important was its impact on the way the overseas migration program was viewed by government, business, civil society groups, and the Filipino people at large. The events of the mid-1990s represented a seismic shift in how government and business approached overseas labor migration policy, and represented a proliferation of civil society groups and non-governmental organizations (NGOs) concerned with worker welfare issues. Although these groups had long been active in advocating for overseas Filipino worker (OFW) welfare issues to both government and business, they had not previously had such influence in migration policy-making circles. This elevated role has persisted from this time until today.

This chapter begins with an overview of major trends in Philippine political economy for the period, in order to place developments within the overseas employment program in the broader national picture. It then examines the events leading up to the creation of the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act 8042 or RA 8042), followed by a discussion of its specific components. The first half of the chapter, in essence, concentrates on legislative analysis, while the last half examines the impact and reactions to

¹ Christina Siracusa and Kristel Acacio, “State Migrant-Exporting Schemes and their Implications for the Rise of Illicit Migration: A Comparison of Spain and the Philippines,” *Journal of International Migration and Integration* 5, no. 3, (2004): 335.

² Ibid.

the bill, particularly in regard to government, business, and NGO groups. Additionally, discussion of how the act has impacted individual migrant workers is embedded throughout the chapter. The events covered in this chapter fall chronologically roughly between 1994 and 2001, although the bulk of the legislative activity during this period occurred between 1994 and 1996.

I will connect this policy effort to the wider focus of the thesis on government-business relations in the overseas employment program. In exploring this policy effort two significant shortcomings will stand out: first, a lack of acknowledgement of how important the overseas employment program had become to the Philippine economy, and a lack of instructions for development planners (such as National Economic Development Authority [NEDA]) to include the program as a component in future national development plans, and second, no plan to improve cooperation among stakeholders (including OFWs) in the overseas employment program, thereby improving welfare and program benefits through coordination and mutual respect rather than antagonism, mistrust, and threats.

A major theme that permeates this chapter is the increasing attention to worker welfare that motivated and resulted from the promulgation of the bill. Although the issue of worker welfare has been a part of social and political considerations regarding the overseas employment program from its earliest days, it had by the mid-1990s become the predominant focus of all attention paid to the issue by all program actors and by the nation at large. The events surrounding the creation of this act will provide further insight into the evolving nature of the policy-making relationship between government and business within the overseas employment program. Primary source materials for this chapter come principally from archival records of the Philippine Senate and House of Representatives, as

well as interviews with government officials, recruitment industry leaders, and NGO leaders. The unprecedented national focus on the overseas employment program in 1995 provided the first major opportunity since the program's inception in 1974 to determine what role it would play in the country's future and how stakeholders could work together to make the most of program benefits. Instead, the executive branch abdicated its leadership role on the issue, Congress punted on addressing the major strategic questions over the program's objectives and role in the Philippine economy, and antagonism increased among stakeholders rather than bringing them together through common difficulty.

Philippine Political Economy (1994 – 2001)

The political economy of the Philippines during the early 1990s was somewhat precarious. Mount Pinatubo erupted in June of 1991, devastating large areas of Luzon Island north of Manila and causing significant damage to the region—most significantly to the US military bases at Angeles City and Subic Bay. The eruption devastated the region economically for a time, and the ecological affects are still apparent today. In 1991, before Ramos came to power, the Philippine Senate voted against the extension of the bases treaty, thus ending more than four decades of U.S. military presence on Philippine soil. This brought significant economic dislocation, particularly in the vicinity of the bases, and a reexamination of the country's strategic position. Mount Pinatubo's eruption and the subsequent cost to repair the bases hastened the United States' decision to pull up stakes. To move the economy forward, President Fidel Ramos (1992-1998) embarked on a plan to improve ties with his neighbors in the region. In 1995 the Philippines joined the World Trade Organization (WTO) and also looked to its membership in the Association of Southeast Asian Nations (ASEAN) for

regional approaches to improving trade and economic relations. Hutchcroft and Rocamora explained that:

Ramos came to power in 1992 with a much stronger reform impulse, but his reform initiatives were concentrated far more in the economic than the political realm. Ramos and his chief theoretician, former general Jose Almonte, blamed oligarchic groups for the country's laggard economic status and combined measures of economic liberalization, privatization, and infrastructure development with concerted attacks on "cartels and monopolies." At the same time, they asserted the need to build a more capable state and free the state of oligarchic influence.³

While anemic in comparison to some regional neighbors Ramos did preside over several consecutive years of growth (see Charts 4.1 & 4.2 below). Bernardo and Tang attributed the economic growth of the mid-1990s to his exuberant reform efforts and optimism:

While the growth episodes were brief, the quality of growth, grounded on employment-generating investments in plants and equipment, may be deemed superior to the current remittance cum consumption-driven economic expansion. Investment activity then was based on tremendous amounts of domestic and international goodwill and, especially during the Ramos administration (1992-98), a lot of consumer and investor exuberance and confidence in the Philippines. Reforms—trade and investments liberalization, tax policy reform, privatization of government assets, restructuring of government enterprises enabled investments to come in while improving government's financial position. The Philippine government under President Marcos was finally seen as one that could "set its mind to do something and actually do it." Indeed, the reforms brought the economy within sight of newly industrializing economy (NIC) status and by 1997 the Philippines was one step away from an investment grade rating.⁴

Ramos' economic reform efforts were ultimately hampered by the Asian financial crisis which stuck the region in 1997, while his political reform efforts (as well as his popularity)

³ Paul D. Hutchcroft and Joel Rocamora, "Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines," *Journal of East Asian Studies* 3 (2003): 279.

⁴ Romeo L. Bernardo and Marie-Christine G. Tang, "The Political Economy of Reform during the Ramos Administration (1992-98)," *World Bank: Commission on Growth and Development*, no. 39, (2008): 10.

faltered following the exposure of details related to his efforts to change the government structure established in the 1987 constitution.⁵

In the midst of the financial crisis, in 1998, leadership in the Philippines changed hands from Ramos to Joseph Estrada (nicknamed Erap). As a former actor and national politics novice, Estrada embraced his outsider status and took on a populist pro-poor platform complete with the slogan “Erap para sa Mahirap” (Erap for the Poor).⁶ In reality Estrada’s slogans were nothing more than lip service:

For all the pro-poor rhetoric and vague redistributive promises made on behalf of those who felt excluded by the economic gains of the Ramos years, the major redistributive benefits of the Estrada administration were extended to those who enjoyed most favorable access to the Palace, most infamously those privileged to join the “midnight cabinet” drinking sessions presided over by Estrada himself.⁷

At his election Estrada presided over a country that still appeared to be headed in the right direction economically despite regional reverberations from the financial crisis. It seemed that the Philippines was well positioned to come through the financial storm and continue on a positive growth trajectory. Hutchcroft and de Dios refer to Estrada’s time in office as “the flawed experiment,” explaining how Estrada’s disastrous behavior, policy decisions, and general ineptitude affected the national economic situation:

This picture of macroeconomic stability and policy consistency was swept aside, however, by the wave of scandals and criticism that engulfed the presidency. The credibility of the administration’s entire program was undercut by charges and exposes of corruption and cronyism, putting paid to all sanctimonious pronouncements about “leveling the playing field” and “transparency” in doing business. By 2000 the extended political crisis had sapped business confidence and threatened to scuttle a fragile economic

⁵ Hutchcroft and Rocamora, “Strong Demands,” 283.

⁶ Maria Christine N. Halili, *Philippine History* (Manila: Rex Books, 2004): 287.

⁷ Emmanuel S. de Dios and Paul D. Hutchcroft, “Political Economy,” in *The Philippine Economy: Development, Policies, and Challenges* (New York: Oxford University Press, 2003): 60.

recovery. The peso depreciated rapidly from 2000 to early 2001, and the scandal-ridden stock market continuing its downward slide, well out of line with regional trends.⁸

With perhaps a collective sense of *déjà vu*, a popular uprising reminiscent of 1986 filled Manila's major circumferential artery, Epifanio de los Santos Avenue (EDSA). This second mass demonstration became known as "People Power II" or "EDSA II", and sparked a rapid withdrawal of support for Estrada by his allies, leading to his resignation and transfer of the Presidency to Vice President Gloria Macapagal-Arroyo in January 2001. Macapagal-Arroyo held a PhD in economics, was the daughter of former President Diosdado Macapagal, and had previously served as both a senator and undersecretary of the Department of Trade and Industry in the administration of Corazón Aquino. Both politically and economically, Macapagal-Arroyo faced many challenges in getting the Philippine state back on track. Hutchcroft and de Dios explain:

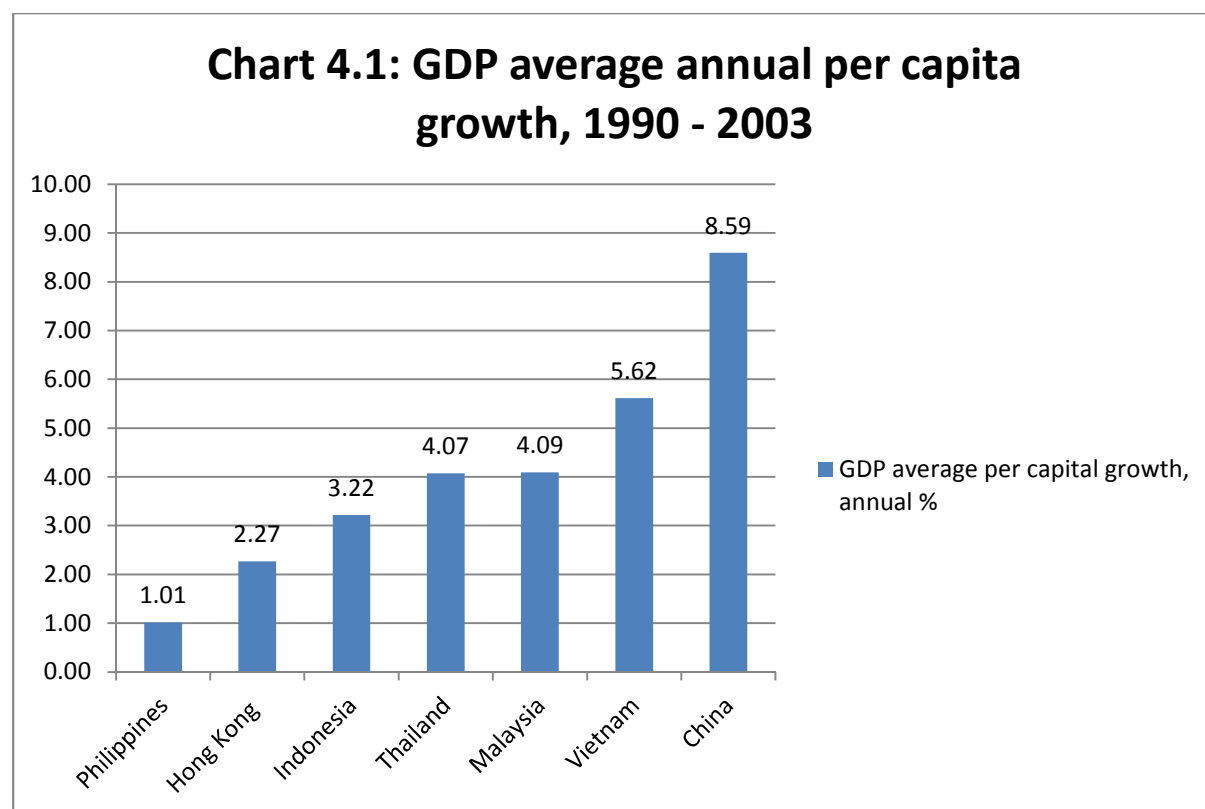
The Macapagal-Arroyo administration faced the difficult task of normalizing political and economic conditions after the excesses and inadequacies of the previous Estrada administration. To some degree, the greater professionalism and back-to-business mien of the Macapagal-Arroyo cabinet represented a welcome change. Corruption, even as it persisted, was kept within bounds and did not reach the institutionally disruptive scale experienced under Estrada. In terms of macroeconomic management, the country even appeared to regain a semblance of balance.⁹

A mere eight months into her presidential tenure, Arroyo's efforts were undercut by a sudden worldwide recession in the wake of the September 11, 2001 attacks against the United States. Despite the recession per capita GDP remained positive through 2002 and 2003, albeit significantly lower than many regional states and still heavily reliant on remittance income. The positive growth trend between 1993 and 1997 notwithstanding,

⁸ de Dios, Hutchcroft, "Political Economy," 62.

⁹ *Ibid.*, 66.

the entire period from 1990 to 2003 registered a paltry average annual GDP growth rate of only 1.01 percent (see Chart 4.1 below). In contrast, throughout the 1990s and into the new century, the numbers of deploying OFWs increased exponentially each year. Charts 4.1 and 4.2 track key growth indices across the broad period from 1990 to 2003.



**Chart 4.2: Philippines GDP per capita growth
1990 - 2003 (annual %)**

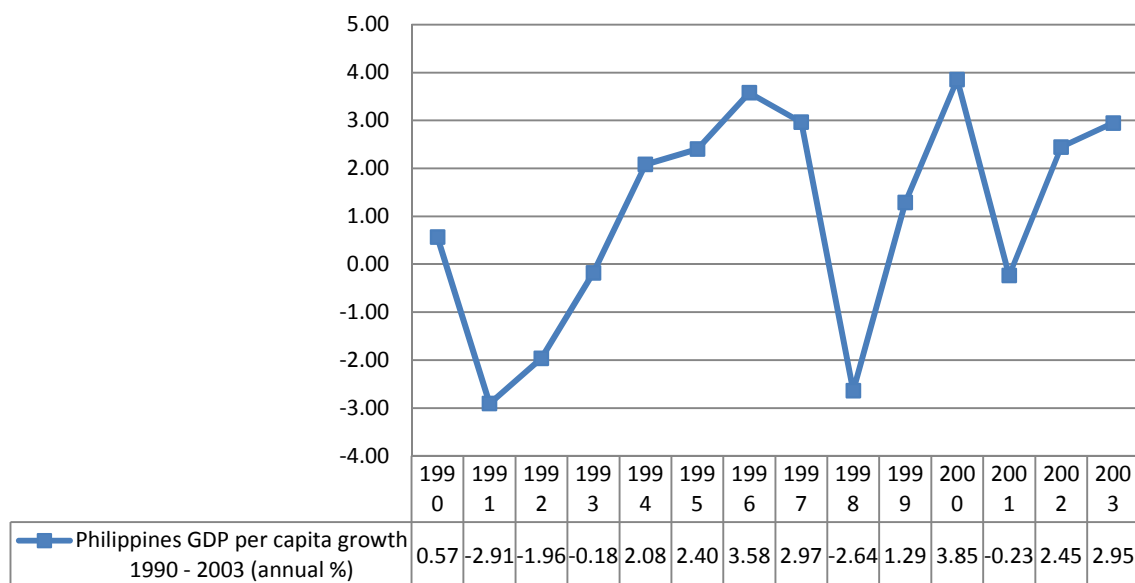


Chart 4.1 and 4.2 Source: World Bank

Background to RA 8042

In the early to mid-1990s, there were a number of high profile incidents involving OFWs that changed both the evolutionary trajectory of overseas employment program policy as well as the country's migration policy objectives. Female OFW, Flor Contemplacion, working as a domestic helper in Singapore, was accused in 1991 of the murder of another female OFW and the young Singaporean boy for whom she cared. Four years later, on the 17th of March 1995, after a series of court trials and appeals, Contemplacion was executed at Changi Prison in Singapore. Relations between the Philippines and Singapore deteriorated to the point that the Philippines nearly severed diplomatic ties. In response to the execution, mass demonstrations were held in both the Philippines and other states where significant numbers of OFWs resided, often in front of the Singapore or Philippine embassies. The execution of Contemplacion was in essence the climax of seemingly endless reports of abuses inflicted on OFWs and a steady stream of OFW caskets being repatriated to the

Philippines. Gonzalez likened the events after her execution to the 1991 eruption of Mt. Pinatubo:

The overall scenario prior to the furor of the Contemplacion Affair was quite similar to the violent awakening of Mount Pinatubo, supposedly a dormant volcano north of Manila, i.e., smooth and picturesque on the outside but brewing and waiting to explode on the inside. No one expected that people would display such angry emotions about another Filipino being executed overseas. However Filipinos had been witnessing ... casket after casket and hearing one [overseas worker] horror story after another. In the meantime, their pleas for assistance and action were to no avail. Bitter emotions had been building up. So on 17 March 1995 this silent international labour migration "volcano" finally erupted, like the force of Mount Pinatubo, triggered by the hanging of Flor Contemplacion.¹⁰

It is difficult to overstate how important the Contemplacion case has been to both the policy direction of the overseas employment program and to government-business relations in the policy-making process. Rodriguez explained that "the Philippine state, thrown into crisis, was compelled to respond to the protests, which threatened to undermine its labor export program, a program on which it had come to depend both economically and politically."¹¹ Prior to these events, "the Ramos administration's position on the overseas employment program remained similar to the past governments' stance – strong in stating that it would maximize the economic benefits but weak on voicing its determination to minimize the social costs."¹² In the immediate aftermath of her tragic execution there was a wholesale dash by all politicians across the government spectrum to appease the increasingly boisterous call for better OFW protection. The timing of Contemplacion's execution became a key issue in the general election in May of 1995, where Senatorial and House candidates

¹⁰ Joaquin L. Gonzalez III, *Philippine Labour Migration: Critical Dimensions of Public Policy* (Singapore: Institute of Southeast Asian Studies, 1998): 6.

¹¹ Robyn M. Rodriguez, "Domestic Insecurities: Female Migration from the Philippines, Development and National Subject-Status," *The Center for Comparative Immigration Studies* (University of California, San Diego, 2005): 3.

¹² Gonzalez, *Philippine Labour Migration*, 124.

across all political parties attempted to position themselves as pro-OFW, and “champions” for enhanced protection.

Whether or not it was due to election-year politics, or the remarkable level of public outrage over Contemplacion’s execution, the Ramos administration responded quickly. On March 20, 1995, a mere three days after her execution, and two days after her body returned to the Philippines, Ramos issued Executive Order No. 231 which created a “presidential fact-finding and policy advisory commission on the protection of overseas Filipinos.”¹³ As the commission was headed by retired Supreme Court justice Emilio Gancayco, it became known as the Gancayco Commission. The Gancayco commission was assigned two objectives:

1. Determine particular and general facts and circumstances involving the policies and actions of the Philippine Government and its agents or officials in relation to the protection of overseas Filipinos, particularly cases involving the criminal conviction of overseas Filipinos, including the case of Mrs. Flor Contemplacion; and
2. Make recommendations with a view to improving the protection afforded by the Philippine Government to overseas Filipinos, consonant with international conventions and standards.¹⁴

The commission was further mandated to “Formulate recommendations, to include legislative measures, for the improvement of the protection of overseas Filipinos by the Philippine Government.”¹⁵ The commission released its report “On the Safety Nets and Protective Measures for Overseas Workers and Filipino Nationals” in early April, 1995 which further exacerbated relations between the Philippines and Singapore.¹⁶ President Ramos

¹³ Fidel Ramos, *Executive Order No. 231* (Manila, Philippines, March 1995).

¹⁴ Ramos, 1995.

¹⁵ Ibid.

¹⁶ Rene E. Ofreneo and Isabelo A. Samonte, “Empowering Filipino Migrant Workers: Policy Issues and Challenges,” *International Migration Papers* (2005): 3.

requested that the Singaporean ambassador to the Philippines be recalled, and dismissed several government officials at the commission's recommendation.

The Gancayco Commission report produced a number of recommendations, but perhaps its most "significant proposal was for the defeminization of labour migration by gradually phasing out the export of women domestic helpers and entertainers who form the most vulnerable sub-sector of the diaspora."¹⁷ In response to the social fallout over the Contemplacion situation, the commission recommended: (a) discontinuing the practice of deploying domestic workers to the Middle East and world-wide by 2000; and (b) discontinuing the deployment of non-professional entertainers to Japan. Since the majority of problems for OFWs occur among those engaged in domestic work environments abroad, the idea was to quit sending these lower skilled workers into such potentially harmful situations. Likewise, there had been a high number of problems with OFWs who deployed to Japan as entertainers, but in some cases ended up working as escorts, prostitutes, or adult entertainers. As many domestic workers deploy illegally, the commission further recommended that (c) Overseas Worker Welfare Administration (OWWA) centers be established in every foreign post; (d) agencies engaging in illegal recruitment receive permanent bans from program participation; and (e) a special anti-illegal recruitment prosecution team be created. Anti-illegal recruitment initiatives had long been a part of government strategy in managing the overseas employment program, though the Gancayco commission's recommendations on the issue went beyond any efforts previously employed. Finally, the commission recommend that (f) legal assistance be provided to OFWs regardless

¹⁷ Gonzalez, *Philippine Labour Migration* , 126.

of whether they are the plaintiff or defendant, “especially in cases of capital or serious offenses.”¹⁸

As mentioned by Rodriquez above, the ever increasing importance of OFW remittances to the Philippine economy undoubtedly had an impact on politicians in both the speed and intensity in which they responded to this crisis.¹⁹ Nevertheless, remittances were only part of the “perfect-storm” that occurred in the wake of Contemplacion’s execution. The additional factors of election year politics, and emotionally charged public outcries for better OFW protections, combined to set the stage for an extended process of legislative political maneuvering that permanently shifted the policy direction of the Philippine overseas employment program.

Creating the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042)

Immediately following his party’s election success on May 8, President Ramos called a special legislative session to commence work on a bill being referred to as a “Magna Carta” for overseas workers. The bill originated in the Committee on Foreign Affairs in the House of Representatives, which held hearings in November 1994 as the commotion related to Contemplacion’s pending execution was building toward its climax. The usage of the term “Magna Carta” or “Great Charter” of course draws reference to the document signed in 1215 in which King John was forced to proclaim certain liberties to the English people. This new bill was envisioned to provide a similar declaration of what OFWs rights were and also what they could expect from their government. By the time President Ramos called a special legislative session, the House version of the bill had already been passed, and thus a Senate version was needed if the Senate decided not simply to pass the House version.

¹⁸ Gonzalez, *Philippine Labour Migration*, 125-126.

¹⁹ Please see Chart 2.2 for figures on the growth of remittances to the Philippines.

Concerning the differences between the circumstances surrounding the creation of both the House and Senate versions of the bill, Tigno explained that “it may be said that the Senate version was more a reaction to the Contemplacion incident whereas the House version was drafted prior to the said episode even as it does not completely set aside the plight of Filipino migrant workers.”²⁰ The Senate fully understood the popular sentiment around the country regarding the need for meaningful government action toward improving OFW protection. Consequently there was no shortage of proposed senatorial bills aimed at enhancing worker protection within the overseas employment program. Table 4.3 provides a brief synopsis of each proposal, its author, and assigned bill number.

Ultimately the five bills were consolidated into Senate Bill Number 2077, or Migrant Workers Act of 1995. Senate Bill No. 2071 “was withdrawn from consideration,” possibly due to the complex and controversial nature of its proposals, and the desire for the bill to be passed post-haste.²¹ The various bills were consolidated and debated within the Senate Committee of the Whole. On May 23, 1995 the committee of the whole conducted a public hearing where “resource” speakers were brought in to testify and answer the senator’s questions. Table 4.4 shows the number of resource persons, senators and assorted stake holders in attendance during the public hearing for the bill. There was solid representation from both NGOs and the recruitment industry, but representatives from the various government agencies involved in the overseas employment program made up the largest group of participants. The high number of government agency representatives is not

²⁰Jorge Tigno, “Governance and public policy in the Philippines: RA 8042 and the deregulation of the overseas employment sector,” (PhD diss., University of the Philippines, 2003): 148-149.

²¹ Graziano Battistella, “The Migrant Workers and Overseas Filipinos Act of 1995 and Migration Management” in *Filipino Workers on the Move: Trends, Dilemmas and Policy Options*, ed. Benjamin V. Carino (UNESCO-Most 1998): 87.

surprising considering that the premise for the bill was to reform how the government manages and protects overseas workers.

Table 4.3. Senate Bills Introduced

Senate Bill number	Sponsoring Senators	Description of key proposals
2068	Senator Blas Ople	Proposed a Legal Welfare Commission for Overseas Workers
		Proposed a Legal Assistance Fund
2069	Senator Ernesto Herrera	Non-promotion of overseas labor for development and the creation of local opportunities
		Deployment of skilled workers only to countries ensuring protection
		System of absentee voting
		Legal assistance to victims of illegal recruitment
		Diplomatic initiatives and the signing of bilateral labor agreements
		Establishment of crisis centers for information, counseling and assistance
2070	Senator Alberto Romulo	Similar to House version
		Establishment of Filipino Overseas Worker Centers
		Absentee voting for OFWs
2071	Senators Edgardo Angara, Rodolfo Biazon, Gloria Macapagal-Arroyo, Raul Roco, Francisco Tatad	Recognized the duty of the state to create job opportunities for Filipinos in the Philippines
		Creation of a Department of Overseas Employment
2075	Senators Ernesto Maceda, Nikki Coseteng	All fees paid by OFWs to POEA and OWWA be frozen at current levels
		OFWs pay only 50 percent of fees, while 25 percent be funded out of Lotto revenues and 25 percent charged to employers
2076	Senator Heherson Alvarez	Only allowing overseas work when the state can ensure protection
		Focus on international cooperation in handling migration
		Increased sensitivity to gender issues

Source: Graziano Battistella, "The Migrant Workers and Overseas Filipinos Act of 1995 and Migration Management" in *Filipino Workers on the Move: Trends, Dilemmas and Policy Options*, ed. Benjamin V. Carino, (UNESCO-Most 1998) 85-86.

Table 4.4. Number of Participants in attendance at the public hearing on a proposed Magna Carta for Overseas Workers (held May 23, 1995) by category

Recruitment Agencies/ Private Sector	13
Government Agencies	37
Non-Governmental Organizations (NGOs)	17
Senators	17
Labor Unions	5
Academics	1
Individual OFWs	1
Unidentified	2

Source: Philippine Senate Archives

Senator Ernesto F. Herrera, who chaired the hearing, made its objectives clear in his opening remarks “may I call to order the hearing of the Committee of the Whole to tackle the various bills related to overseas employment, and, hopefully, to come out with the consolidated Magna Carta for Overseas Workers.”²² Insights about the perspectives of the groups involved in the overseas employment program can be found in the testimonies they gave, as well as in exchanges between legislators and the various program stake holders in attendance. As the various resource persons in attendance at the hearing answered questions and gave their opinions, sharp disagreements emerged over what were the most pressing issues were facing the overseas employment program and who should be responsible for rectifying them. Many questions from senators focused on recruitment agency practices and government oversight of the program. It does, however, seem that the amount of attention paid to the recruitment industry was disproportionately higher than the amount of time spent interrogating the quality of government oversight functions in managing the overseas employment program. Some senators were openly looking to reform the program from the top down, but nevertheless sought to assign the lion’s share

²² Philippine Senate Archives, *Committee of the Whole in Reviewing the Overseas Employment Policy and Program*, May 23, 1995.

of the blame for the state of the program at the feet of the recruitment industry. This is apparent in an exchange on the problem of illegal recruitment involving Dr. Caroline Rogge, Chairperson of the Overseas Placement Association of the Philippines (OPAP, a leading industry organization at the time) and Senator Blas Ople, the former Minister of Labor under President Marcos and architect of the overseas employment program :

Senator Ople: Now, Dr. Rogge, I recall a clear understanding at that time that the OPAP and the PASEI [Philippine Association of Service Exporters Inc.] would police their own ranks so that illegal recruitment agencies could be exposed and brought to court and maybe proceeded against criminally. You did not deliver on your part of the bargain. Can you credit any member of yours with the initiative to expose an illegal recruiter agency?

Rogge: Mr. Chairman, as a matter of fact, when we tell them [POEA] that there is an illegal recruiter in a hotel, we report to them, they said they cannot just go after the illegal recruiter. As I said, there should be a genuine partnership between the private sector and the government because that's the only time we can operate together, that process of synergy helping one another, Mr. Chairman.

Senator Ople: Do you have some concrete proposals on how to deal with the illegal recruitment menace?²³

This exchange highlights the difficulty in dealing with illegal recruiters. The recruitment industry itself can only report illegal activity to the Philippine Overseas Employment Administration (POEA), and the POEA is not structured properly to find and prosecute illegal recruiters. Legitimate recruitment agencies in the industry would like to see the illegal recruiters put out of business, as they are not burdened by the financial or administrative compliance requirements licensed recruiters must meet. Because illegal recruiters operate outside of the overseas employment program structures, they have a competitive advantage over legitimately licensed recruiters.

²³ Philippine Senate Archives, *Committee of the Whole*, 120-121.

Rogge further discussed the POEA's direct hire activities, where it takes on the role of recruitment agency (RA) in deploying workers directly abroad. RAs have long alleged that these arrangements create an ethical problem where the POEA acts as both enforcer and direct competitor to traditional RAs. In further comments on the difficulty with illegal recruitment and the adversarial relationship between the recruitment industry and the POEA, Rogge added:

Why are we called the scalawags when we are supposed to be the genuine partner of the government because we were the ones who looked for the jobs for the many Filipinos we have sent abroad? But instead of us being given some sort of citation, we are told that we are the scalawags. But may I tell you, Mr. Chairman, that we are not the ones. It is the failure of the government to govern. They have been giving so many licenses which they cannot control....So if there should be any magna carta,...I think that the [POEA] should remain, to monitor, to supervise, and to issue respected policies for the private sector to also follow, but not as a competitor. That way I think, we will be heading for a better recruitment program.I think that they [POEA] have also some operational system that is not good for the private sector. They are our competitors....They put more teeth to us, when, in fact, the ones that is committed, all the mistakes, are the illegal recruiters, sir, the ones that are not licensed, because so many red tapes in processing with them [POEA].[sic]²⁴

The numbers of OFWs deploying directly through the POEA has always been low, and the competition claims made here are overblown. But OPAP Chairperson Caroline Rogge made an important point about the government's failure to govern, which highlights a common criticism by many program actors and observers at the time and further illustrates the inadequacy of the measures under consideration within RA 8042 to reform the overseas employment program.

²⁴ Philippine Senate Archives, *Committee of the Whole*, 164-165, 169.

Traditionally OFWs did not pay fees to recruitment agencies, but instead the companies abroad wishing to hire OFWs paid the agencies directly. This began to change however when lower skilled domestic workers began to deploy in greater numbers rather than highly skilled workers. During the proceedings a suggestion was made that a return to the old system of no fees for the workers be adopted. When representatives of the recruitment industry were asked about this, Senator Ople interjected:

Now, this is related, I believe, to changes occurring in the global labor market. You will also recall that some years ago, the wages paid to our workers in the Middle East were much higher than now. And this is probably a function of labor market realities there. There are more countries sending workers to the Middle East and there is a tendency for employers and their governments to play-off one country against another [sic]. So the [Middle] East can very well say, “when we go to Sri Lanka, to India and Pakistan for our unskilled labor needs, the people there offered to pay all these fees. Why should we make an exception [for] you?” At any rate, that is how this evolved. So many countries are willing to accept much lower standards of work than our own. And so the reaction of the employment agencies in the Philippines is just to submit to the demands, the terms dictated by the foreign employers, either you accept these standards or you do not get a job. So I do not want to attribute this change to any difference in management competence but to probably it owes more to the changing realities in the labor markets abroad.²⁵

The fragmentation of the recruitment industry became apparent during the proceedings as resource persons representing different sides of the industry cast accusations of wrongdoing at fellow members who represented different sub-sectors of the industry (i.e. land-based vs. maritime).²⁶ For example, an attendee representing a maritime recruitment agency association referred to the land-based agencies as “scalawags,” prompting Rogge’s rebuttal above. Both the maritime recruiter associations and the associations which

²⁵ Philippine Senate Archives, *Committee of the Whole*, 140-141.

²⁶ As described in Chapter One, the recruitment industry is highly diverse with agencies that specialize in maritime, land-based, low skilled, and highly skilled recruitment.

deployed only skilled construction workers drew attention to the practice of charging OFWs fees, and claimed not to engage in the practice themselves. It was during one such exchange that Senator Ople made the statement above about the realities of competition that the Philippines faced from states less concerned about protecting their workers. One would have expected a certain amount of scapegoating considering popular national sentiment following the execution of Contemplacion, but surprisingly during the Senate hearings most of the accusations of wrongdoing came not from the NGOs (their traditional foes) or senators (government), but instead among the various factions within the recruitment industry itself. This was perhaps due to the fear that a bill would ultimately penalize them all due to the misdeeds of the bad apples. The factions therefore wished to differentiate themselves from those on whom they pinned the blame. The NGOs and senators did of course have negative things to say about the recruitment industry, but by and large did not seem to be attempting to fix blame solely at their feet.

Among the topics debated, illegal recruitment, fees, and government “support” infrastructure at home and abroad took up a large portion of the hearing time. Topics that were discussed, but received somewhat less attention, included pre-departure training, voting rights for OFWs, retirement benefits for OFWs, and bilateral labor agreements among others. The day after the public hearing (May 23, 1995) the Senate Committee of the Whole heard a report from the Gancayco Commission, and also took the opportunity to ask members of the commission about the evolving bill.

After the Senate finished its work and passed its version, the Senate and House of Representatives met in a Conference Committee to iron out the differences between their respective versions of the bill. They completed their work within a few days and had a bill

ready by June 2, 1995. Five days later, on June 7, President Ramos signed the bill set to take effect on the 15th of July 1995. Although the House version of the bill was started the year before, the post-election flurry of activity on overseas employment all took place over a period of less than three weeks. The speed at which the bill was debated, rectified, adopted and signed by the president highlights the level of expectation in the Philippines that the government would take serious and meaningful action toward fixing the overseas employment program. Unfortunately the calls made in the public hearing from NGOs and recruitment industry leaders alike to adopt a slow, considered approach to reforming the program were not heeded. The speed at which RA 8042 was pushed through is likely the leading reason so many problems have arisen related to its various provisions. Had legislative deliberation been slowed down, and more (possibly less emotional) debate taken place, it is possible that some of the mistakes that have arisen since RA 8042's creation could have been avoided. Political expediency and election year politics evidently do not mix well with sound program policy making.

The Objectives of RA 8042

Battistella identified the two primary objectives of RA 8042: "to institute the policies of overseas employment" and "to establish a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress."²⁷ Both objectives fall in line with the popular sentiment that despite being dubbed the "bagong bayani" (new heroes) of Philippine economic development, OFWs were being let down by their own government and its agencies. In response to the national disquiet over the treatment of OFWs, RA 8042 was designed to cover as many areas of the overseas

²⁷ Battistella, "The Migrant Workers," 90, 93.

employment program as possible. In essence, it was intended to provide comprehensive, across-the-board reforms both to the governance of the program and to the working conditions of those it deployed.

On July 7, 1995, in a push to prove how serious the Ramos government was about protecting OFWs, the Philippines became one of the first states to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.²⁸ This was largely symbolic considering that the treaty would not enter into force for another eight years; to this day, it has not been adopted by major migrant receiving states but instead primarily by migrant sending states. Nevertheless, the symbolic gesture showed that the Philippine government would pursue whatever avenues it could in order to provide proactive protection to the welfare of its workers abroad.

RA 8042: Completing the Shift to a Worker-Welfare Focus

At its inception in 1974, the overseas employment program was a temporary measure. By 1995, there had come to be an acceptance that it was a permanent fixture in Philippine society. What had been touted as a temporary necessity, where economic considerations were the driving force, became a critical survival strategy where improvements in worker welfare were sorely needed. After over two decades of horror stories and tragedies, the Contemplacion execution was in essence the straw that broke the camel's back. This led to the passage of RA 8042 and a broader shift in which worker welfare has become the dominant discourse paradigm on all issues related to the overseas employment program. This is the case not only in the political sphere but also in the majority of academic inquiry on overseas labor migration from the Philippines.

²⁸ United Nations, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (New York, 1990).

RA 8042's Impact

I will now turn to analysis of the changes that RA 8042 brought to the structures and institutions of the overseas employment program and the relationships among its key actors. The changes and impacts subsequently explored are organized by actor group, with government first, followed by NGOs, and the recruitment industry (business).

Impact on Government*Department of Foreign Affairs*

The Department of Foreign Affairs (DFA) was heavily impacted by the introduction of RA 8042. Aside from new domestic committee responsibilities, the DFA absorbed additional responsibilities in regard to the welfare of OFWs abroad that were previously beyond the scope of its mandate. In essence the DFA would continue as the lead agency promoting Philippine interests in regional, international, and bilateral relationships, but would also become a resource center providing welfare based services for OFWs around the world. The global scope of the overseas employment program made the DFA the only agency capable of undertaking such a role. The DFA had little experience in dealing with complex issues arising from the massive numbers of OFWs deploying around the globe and was underfunded. The DFA could readily solve visa or passport issues for overseas Filipinos but found that they were ill prepared to counsel distressed, abused, and runaway OFWs. RA 8042's reinforcement of the "Country Team Approach" was meant to lessen the burden on the DFA by bringing specialized experts into the DFA's overseas structures to deal with the wide variety of challenges faced by OFWs in destination states. Despite this reinforcement, as discussed in Chapters Five and Six, support for OFWs while abroad has remained

disjointed and woefully inadequate. The “country team approach” meant that several separate organizations within the overseas employment program bureaucracy would join forces and thus pool expertise in support of the new worker welfare mandates.

Although the DFA has always been mandated to pursue trade and labor agreements with other states, RA 8042’s emphasis on bilateral labor agreement established a new foreign policy priority for its diplomats. In the latter half of the 1990s, the DFA unsuccessfully pushed for migrant worker agreements through regional organizations such as ASEAN.

Instead the DFA set its sights on bilateral labor agreements, which, while easier than their multilateral regional and global counterparts, nonetheless present their own challenges. Chapter Five will explore the strengths, weaknesses, and opportunities of bilateral labor agreements and will further explore the DFA’s role in completing them.

Finally, the DFA was required to establish a Legal Assistance Fund of 100 million pesos to fund criminal or other labor disputes involving OFWs in destination states. Defending OFWs accused of crimes while overseas can be expensive and is often beyond the means of individual migrants. Through the assistance fund, attorneys and experts in local legal systems assist OFWs in legal matters ranging from salary and contract disputes to criminal cases involving theft and even more serious crimes such as murder (as in the case of Flor Contemplacion). The task of legally defending the rights of OFWs in dozens of states around the world further illustrates the unique challenges the overseas employment program places on the DFA and why they have experienced growing pains and difficulty in fulfilling their new mandate (as further discussed in Chapter Five). This fund operated in conjunction with the newly created Office of Legal Assistant for Migrant Workers Affairs. In addition to monitoring the legal needs of OFWs, the DFA was also now required to produce

assessments of which regional and international labor standards agreements destination states were participating in, and how well they were complying with agreement standards. RA 8042 requires the DFA to “monitor, assess and undertake creative approaches in the observance of human and labor rights of migrant workers, including legal options” in destination states.²⁹ In essence, the DFA became obligated to supply situational reports of the labor landscape (with a welfare focus) in each state to which OFWs are deployed.³⁰

In summary, the DFA faces monumental challenges in filling its robust mandate. The DFA is a department tasked with watching over the nation’s foreign relations, broadly defined, while it has been forced to focus to a huge extent just on the consular elements of its mandate portfolio.

The Department of Labor and Employment

Like the DFA, the Department of Labor and Employment (DOLE) has seen a significant expansion in its responsibilities toward the overseas employment program and especially worker welfare. The first new responsibility for DOLE was the call to create a “Re-placement and Monitoring Center” conceived to place recently returned OFWs in local employment at home in the Philippines. This program sought to utilize the newly acquired skills of returning OFWs to fill positions domestically, but failed to provide a strategy for how these new jobs would be created beyond the cryptic mandate that DOLE should “develop livelihood programs and projects for returning Filipino migrant workers in coordination with the private sector.”³¹ One could reasonably ask that if these jobs existed in the first place, why were they not filled by prospective OFWs before their international migration in search

²⁹ Ofreneo and Samonte, “Empowering Filipino Migrant Workers,” 10.

³⁰ Republic of the Philippines, 9th Congress, *Republic Act 8042, Migrant Workers and Overseas Filipinos Act of 1995*, Section 22.

³¹ *Ibid*, Section 18 (a).

of employment? If the high quality jobs were somehow able to be created, the skills database of returned OFWs mandated as a part of the Re-placement and Monitoring Center would be useful for filling the positions. The “re-integration” side of DOLE’s mandate is much easier to understand as many OFWs find it difficult to fit back into Philippine society or even their own families after many years or even decades living abroad.

A second and somewhat more controversial change mandated on DOLE by RA 8042 was the instruction to formulate a plan for the POEA to de-regulate the recruitment industry within five years. Including this order in a bill designed primarily to enhance welfare and protection for OFWs seems counter intuitive, but the logic behind the move will be discussed in detail below in the section on RA 8042’s effects on the recruitment industry. Needless to say this initiative sparked a great deal of opposition from NGOs and migrants groups alike. Several scholars have attempted to unravel the reasoning and rationale behind this interesting move. It should be noted that deregulation was a popular mantra in the 1990s, with the notion being that if government got out of the way the private sector would flourish. Despite world-wide trends, this policy objective was controversial at the time, as it seemed counterproductive to the objectives of the newly created worker welfare provisions. In the end, no meaningful deregulation of the private sector’s participation in the overseas employment program has taken place since the creation of RA 8042.

In conjunction with RA 8042’s emphasis on increasing the number of BLAs, DOLE was assigned the task of assisting the DFA in future BLA negotiations. It seems at first glance that the POEA would be a more likely candidate to negotiate on behalf of OFW interests, but as the lead labor organization within the Philippine bureaucracy, and as the POEA’s parent organization (see organizational Chart 2.1), DOLE represents OFW interests while the DFA

takes the lead in both initiating and conducting negotiations. As I will explain in Chapter Six, DOLE has found it tremendously difficult to cope with this task.

The Overseas Worker Welfare Administration (OWWA) operates under DOLE and received some specific mandate modifications through the introduction of RA 8042.³² In addition to playing a role in DOLE's new "re-placement and monitoring" program, OWWA was tasked with managing two new funds, the Emergency Repatriation Fund and the Migrant Worker Loan Guarantee Fund. The Emergency Repatriation Fund was designed to cover all necessary expenses related to unplanned OFW repatriation. This would include causes such as natural disasters, violent conflict situations, or health epidemics. In cases of contract violations committed by the employer, routine completion of an employment contract, or death, the foreign employer and recruitment agency are the default financiers of OFW repatriation. The problem with assigning the agency with paying for OFW repatriation has long been that the majority of OFWs are re-hires, or repeat OFWs, who no longer rely on an agency but rather secure work abroad via their own contacts. OWWA's Emergency Repatriation Fund was designed to solve this problem though its record of success has been somewhat mixed in the years since the introduction of RA 8042. Problems over who is responsible for repatriation bills linger today.

OWWA's new Migrant Worker Loan Guarantee Fund was designed to disrupt the abusive lending industry that had evolved out of the recruitment process. Some Filipinos wishing to find work abroad, but who were unable to pay the necessary fees, would obtain high interest or otherwise abusive loans from "unscrupulous" lenders or illegal recruiters. The goal was for OWWA to collaborate with government financial institutions to create

³² For more information on the organizational relationships within the overseas employment program bureaucracy, see Chart 2.1.

“financing schemes that will expand the grant of pre-departure loan[s] and family assistance loan[s]” to help prospective OFWs achieve their goal of working abroad, while avoiding unnecessary financial burdens or hardship. Unfortunately, as illegal recruiters were and are primarily the ones engaging in such activities, and by definition operate outside of the law, there was little prospect of their discontinuing the practice of offering abusive loans. However, the fund did provide a safe alternative should prospective OFWs choose to utilize it.

The Philippines Overseas Employment Administration

The POEA was minimally impacted by RA 8042, with only small changes made to its role and responsibilities. The changes however, could have been much more sweeping. One exchange during the Senate hearings on RA 8042, between Senator Ernesto Maceda and Ampy Robles, a recruitment industry representative, showed the extent of the changes that were under consideration. While Senator Maceda seemed to be implying that the POEA should be changed or reformed in some way, Robles instead asserted that the problem “is not the office, it is the people manning it.”³³ The key question was this: should the institutional structures be altered or should there be a change in personnel? In the final version of the bill however, nothing approaching the broad re-structuring proposed by Senator Maceda was included. Instead, several small changes were made—particularly in regard to POEA policies and its collaborative relationship with fellow overseas employment program agencies within the government bureaucracy. This exchange highlights another important point to consider when investigating the relationship between government and business within the overseas employment program context, namely, that RAs operating

³³ Philippine Senate Archives, *Committee of the Whole*, 133-134.

within the legal side of the program want to see the program's gatekeeping institutions maintained because they marginalize those agencies operating illegally. This would have the desired effect of decreasing illicit competition.

The most significant change made by RA 8042 on POEA policies and procedures was the freezing of all fees paid by OFWs at their then-current (1995) levels. Additionally the repatriation bond, which had covered any need for an OFW to be repatriated, was abolished. During the Senate hearings, the consensus was that the large array of fees required by the POEA only added to the financial pressures which burdened prospective OFWs. By freezing fees at their current levels there would be less need for Filipinos to seek loans from unscrupulous lenders. In conjunction with the country specific reports created by the DFA, the POEA was tasked with the regular publication of travel advisories to "adequately prepare individuals [in] making informed and intelligent decisions about overseas employment."³⁴

Other Changes in Government Oversight of the Overseas Employment Program

In addition to the individual changes that affected each of the agencies described above, there were changes in RA 8042 designed to bring together the various bureaucratic entities to improve program coordination. One such effort was the introduction of a Shared Government Information System for Migration, designed to integrate information exchange across a variety of government agencies with varying degrees of involvement in the

³⁴ Republic of the Philippines, 9th Congress, RA 8042, Section 14.

overseas employment program. RA 8042 envisioned that the entire overseas employment program bureaucracy would build a shared and centralized database, including:³⁵

- (a) Masterlists of Filipino migrant workers/overseas Filipinos classified according to occupation/job category, civil status, by country/state of destination including visa classification;
- (b) Inventory of pending legal cases involving Filipino migrant workers and other Filipino nationals, including those serving prison terms;
- (c) Masterlists of departing/arriving Filipinos;
- (d) Statistical profile on Filipino migrant workers/overseas Filipinos/tourists;
- (e) Blacklisted foreigners/undesirable aliens;
- (f) Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with the large numbers of Filipinos;
- (g) List of labor and other human rights instruments where receiving countries are signatories;
- (h) A tracking system of past and present gender disaggregated cases involving male and female migrant workers; and
- (i) Listing of overseas posts which may render assistance to overseas Filipinos, in general, and migrant workers, in particular.³⁶

The benefit of improved data coordination cannot be understated in terms of its importance for capturing and sharing relevant information for program policy makers and managers. If the overseas employment program is ever to be used as a component within a larger national economic development strategy, as argued in this thesis, it will be vital that these data points be captured. The agencies which have overseen the overseas employment program had been plagued by redundant data collection in some areas combined with a total lack of data tracking in others. Since the introduction of RA 8042, data collection and sharing has improved dramatically although much more could be done. To date most

³⁵ The named relevant bureaucratic agencies named included: the Department of Foreign Affairs and its attached agency, the Commission on Filipino Overseas, the Department of Labor and Employment, the Philippine Overseas Employment Administration, the Overseas Workers Welfare Administration, the Department of Tourism, the Department of Justice, the Bureau of Immigration, the National Bureau of Investigation, and the National Statistics Office.

³⁶ Republic of the Philippines, 9th Congress, *RA 8042*, Section 20.

improvements in capturing this data have occurred on the sending side of the program.

There is still a serious lack of data being captured for returning OFWs.³⁷

The Legislative Branch

Although they were responsible for crafting RA 8042, the legislature did not impose any new responsibilities upon themselves or fundamentally change their own policy-making role in the overseas employment program. The legislature did accentuate a policy shift by signaling that workers would only be deployed to countries that met certain standards of worker welfare protection, also emphasizing the need for bilateral labor agreements (more on this in Chapter Five). The one new responsibility the legislature assigned themselves was the crowd-pleasing introduction of the Congressional Migrant Workers Scholarship Fund designed to “benefit deserving migrant workers and/or their immediate descendants below twenty-one (21) years of age who intend to pursue courses or training primarily in the field of science and technology.”³⁸ In fact the legislature left the management of this scholarship program to DOLE, meaning that the inclusion of “congressional” in the program title was nothing more than an emblematic gesture.

Perhaps the most important of all policy shifts and declarations included in RA 8042 was the legislature’s assertion that “the government, in pursuit of the national interest or when public welfare so requires, may, at any time, terminate or impose a ban on the deployment of migrant workers.”³⁹ It is difficult to say what motivated this declaration. Was this statement intended to portray a sense to the public that the government would put OFW welfare above the economic necessity the overseas employment program had become?

³⁷ I make this claim based on a review of available statistics at the POEA, the Bureau of Labor and Employment Statistics at the Department of Labor and Employment, as well as the Bureau of Immigration.

³⁸ Republic of the Philippines, 9th Congress, *RA 8042*, Section 37.

³⁹ *Ibid*, Section 5.

Perhaps instead this statement was meant to reinforce the “temporary” status of the program in the eyes of the public. Although this statement was made, it has never been implemented except in limited ways, in specific countries or hot spots, such as during Iraq War in 2003.

The Executive Branch

The executive branch was given the responsibility to make several new appointments in relation to new offices created by RA 8042. These included two individual OFWs to represent OFW concerns in policy-making within the House of Representatives, the office of Legal Assistant for Migrant Workers Affairs under the DFA, and new female OFW representatives on the POEA and OWWA boards.⁴⁰ Through these appointments the president could have influence over how welfare related policies were being managed, implemented, and overseen.

The Ramos administration faced tremendous challenges in the face of the Flor Contemplacion crisis and successfully balanced the national need for a response while minimizing the impact of the Philippines relationship with Singapore (as well as other destination states). That being said, the efforts made by Ramos and his successors, Joseph Estrada after 1998 and Gloria Macapagal-Arroyo after 2001, amounted to little more than the minimum response required to make certain that pacifying public demands for justice would not be accompanied by disruptions to the remittance lifeline that the economy required. Under Ramos, for example, major policy initiatives focused on economic reform, international economic and security ties, judicial issues such as the death penalty, and—late in his administration—efforts to revise the 1987 constitution (widely known as charter

⁴⁰ Ibid, Sections 24, 32, 34.

change or cha-cha). Beyond the 1995 response to the Contemplacion execution, reform of the overseas employment program was not a major policy priority. In her assessment of the Ramos administration's foreign policy, Pattugalan highlighted successes and failures across a variety of foreign policy areas. Despite the tremendous importance of the overseas employment program and the subsequent remittances, she characterized the administration's response to the Contemplacion situation simply as a "[push] for greater attention on migrant workers."⁴¹ Ramos' leadership role on the issue was such that he seemed satisfied with convening the Gancayco Commission and then calling the Congress to a special legislative session to address the crisis through the creation of a new law. Ramos did take a leading role in trying to repair the now tattered bilateral relationship with Singapore.

Although the Estrada and Macapagal-Arroyo administrations paid lip service to the importance of the overseas employment program and OFWs, neither made the program or OFW issues a centerpiece of their policy agendas. The economic fallout of the financial crisis was of paramount importance through Estrada's brief but corruption-plagued presidency, and were still evident when Estrada was removed from office and Macapagal-Arroyo took over in January 2001. Because the executive branch chose not to focus on the overseas employment program, it was thus left to the legislature to lead on policy formulation and then for the bureaucracy to both implement RA 8042 and interpret the law's provisions. In addition, and as explained further below, the Supreme Court weighed in from time to time on program disputes.

⁴¹ Gina Rivas Pattugalan, "A Review of Philippine Foreign Policy Under the Ramos Administration," *Kasarinlan: Philippine Journal of Third World Studies* 14, no. 3 (1999): 143.

Impact on NGOs (Civil Society)

Although migrant worker NGOs concerned with OFW welfare have existed from the earliest days of the overseas employment program, it was not until the waning years of the Marcos administration that they had any real success in their attempts to influence policy-making decisions. As discussed in Chapter Three, this included NGO success in forcing Marcos to rescind Executive Order 857, which required OFWs to remit their earnings through Philippine banks.

NGOs became progressively more important players in overseas employment program policy making, especially during the post-Marcos years.⁴² President Cory Aquino solicited NGO opinions during her across-the-board review of the overseas employment program. The introduction of RA 8042 signaled a new high water mark for the status of NGOs in overseas employment program policy making. Enshrined in RA 8042, under the “Declaration of Policies” section, NGOs were officially recognized as “partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare”; furthermore, “the State shall cooperate with them in a spirit of trust and mutual respect.”⁴³ While this “partnership” was well received by NGOs, the same collaborative partnership was not offered or expressed in regard to the recruitment industry. NGOs were not given any new roles or responsibilities within RA 8042, but several expressions of cooperation were made instructing various agencies to coordinate their efforts with relevant NGOs.⁴⁴ Instead of RA 8042 impacting NGOs, it could be argued the reverse, namely that they impacted RA 8042. Many of the things which underpin the bill were either long sought-after by NGOs or

⁴² For more information on NGO struggles with President Marcos, see Chapter Three.

⁴³ Republic of the Philippines, 9th Congress *RA 8042*, Section 2.

⁴⁴ *Ibid*, Sections 13, 24.

brought forward during the Senate and House hearings on the bill. Most importantly, NGOs had long lamented the inadequate support infrastructure the Philippine government was providing to OFWs in destination states. Large portions of the policy and structural changes contained in RA 8042 dealt with these criticisms and perceived shortcomings. NGOs, however, would have liked to see RA 8042 go much farther than the Congress was prepared to in the aftermath of Contemplacion's execution.

Although they would likely not readily agree, considering their expressed dissatisfaction with the results of RA 8042, NGOs should take pride in their role in influencing the bill and its subsequent outcomes. The passage of RA 8042 enshrined worker welfare, the primary focus of most NGOs, as virtually the sole consideration in all policy matters related to the overseas employment program. While this should be viewed positively from the NGO and OFW perspective, this singularly one-sided approach to the management of overseas employment program policy has at the same time inhibited any meaningful action on utilizing positive program outcomes for national economic benefit. Attention to worker welfare should be complemented with a comprehensive and pragmatic national economic development strategy that clearly outlines the role of the overseas employment program as a component.

Impact on Business

Although the recruitment industry had been included in the hearing processes in both the Senate and House, the measures in the final bill outlining the definition of illegal recruitment and associated penalties were perceived as overly punitive. The recruitment industry felt as though they were being criticized and singled out for punishment despite their adherence to the laws governing the overseas employment program. Key provisions in

RA 8042 were intended to address actions taken by illegal recruiters operating without a license, but because of their broad definitions many of these provisions would affect legal recruiters as well. It is easy, however, to understand why licensed recruitment agencies would feel threatened by the unlawful practice definitions as well as the penalties prescribed in the bill. Two examples of vague and ambiguous illegal recruitment definitions were (1) “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” and (2) “To fail to submit reports on the status of employment, placement vacancies, remittances 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.”⁴⁵ In regard to the first point, the ambiguity of such a statement would make any recruitment or placement agency nervous. Protecting against jobs that might be hazardous to worker welfare is something that government has an interest in regulating, but there has been a disturbing vagueness in defining exactly what types of employment do or do not harm the “morality” or “dignity” of OFWs. Likewise, the second point assumes a large measure of control by the recruitment agency, particularly in regard to capturing data related to an OFW’s work for a foreign employer. Should it, for example, be the prerogative of the recruitment agency, or the foreign employer for that matter, to record the details of how much or to what extent an OFW is remitting his or her savings?

Recruitment industry fears were further exacerbated the following year, with the release of the implementation rules and regulations for RA 8042 that specified how complaints against recruiters would be handled:

⁴⁵ Republic of the Philippines, 9th Congress, *RA 8042*, Section 6 (f), (h).

Where the complaint/Report alleges that illegal recruitment activities are on-going, surveillance shall be conducted and if such activities are confirmed, issuance of closure order may be recommended to the POEA Administrator through the Director of the Licensing and Regulation Office (Director-LRO). If sufficient basis for criminal action is found, the case shall be immediately forwarded to the appropriate office for such action.⁴⁶

It is not difficult to understand why recruitment agencies took a dim view of being subjected to surveillance based on a complaint filed by an OFW against them. Such a relational arrangement is hardly conducive to either embedded autonomy or even the most basic definition of cooperation and fair play. Surveillance may indeed be necessary to document and convict illegal recruiters, but in the implementing rules and regulations no distinction was made between legal and illegal recruiters in regard to the application of surveillance.

The de-regulation of the recruitment industry's participation in the overseas employment program was enshrined in the final version of RA 8042, and constituted a major policy shift in government-business relations. The final language contained in RA 8042 read:

Comprehensive Deregulation Plan on Recruitment Activities. — Pursuant to a progressive policy of deregulation whereby the migration of workers becomes strictly a matter between the worker and his foreign employer, the DOLE, within one (1) year from the effectivity of this Act, is hereby mandated to formulate a five-year comprehensive deregulation plan on recruitment activities taking into account labor market trends, economic conditions of the country and emerging circumstances which may affect the welfare of migrant workers.

Gradual Phase-out of Regulatory Functions. — Within a period of five (5) years from the effectivity of this Act, the DOLE shall phase-out the regulatory functions of the POEA pursuant to the objectives of deregulation.⁴⁷

Between the finalization of the House version of the bill and the passing of the Senate's version, DOLE issued an April 1995 white paper that mentioned the idea of decreasing the

⁴⁶ Republic of the Philippines, "Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995," Part VIII, Issued February 29, 1996.

⁴⁷ Republic of the Philippines, 9th Congress, RA 8042, Sections 29, 30.

POEA's regulatory role over private sector recruitment agencies. There were in fact two conflicting perspectives toward the regulatory role government (POEA in this case) has over the recruitment industry, which created a policy-making paradox of sorts. On the one hand arguments were made that because so many OFW welfare problems originated from their interactions with recruitment agencies, either legal or illegal, *more regulation* was needed to stamp out abusive or unfair practices within the industry in order to solve the problems. This perspective was taken for granted in the House version of the bill and was also the traditional position taken by NGOs. By the time the Senate took up its own efforts at forging a bill there was a conflicting perspective, most likely influenced by DOLE's white paper recommendations. Tigno articulated this opposing perspective quite well:

Specifically, what troubled the legislators was that the government had been putting too much emphasis on its regulatory and control functions to the point that these have ceased to be effective and enforceable. Indeed, these tough regulations have in fact encouraged the proliferation of illegal activities that have become detrimental to the rights and the interests of Filipino migrants.⁴⁸

In other words, increasingly comprehensive and strict regulations were motivating more agencies to decide against operating within the legal structure, in favor of acting illegally. The paradoxical contradiction posed by this argument was that in order to better protect OFWs the government needed to *lessen oversight and regulation* on those perceived to have been committing the wrongs against them. As Tigno identified, the deregulation rhetoric never really matched the reality. Even by the end of the period covered by this chapter, into the Macapagal-Arroyo years, no serious effort at deregulation took place within the overseas employment program—despite RA 8042's provisions for it to happen.

⁴⁸ Tigno, "Governance and Public Policy," 146.

During the Senate hearings, several senators engaged with testimony provided from a variety of backgrounds over the notion of de-regulating the recruitment industry. One previously cited exchange between Senator Maceda and OPAP Chairperson Caroline Rogge, a recruitment industry representative, on dissolving the POEA foreshadowed this perspective. If not for their regulatory role, what need would there be for the POEA? A later exchange during the Senate hearings provided a more overt view of the reasoning behind the push for de-regulation.

Senator Maceda: It is accepted that under any political system it is the main function of government to provide jobs and livelihood for its people[T]he point I'm trying to raise is, when a Filipino who has not been provided with a job by his government is able to find employment abroad, he should not be penalized by having to pay so many fees for helping himself and saving the government from its job of providing him an employment in this country[E]arlier there was a proposition espoused by the Department of Labor for a deregulation within five years' time when necessary, which means to say we leave this up to the private sector, to the employers, the employees, the workers to handle this.

Rogge: Yes, Mr. Senator.

Senator Maceda: Do you agree that the increases in passport fees, the increases in airport tax, the increases in the travel tax, all of these are unreasonable collections from workers who should otherwise be provided jobs by their government here and they helped themselves and get jobs abroad, why should they be charged this continuing number of fees and charges that are going up year after year?

Rogge: I agree with you, Sir.

Senator Maceda: Right. Do you, therefore, agree that since the Department of Labor is proposing a deregulation in five years that all these fees to begin with should be frozen at present levels and any increase should be prohibited plus within these five years of phase out, these fees should be phased out for the [OFW]?

Rogge: Five years, sir, is too long. It should be soonest.[Sic]⁴⁹

⁴⁹ Philippine Senate Archives, *Committee of the Whole*, May 23, 1995, 173-176.

Although Senator Maceda made some sweeping generalizations about the role of government in providing jobs to its citizens, assertions that warrant further debate if they were not beyond the scope of this project, his argument equating the proliferation of fees on OFWs as a sign of overly intrusive regulation seems to have made an impression on both the committee chair as well as his fellow senators. The final Senate version did indeed contain de-regulation language, but surprisingly was retained during the bi-cameral conference between the House and Senate in combining the two versions into a final bill. The House version of the bill contained no such provisions. The retention of the de-regulation mandates under the final version of the bill is surprising primarily because the House's hearings and deliberations on their version of the bill centered on increasing rather than decreasing regulation. Tigno described an exchange during the bicameral conference when "Senator Maceda reassure[d] Representative Lopez that, given the statements of President Ramos, the country would have achieved NIC-hood by the year 2000" (NIC, Newly Industrialized Country) insinuating that within the five-year time span of the de-regulation plan, the overseas employment program would no longer be relied on so heavily as the country will have reached a certain level of industrialization and consequently increased its demand for domestic labor. Despite lingering opposition from members of the House of Representatives, and after several incidences of deadlock, 8 of the 13 representatives signed the bicameral conference report leaving the president's signature as the last step before becoming a law.

The position of the recruitment industry on the de-regulation aspects of RA 8042 were overwhelmingly positive, with the possible exception that many felt five years was too long of a transition period. One of their key complaints against the POEA's regulatory role (as

mentioned above) was that as an active participant in both the recruitment and deployment of OFWs through its direct hire program, it was inappropriate for the POEA to undertake regulatory functions over their “competitors.” The conflict of interest, they assert, establishes an unequal playing field on which the recruitment agencies had to compete. Some, however (such as Rogge) did express a certain value in the POEA regulating the industry to assure that all recruitment agencies would compete under the same rules and requirements.

Regulation and Deregulation: The Mixed Messages of RA 8042

Throughout the remainder of the 1990s, debates over RA 8042 provisions continued while both the numbers of deploying OFWs and their resulting remittances increased. In 1998, Battistella identified 23 key provisions of RA 8042 and identified 8 as having been fully implemented, 6 as having been started but not fully implemented, 5 having not been started, and 4 with undetermined status.⁵⁰ In regard to the five year de-regulation plan, the POEA seems to have made efforts to reform how it regulated the recruitment industry, but not any real steps toward phasing out its regulatory role. Ofreneo and Samonte explained:

Six years after the enactment of the law, the POEA is still actively exercising its regulatory functions. It has even initiated various re-structuring activities referred to as part of a “streamlining” program, which results ...[in] a more effective implementation of its regulatory functions. There has been an absence of policy guidelines on how the phase-out shall be implemented, or an anticipation of the necessary mechanisms that will competently manage the enforcement of overseas employment, placement and recruitment regulations in a deregulated environment, such that it indeed makes good sense for the POEA to continue the exercise of its regulatory functions.⁵¹

⁵⁰ Battistella, “The Migrant Workers,” 108-111.

⁵¹ Ofreneo, “Empowering Filipino Migrant Workers,” 12.

A major problem with the de-regulation provisions contained within RA 8042 was that the de-regulation provisions contained in sections 29 and 30 exist in direct opposition to section 7, which explained that “the POEA shall continue to regulate private sector participation in the recruitment and overseas placement of workers *through its licensing and registration system* pursuant to its Rules and Regulations on Overseas Employment.” In essence, the POEA was told both that it should discontinue its regulation of the recruitment industry and that one of its core roles was to regulate private sector involvement through its licensing program.

Compounding the problem was the fact that the POEA was to create its own de-regulation plan, meaning that they could interpret RA 8042’s de-regulatory intent any way they wished. The lack of proscribed oversight bodies or assessments from DOLE of the POEA’s progress toward de-regulation was a further death knell for the prospects of de-regulation over the recruitment industry. As mentioned by Ofreneo and Samonte above, what did happen is that over time the POEA embarked on a streamlining program designed to improve their processes and program management across the board.⁵²

In the years following the promulgation of RA 8042, the recruitment industry continued to deploy increasing numbers of OFWs but also brought several legal cases against the government in response to RA 8042’s definition and punishments related to illegal recruitment as well as some of the embedded responsibilities assigned to agencies. One such case, brought by a recruitment agency against the DFA and DOLE in 2001, pertained to the responsibilities of the RA in the wake of the death of a worker who had been deployed

⁵² This analysis is based on a review of Memorandum Circulars issued by the POEA between July 1995 and 2003.

to Korea.⁵³ The agency argued that because the OFW had violated their employment contract by fleeing from the designated foreign employer (a factory), and subsequently finding work in another factory, the agency could not be held responsible for costs associated with the repatriation of his body and personal effects as per the rules outlined in RA 8042. The agency further argued that RA 8042's provisions requiring that advance payment be made in such cases as OFW deaths abroad were unconstitutional as they preceded the arbitration process at the National Labor Relations Commission. In 2001, the court of appeals ruled against the agency and affirmed RA 8042's provisions requiring that recruitment agencies be financially liable for the OFWs they deploy regardless of what happens once they are abroad. On appeal of the case, in 2006, the Philippine Supreme Court again decided against the recruitment agency.⁵⁴

Virtually every group involved in the overseas employment program found reason to criticize RA 8042. The POEA disliked the de-regulation provisions, perhaps because it removed a large portion of their responsibility and ultimately a core reason for their continued existence. NGOs disliked the de-regulation provisions because they felt that the recruitment industry was in large part responsible for many of the wrongs perpetrated on OFWs and therefore required more regulation, not less. The recruitment industry disliked the harsh new penalties imposed for a variety of infractions, and preferred instead to establish some kind of tiered penalty system with warnings for first time offences. The legal operators within recruitment industry felt that they were being punished unfairly for the actions of those recruitment agencies which operated outside of the legal structure. Finally,

⁵³ Republic of the Philippines Supreme Court, *G.R. No. 152214, Equi-Asia Placement, Inc. vs. Department of Foreign Affairs, et. al.* (Manila, September 19, 2006).

http://www.lawphil.net/judjuris/juri2006/sep2006/gr_152214_2006.html

⁵⁴ Rey G. Panaligan, "SC says rules of RA 8042 constitutional," *Manilla Bulletin Publishing Corporation*, September 25, 2006, accessed 31 March 2011, <http://www.mb.com.ph/node/94298>.

individual OFWs disliked RA 8042, alleging that its measures were insufficient and largely glossed over the significant problems facing the program itself and the welfare of workers.

Gonzalez explained that:

Soon after its release, implementation of some of the sections of RA 8042 was put on hold because of objections from certain interest groups. Several hundred individuals demonstrated close to Malacañang Place arguing that RA 8042 was passed without adequate consultation with [OFWs] and their representatives. [One] issue was that while the law highlights the general problematic areas of labour migration, it is not clear about specific guidelines on what should be done. The most devastating criticism by RA 8042's critics was that the law simply would not protect migrant workers since it does not adequately address the social and other substantive issues linked to labour migration.⁵⁵

One of the biggest objections NGOs had with RA 8042 was its call for de-regulation of the recruitment industry. From the perspective of NGOs, the recruitment industry was the enemy and the only way to improve OFW welfare was to increase regulation or remove them entirely from participation in the program. This is of course in addition to those within the NGO community who believe that the only way to protect OFW welfare and stop their exploitation is to completely and immediately end the overseas employment program.⁵⁶

The paradox with the de-regulation clauses of RA 8042, as mentioned above, was the notion that there would be fewer rights violations against OFWs by regulating the recruitment industry less.⁵⁷ This disconnect between the stated policy objectives in RA 8042 and the total lack of any meaningful progress on this issue highlights a common theme in Philippine policy making, where it is common for laws not to be well implemented. This happens for a

⁵⁵ Gonzalez, *Philippine Labour Migration*, 128-129.

⁵⁶ Based on interviews conducted with NGO leaders in Manila and Quezon City between August and December 2009.

⁵⁷ For additional analysis of the de-regulation aspects of RA 8042 see the excellent coverage of this important policy change in Jorge Tigno, "Governance and public policy in the Philippines: RA 8042 and the deregulation of the overseas employment sector," PhD Thesis, University of the Philippines, 2003.

variety of reasons such as inadequate funding, lack of relevant training or skills in the departments, overly ambitious policy objectives exceeding bureaucratic capacity, and poor implementation guidelines.

Conclusion

The passage of RA 8042 involved a number of missed opportunities that could have made a real difference in both matters of OFW welfare as well as the developmental benefits the program could potentially provide to the national economy. Although there are many important issues which were omitted from RA 8042, two shortcomings stand out: first, a failure to acknowledge the overseas employment program's importance to the Philippine economy and to better integrate it into future development plans, and second, no plan to improve cooperation among stakeholders thereby maximizing both welfare and economic benefits for all.

For the purposes of this project, the first shortcoming is particularly important as RA 8042 was the perfect opportunity for the government to re-assess how the program could be better utilized within a national economic development framework. Instead, the legislature acknowledged the program's importance, and then proceeded to disavow its role in official economic development policy. Taking this stance was counterproductive, and did not contribute either to worker welfare or to better utilization of the economic benefits to the country coming from the overseas employment program. The National Economic Development Authority (NEDA) did not appear to play a role in the hearings leading up to RA 8042, nor was there any big-picture shift in placing the program within NEDA's medium-

term development plans.⁵⁸ Furthermore, the most basic denials in RA 8042 of the overseas employment program's role in achieving national development, namely, the declaration that "the State does not promote overseas employment as a means to sustain economic growth and achieve national development," may have made it impossible for the government to truly partner with the recruitment industry to maximize the program's developmental potential.⁵⁹

In regard to the second shortcoming, improving cooperation among overseas employment programs stakeholders, one can note another missed opportunity in RA 8042. While there was political will for all concerned parties to work together for greater welfare and prosperity for OFWs, the tone adopted by the legislators (particularly in the Senate) in the wake of Contemplacion's execution made it clear that they intended to assign blame for the perceived failures that led to her execution. Rather than singling out one group such as the recruitment industry, what ultimately happened in RA 8042 was that the Congress attempted to divide the blame equally between the recruitment industry and the bureaucracy. To avoid the impression that they were playing a blame game they embedded explanations into the bill as to why each was guilty but further explained how these problems would be overcome by the bill's provisions. In the case of the recruitment industry, over-regulation was the stated cause for the recruitment industry's poor performance, and would be remedied through de-regulation.⁶⁰ For the bureaucracy,

⁵⁸ National Economic Development Authority, Medium-Term Development Plan 2001-2004, accessed on June 18, 2012, http://www.neda.gov.ph/ads/mtpdp/mtpdp_part1.htm.

⁵⁹ Republic of the Philippines, 9th Congress, *RA 8042*, Section 2.

⁶⁰ This generalization cannot be universally applicable across the entire recruitment industry as there are a multiplicity of views on the issue of regulation. For example, while the majority of private sector participants supported de-regulation, some industry leaders felt that de-regulation might allow the illegal recruitment industry to flourish and thus increase competition for both overseas employment contracts and workers.

inadequate funding and poor coordination among agencies had been the culprit and would be rectified by addressing those points.

The NGOs did not share in the blame game, but were instead upheld as the “defenders of the OFW” and declared to be “partners” with the government. The sentiments expressed by the legislature toward the NGOs demonstrate that the Philippine state is capable of establishing cooperative relationships with the private sector. In this case, however, the expressions of partnership with NGOs were disingenuous and more due to populist politics and national sentiments related to the execution of Contemplacion. A more pragmatic approach to fixing problems with any government program is to partner with all its stakeholders. The legislature itself assumed no responsibility for the state of neglect the overseas employment program was in during the mid-1990s. There were no acknowledgements of the tardiness of their reform efforts until after a high-profile international incident, and subsequent demonstration and national outrage. The reality is that the legislature would never have acted to improve worker welfare or the program at large if not for the Contemplacion saga. By deflecting criticism of its own failure to effectively manage the overseas employment program, and putting major focus instead on the recruitment industry, Congress seems to have effectively inhibited any meaningful cooperation between government and business.

Rather than assigning blame and assorted fixes for the supposed failings of program participants, it would have been more constructive for a once-in-a-generation, high-caliber bill to be carefully considered in a methodical, cooperative fashion. This would, optimally, be based on mutual respect with the goal of improving not only worker welfare but implementing meaningful reforms that might improve all aspects of the program and its

benefits toward both the country's economy and individual OFWs. The Contemplacion saga was an opportunity for a thoroughgoing national reevaluation of the overseas employment program. Instead, cosmetic changes were adopted and the program carried on without even determining what it was really meant to accomplish for the Philippines. In Chapter Two, I examined the positive benefits that came forth, in the East Asian tigers, when government cooperates with business and government policies align with long-term private business interests. Had RA 8042 been acclaimed by OFWs or NGOs alike, then perhaps one could argue that the bill was successful in accomplishing its objectives. But by failing either to improve coordination among stakeholders or to leverage the program's economic benefits for national development, RA 8042 was widely condemned by many sectors of Philippine society. Rhodora Abano from the Center for Migrant Advocacy (an NGO which advocates for improvement in government policies toward migrant rights and welfare) characterized the creation of RA 8042 as the codification of the worst aspects of the overseas employment program, particularly with regard to the permanent normalization of the system in which it is permissible for recruitment agencies to charge prospective OFWs placement fees.⁶¹ In the House of Representatives, current Overseas Workers Affairs Committee secretary Atty. Christopher Lomibao explained that RA 8042 was flawed in many ways, particularly the joint solidary liability provisions with regard to OFW money claims against employers (as discussed further in Chapter Five).⁶² Lito Soriano, a recruitment agency owner and long-time industry advocate, declared that portions of RA 8042 were not

⁶¹ Interview with Rhodora A. Abaño, Advocacy Officer, Center for Migrant Advocacy, Quezon City, Philippines, October 22, 2009.

⁶² Interview with Atty. Christopher Lomibao, Committee Secretary Overseas Workers Affairs, Republic of the Philippines House of Representatives, November 2009.

simply bad but actually unconstitutional.⁶³ Soriano was involved in the recruitment industry's efforts to bring a suit (described above) against certain portions of RA 8042, particularly the provisions which mandated that agencies would be held financially liable for contract violations perpetrated by foreign employers on OFWs. This issue is further examined in the next chapter.

The speed at which RA 8042 was rushed through meant that important issues requiring careful attention and sensitive calibration were instead subjected to stop-watch negotiations. One might counter this argument, however, that the intensity of public outcry demanded immediate action to better protect OFWs. This argument is most certainly true, but if the government had explained to the public that this bill was too important to be rushed, and then proceeded to work for another few weeks or a month on making the bill better with the help of program stakeholders, some of the problems that have subsequently cropped up might have been avoided. Additional major legislative fixes for the overseas employment program introduced since then might have also been unnecessary. It is hard to believe that something as important as the overseas employment program, accounting for such a large percentage of the Philippine economy could only be allocated a few days of the legislature's time. As will be discussed further in Chapter Six, the legislature's short-sightedness meant that there would be a future need for further legislative intervention on an even grander scale than RA 8042. Placing all of the blame squarely on the shoulders of the legislature would be unfair, considering the serious lack of executive leadership by President Ramos on the issue. Strong executive leadership could have provided the longer term, big-picture focus that was conspicuously absent from RA 8042. Instead of leading

⁶³ Interview with Loreto B. Soriano, CEO – President, LBS Recruitment Solutions Corporation, Manila, Philippines, October 12, 2009.

from the front on the issue, President Ramos was content to let others shape the future direction of one of the most important government programs in the country. In the next chapter it will become clear that Ramos will not be the last president to pay lip service to the importance of the overseas employment program and reap its economic stabilizing benefits while refusing to engage in any substantial executive leadership on program policy.

Chapter Five: Government-Business Relations in the Overseas Migration Policy Process, 2004-2011

Before arriving in Manila in July 2009, I knew that significant efforts were underway to reform RA 8042, the landmark legislation that had governed the overseas employment program since 1995. I had not yet heard, however, about the growing controversy over a particular provision in the proposed bill. This provision mandated that liability insurance be purchased by Recruitment Agencies (RAs) for overseas Filipino workers (OFWs) to provide coverage related to a variety of problems sometimes faced while abroad. Over the next five months, along with other research efforts, I conducted interviews with a variety of program actors and came to realize that I was witnessing first-hand not only a major shift in the direction of the overseas employment program but also a perfect example of how overseas employment program actors interact with one another in the policy-making process. In capturing the struggles between actors and exploring their perspectives, as well as the reasons behind them, it is my belief that insight can be gained into why the program has evolved in such a patchwork, haphazard way. At one level, this bill and the process by which it was debated, fought over, and compromised upon should be viewed as a case study of the overseas employment program policy process works in the Philippines. More importantly, and of particular relevance to the overall objectives of this research project, it provides insight into the troubling lack of communication, dialogue, and mutual understanding among major program actors.

Between 2004 and 2008 the Philippines' overseas employment program proceeded much as it had since the introduction of RA 8042 in 1995: the number of OFWs deploying abroad increased year by year with no end in sight, and the government displayed no desire to deviate from the present course. By 2006, the number of OFWs deployed in a single year

surpassed the one million mark for the first time (see Table 5.1 below).¹ The bill that aimed to introduce liability insurance and reform many parts of RA 8042 would eventually be known as Republic Act 10022 (RA 10022), though its full name characterized it as an amendatory act of RA 8042.² There were a number of agencies, organizations, and private associations involved in the creation and implementation of RA 10022. This chapter is arranged according to the framework outlined in Chapter Two, with the roles and actions of the government actors described first, followed by a discussion of the same for business. For the sake of simplicity, the policy process and actor perspectives and arguments described in this chapter are thus divided accordingly between government and business. A third section on non-government organizations (NGOs), international organizations (IOs), and the media are included to provide solid coverage of the perspectives of the primary overseas employment program actors. In this chapter, a single policy effort will be isolated and explored using the government-business relations framework outlined in Chapter Two.

Table 5.1

Total of Deployed Overseas Filipino Workers (Land and Sea-based)			
Year	Total Deployed	% increase over previous year	
2004	933,588	7.56%	
2005	988,615	5.89%	
2006	1,062,567	7.48%	
2007	1,077,623	1.42%	
2008	1,236,013	14.70%	
2009	1,422,586	15.09%	
2010	1,470,826	3.39%	
Total 2004 - 2010	8,191,818	Average	7.93%

Source: POEA

¹ Philippines Overseas Employment Administration (POEA), *A Compendium of Overseas Employment Statistics 2006*, accessed June 21, 2012, <http://www.poea.gov.ph/stats/2006Stats.pdf>.

² The full name of the act (capitalized in the original text) is: AN ACT AMENDING REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES.

Before the bill

As the global financial crisis unfolded in 2008, the reality of the Philippines' vulnerability to downturns in the global economy as well as individual economies around the world began to be felt acutely. Fearing how the global financial crisis would impact the Philippines' heavy reliance on remittance income, President Gloria Macapagal-Arroyo issued an administrative order in December of 2008 with the objective of filling "the possible slack that may be caused by the constricting market in traditional host countries such as the continental United States."³ In order to address the prospective problem of diminished OFW deployments (and thereby remittances), Arroyo ordered that seven actions be taken.

1. The Philippine Overseas Employment Administration shall execute a *paradigm shift by refocusing its functions from regulation to full-blast markets development efforts[sic]*, the exploration of frontier, fertile job markets for Filipino expatriate workers.
2. Within the next few weeks, the POEA shall submit to the President a global employment map with emphasis on what can be called the Code Green areas, countries that are aggressively recruiting foreign workers, hence, natural deployment sites for Filipino expatriates.
3. The Cabinet shall render full support to the POEA so it can aggressively deploy Filipino expatriates into the aforementioned Code Green countries with urgency and unbothered by institutional hurdles.
4. The POEA shall update and expand its Rolodex on its country-contacts, global companies recruiting expatriate workers, international head hunters and manpower placement agencies with a global reach.
5. The *target shall be to increase the countries currently hosting Filipino workers and break through the 200-country barrier*.
6. The Technical Education and Skills Development Authority (TESDA) shall recast its priorities in line with the aggressive labor marketing efforts of the POEA.
7. TESDA shall intensify its skills retraining and skills upgrading program. (emphasis added)⁴

³ Gloria Macapagal Arroyo, *Administrative Order No. 247*, (Manila, December 4, 2008).

⁴ Ibid.

There are several things that can be learned from an examination of this administrative order. The first and perhaps most important is the monumental policy shift that is implied by President Arroyo's new marching-orders for the Philippines Overseas Employment Administration (POEA). The longstanding official position of the Philippine government has always been that the overseas employment program was a choice for Filipino workers, and not something that the government promoted or emphasized. This standing policy perspective situates the Philippine government simply as the guarantor of an "overseas option" for Filipino workers. In contrast, this order clearly shifts the role of the POEA from one of program oversight to one of program promotion and enhancement. Secondly, the fact that such a long-held policy position has been abandoned in the face of the global financial crisis validates the importance that the overseas employment program plays in the Philippine economy. If it were merely a government- guaranteed option and not crucial to the national economy, why then would Arroyo have insisted on such aggressive measures to assure that program outcomes (namely deployments and remittances) would not be diminished because of the threat of global recession? Thirdly, President Arroyo's abandonment of the decades-long policy position highlights how external shifts in the global economic climate exposed the vulnerability of the Philippine economy to its singular reliance on remittance income. As we will discuss in Chapter Six, when times of economic hardship hit destination countries, it is often migrant workers who are the first to lose their livelihoods. Lastly, the underlying context of President Arroyo's order demonstrates that it is in the government's best interest for the overseas employment program to continue on its growth trajectory, and that any negative program trends could have disastrous economic, political, and social consequences for the Philippines. This again supports my assertion in previous chapters that if the overseas employment program plays such a crucial

role to the Philippines, why then had it not previously been embraced as an element of a national development strategy? In essence, President Arroyo's administrative order signals that the program is not only important to the country, but possibly the most important element of national economic policy.

It was within this climate of uncertainty of how the global financial crisis would affect the Philippines' overseas employment program that the case study occurred over a period of time stretching from late 2008 until July 2010. In this chapter, I will follow a particular piece of migration-related legislation from inception to formal codification into Philippine law. Special attention will be paid to the debates and consultations which took place between government, business, the media and civil society groups while the bill proceeded through the legislative process. While it was initially conceived as a relatively minor policy adjustment initiative, RA 10022 has become a major policy turning point for the Philippine overseas employment program perhaps only superseded in importance by the 1974 labor code and RA 8042. Through careful exploration of this particular event, insight will be gained into how government and business and other actors interact within the context of the overseas employment program.

Republic Act 10022: Genesis to Major Reform

In the years following the passage of RA 8042 there were occasional efforts to reform various parts of the legislation. The genesis of the bill that eventually became RA 10022 began in 2008 and centered on the issue of compensation for OFWs whose overseas employment contracts had been violated. The issues adjoining OFW labor contracts are complex and have been the subject of numerous Supreme Court cases, but suffice to say the crux of the problem centered around who was responsible for fulfilling the terms of a

contract in those instances in which the terms were violated due in no part to the actions of the OFW. Under RA 8042 the recruitment agency, through which the contract was arranged, was responsible for paying the worker the remaining (unexpired) portion of compensation for the duration of the contract. RA 8042 used the term “joint and solidary responsibility” (JSL) to refer to the dual responsibility of Philippine recruitment agencies and the foreign employer for such actions as illegal contract termination by a destination employer. In real terms this could mean, for example, that an OFW whose 24-month contract was terminated illegally by the destination employer four months into the contract period could seek compensation for the remaining 20 months from both the destination employer and the recruitment agency which arranged the contract. Cases of this nature are brought by OFWs before the National Labor Relations Commission (NLRC), which then makes a decision on fault and how much compensation is owed. Recruitment agencies are required to pay the OFW the amount determined by the NLRC .

At this point in the process it became apparent that there was a major problem with the system under RA 8042. Given the competitive nature of the overseas employment industry in the Philippines, it is not uncommon for individual recruitment agencies to go out of business. This then leaves the OFW uncompensated. Under the old system, the solution to this problem was for the OFW to be paid from the 1 million peso (approximately US\$23,000) escrow account that all licensed recruitment agencies were required to establish at reputable Philippine banks as a precondition to obtaining a license to deploy workers overseas legally. In many cases this arrangement worked as conceived, but if for example there were more than one OFW claimant, and if they happened to be higher paid ‘skilled’

workers in the 20 month scenario given above, the amounts owed them could quickly exceed the escrow account balance. Chart 5.2 illustrates the dispute process visually.

The Commission on Audit (COA) released a report in May 2008 after having audited the overseas employment program for over a year. Susan P. Garcia of COA explained in the forward to the report that “the audit was conducted to assess the effectiveness of the government in regulating overseas recruitment activities and providing sufficient and responsive services to OFWs to promote their decent and productive employment.”⁵

Although the audit report comprehensively covered a variety of issues and topics, a great deal of attention was spent addressing the issue (outlined above) of difficulties faced by OFWs seeking compensation for contract violations. In assessing the degraded and inadequate state of the escrow fund repayment system, the COA explained that considering “the total claims for the period January 2006 to June 2007 alone from each recruitment agency already ranged from 5,000 [pesos] to 6,088,500 [pesos], the escrow deposit of 1,000,000 [pesos] was no longer sufficient to ensure full recovery of OFW claims from the concerned recruitment agencies.”⁶ To put these statistics into human terms, the COA found that claims from 452 OFWs against 49 recruitment agencies went unpaid during the audit period due to a lack of available funds from the escrow account system.⁷

⁵ Ibid.

⁶ Ibid., 43.

⁷ Ibid., 35.

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graph TD
    POEA[POEA] --> OFW[OFW]
    POEA --> Rec[Recruitment Agency]
    OFW --> POEA
    OFW -- "After evaluation of complaint, if the agency involved/homework claim, advise OFW to file complaint at NLRC (B.7)" --> POEA
    OFW -- "File complaint at NLRC by filling up information sheet (B.3)" --> NLRC[NLRC]
    NLRC -- "Pay OFW claims (B.8)" --> OFW
    NLRC -- "Notifies recruitment agency and OFW; conducts conciliation-mediation and hearing; Issue Writ" --> Rec
    NLRC -- "NLRC issues Decision; Sheriff serves Notice of Garnishment; garnishes the escrow deposit of the concerned agency; prepares report; remits the amount garnished to the Cashier;" --> Bank[Bank]
    Rec -- "Notify recruitment agency of the amount garnished from escrow account and require said agency to replenish the amount within 15 days (B.7)" --> POEA
    Rec -- "Replenish escrow account (B.9)" --> Bank
    Bank -- "Advised POEA of the garnished amount released pursuant to Notice of Garnishment issued by NLRC (B.6)" --> POEA
  
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The flowchart illustrates the NLRC Garnishment Process, involving the following entities and steps:

- POEA** (Philippine Overseas Employment Agency) and **OFW** (Overseas Filipino Worker) interact initially. POEA sends information to OFW, and OFW sends information back to POEA.
- POEA sends information to **Recruitment Agency**.
- OFW sends information to POEA: "After evaluation of complaint, if the agency involved/homework claim, advise OFW to file complaint at NLRC (B.7)".
- OFW sends information to **NLRC** (National Labor Relations Commission): "File complaint at NLRC by filling up information sheet (B.3)".
- NLRC sends information to OFW: "Pay OFW claims (B.8)".
- NLRC sends information to **Recruitment Agency**: "Notifies recruitment agency and OFW; conducts conciliation-mediation and hearing; Issue Writ".
- NLRC sends information to **Bank**: "NLRC issues Decision; Sheriff serves Notice of Garnishment; garnishes the escrow deposit of the concerned agency; prepares report; remits the amount garnished to the Cashier".
- Recruitment Agency sends information to POEA: "Notify recruitment agency of the amount garnished from escrow account and require said agency to replenish the amount within 15 days (B.7)".
- Recruitment Agency sends information to **Bank**: "Replenish escrow account (B.9)".
- Bank sends information to POEA: "Advised POEA of the garnished amount released pursuant to Notice of Garnishment issued by NLRC (B.6)".

⁸ Commission on Audit, Government's Overseas Workers' Welfare Program, *Management Services Report No. 2007-01*, 2008, 15, accessed on June 20, 2012, <http://www.coa.gov.ph/GWSPA/2007/OWWP.asp>.

After identifying the obstacles faced by OFWs seeking compensation for contract violations, COA proposed that the escrow account be increased by 50 percent to 1.5 million pesos (\$35,500 USD) in order to assure payouts. The audit team however did not seem convinced that raising the escrow account amount would solve the problem. As they reported,

The team acknowledged the efforts being exerted by the POEA in ensuring that legal claims of OFWs will be covered in the proposed increase of escrow deposit. However, the proposed amount of 1.5 M [pesos] may still not be sufficient. The maintenance of a separate insurance cover would be a good alternative for OFWs even if it takes time to be released than having nothing to claim at all [sic].⁹

The COA thus proposed that the escrow account requirement be raised to 1.5 million pesos, and that the POEA should “consider the establishment of separate fund/insurance to cover the risk related to unsatisfied claims of OFWs.”¹⁰ This proposal proved to be a standout recommendation from the COA report; as we further explore the policy-making process that ultimately led to RA 10022, it will become clear that lawmakers and others seized upon this recommendation in their efforts to reform the overseas employment program as outlined under RA 8042. In subsequent sections of this chapter the developments and deliberations leading to the completions of RA 10022 will be explored from the perspectives of stakeholders in the policy-making process. First, perspectives on the process from government actors will be shared, followed by the perspectives of business and then by those of civil society groups and the media.

⁹ Commission on Audit, Report No. 2007-01, 43.

¹⁰ Ibid., 104.

Government

House of Representatives

The legislative origins of RA 10022 were similar in both the Senate and the House of Representatives, but exploring the timelines and sequence of events in each provides an overall understanding of how this important bill came into being. In 2008 the Philippine House of Representatives saw a number of bills introduced aimed at revising RA 8042 in a variety of ways. These five bills were ultimately consolidated into a single bill (House Bill No. 5649) and a series of hearings were held by the House Committee on Overseas Workers Affairs (COWA).¹¹ During COWA's hearings representatives from a cross-section of government agencies, business interests, and civil society groups testified on the matters of consideration. According to COWA Committee Secretary Atty. Christopher Lomibao it was actually a representative from the NGO Center for Migrant Advocacy (CMA) who recommended that the committee review the aforementioned COA audit report.¹² COWA's hearings on the HB 5649 brought in a wide cross-section of stake holders involved in the overseas employment program and covered a diverse range of issues related to improving worker welfare and protection. Paramount among the proposals discussed during the hearings was the concept of third party liability insurance to provide compensation to OFWs who experience contract violations.

Although the rationale for exploring the timeline of these legislative processes may not seem immediately clear, it is important to understand this timeline in order to better appreciate the perspectives of both government officials and businesspersons that will be

¹¹ House of Representatives, *House Bill No. 5649* consolidated House Bills 628, 699, 700, 769 and 4783, Fourteenth Congress, Second Regular Session (Manila, 2009).

¹² Atty. Christopher Lomibao, Committee Secretary Overseas Workers Affairs, Republic of the Philippines House of Representatives, interviewed by author November 2009.

shared later in this chapter. COWA's bill was presented for its first reading on the House floor December 17, 2008 after which it was referred to the House Committee on Rules. Shortly after returning from the legislative holiday break (December 17, 2008 – January 19, 2009) the revised bill was approved via an oral vote during its second reading on February 3, 2009 at which time the period for "debate and amendment" for the bill was ended. On the 18 of February copies of the finalized bill were distributed to all members of Congress for them to review. Seven days later on February 24, the third and final reading of the bill was approved. In the final vote there were 127 yeas, 0 nays, and 0 abstentions. It is striking that only 127 representatives of the 267 members of the House of Representatives (or 47 percent of the total) chose to have their votes recorded on such an important piece of legislation affecting such a large number of Filipinos, not to mention the national economy. Perhaps even more astonishing was the fact that no issues or portions of the bill were debated on the House floor; it was simply passed. A few days later, the now completed bill was transmitted to the Philippine Senate for consideration.

From its introduction until it was approved, the House version of the bill (HB 5649) traversed the lower chamber in only 18 legislative days. This does not constitute a record, nor is it necessarily exceptionally fast by the standards of the Philippine House of Representatives. It is, however, rather fast for a bill with such widespread implications across the Philippine economy and one that will directly impact so many individuals, not to mention their families as well as the business community tasked with executing the program. It should be noted again that the process did not technically begin when the bill was initially introduced on December 17, 2008, but rather previously introduced bills authored by a variety of congresspersons were consolidated into what became HB 5649.

Technical working groups (hearings) had been organized and resource persons were invited to share their perspectives on the proposals contained within the draft bill.

Senate

The story of the Senate's own version of the bill has similar origins as HB 5649. Between 2007 and 2009, five senators introduced 10 bills aimed at either revising aspects of RA 8042 or otherwise reforming elements of the overseas employment program (see Chart 5.3 below). These bills were ultimately consolidated into Senate Bill 3286 (SB 3286). Senators Lapid, Gordon, Estrada, and Revilla each offered a single reform-minded bill during this period while Senator Villar offered five bills on the subject. Three of Senator Villar's five bills were offered after his September 2008 declaration of his candidacy for the Presidency of which OFW welfare became one of his signature campaign issues.¹³ The 10 Senate bills were really a medley of disparate welfare-focused reforms designed to address populist sentiment toward the unfortunate plight of OFWs. Remarkably, much of the language presented in the "Explanatory Note" introductions to the bills, which justified the need for the proposed reform, betray these Senators' views of just how dependent the Philippine economy has become on the overseas employment program.

In highlighting the need for better health insurance and retirement benefits for OFWs in his proposal, Senator Lapid explained:

For many years now, these migrant workers have *played a major role in keeping the Philippine economy from going bankrupt*, particularly during the financial crunch of the 1990's. Today, our [OFWs] have evolved to become *the biggest dollar earners for the country... admittedly, our migrant workers*

¹³ Bi Mingxin, ed., "Philippine Senate head confirms joining 2010 presidential election," China View, last modified 4 September 2008, accessed 3 January 2012, http://news.xinhuanet.com/english/2008-09/04/content_9769905.htm.

*are the ones who continue to salvage our debt-ridden economy from going down the drain (emphasis added).*¹⁴

Chart 5.3

Senate Bills consolidated into SB 3286			
Introduced by Senator:	SB #	Date Introduced	Primary proposal(s)
Manuel M. Lapid	54	30-Jun-07	Adding a pension/benefit scheme to RA 8042 for OFWs
Richard J. Gordon	149	30-Jun-07	Enhancing/improving emergency repatriation arrangements of RA 8042
Jinggoy P. Ejercito-Estrada	154	30-Jun-07	Increase number of BLAs, establish higher standards of OFW protection
Manny Villar	1879	15-Nov-07	Establish strict penalties on Gov't officials who fail to protect OFWs
Manny Villar	2231	30-Apr-08	Provide enhanced legal and financial assistance to distressed OFWs
Manny Villar	2288	15-May-08	Increase penalties against Recruitment Agencies who deploy minors
Manny Villar	2698	6-Nov-08	Provide comprehensive insurance policies to OFWs
Manny Villar	3040	4-Feb-09	Provide compulsory welfare insurance to OFWs
Ramon A. Revilla Jr.	3168	20-Apr-09	Compulsory insurance, strict ban on deployments to high-risk states
Manny Villar	3180	22-Apr-09	Establish strict penalties on Gov't officials who violate deployment rules

Senator Estrada justified his proposal to enhance OFW welfare protection by explaining that “it is only proper as OFWs deserve the concern, having proven that they can help ease the burden of the very economy that drove them to work abroad and be far from their families.”¹⁵ Likewise Senator Villar explained that “the contribution of Filipino overseas workers in the country’s economic recovery has proven to be both vital and

¹⁴ Manuel M. Lapid, Senator, *Senate Bill No. 54*, Philippines 14th Congress (Manila, June 30, 2007).

¹⁵ Jinggoy Ejercito-Estrada, Senator, *Senate Bill No. 154*, Philippines 14th Congress, (Manila, June 30, 2007).

indispensable.”¹⁶ Senator Villar went a step further in another of his proposed bills in proclaiming the importance of the overseas employment program to the national economy amid fears over how the global financial crisis would impact OFW deployments:

It can be acknowledged that a drawn-out global recession could result in unforeseen responses by OFW-receiving countries and their foreign employers, such as the inability to adjust their acceptance of OFWs that could cause their possible repatriation due to employment termination or decrease in salary and other employment benefits. Millions of Filipino families dependent of the OFWs’ remittances could face a socio-economic catastrophe that would in turn direly affect the country. Our concern for the overseas employment sector should be foremost as we share a social responsibility of ensuring that the country’s economic stability in this time of crisis and strengthening the ability of our OFWs to cope with the effects of such a crisis.[sic]¹⁷

Collectively these sentiments, as well as others made in each of the 10 bills, constitute a recognition on the part of the Philippine Senate that the overseas employment program is vital to the survival of the Philippine economy. Nevertheless, despite these admissions the bills they proposed only addressed welfare-related problems to the exclusion of all else. It is curious that they would think that after identifying the tremendous importance of the program to the country that their next step would be to increase regulations, red-tape, penalties, and other cost burdens on the economic sector that they claim is the country’s life blood. The larger point is that the measures they propose seem incompatible with the enforcement capacity of the Philippine state.¹⁸ It would seem more logical for them to have pursued enhanced welfare protections for OFWs while positioning the program itself more prominently within the national development strategy considering its singular importance.

¹⁶ Manny Villar, Senator, *Senate Bill No. 3180*, Philippines 14th Congress, (Manila, April 22, 2009).

¹⁷ Manny Villar, Senator, *Senate Bill No. 2698*, Philippines 14th Congress, (Manila, November 6, 2008).

¹⁸ It is possible to imagine some of these welfare measures getting funded from the wealth generated by remittances, but that would require a far more adept state than that which currently exists, and any encroachment by the state on OFW remittances would likely prove as unpopular as Marcos’ attempts to do so in the early 1980s (see Chapter Three).

Particularly confusing was Senator Villar's follow up to the quote given above about the risks posed by the global financial crisis where he explained that "in times of uncertainty such as what we are facing in the overseas employment market, the best strategic approach is to increase and strengthen OFW protection."¹⁹ Worker welfare is perpetually important and should be enhanced wherever possible, but the Senator's logic in this regard is somewhat incoherent. Exactly how does enhancing OFW protection abroad address the concern that their jobs and compensation may be at risk by a change in financial circumstances for destination employers, or the economy in destination states? The correlation that the Senator seems to be alluding to simply does not exist.

In reality, President Arroyo's approach just one month later in December 2008, in Administrative Order No. 247, seems much more in line with how policy makers might be able to ameliorate the potential effects of the financial crisis. As discussed above, it proactively sought to enhance job opportunity sourcing and expedite the opening of new opportunities for OFWs. In times of global financial instability, it seems more appropriate to focus on developing new OFW opportunities and improving program efficiencies in order to reduce costs for all parties involved.

As shown in Chart 5.3, there had then been ten separate bills proposed by five senators by March of 2009, when House Bill 5649 was transmitted to the Senate.²⁰ It was almost three months later, on May 27, 2009, when the Senate acted; rather than starting with the House version of the bill, however, they simply consolidated their own ten bills into a single one. HB 5649 was a mere four pages upon its completion, while SB 3286 ballooned to 27 pages likely resulting from it being merged from 10 separate bills. The primary sponsor of SB 3286

¹⁹ Villar, *Senate Bill 2698*, 2008.

²⁰ HB 5649 was transmitted to the Senate on 4 March, 2009.

was Senator Jinggoy Ejercito-Estrada, who upon introducing the bill gave a brief speech describing its importance:

It is a known fact that since the labor export industry was instituted in 1974, the Philippine economy has become increasingly dependent on the remittances of overseas Filipino and OFWs. Indeed, the labor export industry is one of the major dollar-earning industries in the country. Despite the significant and continuous contribution of our OFWs in our economy, they have yet to get a fair share of protection they deserve from the government.²¹

After Senator Estrada made his case for the bill's adoption, the periods of interpellation, amendment, and consideration were all immediately ended with the bill being approved on its second reading. The next legislative day (five days later, on June 1, 2009) the bill was approved on its final (third) reading without debate, discussion, amendment or revision. SB 3286 was approved by a vote of 12 (of 24) senators in favor, 0 against, and 0 abstentions. Remarkably, Senator Villar did not vote on the bill at all despite his contributions to its contents and his expressed passion on the issue.

Final legislative steps

Three days later, on June 3, the Senate requested a conference committee between the House of Representative and the Senate to rectify the disagreeing provisions of the two versions. The Senate/House conference committee completed its work during several meetings held between August and December 2009. The final conference committee report was approved in both Houses in January 2010, after which the now completed bill went to President Arroyo's desk for final approval. President Arroyo chose neither to sign the bill nor to veto it; in accordance with Article VI of the Philippine Constitution, the law was

²¹ Jinggoy Ejercito-Estrada, *Senate Journal – Session No. 81*, Philippine Senate, 14th Congress 2nd Regular Session, 2410 (Manila, May 27, 2009).

approved and formally became Republic Act 10022 on March 8, 2010. The reasons for President Arroyo's failure to sign such an important piece of legislation can only be speculated upon, but may have something to do with the fact that election season had arrived by early 2010 and she, as well as her party, was anxiously engaged in election season politics. Perhaps due to election fever which had hit the Philippines by March 2010, there was surprisingly little written in the press about President Arroyo's decision, aside from reports on the dissatisfaction of NGO groups toward her refusal to veto the bill. According to John Leonard Monterona, Middle East regional coordinator of Migrante, a large multi-national migration-focused NGO, "It seems that President Arroyo found her way not to sign it so she could escape from the ire of millions of OFWs and their dependents."²²

The end result of this legislative effort, the bulk of which having been conducted in approximately 12 months, was a 37-page bill that made substantial changes to RA 8042, the law that had governed one of the most important aspects of the Philippine economy for the previous 15 years. Key among the changes to the program was the creation of a new liability insurance mandate that was designed not only to protect OFWs from lost wages, but to provide them with a slate of enhanced protections while abroad. As one continues to explore the perspectives of the actors involved in the overseas employment program, in both government and business, it will become obvious that the inclusion of the insurance provision of RA 10022 demonstrates much of what is wrong with how government and business cooperate within the context of the overseas employment program—to the detriment of the overseas employment program, the national economy, and nation as a whole.

²² Pam Brooke Casin, "Migrante criticizes amendment to law on migrant workers," Manila Bulletin Publishing Corporation, last modified March 21, 2010, <http://www.mb.com.ph/articles/248923/migrante-criticizes-amendment-law-migrant-workers>.

For the most part members of Congress had nothing but good things to say about the passage of RA 10022. Speaking to OFWs in Kuwait, Senate President Pro Tempore Jinggoy Estrada exclaimed that:

More than giving the much-deserved verbal recognition to our OFWs, it is more proper that the government translate talk into concrete and immediate response to the needs of our OFWs. I think [the provisions of SB 3286] would be [the] highest form of appreciation that we can extend to our *bagong bayani* [new heroes].²³

In contrast, House Overseas Workers Affairs Committee Secretary Christopher Lomibao identified the crux of a problem (described at length later in the chapter) centering on the expansion of the proposed insurance coverage among the narrowly defined “liability” parameters from HB 5649 to the vastly expanded coverages in SB 3286. He explained that:

The Senate version has adopted the House version, making it mandatory. Under the present version of the bicam, in the current version we have expanded coverages: natural death, accidental death, permanent disablement, repatriation including the remains – if the worker dies, and subsistence allowance in case the worker is involved in a case against a foreign employer. For these additional insurance coverages, we have even raised the condition of non-contestability, meaning no-contest, if the worker dies, the foreign employer cannot ascribe fault, even if the worker commits suicide, under the no-fault no-contest provision including permanent disablement if the worker suffers physical injuries it is considered covered.²⁴

Although his tone indicated that these developments were positive steps toward providing additional protection and benefits to OFWs, he acknowledged that the enhancements were not in essence what the recruitment industry had originally sought. He explained that “the

²³ Jinggoy Ejercito-Estrada, “Jinggoy speaks before FilCom in Kuwait; pays tribute to OFWs in Kalayaan ‘09 celebration,” last modified June 15, 2009,

<http://www.senjingoyestrada.com/index.php/articles/view/179.html>.

²⁴ Lomibao, interview, 2009.

originally proposed level of insurance was very good for the recruiters, actually they would insure their liabilities, but not with the expansion.”²⁵

The Bureaucracy

Up until this point the chronological progression of RA 10022 has been discussed from the perspective of the two legislative bodies that passed it. Government, as discussed in previous chapters, of course includes more than just legislative bodies and executive leaders, it also consists of a large bureaucracy containing a number of departments and agencies which manage the implementation of laws and government programs. As discussed in Chapter Two, there are a large number of government departments tasked with overseeing the overseas employment program. As you would expect these bureaucratic stake holders were heavily involved in the creation of RA 10022. This was especially true during the early formulation period for the House version of the bill. Representatives from relevant government agencies were invited to hearings and working groups to testify and respond to questions from congresspersons.

The POEA as the lead agency on matters related to the overseas employment program plays a particularly important role in facilitating the smooth operation of the program as well as assuring oversight over the private recruitment industry. Perspectives on the proposed bill were quite different among the leadership of the POEA. Of all of the departments involved heavily in the overseas employment program some are clearly preeminent in their importance to making it work, day in and day out. The Department of Labor and Employment (DOLE), the Overseas Workers Welfare Administration (OWWA), and the Department of Foreign Affairs (DFA) all play crucial roles in assuring the program’s smooth

²⁵ Ibid.

operation, but the POEA clearly functions as the keystone for the program. As the lead agency over the overseas employment program, the POEA brings a great deal of experience and expertise in regard to the mechanical and procedural workings of the program. In essence the POEA acts as the convergence point between government and business for all matters related to overseas labor migration. From the perspective of the recruitment industry the POEA is the face of government as it is the department with which they must deal on a regular basis and which has tremendous power over them. Likewise, most bills that the legislature passes in regard to the overseas employment program will ultimately be implemented by the POEA. Their expertise in managing the large and unwieldy program since the early 1980s (see Chapter Three) has proved their ability to do the best they can with what they have been tasked. For all of these reasons, it was crucial for the legislature to consult with the experts at the POEA when creating this bill. As will be shown below, the reality of the consultation among key government actors in the overseas employment program was at best dysfunctional and at worst negligent.

When interviewed for this chapter in November 2009, Hans Cacdac, the then Deputy Administrator of the POEA, provided insight into how the POEA viewed both the provisions of the proposed bill as well as the policy-making process related to the bill up until that point.²⁶ Cacdac explained that there were three fundamental reasons why the POEA opposed the proposed mandatory liability insurance component of the bill. First, he said,

our questions relative to insurance are basically first fundamental. One is while we do not disagree with the concept of social insurance, social protection for OFWs, we pose the question as to whether it is necessary to privatize this level of social insurance. ... We feel that it is dangerous to have

²⁶ Hans Cacdac has since been promoted to Administrator of the POEA as of late December 2011/early January 2012.

the private sector, to leave the private sector with all the decisions with respect to social welfare and benefits of all OFWs.²⁷

As described by Cacdac this first objection is likely informed by the tremendous experience the POEA has had in regulating, or attempting to regulate, a large diverse private enterprise. As already discussed in Chapter Three, the problems with illegal recruitment, for example, illustrate how difficult it can be for the bureaucracy to effectively monitor a program as large and unwieldy as the overseas employment program. Cacdac continues:

Second, is the matter of the joint and solidarity liability of recruiters. We feel that liability insurance, which is what would be the key component of the mandatory insurance proposal, at least the one that was passed in third reading in both Houses, undermines the joint solidarity liability of recruiters in the sense that *recruiters would realize that they are not footing the bill and therefore they would be more careless in selecting foreign employers for our people.* (emphasis added)²⁸

From the perspective of the POEA it is easy to understand how they might fear any erosion of the joint and solidary liability rules that are situated at the very heart of the laws which govern the overseas employment program. Cacdac seems to be referring to the principle of a moral hazard, that if a third party (insurance agency) is inserted between the recruitment agencies and their financial liability toward OFWs they will be less inclined to conduct their business affairs ethically as they will not be subject to the full extent of the financial consequences of unethical business practices currently imposed on them through the JSL provisions. It is in fact the joint and solidary liability provisions which address the tricky question of how to solve (if not simply “deal with”) complicated legal disputes between Filipinos and their foreign employers. As mentioned at the beginning of this chapter, even with the joint and solidary liability provisions in place there are many claims abuses

²⁷ Hans Cacdac, POEA Deputy Administrator, Interviewed by author, November 2009.

²⁸ Ibid.

perpetuated on OFWs that never fully receive fair consideration, let alone compensation.

From Cacdac's perspective, the POEA opposes any weakening of the joint and solidary liability rules because the POEA is involved in the OFW-foreign employer-recruitment agency dispute settlement process, and it is charged with enforcing any punitive decisions, such as license revocation, against recruitment agencies. As such, they understand the process.

Along the line of reasoning put forward by Cacdac, if recruitment agencies were able to decrease their financial risk exposure to OFW money claims through the arbitration process at the NLRC, they might indeed take less care in placing OFWs with ethical foreign employers. This point raises an interesting question not addressed by the bill: in NLRC disputes, will the disenfranchised OFW be able to claim what they are entitled to from the recruitment agency in addition to what the terms of the insurance covers, or will the recruitment agency only pay any remaining money owed to the OFW beyond what is covered by the liability insurance? The final version of the bill as well as the "Omnibus Rules and Regulations", created by DOLE, the DFA, the NLRC, and the Department of Health provides clarification on this issue. The implementation rules state that:

Within ten (10) days from the filing of notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker's claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof.²⁹

²⁹ Republic of the Philippines, 14th Congress, *Republic Act No. 10022, Section 23* (Manila, March 8, 2010).

As feared by the POEA the bill does indeed reduce the financial liability exposure on the recruitment agencies. The insurance requirements proscribed in RA 10022 mandate that the policy coverage's against NLRC money claims "shall be equivalent to at least three (3) months for every year of the migrant worker's employment contract."³⁰ Any OFW compensation claims then beyond the three month minimum would be paid by the recruiter, unless they were able to purchase a policy that covers a larger number of months. Regardless, this insurance mandate does indeed reduce the financial liability for recruitment agencies, which has the potential to lead toward an erosion of recruitment agency regard for the quality of foreign employers. Thus the fears of the POEA would be realized.

Cacdac's final problem with the liability insurance component of the proposed bill is one that has persisted since the earliest days of the overseas employment program and one that we have discussed in earlier chapters. Cacdac explained that:

The third one of course is the issue of passing on the premium costs. Recently we had a series of meetings with the recruiters. We had some discussions and they said that the original proposal that they had [made] is not the same version that is in the recent bicam conference draft. The bicam conference draft no longer just tackles liability but it put in repatriation which yields so many other questions from our end. Something as basic as insurable interest of recruiters, what interest would the recruiter have for instance in an OFW's life and disablement? We understand when it comes to liability because of the joint solidarity liability but when it comes to accident and death and disability what insurable interest, legally speaking, would the recruiter have? So we [POEA] have very strong reservations and according to the recruiters this is not the same version for which they signed on. They had also thought that one million OFWs, they had factored in 1.2 million OFWs as potential beneficiaries but in reality only around 250-300 [thousand] will be covered. Because of that, they [recruitment industry leaders] told us in that meeting two weeks ago that they are now not sure as to the affordability

³⁰ Ibid.

level, short of telling us there is a strong likelihood we'll pass this onto the workers, so that alarms us.³¹

Deputy Administrator Cacdac's third objection to the mandatory insurance provision of the bill contains many important parts that are worth exploring more deeply. He first draws attention to the fact that there should be a valid interest, from the recruiter's point of view, that the insurance would cover. Money claims through the NLRC arbitration process clearly qualifies, but in the expanded insurance mandate coverage's include: accidental death, disablement, repatriation costs, living allowance benefit, medical evacuation, compassionate visit (for family member in case of hospitalization), and medical repatriation (in case of illness).³² In essence, Cacdac is arguing that while the proposed insurance coverage may be great from an OFW's perspective, particularly if they do not shoulder the costs, some of the coverage benefits are really not part of the responsibility the recruitment agency has toward their deployed OFWs.

Next, Cacdac seems to have received not-so-subtle hints from recruitment industry leaders that despite the rules in the bill they may find ways to pass the costs on to OFWs due to the unanticipated expense of the newly expanded insurance premiums. The higher-than-expected insurance premiums, Cacdac learned, increased from the original calculations made by the recruitment industry on premiums that would be purchased by all deployed OFWs, not just those deployed through recruitment agencies. If for example all of the 1.4 million OFWs who deployed abroad in 2010 were required to purchase liability insurance the premium would be relatively low because of the wide pool of participants. After the Senate version of the bill passed and was combined with the House version in the bicameral conference, and the insurance coverage was expanded, it became clear that only OFWs

³¹ Cacdac, interview, 2009.

³² Philippines 14th Congress, *Republic Act No. 10022*.

newly deployed through private recruitment agencies would be included under the new scheme. This would reduce the participant pool to “250-300 thousand”, potentially increasing premium rates for the recruitment agencies.³³ As will be discussed later this in this chapter, recruitment agencies operate under strict guidelines as to the amounts they are legally allowed to “charge” OFWs. If insurance premium costs rise dramatically it is possible that this could impact their profit margins on sending workers, which could explain the possibility (as stated above) of some recruiters finding a way to pass this premium cost on to the workers. As we will see later in the chapter, the POEA’s fear of this outcome is shared by many other actors involved in the overseas employment program.

After his describing his three primary concerns with the insurance proposal in the bill, Cacdac expressed an additional concern, not with the bill itself but with the process by which it was created. His concerns were likewise shared among the other actors involved in the overseas employment program and speak to a fundamental problem that exists between government and business in relation to the management, implementation, and ongoing maintenance of the overseas employment program. Specifically, Cacdac questioned the timing and “rushed” passage of the bill. On this issue he explained that:

They were pretty fast in passing this whole thing considering it’s an omnibus amendment to a major law, social justice law. In the House for instance, it was filed in December and passed in February. In a span of two months! It was read on second reading, in both House and Senate, read on second reading, supposedly interpolated, supposedly amended, and passed on second reading on the same day. They had clearly avoided discussions and interpolations on such an important bill. On [the House] side this was passed on third reading in the House in February. Between February and June, June was the time of the Senate passing and that’s when we learned about it, but

³³ The figure “250-300 thousand” OFWs deployed through agencies each year, in regard to the participant pool for insurance premium calculations is a good ball-park figure as the exact number of OFWs deployed through recruitment agencies in 2010 was 322,198. POEA Overseas Employment Statistics 2010.

between February and June we had a series of hearings on some other matter with the House and we never once heard from Chris [House Committee Secretary] as to the passage of this third bill in February. On such an important bill Nathan! We are just really wondering why this was the procedure, this is how they did it.³⁴

There was a clear sense from the comments above as well as others made by Cacdac that this bill was far too important to be rushed through haphazardly, as one might do with a less important bill. As already established above, from the mouths of the very senators who authored SB 3286, the overseas employment program has almost single-handedly kept the Philippine economy right-side-up. Cacdac's questions seem not only appropriate, but possibly the only rational way to look at the timeline and development of events in relation to the creation and eventual passing of RA 10022. As will be discussed further, this came amid the opposition to the bill from a near unanimity of private sector program actors. Furthermore, Cacdac seemed to be implying that the POEA had not been involved in the House Overseas Workers Affairs Committee hearings that had been held according to committee secretary Christopher Lomibao. When asked about this Cacdac later explained:

First, Chris would say well, you were invited in the technical working group, but we're saying, we were invited, we were there, but we had registered our reservations and you shut the thing down in one or two months' time. That's not enough. Even if you invite us to two or three meetings, we didn't sign on for just those meetings and then suddenly we learn that its shut down. There's a lot of back-and-forth about this.³⁵

Considering the POEA's three decades of expertise in managing the program, it seems odd that their calls for the process to be slowed down and for more careful considered deliberations to be held were not heeded by the legislature. As the leading government department on this issue, knowledgeable of the intricate workings of the overseas

³⁴ Cacdac, interview, 2009.

³⁵ Ibid.

employment program, it only seems appropriate that the legislature would rely heavily on the POEA's recommendations and expertise.

If the POEA opposed the bill, why did the legislature push it through with such speed and determination? As soon to be discussed, their actions are even more striking given subsequent changes by the Senate and the near universal opposition to the bill from recruiters, civil society groups, and even international organizations such as the International Organization for Migration. While discussing why the legislature ignored nearly unanimous opposition to the bill, the issue of the forthcoming elections was raised.

Cacdac explained:

It's clearly a year before an election year. I'm not so sure how much we can say beyond that, but it's worse on the Senate side. I don't know if you checked the Senate records but we [POEA] learned about it [SB 3286] when it was passed in the Senate in June. In the Senate there is even no debate or discussion at all in the hearings on insurance and this is something that clearly popped out after or during the second reading sponsorship by Senator Estrada. In the second bicam conference where I testified in behalf of the department, Senator Estrada perhaps in frustration chastised myself and the POEA saying, you know, it's too late, we've given you chances to participate and now you are objecting at the wrong time, et cetera. I didn't want to antagonize the good Senator, but all the records will indicate, aside from the swiftness in which the bill was passed, that insurance was never discussed at all.³⁶

While not necessarily a wedge-issue in Philippine politics, the overseas employment program and especially the plight of OFWs has become a favorite populist platform for politicians to utilize in their election pursuits. Beyond their rhetoric and heavy usage of welfare-based language and proposals in the bill itself, there is little evidence to prove that the Senators involved did what they did due to the potential benefits the bill might have on

³⁶ Ibid.

their re-election prospects. Despite the lack of hard evidence proving an election connection behind the legislators motives, anecdotally the timing of the entire affair and the manufactured sense of urgency seem suspicious at best, and logically lead an observer to the election as a plausible motive—especially considering the unanimous opposition to the bill’s provisions from all actors outside the legislature. The fact that Senator Villar was actively pursuing the presidency, while Senator Estrada’s father was also running, casts suspicion on what the motivations were for the decisions they made in regard to writing and passing the bill.³⁷ In the final accounting of the circumstances surrounding the creation of RA 10022, it is the Senate’s failure to heed the avalanche of opposition to the liability insurance proposal that has brought both observers and participants of events to scratch their heads. Why did the Senate continue to pursue something in the face of so many who argued that it was a bad idea?

Business

The Recruitment Industry

As discussed in Chapter One, and in subsequent chapters, the relationship between business and government has been troubled over the nearly four decades-old program. By “business,” the primary reference is toward recruitment agencies although in this project the perspectives of other groups, such as NGOs, IOs, and the media have also been included.

As described above in the discussion of the COA report, the Joint and Solidary Liability (JSL) rules that recruitment agencies operate under are a major source of contention between

³⁷ Although Senator Benigno “Noy” Aquino III was also pursuing the Presidency (and ultimately won) he was not involved in the drafting or deliberations around RA 10022.

the private drivers of overseas employment from the Philippines, and certain government actors, in particular those in Congress. Worker welfare and rights are of course at the center of the debate, although when matters related to JSL are discussed money is at the core of the problem. It could be said that cases brought by OFWs to the NLRC are done so in pursuit of fairness. OFWs of course should be able to claim lost wages when they have been unfairly treated abroad, but the solution under JSL rules show that little consideration has been paid to “fairness” for recruitment agencies. Many might simply argue that RAs must simply accept the risk of negative financial outcomes from NLRC decisions as part of the price of participation in the overseas employment program or the cost of doing business. The tremendous difficulty of enforcing laws and regulations across international borders, involving sending RAs, destination employers, as well as foreign and domestic governments, is an incredibly complex undertaking by any measure. Obviously, OFWs are exposed to tremendous financial and even physical or emotional distress in these types of situations. However without diminishing the plight of disenfranchised OFWs, and upon close examination, in terms of risk exposure in the business environment, the RAs are exposed to a large share of the financial liability when it comes to JSL provisions. The foreign employers, who are usually at fault for creating the negative situation that results in the NLRC arbitration process, are beyond reach and therefore beyond culpability. Victor Fernandez, head of the largest association of recruitment agencies in the Philippines, the Philippine Association of Service Exporters Inc (PASEI), attempted to explain the industry’s perspective on JSL after being asked how recruiters can be responsible for how foreign employers treat workers.

You don't know after you deploy them, we are not saying no, we're letting go of any responsibility we are just saying we don't have the right to manage the

company, we don't have a say in how the employer treats the worker. We cannot even recommend, hey, you pay the salary this way, do it. Here in the Philippines the salary is paid every 15 days. There it's done every month so we cannot say no, no, look the family here is starving and they're used to, before they received their salary weekly you know, construction workers. Then if they become workers in a company it's 15 days but now overseas it's monthly so no, no, no, you have to do it this way. No, we don't have any say in those things. We don't have a say in the way they market, they conduct their business, if they're doing bad, or doing good. But if they don't pay the worker we now get blamed. I'm sorry, how can an agent be responsible for the acts of the principle?³⁸

Fernandez believes that the arbitration process is stacked against them to begin with so the OFWs can abuse the process to get compensation unfairly, which in turn causes recruiters to do wrong to make up for what they viewed as unfair theft of their money. A discussion of the merits or morality of the various perspectives on the issue of the JSL rules is beyond the scope of this chapter, but it is important to understand the perspective of the recruitment industry on this very important issue. This perspective led industry leaders to propose a solution to the problem, as they saw it, that would guard both against their own liability exposure to the illegal actions of foreign employers and offer stronger welfare protection for OFWs, namely liability insurance. According to industry leaders, it was they who first proposed the idea for liability insurance to cover OFWs.³⁹

Fernandez went a step further, associating JSL rules with some of the unethical and illegal actions taken by some RAs in regard to the fees they charge OFWs. He explained that some agencies might take more than the legally allowed one month salary maximum in fees from a worker to offset the possibility that the worker might return and sue the agency through the NRLC. Fernandez explained that with the limits on what they are allowed to charge

³⁸ Victor E.R. Fernandez Jr., President, Philippine Association of Service Exporters, Inc. (PASEI), interviewed by author, Mandaluyong City, Philippines, November 7, 2009.

³⁹ Loreto B. Soriano, CEO – President, LBS Recruitment Solutions Corporation, interviewed by author, Manila, Philippines, October 12, 2009.

OFWs, there is significant financial risk for the agencies in the off-chance that a worker returns and sues the agency for lost wages. In addition to strong disagreements with the JSL provisions the issue of risk, and risk amelioration for recruiters, was at the very heart of their desire for some form of OFW liability insurance. Fernandez blamed the problem of recruiters overcharging OFWs squarely on the JSL rules. He explained, providing an example of the types of strategies used by some recruiters to reduce their financial exposure to risk.

The bad guys in the industry, it is [in] their very nature. That is why they are the ones making so much money, and they are the ones who can get themselves protected. Like, I will deploy, I have a job order for 10 [workers]. I will charge each of these workers maybe 2 or 3 months' salary, and that is illegal. But I can get 3 months, so let's say I charge \$1,000 each. I can now have for 10 workers \$30,000, when I should only have \$10,000. If one of these 10 gets into trouble and he comes back and he will sue me I have 30,000 to [pay his] claim, and even with his own money. [I say] let's put an end to this, I will settle this by paying you 1 months' salary, after all I was able to deploy you, you worked for 6 months so you have already recovered your 3 months. No, not fair! Ok, I'll give you 2 months. Which actually, the agency [is] returning only his money and then since he already earned 6 months, plus 2 months, it's ok. Now I profit from my earning of \$30,000. I lost only \$2,000. But for an agency who collects only 1 month, he has only \$10,000 and he will be the one who will fight tooth and nail to say no, it was your fault, you were not diligent, you destroyed this, etc. No, I will not pay you, etc. He [the OFW] is enriching himself at my expense. But of course government will say no, you are making too much money. You just recover that from your next deployment.⁴⁰

Fernandez's example, though emblematic, is clearly something that does happen in the industry, particularly by those operating at the fringes of legality within the program.

Although expressly against the law, one can see how the temptation for the recruiters to protect themselves by overcharging placement fees to OFWs can be strong considering the potential cost of settling a dispute with the NLRC. Another industry leader shared similar

⁴⁰ Fernandez, interview, 2009.

sentiments regarding the relationship between unethical industry practices and the JSL provisions. After being asked if JSL provisions contribute to unethical and illegal activities, he explained:

Yeah, and sometimes that is used as justification for asking fees from the worker. If it is the fault of the worker, what is the liability of the worker if he does not do his job there and he is repatriated and then he comes back here and says his boss there is abusing him and maltreating, what? Supposed he is found out to be not [sincere in his claim]? What will he pay the government, what will he pay the agency?⁴¹

Exactly why this issue of OFW accountability in making claims is not discussed is not difficult to understand. The prevailing and overwhelming narrative regarding OFWs is that they are victims of abuse by others, and not abusers themselves. However, it is not difficult to imagine how a returned and possibly disgruntled worker might not be willing to assume responsibility for their dismissal from a foreign employer, and instead claim that they were the victim of abuse in the hopes of recovering wages that they might have otherwise earned if not for their own actions. The fact that this point of view has not been addressed or acknowledged by either the NLRC or the POEA as something that does occur certainly proves that further research and investigation into this claim by the recruitment industry warrants further research efforts. In essence OFWs could potentially use the same accountability conundrum that has been discussed at length in this chapter surrounding the JSL provisions and the inherently international nature of the overseas employment program as a way around whatever contract terms that they may have violated while working overseas, thus resulting in their termination. By claiming that abuse had taken place, they might convert a self-inflicted hurt through their own misdeeds while working for the foreign

⁴¹ Rene E. Cristobal, Chairman, DCL Group of Companies, interviewed by author, Makati City, Philippines, November 19, 2009.

employer into a financial windfall at the expense of the recruitment agency which sent them abroad in the first place. That RA, however, had no part whatsoever in events that occurred between the OFW and the destination employer. It is no wonder that RAs would feel taken advantage of in such a scenario, particularly given that the notion of OFW as abuser does not fit into the collective national narrative. When there are financial claims at the NLRC and uncertainty exists as to who is at fault, it seems that the OFWs commonly receive the benefit of the doubt while the RAs do not.

Another industry leader and industry advocate, Loreto B. Soriano, described the risks he faces in doing business:

To me as an ordinary practitioner, even with my kind of operations, I am really at risk, big risk! Your contingent risk is so big, if you are doing risk management, I always look at that, those we call contingent risk and its equivalent to a 2 year contract of your worker that you deploy. It's really huge amounts of money, and ... the responsibility compared to the money that you earn in deploying workers is so less, it's grossly disproportionate to the risk - number 1. Number 2 - your legal recourse is zero because you cannot run after the employer [in the destination country].⁴²

Soriano furthermore referenced a recent Supreme Court decision which struck down the provision in RA 8042 which limited the annual amount of compensation disenfranchised OFWs could claim from their original contract. In the case of *Antonio M. Serrano Vs. Gallant Maritime Services, Inc., et. al.*, the Supreme Court instead ruled that the deploying agency could be held responsible for the entire unfulfilled portion of the contract, thus significantly increasing the RAs financial liability risk.⁴³ Speaking of the new reality RAs are operating under in the post-Serrano decision climate, Soriano explained that with the competitive

⁴² Loreto B. Soriano, CEO – President, LBS Recruitment Solutions Corporation, interviewed by author, Manila, Philippines, October 12, 2009.

⁴³ Supreme Court of the Philippines, *G.R. No. 167614, Antonio M. Serrano Vs. Gallant Maritime Services, Inc., et al.* (Manila, March 24, 2009).

nature of labor recruitment and deployment, the margin for profit is low when compared to the level of risk. He provided an example based on the type of workers he deploys, where his agency is able to negotiate a monthly salary for a prospective OFW of US\$600. His costs to deploy that worker are roughly \$415. This leaves a profit of \$185 from the maximum legal amount (equal to one month's salary) that RAs are allowed to charge prospective OFWs.⁴⁴ Under the Serrano decision, if the recently deployed worker is sent home without cause during the first month of a 24 month contract, Soriano's agency would be held liable to pay the worker for the remaining balance of the contracted salary, or in this case \$13,800 (\$600 x 23 months). On this issue of profit versus risk Soriano exclaimed that "\$185 per worker is equivalent to a very huge responsibility...I don't know why they [opponents of liability insurance] don't understand that?"⁴⁵

Soriano raises an interesting point in regard to the Serrano case, and based on the numbers he is justified in his apprehension if not fear. In the case, "Seafarer Antonio Serrano had served two months and seven days of his 12-month contract when he was repatriated...won \$26,442.73 in wages for the nine months and 23 days that he would have spent on board ship."⁴⁶ This decision significantly increased the risk stakes for RAs, considering a) the limits on their ability to charge fees; b) the competitive nature of job orders abroad; and c) what foreign employers are willing to pay them to source capable and qualified workers. There is a real mismatch between the income potential for placing workers abroad and the enormous financial liability that lies over them. It was with these risks in mind that the industry began to investigate ways of reducing their risk exposure.

⁴⁴ POEA rules limit allowable fees to a maximum equivalent to one month's salary regardless of contract duration. RAs which violate the rule mandating that OFW fees may not exceed one month's salary risk license cancellation.

⁴⁵ Soriano, interview, 2009.

⁴⁶ Edu Punay, "Supreme Court upholds equal protection of illegally dismissed OFWs," *The Philippine Star*, April 01, 2009, <http://www.philstar.com/Article.aspx?articleId=454077&publicationSubCategoryId=205>.

Soriano explained how the industry first explored the feasibility of liability insurance and then introduced the concept to COWA in the House of Representatives. After being asked about the origins of the liability insurance provisions in the bill, Soriano explained:

Actually it was me who recommended that. We introduced [to COWA] ... employers practices liability insurance....What you are insuring is the liability of the agency and the practices of the employers who are not inside the Philippines....It's not...easy because what you seek to insure is the commission or omission of a party that is outside of the Philippines in which you, the agency, has no participation in each successful omission or commission. When I talked to AIG [American Insurance Group], the AIG people said Mr. Soriano, your product, we don't understand how to do it? You are not the company who is committing the error or the crime. How can [we] insure something that you are not the one doing?⁴⁷

The insurance industry, it seems, faced the same problems that have plagued those tasked with governance of the overseas employment program since its inception, namely, how can a program that is inherently international in scope be governed domestically? Except in this case, the insurance providers were asking, how can a recruitment agency obtain liability insurance protection based on the actions of a third party, who also happens to be in another country and is therefore subject to a completely different set of laws? Although liability insurance of varying types is extraordinarily common all over the world, the unique nature of the requirements here took some effort to work through. According to Soriano again, it seems that a motivating factor for the insurance industry was the original assumption that such an insurance plan would be applied to all 1 million plus OFWs deploying annually.

⁴⁷ Soriano, interview, 2009.

As an example, Soriano referred to the Philippine Deposit Insurance Corporation (PDIC) which insures individual bank deposits up to a maximum amount of 500,000 pesos.⁴⁸ Through this, the risk that investors might lose their savings and investments is ameliorated. The PDIC insurance thus reduces financial exposure, allowing investors to put their money in banks with the confidence that their investments are backed by the government in case of a financial disaster. Soriano argued:

Our obligation should have also a cap because we are just an agent of the principle. Our responsibility is subsidiary, the employer [abroad] is primary, and it's the government who has a better recourse to [pursue] the employer to the government for the country of destination. So in my proposal to the House I submitted them a "new mindset" in saying that it should not be the other way around where we become jointly and severally liable meaning our responsibility is equal.⁴⁹

The argument that Soriano makes above is logical and indeed the foreign employer should be liable for violating OFW contract terms and obligations. The inevitable question, however, is how can they be held liable? In order to do so, the case brought against them must be made in the destination country, but as the OFW has already returned home and most likely does not have the resources to hire legal counsel in the foreign state, there is little that can be done to the foreign employer that will provide just compensation to the disenfranchised OFW. This conundrum is what led policy makers to the notion of JSL in the first place, the idea being that perhaps if RAs were meticulous in selecting only foreign employers of impeccable morale and ethical business practices, such situations could be avoided or at least minimized. In reality, no amount of due diligence on the part of an RAs can definitively determine how an overseas employer will treat his workers, nor will it assure that they uphold their obligations under the employment contract. The recruitment

⁴⁸ Philippine Deposit Insurance Corporation, last accessed June 13, 2012, <http://www.pdic.gov.ph>.

⁴⁹ Soriano, interview, 2009.

industry is justified in feeling that these circumstances are unjust, again without diminishing the plight and ongoing problems faced by OFWs while abroad. JSL is really not a workable solution for a problem that can only be addressed through a legally binding treaty between the Philippines and the destination state. A bilateral labor agreement (BLA) can help, as we will see in Chapter Six, but it cannot fully address the ongoing legal challenges that can arise through the flows of migrants between two states.

It is not only fee-charging recruiters who find the risk and financial liability associated with the JSL rules difficult to accept. Rene E. Cristobal, a widely respected businessman who owns recruitment agencies which do not charge any fees to OFWs, pointed to a possible conflict between the JSL provisions and the national corporate code. In addition to his no-fee policy, Cristobal's company provides a variety of services to the OFWs and their families while abroad which have been acclaimed by both NGOs and OFWs, some even calling his approach to recruitment the model that the industry should follow. Nevertheless, despite his "enlightened" approach, and approbation from industry watchdogs, Cristobal still feels anxiety over his risk exposure in regard to JSL rules. Cristobal did note that many of his deployments are maritime, and therefore less risky because of the insurance policies carried by shipping companies, though he does deploy land-based workers as well. Nevertheless, Cristobal takes exception to the idea that although an agency might be a corporation, under the JSL provisions individual employees (or more likely owners) at that corporation could have their personal assets garnished or confiscated as result of a NLRC decision. Cristobal explained:

The reason why you incorporate is because you want to have limited liability....Now, what the recruitment people are saying, if we get this insurance, that the coverage of that insurance should include whatever

liability we have. That may involve us to be personally, jointly and severally liable with the foreign employer. That is the purpose of that, so that the government can run after, not the individual agencies, but run after this insurance company which has insured all this risk. If you are a single proprietor or a partnership, then your personal assets are at stake! So what we are saying is, let us insure all this liabilities under one [policy] so that the government will run after the insurance company rather than run after the 1,000 agencies for this kind of liability.⁵⁰

Cristobal's point is interesting, and something that could potentially undermine the JSL rules through legal action. He further mentioned that RAs could bring a case to the Supreme Court on this matter, and surmised that they would likely win. Corporations do indeed indemnify individual company leaders from personal liability, and many RAs are incorporated, so which law prevails, the corporate code or JSL? Another important point is his reference to the fact that through the JSL provisions RA owners can be held personally liable financially or criminally for the actions of destination employers. This fear was widely expressed by industry leaders, as were tales of once successful RA owners brought to financial destitution through NLRC decisions. There is no hard data on how many individual agency owners have lost their livelihoods due to NLRC decisions, but the laws do allow the NLRC to seize assets of agency owners if the agency itself is incapable of meeting the financial terms of the decision. So at the very least, the possibility exists that this has and does happen, though many owners evidently choose to simply close their businesses and flee rather than to subject themselves to this eventuality.

There is some uncertainty at this point as to who was responsible for originating the idea that eventually became RA 10022. As mentioned above it was included in early drafts of some of the Senate bills which were consolidated into SB 3286, it was recommended as an option in the COA report, and according to Soriano and Fernandez, the recruitment industry

⁵⁰ Cristobal, interview, 2009.

had lobbied the legislature to pursue liability insurance. Regardless of with whom or when the idea for liability insurance originated, it was an integral part of HB 5649 by late 2008 and early 2009. From the recruitment industry's perspective, the provisions of the House version of the bill contained much of what they were looking for. According to Mr. Fernandez the provisions outlined in the House bill served a second function to demonstrate that while looking out for their financial risks, the added benefits included with the insurance, and to be paid for by recruitment agencies, would benefit OFWs and prove that the industry does indeed value the workers they deploy. In other words Fernandez considered the additional benefits, beyond the coverage for lost compensation, a "win-win" situation and would work to improve public perception of the industry. In regard to how the new insurance plans would improve public relations Fernandez explained his vision for the future of the industry:

We are trying to correct this particular situation. The moment the financial burden is passed on to another entity more capable, I [recruiters] can now focus on my corporate social responsibility. I can now act as an NGO. I can now argue with an [overseas] employer and say no, you have to be better. I can now have programs here in the Philippines that will generate training for his [OFW] family, because I am no longer fighting the worker....I want to produce results because everybody is blaming us, our industry. [They say] that we are ... good-for-nothing bastards who suck the blood out of our workers.⁵¹

Fernandez' vision for the industry focuses on removing the adversarial conditions that have dominated the relationship between OFWs and the agencies that deploy them. The liability insurance proposals in the House version of the bill, according to Fernandez, Soriano, and other industry leaders were meant to address this adversarial relationship, which in turn would allow them to better pursue the interests and welfare of the OFWs they deploy

⁵¹ Fernandez, interview, 2009.

without constantly worrying about the possibility that any OFW that they deploy could potentially bring suit (and large financial penalties) against them with the NLRC. Fernandez argued that once the liability risk was diminished for RAs, progress could be made in improving the behavior of the industry in regard to how it interacts and supports the OFWs they deploy overseas. In essence, they could advocate on behalf of the worker to the destination employer, to encourage them to address concerns or discontinue inappropriate or illegal practices. Under the current system, because of their JSL, RAs are more likely to side with the foreign employer than with the OFW they deployed because they are culpable financially if a case is brought to the NLRC despite the fact that the infraction was committed by a third party (the foreign employer).

When HB 5649 was completed and sent over to the Senate, the recruitment industry generally viewed the provisions on insurance favorably and supported the effort. However, as mentioned above, significant changes were made to the bill by the Senate, enlarging the scope of the insurance coverage. Originally, the liability insurance provisions were intended to include not only agency deployed workers, but also OFWs who re-deploy abroad without the involvement of an agency. In their case, the premium would be paid prior to departure much in the same way that people buy travel insurance before going abroad. When recruitment industry leaders recommended that liability insurance be made mandatory, and volunteered to shoulder the costs for the workers they deploy, they were operating under the understanding that all workers, not just those deployed through agencies, would be required participate in the insurance scheme. In 2009, of the 1.09 million land-based workers deployed overseas, 349K were deployed through agencies while 742K were rehires

and returned to jobs overseas without RA involvement.⁵² As Mr. Soriano explained above, the calculations for the price of the premium, which was projected to cost around 35 US dollars per OFW, were based on two variables: first, that all OFWs would be required to participate fixing the participant pool at over 1 million, and second, that the rate was fixed to the level of policy benefits originally outlined.

The first variable needed to achieve the \$35 premium, namely the anticipated participation of over a million land-based OFWs, never materialized as even the House version did not make the liability insurance mandatory for any OFWs other than those deployed through agencies. Industry leaders continued to lobby for universal applicability of the mandatory insurance upon all departing OFWs even after the passing of HB 5649, but there evidently was insufficient political will in either the House or Senate to mandate that OFWs deploying without an agency be legally required to purchase insurance. In expanding the coverage provided through the mandatory liability insurance, the Senate, in an apparent attempt to further enhance benefits for OFWs, made the earlier \$35 premium quotes impossible for insurance providers to achieve. Matters were not helped by the fact that SB 3286 seems to have been rushed through without hearings or consultation with overseas employment program stakeholders. Fernandez and another industry leader, Raul de Vera, expressed their frustration with the Senate process explaining that:

The House came up only with four amendments to the law [RA 8042]. The Senate came up with an entire revision of the law, complete revision! But there was no consultation on the Senate side. On the House, we are grateful

⁵² POEA, *Overseas Employment Statistics 2010*, 4, last accessed June 21, 2012, http://www.poea.gov.ph/stats/2010_Stats.pdf.

that almost every other week there was consultation and that is where the entire program was conceived.⁵³

Following the rushed passage of SB 3286 industry leaders began to shift their position on the whole idea of mandatory liability insurance, alarmed at the requisite rise in policy premiums based on the Senate's added coverage. During the bicameral process, which is designed to simply iron-out differences between both House and Senate versions of a bill, matters were made worse from the recruitment perspective when even more insurance benefits were added to the bill's provisions. Industry leaders attacked some of the proposed benefits as laughably unworkable, such as the provision for allowing "compassionate visits" of family members for hospitalized OFWs. In essence the provision calls for the insurance policy to provide the family member an airline ticket, but does not provide for the maintenance of the family member while visiting. Another added benefit, medical repatriation, provides airplane or helicopter transportation to sick or injured OFWs to the closest suitably equipped hospital capable of responding to their needs. Fernandez and de Vera lambasted the lack of thought behind this well intentioned yet short-sighted provision, arguing that most OFWs deploy to states more developed than the Philippines with high quality medical care systems. They explained:

If the worker is going to Zambia or Rwanda that would be another thing, but if you are going to a Middle Eastern country, first world country, you don't need all those things. They know very well how to take care of this. Now this is the catch. Because of those premium provisions, the premium we have will now skyrocket because there will now be justification. [The insurance companies will say] we have to increase the premium because there are these additional benefits for you.⁵⁴

⁵³ Victor E.R. Fernandez Jr., President, Philippine Association of Service Exporters, Inc. (PASEI) and Raul J. de Vera Jr., President, Cherub Manpower Incorporated, interviewed by author, Mandaluyong City, Philippines, December 2, 2009.

⁵⁴ Fernandez and de Vera, interview, 2009.

Industry leaders claim that the original estimate provided by insurance companies for the liability insurance, prior to the Senate's added benefits, was to cost \$35 per worker per year. This would put the average two-year deployment contract cost for an OFW at \$70. After SB 3286 was passed, and even more benefits were added during the bicameral conference sessions, industry leaders claimed that the premium numbers they were now seeing were closer to \$85 per year per OFW.⁵⁵ It should again be noted that RAs are legally prohibited from collecting more than the value of a single month's contracted salary from the deploying OFW.

Although there never had been complete support for the liability insurance provisions of the proposed law across the entire recruitment industry, it was during the bicameral conference that support for the idea collapsed among industry leaders. Some were upset by the added insurance coverage, and how the premium they would be responsible for paying would cut into their profit margins under the limitations of the one-month fee cap. Fernandez and de Vera described what would happen if a lower skilled OFW was deployed:

Imagine if you are going to follow the law, and collect only 1 months' salary. You have a worker whose salary is 200 US dollars because he's a laborer. So you cannot collect 250 or 300, you'd get your license cut. You now have to pay OWWA 25 US dollars, if the contract is 2 years you now have to pay \$165 or \$170 to insurance premium, and then you have to process with POEA, and then you have to pay for the PhilHealth [national health insurance program], and then you have to pay for POEA processing, visa fee. Where is the money now going to the agency?⁵⁶

Other leaders and owners expressed fear that they would now be subjected to "premium" abuses from insurance companies, where they could increase premiums at will, and the industry would be legally obligated to pay regardless of the cost.

⁵⁵ Ibid.

⁵⁶ Ibid.

Now imagine, ourselves, we are now going to be at the mercy of the insurance [companies] because if it becomes the law we have no choice but to get an insurance policy and that means now the insurance company will now dictate on us and say from now on no insurance company will have to sell lower than this price. Why, because they have nowhere to go. We can milk this recruitment agency and we can make more money.⁵⁷

A somewhat less common complaint by industry leaders was merely in reference to the highly unusual way in which the policy process was unfolding. As described above in the section on government, the Senate passed the bill without consulting with stakeholders in the traditional sense. Likewise, the bicameral conference was being used to make additions to the bill beyond simply rectifying the competing provisions of the bill. This complaint was not unique to the RA perspective, but was verified by stakeholders in government as well as civil society groups. Fernandez, upon learning that an NGO representative was permitted to participate in one of the first bicameral meetings, demanded that he be given the same opportunity at the next meeting in order to assure that the recruitment industry's perspective was represented. He explained:

This is what's unfair; it's not open to us because it's supposed to be bicam. A bicam is supposed to harmonize two different versions...but what is happening is new provisions are coming in from the conferences, that's why from the original bill it's now growing to about 16 pages when it was only about 5 or 6 pages and there are new provisions that were never discussed ... but now are being inserted.⁵⁸

By the time the bicameral process was underway the recruitment industry had publicly withdrawn its support for the mandatory liability insurance and instead called for it to be voluntary. This created a unique situation in overseas employment program policy history in that the program bureaucracy, concerned civil society groups (more on this below), and the recruitment industry were in solidarity in opposition to the mandatory nature of liability

⁵⁷ Ibid.

⁵⁸ Fernandez, interview, 2009.

insurance.⁵⁹ In essence, all program actors were united against it and yet the legislature persisted undeterred. Recruitment industry leaders acknowledged that their earlier efforts to win over legislators to the idea of mandatory liability insurance had succeeded, perhaps too well, particularly in the Senate. They argued that election year populist politics had coopted their proposals, and that the legislators, with particular emphasis on the Senate, were enhancing the insurance benefits for OFWs merely to curry favor with the electorate, and without considering how these changes would impact the program overall or those who make it work day-to-day. Soriano shared similar sentiments of those shared above by Cacdac from the POEA that the overseas employment program was simply too important to rush policy through based on election year expediency.

You can see how they react, how reactionary government rules are processed. It's too short-sighted, close-eyed. They want it to be a public relations scenario and they are rushing it because of the election next year. The law as worded now and the attempt and the measure that's being done is more of trying to address the public mind but not trying to address the problem itself. So they will look at it more as a public statement that we care for the OFWs so we did this.⁶⁰

As already discussed above, several of the co-authors of SB 3286 in the Senate were either considering presidential runs, already declared candidates, or at least up for senatorial re-election in 2012. In the face of such universal opposition, particularly after the recruitment industry as original proponents of the insurance idea withdrew their support, it does seem unusual that the legislature would pursue the bill so doggedly and with so much urgency if not to utilize the completed bill as a legislative showpiece for their re-election campaigns. This was especially true for Senator Villar and to some extent Senator Estrada (on behalf of his father, who was an opponent of Villar in the presidential election).

⁵⁹ Unique as a threesome, but it is not as unusual for the POEA and RAs to agree on issues and even policy.

⁶⁰ Soriano, interview, 2009.

For industry leaders such as Fernandez, de Vera, and Soriano they seemed to view the negative turn of events as a literal step in the wrong direction for improving the relationship among stakeholders in the overseas employment program. Fernandez, who had earlier expressed so much optimism about how the industry could change its stripes if the adversarial nature of the arrangements among parties could be improved, felt that new battle lines were being drawn and that the industry needed to return to a defensive posture in order to protect its interests if not its survival. He lamented the deterioration of events during the bicameral conference, explaining:

The worst part there is what would now be lost. Instead of focus[ing] on welfare and protection, on corporate social responsibility, doing preparation for workers, [the] family left behind, entrepreneurship, or teaching them livelihood or money management, now we are back to the same program and battle [where] we again have to protect ourselves. It [insurance] veered away from the original concept. They [government] saw the opportunity to abuse us further, from a concept wherein we feel we could only complement what the government could not do. Now it became an obligation from us.⁶¹

By the completion of the bicameral process and despite the 11th hour alliance between the bureaucracy, NGOs and RAs, the final bicameral draft was approved by both Houses and RA 10022 lapsed into law in March 2010.

Non-Governmental Organizations, International Organizations, and the Press

In this section the participation and views of NGOs, the media and International Organizations (IOs) in the policy efforts leading to the creation of RA 10022 are explored. In regard to IOs, the only organization which is included in this chapter is the International Organization for Migration (IOM), which has a global reputation for expertise in migration policy making and has been involved in advising Philippine decision makers for many years.

⁶¹ Fernandez and de Vera, interview, 2009.

The IOM maintains a large complex in Makati City, in Metro Manila, and is actively involved in migration-related research and projects in the Philippines and throughout the world. As for the NGOs (often in the Philippines referred to as civil society groups), there is a seemingly never-ending number of them that engage in a wide variety of activities ranging from advocacy, worker welfare, OFW support services, education and training, social and economic re-integration for returned workers, and even training and support for would-be OFW investors and entrepreneurs. There is a wide mix of Philippine-based NGOs, but also many that are based in other states and have branches in the Philippines. By and large, and for obvious reasons, the majority of NGOs focus their objectives, efforts and resources on the worker-welfare side of the overseas employment program. Relatively few engage in direct lobbying of government or the policy process itself beyond joining hands in solidarity with other like-minded NGOs on issues of particular importance to OFW welfare. Even fewer still focus on bringing the developmental potential of OFW remittances to bear on the acute poverty and suffering in the country through investment and entrepreneurship. One NGO which has caught the developmental vision of how remittances can better be harnessed for developmental outcomes is Unlad Kabayan, which helps OFWs organize migrants' saving for investment in cooperative entrepreneurial ventures in some of the poorest parts of the country.⁶² From the small group of NGOs who engage in government policy advocacy, three which play a large role include the Center for Migrant Advocacy (CMA), Philippine Migrant Rights Watch (PMRW), and the Scalabrini Migration Center. A fourth group, Migrante International does engage in advocacy, but did not seem to play an active role in the

⁶² For more information on the exciting work being done by Unlad Kabayan in the area of migrant savings investment and OFW entrepreneurship and cooperatives visit their website at: <http://www.unladkabayan.org/>.

debates surrounding RA 10022. Finally, the media includes all current forms of news and print media as well as the increasingly important role of internet-based media sources.

Non-Governmental Organizations

The initial reactions of most NGOs involved in the overseas employment program to the proposed bills in late 2008 and early 2009 were a mixture of cautious optimism for the chance of improving various aspects of the program with a healthy dose of skepticism based on their perceived failures of the last major program revision, RA 8042. NGOs at first displayed uncertainty or even indifference toward the proposed mandatory liability insurance provisions, and instead focused their efforts on pressuring policy makers to reform aspects of the program which they saw as most in need of revision. During the early policy formation stages NGOs began to voice opposition to the insurance proposals, but in explanation for their opposition only articulated the argument that RAs would inevitably find a way to pass the costs on to the OFWs.

Similar to the expressed recollections expressed by Hans Cacdac of POEA, as well as many of the recruitment industry leaders, the advocacy-focused NGOs seemed to be caught unawares by the dramatic size and scope of the changes proposed by the Senate version of the bill (SB 3286). Also similar to sentiments from the recruitment industry and the program bureaucracy, were their assessments that the Senate had not included them in the deliberation process, and had rushed their bill through without proper consultation. It was during the bicameral process that NGOs, CMA in particular, began to oppose intensely the proposed bill for a variety of reasons, chief among them the mandatory liability insurance provisions. Rhodora Abano from CMA explained that their opposition to insurance provisions, despite assurances that the RAs would cover the expenses on behalf of OFWs,

were based on historical precedent, particularly the failure of foreign employers (via RAs) to pay the required \$25 OWWA fee as prescribed in RA 8042. She explained:

We're saying that like the OWWA fee which should be shouldered by the employer, it's now passed on to the worker. We don't see any assurance that the premium that will be paid by the agency will actually be paid by the agency and will not be passed on to the migrant worker. Because what will keep them from passing it on? They have been charging so much! You never know what they put in [charges to the OFW].⁶³

NGOs like CMA did not believe, based on historical precedent, that the clause threatening license cancellation would act as a sufficient deterrent for RAs to resist the temptation to pass on insurance premiums through accounting gimmicks and fees.

Before proceeding to explore the full list of NGO grievances toward the proposed revision to RA 8042, a brief exploration of their views toward the JSL provisions and the issue of "risk" seem important as they were central to the arguments put forward by the recruitment industry in pushing for liability insurance. In the following exchange the recruitment industry perspective on JSL was put to Rhodora Abañó at CMA. Her response was indicative of sentiment across the NGO sector toward the recruitment industry on the issue of JSL. When asked her opinion on recruitment industry complaints that they have no control over the behavior of a foreign employer, and feel that as a result they are unjustly punished and held financially liable for their actions, she explained:

The question is why did they deploy the worker to that company? They are supposed to make sure that the worker will be [protected], that is why there is a contract. Of course they did study these companies. So why will you choose a company that wouldn't treat your workers well? Of course it's not only them who is the problem, because of course the government. For

⁶³ Rhodora A. Abañó, Advocacy Officer, Center for Migrant Advocacy, Interviewed by author, Quezon City, Philippines, October 22, 2009.

example the POEA is supposed to be doing the regulation and the other entity is the [DOLE] labor attaché.⁶⁴

Abaño brought up an excellent point regarding the role of DOLE's labor attaché. She is referring to the law that requires the labor attaché in destination states to verify every employer meets a certain standard before OFWs may be deployed to work for them. In practice, however, this requirement is unworkable considering the volume of OFW deployments and the paltry resources available to labor attachés in destination states.

When asked about how the verification process is supposed to work, Abaño explained that:

[The labor attaché's responsibility extends to] every contract, because the process is that if there is recruitment, the contract should be sent to the labor attaché and he's supposed to check that the contract is ok, and to make sure that the employer will be able to, that employer exists and that employer will be able to pay the employee, etc., etc., etc. Then on the other hand, the POEA here are supposed to monitor who are the people going abroad and where etc., etc. They are supposed to be talking to each other. But because of the sheer magnitude, and whose fault is the magnitude? It has to be clear whose fault is it? Is it the workers fault that he had to go abroad? Because it's very basic, why does our worker have to go abroad to find livelihood for his family?⁶⁵

Although Abaño clearly does not accept the recruitment industry's point of view on the JSL provisions, she does however make it clear that the industry is not solely responsible and that the government bureaucracy shares a large portion of the blame as well. The last portion of the above quote was included because it underlies the philosophy of most of the major NGOs concerned with the overseas employment program, and specifically those which involve themselves in the policy-making process. This fundamental position, in essence, is that it is the government's responsibility to provide jobs domestically, and that OFWs should not need to go abroad for work unless they want to. For example, when asked

⁶⁴ Ibid.

⁶⁵ Ibid.

about what would happen to the Philippine economy if OFWs were no longer able to find work abroad due to excessive and overly burdensome government regulation which made Filipinos too expensive to hire compared to other workers, the most common response was that this would be an excellent outcome as it would force government to provide jobs domestically. When one begins to appreciate the staunchness with which the NGOs adhere to this central philosophy, it becomes easier to understand the totality of, and rationale behind, the positions they take on key issues in the policy-making process. No matter how the question was phrased, NGOs such as CMA utterly refused to acknowledge the unique challenges and risks faced by businesses in the Philippines. In essence, the RAs must take financial responsibility for the actions and behaviors of a business in another country and operate in a completely different culture and legal environment.

The unwieldy nature of the JSL “fix” for the problems posed by the inherently international nature of the private sector driven overseas employment program are non-issues from the NGO perspective. This explains why they have zero patience or tolerance for any arguments from the recruitment industry about risk exposure.

Our position is: what’s keeping them from insuring, if they will pay for it? Nothing is keeping them. So if you are really concerned about that then insure it! Why will you make it into a law? Whose interest are you protecting, because the government [bureaucracy] is against it, we are against it, the OFWs are against it, so who favors it? It’s only them. It must be the agencies’ interests that they are after, not the OFWs. Of course what they are saying is, it’s for the OFW, but it’s actually because they are concerned about the damage to themselves. Then [they should] protect themselves from that damage by insuring. We have no problem [with them] insuring themselves. There is risk in business. So their risk, when the going is good [everything] is ok, but when the going is bad, then you ask government to help you about the insurance etc., etc. It’s ok when you are benefitting

but when there is danger of your not benefitting then we have to look to where, where, where?⁶⁶

On the issue of the recruitment industry insuring their risk, the NGOs have taken the position that they do not object whatsoever, provided this is something that the industry does on its own, and is not legally codified. In essence, they take the position that if the recruitment industry does not like the risk and financial liabilities they are exposed to through the JSL provision, then they should protect themselves through insurance, without involving the government.

After the first bicameral conference in August a cross-section of welfare and policy focused NGOs joined hands and submitted two position papers to the member of the bicameral conference expressing their desire to see the compulsory liability insurance dropped from the bill. Their position papers, signed by 37 different NGOs, launched a well-reasoned attack at the mandatory liability insurance provisions in the bill.⁶⁷ Their argument can be broken down into five parts. First, they argued that “data from the POEA covering the years from 1990-2008 shows that only an average of 26.6 percent of the total number of OFWs

⁶⁶ Ibid.

⁶⁷ Members of Consultative Council on OFWs (CCOFW) and other migrants rights advocates: Apostleship of the Sea Manila, Center for Migrant Advocacy, Center for Overseas Workers, Development Action for Women Network (DAWN), Episcopal Commission for Migrants and Itinerant People (CBCP-ECMI), Kabalikat ng Migranteng Pilipino, Inc. (KAMPI), Kabalikat ng OFW, Inc. (KOFW), Kaibigan ng OCW, Kalahi, Kanlungan Center Foundation, Kapisanan ng mga Kamag anak ng Migranteng Manggagawang Pilipino (Kakammpi), Philippine Migrants Rights Watch (PMRW), Scalabrini Center for People on the Move, Scalabrini Lay Missionaries, Scalabrini Migration Center, Women in Development Foundation (WIDF), Akbayan Citizens' Action Party, Alliance of Progressive Labor, Batis Aware, Batis Center for Women, Commission for Filipino Migrant Workers (CFMW) The Netherlands, Economic Resource Center for OFWs (ERCOF), Fernando Crisosto - Saudi Arabia, Filipino Community Services and Information Network-Hongkong (FILCOMSIN-HK), Filipino Domestic Workers Union – Hongkong, Florencio Olemos, Sr., Focus on the Global South – Philippines Programme, Francisco Oca, OFW Saudi Arabia, Geneva Forum for Philippine Concerns, Hsinchu Catholic Diocese Migrants & Immigrants Service Center (HMISC), Joseph Henry Bibera Espiritu Patnubay.com, KOOP Natin - The Netherlands, Marino, Migrant Forum in Asia (MFA), Merchant Marine Operators Association (MMOA), Mike Bolos, Jr.- Ex-OFW - OFW Rights Advocate, Peoples Partner for Development and Democracy (PPDD) – Thailand, Philippine Alliance of Human Rights Advocates (PAHRA), PS Link, Pusong Pinoy Association – Abuja Nigeria, Rashid Fabricante – OFW - Saudi Arabia, RESPECT Network Europewide, Ronnie Abeto - OFW - Saudi Arabia, Samahan ng Manggagawang Pilipino sa Belgium, Trusted Migrants - The Netherlands, Women in Development Foundation, YMCA Philippines.

are deployed through recruitment agencies,” and therefore the provisions would only affect a fraction of the total workers deployed.⁶⁸ Second, they further argued that any attempt to force the remaining 73.3 percent of workers who went abroad on their own to buy liability insurance would most certainly be unconstitutional. By this point in the process, it was already clear that any such move would not be attempted, despite the desires of the recruitment industry. The third reason given was that “the presence of a third party – the insurance companies – adds more layers to the bureaucratic tangle that the OFWs or their families have to unravel whenever they have money claims or damages claims against their agencies.”⁶⁹ The irony behind this third point is that adding a third party to the already complicated program relationship is exactly what the recruitment industry is trying to protect themselves against, namely the uncontrollable actions of a third party which also happens to be in another country. The fourth argument put forward by the NGOs relates to the problem of moral hazard: It was then explained that “should this insurance provision be passed into law, the recruitment agency will no longer be answerable to any abuses that the OFW will face abroad: their neglect can be passed on to the insurance companies.”⁷⁰ Lastly, the NGOs provided a fifth reason explaining that they “doubt the capability of government agencies to effectively implement this insurance scheme, particularly the Philippine Overseas Employment Administration” as “their track record in protecting the basic human rights of our migrant workers has so far been unsatisfactory.”⁷¹ This final point is difficult to argue with considering the patchwork makeup of the overlapping responsibilities and haphazard organization of the overseas employment program’s bureaucratic overseers,

⁶⁸ “Migrants Rights Groups and Trade Unions say No to the Proposed Compulsory Insurance Coverage for OFWs in RA 8042! Yes to OFW Protection!,” Center for Migrant Advocacy – Philippines, last modified November 9, 2009, <http://www.pinoy-abroad.net/lungga/index.shtml?apc=n--8551->.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

though singling out the POEA for criticism seems unfair as they clearly are not solely responsible for the direction and management of the program overall.

Even with their well organized and coordinated effort to block the mandatory insurance proposal, and despite the withdrawal of support by the recruiters themselves, the bicameral conference completed its work and the final draft was passed by both the Senate and House. Nevertheless, they had not fully given up their efforts. On March 4, four days before RA 10022 was to lapse into law provided it was not vetoed by the President, a coalition of 24 NGOs dispatched a letter to President Macapagal-Arroyo.⁷² In the letter they requested that she veto the legislation and provided the following reasons:

1. The compulsory insurance will do more harm than good to our bagong bayani [new heroes].
2. Many recruitment and manning agencies already, as a practice, provide insurance coverage for their workers, thereby making this provision unnecessary and irrelevant.
3. We believe that, should this bill become a law, the government agencies tasked with its implementation will not be able to properly implement, regulate and monitor it.
4. There are many other alternative to legislating and privatizing OFW insurance coverage.⁷³

Their efforts went unheeded, and for her own reasons President Arroyo opted not to sign the bill or veto it, but instead to allow it to lapse into law on March 8, 2010.

International Organizations

There did not seem to be large scale involvement by international organizations in the process leading up to the House and Senate versions of the bill, nor in the hotly contested

⁷² Veronica Uy, "Seamen slam new OFW law to cut their benefits," *Inquirer.net*, March 7, 2010, <http://globalnation.inquirer.net/news/breakingnews/view/20100307-257119/Seamen-slam-new-OFW-law-to-cut-their-benefits>.

⁷³ Members of Consultative Council on OFWs and other migrants rights advocates, Letter to President Gloria Macapagal-Arroyo, President of the Republic of the Philippines, March 4, 2010.

public debate during the bicameral conference process. While they may not have been inserting themselves into what, by the end, became a very heated public policy dispute, the IOM was willing to share their views on the insurance debate for this research project.

Ricardo Casco, National Officer – Labor Migration Support with the IOM, is uniquely qualified to offer his perspective on the insurance debate having worked at the POEA for many years serving in a variety of leadership capacities, as well as having worked for the International Labor Organization and now the IOM. Casco's comments on insurance were direct and to the point. He explained that this kind "of scheme is welcome as an option, not to be compulsory, that's alright but for the recruitment industry to lobby a law to mandate it, I think it is too premature because they have no track record."⁷⁴ Although Casco expressed that he sympathizes to some extent with the reasons for which the recruitment industry was seeking after protection for their financial liabilities, he clearly does not believe that making the policy mandatory was appropriate based on how the industry has performed in other mandatory compliance areas. This of course echoes the concern of the NGOs that the premium costs would inevitably find their way back to the OFWs themselves.

Although IOM did not play a major role in the policy debate surrounding RA 10022, in addition to their many projects in the Philippines, the IOM does provide important research functions on the Philippines overseas employment program, especially in how it compares to program structures in other migrant sending states. While discussing the recruitment industry and the JSL provisions governing the relationship between the OFW, the recruitment agency, and the foreign employer, Casco provided some insight into the

⁷⁴ Ricardo R. Casco, National Officer- Labor Migration Support, International Organization for Migration, interviewed by author, Makati City, Philippines, November 12, 2009.

importance of perspective when striving to understand how each actor in the policy-making process views the situation. He explained:

Who are the clients of the [recruitment] agencies? I think considering the worker as their client is not something that sinks in with them as of now. Maybe very very few. It's always their "foreign principal" or "employer" [who] is their client so I think this is very bad because if there is something that needs to take place or be a basis for progressive changes this is the [attitude] that must [change in the industry]. Recruiters must realize that workers and employers are both their clients. Because not until they operate this way will they be more objective.⁷⁵

Casco's point about who the industry views as their client is an excellent observation and certainly could be a contributing factor to some of the problems that plague the industry and underlie many of the views shared above by industry leaders such as Victor Fernandez. Although a change in this area would certainly be welcome by NGOs and the workers themselves, it is unlikely that this sea-change in thinking could take place until alternative arrangements could be made other than the current JSL system. As previously mentioned, the current JSL system forces the agencies, even if they view their deployed OFW as a client/customer, to defend themselves against a financial loss and when necessary defend the actions of the foreign employer.

The Media

The role of the media in regard to the overseas employment program should not be overlooked as they are powerful actors as the gatekeepers of information regarding what happens abroad and at home to OFWs. Unfortunately they rarely have good news to report when it comes to the overseas employment program, something that is lamented greatly by recruitment industry leaders who are trying to improve the industry's overall image. A

⁷⁵ Casco, interview, 2009.

reporter for the *Philippine Inquirer*, Veronica Uy, was active in covering the debate and developments related to the insurance proposals.⁷⁶ Uy participated in the *Inquirer's* Global Nation section and adjoining website which is dedicated to issues relevant to OFWs. Due to the Filipino diaspora, it has a strong world-wide readership. In a role reversal that was difficult for her to accept, she agreed to answer some questions related to the role the media has played in framing the debate on insurance, and how the media in general portrays the recruitment industry. Regarding the last point, Uy insisted that there was no malice toward the industry nor were there any overt attempts to paint the industry in a bad light. In essence, according to her, such efforts would hardly be necessary. Instead she insisted that the *Global Nation* reporters had made conscious efforts to find positive, upbeat stories related to overseas migration, but that these types of stories seldom materialized. Instead she readily agreed with the characterizations of media coverage by the recruitment industry of stories about bodies coming off of planes. Uy explained that these negative stories cannot be ignored and that “there have been big stories of terrible things happening to overseas workers” and that “these stories resonate with everyone.”⁷⁷

From her articles on the subject it is quite clear that Uy endeavors to be impartial in presenting the sides of the argument regarding liability insurance. As far as the perspective she has on the insurance debate, she explained that “if you allow insurance you are taking out government control, their mandate, and you are adding a level, adding another layer to the picture.”⁷⁸ In this case Uy seems to share this perspective with NGOs that despite what motives the recruitment industry may or may not have regarding liability insurance, it was

⁷⁶ For more information on these articles please see: <http://globalnation.inquirer.net/> searching between August 2009 and March 2010.

⁷⁷ Veronica Uy, Reporter, *Philippine Inquirer*, interviewed by author, Makati City, Philippines, December 2, 2009.

⁷⁸ Ibid.

the government that ultimately had responsibility for OFW welfare and she clearly does not believe that adding another “layer” to the process will be productive. The role that reporters like Uy played in covering the debate also did not seem to sway the minds of the conference committee members during the final days of the bicameral process, despite their extensive coverage of the ever increasing ranks of program actors who opposed it, including press coverage of the recruitment industry’s public withdrawal of support for the measure. The press reports that were written in opposition to mandatory liability insurance also could not sway Congress from passing RA 10022 with the insurance provisions included.⁷⁹

Conclusion

By the end of 2011 the mandatory insurance element of RA 10022 had been in effect for just over one year (insurance became mandatory from November 2010 forward). A year into the new program we have yet to see exactly what the new insurance provisions will mean for OFWs and recruiters alike, but we will glean more as increasing numbers of OFWs deploy with the new coverage. There was a crisis in Libya in early 2011 involving the need to evacuate a large number of OFWs from that country, but almost none of them had been deployed since the insurance provisions became active a few months earlier. One aspect of the case study in this chapter was the arguments made over what the actual premium costs would be. With some hindsight, now that the mandatory liability insurance provisions have been active for over a year, it is possible to draw a few preliminary conclusions concerning

⁷⁹ Veronica Uy, “Recruiters take back insurance proposal for OFWs,” *Inquirer.net*, November 17, 2009, <http://globalnation.inquirer.net/news/breakingnews/view/20091117-236810/Recruiters-take-back-insurance-proposal-for-OFWs> & Veronica Uy, “Mandatory insurance benefits recruiters, not migrants says CMA,” originally posted on *Inquirer.net*, November, 16, 2009, reposted on <http://www.december18.net/article/philippines-mandatory-insurance-benefits-recruiters-not-migrants-says-cma>.

how the program is functioning. To start with, it is now possible to review the actual prices being charged to RAs for liability insurance coverage. In February 2012 the current insurance premiums were as follows:

Table 5.4

Premium for Land-Based OFW:	Premium for Sea-Based OFW:
One-year Premium: US\$ 72.00	Six-month Premium: US\$ 56.70
Two-year Premium: US\$144.00	One-year Premium: US\$100.00
	Two-year Premium: US\$200.00

Source⁸⁰

Although policy premiums are much higher than the recruitment industry's initial cost-estimates, they seem not to have quite reached the levels to which some in the industry had feared they would. Nevertheless, in the case of lower skilled workers the premium amounts here could potentially consume a significant portion of the permissible 1 month salary based fee structure charged by agencies for placing workers abroad. It is too early to assess how this new reality will affect the deployment of lower skilled workers.

A great deal of attention has been paid to the issue of the JSL provisions in this chapter. This was not an intentional outcome but instead the focus on this issue stemmed primarily from the problems multiple program actors (especially RAs) identified with the JSL arrangements. Like much of the overseas employment program policy architecture, JSL provisions are a unworkable and flawed solution to a problem that really can only be addressed through binding agreements, or treaties, between the Philippines and destination states. As we will see in Chapter Six, non-binding bilateral labor agreements can help, but will not bring the level of certainty to the sending-receiving relationship that workers, recruiters, and employers would like to see. As the new insurance-based system settles into normalcy over

⁸⁰ Paramount Life & General Insurance Company, Paramount OFW Policy, accessed February 13, 2012, <http://paramount.com.ph/files/6C-%20Master%20Policy.pdf>.

the next few years it will be interesting to observe what changes if any begin to affect the JSL rules. Will, for example, the liability insurance diminish the importance of JSL? Or will the provisions continue to be relevant parts of the dispute process? Issues of moral hazard must also be considered; as Hans Cacdac from the POEA explains, “recruiters would realize that they are not footing the bill and therefore they would be more careless in selecting foreign employers for our people.” This clearly demonstrates a fear of the incentives that the new policy puts into place, and where some program actors feel the new policy will lead in reference to JSL.⁸¹

By the completion of the policy process the recruitment industry felt that the entire effort on RA 10022, had in essence been a step in the wrong direction. Whereas industry leaders had hoped to enhance worker benefits and protections while protecting their own financial liabilities, instead they argued that they have again been asked to shoulder excessive burdens not of their own making. They have further argued that the insurance provisions in RA 10022 will actually increase illegal activities and unethical practices within the legal side of the industry. Fernandez explained that:

We are also interested in the worker’s protection. Government does not have the monopoly of good intentions, we also have. And now they are listening to us maybe we can start that way, but now that they have mangled the law we are back to square one. We are now again focused on migrants who are again going to be abused. We have to defend ourselves to the thief and then probably we need the money so collect as much as you can get from the worker so that when we go to battle we have money to fight government, instead of saying let’s join hands with [Congress] and let us obey the rules. Now, no, I will just say - Don't get caught! That will be the rule now. Do whatever you have to do because it’s your judgment call, for sure don't get caught, because you're on your own. So that means to say you are not propagating hate against hate instead of saying let’s be concerned about

⁸¹ Cacdac, interview, 2009.

our workers. We cannot detach ourselves from what is happening, but with this kind of government mentality, no way!⁸²

The industry's point is that as long as the relationship continues down the path of antagonism and blame, progress toward program improvements cannot be made. Civility, tolerance and mutual respect are of course necessary first steps before true cooperation can be achieved, and cooperation between Congress and business is the primary stumbling block. Can the Philippines achieve meaningful economic developmental progress through its overseas employment program, or will it persist on its perpetual track of disorganized growth without meaning or effect? Fault-finding and determinations of moral rightness in regard to the RA 10022 case study are in the end meaningless when compared to the primary lesson, namely that all sides must listen to each other if they wish for anything to change, let alone improve the economic situation in the country.

It is plausible to make a connection between the motives of the legislators involved in the creation of RA 10022 and election year politics, but this needs to be examined further in future research. Although concrete evidence of the timing of their actions has not yet been uncovered, the issue was raised almost universally by those interviewed for this chapter from across the spectrum of program actors. The statements shared in this chapter from various senators in regard to how important the overseas employment program is to the national economy should come as no surprise to anyone who has looked into the size and scope of migration from the Philippines. However, these sentiments now expressed must be translated into meaningful action to rectify the ongoing problems with the overseas employment program. Based on its importance, and the declarations of these national leaders, the overseas employment program should then be put in its rightful place as a key

⁸² Fernandez and de Vera, interview, 2009.

ingredient in the national development strategy so that program benefits can be maximized to benefit the whole country.

Beyond what is not known regarding motives, there are a great number of things that we do know based on this case study. First and foremost is that the overseas employment program policy-making process is dysfunctional. The relational framework between government and business, as described in Chapter Two, and established by Evans et. al. is completely lacking from both the policy-making process itself as well as the relationship among key program actors generally. Another key lesson is the apparent resistance to input displayed by the legislature, further compounded by a lack of executive leadership from the President. As mentioned earlier, the legislature's "we know better" approach demonstrates both the nature of the policy-making process and explains the patch-worked state of program governance structures and legal framework today. Along with the need to improve government oversight of the overseas employment program, it is also necessary to ensure that the benefits of this program promote national economic development. This case study highlights the serious need for a central planning body with both expertise and authority to coordinate policy efforts for the country's economic benefit as was the case in Korea, Japan, and Taiwan. As a captured moment in policy time, this case study examining the full process surrounding RA 10022 has proven definitively that the Philippines policy makers must do better at cooperating with each other if the overseas employment program is to be maximized for the economic benefit of the country as a whole. This bill and the process in which it was debated, fought over, and compromised upon should be viewed at one level as a case study not only of the how the overseas employment program policy process works in the Philippines. More broadly, it provides insight into troubling the lack of communication,

dialogue, and mutual understanding that characterizes the relationship between Congress and other major program actors.

Chapter Six: Making Migration Policy: Reflections on the Philippines' Bilateral Labor Agreements

Chapter Overview

This chapter discusses the changing influences on Philippine migration policy destination states of migrant workers are exerting through bilateral labor agreements, defined as agreements between two states establishing a working relationship in regard to the exchange, recruitment, welfare, health, training, compensation, and rights of migrant workers. As neo-liberal trade policies have become more common across the Asia-Pacific, labor agreements have proliferated as well. Both bilateral and regional free trade agreements are now in place or under negotiation across the region. Likewise, states are engaging in labor relations liberalization through bilateral agreements, particularly those concluded between states with labor surpluses and others with labor shortfalls. Within these bilateral frameworks, new targeted migrant schemes have been introduced to expedite the process of getting workers to where they are needed. Workers' welfare has also been a hallmark of such agreements, but business involvement has been largely absent.

I will analyze several cases of agreements between the Philippines and migrant worker destination states in an attempt to identify broad patterns found in bilateral labor agreements. This research fills a void in the literature in regard to the structure and content of completed bilateral labor agreements between states. Further analysis will be provided into how these completed agreements have impacted government-business relations within the context of the Philippines overseas employment program. Although case studies from the Philippines are used, it is expected that analysis and conclusions drawn will have wide regional applicability. This chapter should not be viewed as an appendage to the larger topic of government-business relations in the Philippine overseas employment program, but

instead as an in-depth exploration of an issue of significant importance to the program. The three-fold objectives of the chapter are first to analyze completed agreements, second, to explore how government and business have interacted in both the Philippines and destination states in the pursuit of them, and third, I will argue that new creative approaches are required in order to assure that additional bilateral labor agreements (BLAs) will be forged with the states to which large numbers of overseas foreign workers deploy.

The Philippines' Aggressive Pursuit of Bilateral Labor Agreements

The pursuit of BLAs is now a major component of Philippine migration policy and international diplomacy efforts. In October 2007, Philippine Senate President Pro Tempore Jinggoy Ejercito Estrada was quoted in a Senate press release stating that “practically every day, we hear of Filipino workers being abused and maltreated by their employers abroad, especially in countries that our government does not have bilateral labor agreements with. Such agreements could prevent these misfortunes by laying down the necessary guidelines and provisions for the protection of our workers”¹ Estrada’s comments clearly illustrate a desire for more BLAs. His call for better assurances of safe working conditions for Filipinos abroad demonstrates one of the primary reasons for the Philippine government’s interest in developing new labor agreements with migrant destination states. At that time, the Philippines only had bilateral labor agreements with 13 of the 197 countries which host Filipino workers, a figure that has modestly increased to 19 at latest count (see Appendix 1).² Estrada’s sentiments are not unique and illustrate a growing trend in policy making on Philippine overseas work. Government officials, the Philippine Overseas Employment

¹ Senate of Philippines 14th Congress, “Jinggoy seeks bilateral labor ties with OFW host countries,” accessed June 22, 2012, http://www.senate.gov.ph/press_release/2007/1024_estrada1.asp.

² Senate of Philippines 14th Congress, 2007. Note: According to my count there are 19 BLAs in force today (see Appendix 1).

Administration, overseas employment agencies, and even overseas workers' welfare Non-Governmental Organizations (NGOs) have expressed a desire for BLAs.³ Despite the weaknesses of BLAs and the tremendous difficulty in forging them, short of legally binding international agreements they are a useful tool available for states to enhance efficiency-for-welfare, potentially leading to greater protection and profitability for the migrants and employers, as well as the sending and receiving states. In this chapter 'efficiency' is conceptualized as any improvement in the sending, receiving, or processing of migrant workers between two relevant states. These improvements can include (but are not limited to): financial savings for migrants and/or employers, up-front disclosure of labor migration cost responsibilities and other important information, reduction in time expended, removal of obstacles and bureaucratic hurdles, dispute resolution procedures, guidelines for migrant repatriation, guarantees of good working conditions, agreed procedures and guidelines on protecting worker health and welfare, and on dealing with problems that migrants may encounter while overseas.

The number one destination for Filipino migrants, Saudi Arabia (see Table 6.1 below), has shown disinterest in the Philippine government's numerous attempts to begin negotiations for a bilateral labor agreement. Saudi Arabia has opposed engaging in negotiations with the Philippines due to the fear of a snowball effect which would then require them to sign similar agreements with other states that have workers in the kingdom. Saudi disinterest in forging labor agreements is particularly difficult for Philippine officials as many Filipino migrants there have been victims of abuse including arbitrary incarceration, and violent crimes including beheadings. Describing the nature and scope of the problems facing OFWs

³ "Migrants Rights Groups and Trade Unions say No to the Proposed Compulsory Insurance Coverage for OFWs in RA 8042! Yes to OFW Protection!," Center for Migrant Advocacy – Philippines, 4, last modified November 9, 2009, <http://www.pinoy-abroad.net/lungga/index.shtml?apc=n--8551->.

in the kingdom, former Philippine ambassador to Saudi Arabia Antonio Villamor testified before the House of Representatives Committee on Overseas Workers' Affairs in early 2011, explaining that

70 per cent of Filipinos there are professionals or skilled workers and 30 per cent are low-skilled workers. However, the proportions are reversed when it comes to difficulties and problems, with low-skilled workers, including domestic workers, accounting for about 70 per cent of these and professionals for 30 per cent.⁴

There are tremendous challenges to concluding a BLA with Saudi Arabia. Both sides have a strong need for each other, but it is the destination state in its role as 'job supplier' which holds significant negotiating power. Because Saudi Arabia needs Filipino labor, the Philippines' primary negotiating tool would be to cut off the supply of migrant laborers, which would of course harm the Philippines at least as much as it would Saudi Arabia. Thus the strategy employed by the Philippine Overseas Employment Administration (POEA) and the Philippine government has been to pursue agreements wherever possible and then to take what they can get, the theory being that any BLA, despite its non-binding status and limited applicability beyond certain professions, is better than no agreement at all. The global demand-driven nature of international migration has put labor exporting states like the Philippines in a weakened bargaining position.⁵ Destination states are hesitant to undertake agreements for a variety of reasons, but two of the most common include first that "Filipino workers are subject to the same laws and regulations as nationals; consequently, they do not need any special attention" and second "labour receiving

⁴ Philippine House of Representatives, *Final Report of the Investigating Mission of the Committee on Overseas Workers' Affairs to Saudi Arabia*, Committee on Overseas Workers' Affairs, (Quezon City, Philippines, 2011): 7.

⁵ As Senator Blas Ople observed, "So many countries are willing to accept much lower standards of work than our own. And so the reaction of the employment agencies in the Philippines is just to submit to the demands, the terms dictated by the foreign employers, either you accept these standards or you do not get a job." See Chapter Four for full quote.

countries have also argued that since the terms of employment are negotiated by the overseas Filipino workers and private employers or agencies, they do not want to get involved.”⁶

As illustrated in the preceding chapters the Philippine government’s managed program of sending workers abroad on a contract basis has existed formally since 1974. Since that time, the program has evolved from something originally intended to be temporary, into a massive program with a full range of bureaucratic entities charged with managing the process and related efforts. In addition to the president and the Congress, the primary entities involved in concluding bilateral labor agreements are the Department of Foreign Affairs (DFA), the POEA, and the Department of Labor and Employment (DOLE). Although BLAs have existed since the earliest years of the program, they have proliferated more broadly since the passage of the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042), when (as discussed in Chapter Four) protecting workers became the dominant paradigm in Philippine migration policy.⁷ In regard to BLAs, Republic Act 8042 (RA 8042) states that:

The State shall deploy overseas Filipino workers *only* in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection and the rights of overseas Filipino workers:

- (a) It has existing labor and social laws protecting the rights of migrant workers;
- (b) It is a signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers;
- (c) *It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and*

⁶ Stella P. Go, *Fighting For The Rights Of Migrant Workers: The Case Of The Philippines*, In *Migration For Employment: Bilateral Agreements At A Crossroads*, (OECD, 2004): 188.

⁷ Based on a matrix of Philippine Bilateral Labor Agreements (see Appendix 1) created by the Center for Migrant Advocacy from *Bilateral Labor Agreements and Social Security Agreements*, December 2010.

(d) *It is taking positive, concrete measures to protect the rights of migrant workers.* (emphasis added)⁸

Since 1995 bilateral labor agreements have taken center stage in Philippine diplomatic efforts with the DFA taking the lead but consulting with both the POEA and DOLE. This new emphasis was further affirmed in 2010 with the passing of RA 10022, as examined in Chapter Five.

Despite its tremendous importance the topic of bilateral and regional labor agreements has been often overlooked while considerable research efforts have been committed to bilateral and regional trade agreements. When the 'labor' component is discussed it is normally relegated to an afterthought in relation to workers' welfare. No known research has been conducted on how completed BLAs influence ongoing efforts to secure additional agreements or how the contents of the agreements differ from one to the next. Stella P. Go is one of the few scholars who have addressed BLAs in the Philippines primarily through the framework of workers' welfare. Her work highlights the enormous difficulty in securing meaningful labor agreements between source and destination states, as she explores at length the difficulties in negotiating by identifying the imbedded tension in the objectives of both sending and receiving states. Go explains that for labor-receiving countries the primary objectives for entering into bilateral agreements include: (1) addressing the manpower needs of employers and the industrial sector; (2) promoting cooperation in the management of migration, both regular and irregular; and (3) promoting cultural/political ties and exchanges. For sending countries, on the other hand, the main objectives for entering into these agreements are: (1) ensuring continued access to the labor market of

⁸ Republic of the Philippines, 9th Congress, *Republic Act 8042, Migrant Workers and Overseas Filipinos Act of 1995*.

receiving countries; (2) easing unemployment pressures; (3) promoting the protection and welfare of their workers; and (4) obtaining foreign exchange through workers' remittances.⁹

This chapter is different from Go's research in that it will explore specific aspects of the most recently agreed BLAs in order to understand how the agreements themselves are evolving. My analysis also helps to identify 'selling points' that can be emphasized in future agreements proposed to uninterested states.

Since the 1990s, bilateral and regional trade agreements (RTAs) have proliferated with 400 agreements registered with the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) that were to be implemented by 2010.¹⁰ Efforts to attach labor agreements to trade agreements through the WTO have been a great source of controversy. Developing states, for example, have resisted efforts by developed states to impose worker's protection as conditions in trade agreements, arguing that they are unfair and prohibitively expensive to implement. Thus, efforts toward forging labor agreements have largely been approached from an economic cooperation perspective, with little attention given to how these agreements could be used as a component of a migration-for-development strategy or for increasing efficiencies in sending and receiving.

Regional organizations and trade blocs have largely rebuffed the pursuit of labor agreements as an independent policy objective intended to address labor shortages or surpluses in member states. Nevertheless, the Philippines has taken a leading role in pressing for international and regional approaches to workers' welfare through multilateral

⁹ Stella P. Go, "Asian Labor Migration: The Role of Bilateral Labor and Similar Agreements," Paper presented at the Regional Informal Workshop on Labor Migration in Southeast Asia: What Role for Parliaments, 2007, 9.

¹⁰ World Trade Organization, Regional Trade Agreements, 2009, http://www.wto.org/english/tratop_e/region_e/region_e.htm.

agreements.¹¹ Through the Association of Southeast Asian Nations (ASEAN) and Asia-Pacific Economic Cooperation (APEC), the Philippines has pursued efforts to create agreements on minimum standards applicable to overseas migrants. The Philippines has been active in its support of various International Labor Organization initiatives and was one of the few states to sign and ratify the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Because the Convention has been almost exclusively ratified by migrant sending states rather than destination states, it does very little in terms of managing international migration and migrant welfare. Bilateral labor agreements have thus become the norm for states wishing to address workforce shortfalls and surpluses.

The research on which this chapter is based focuses on a broadly defined category of bilateral labor agreements, but it must be remembered that there are several types of agreements under the BLA umbrella, based on the extent of commitment and detail among the parties. All of the agreements analyzed in the case studies used here are Memoranda of Understanding (MOU), sometimes called Memoranda of Agreement (MOA), which are less formal than legally binding BLAs in the form of treaties. Despite being less binding than formal treaties, MOUs “can create more certain, formal mechanisms by involving the key players at different stages of design and implementation of the agreement.”¹² Others include bilateral social security agreements which “enhance the cooperation between the social security authorities of the countries involved ... to ensure the adequate portability of

¹¹ Go, *Fighting For The Rights Of Migrant Workers*, 192-193.

¹² Irena Omelaniuk, ed., “World Migration 2005 Costs and Benefits of International Migration,” *International Organization for Migration*, 2005, 251.

contributions and entitlements of migrant workers and their families.”¹³ Although bilateral social security agreements are beyond the scope of this chapter, it is clear that such agreements profit workers through benefit portability upon their return home.

One of the purposes of this research is to go beyond the broad structural description of bilateral agreements set forth by other authors and to explore more deeply the substantive outcomes of recently finalized BLAs.¹⁴ By analyzing and classifying various agreements, patterns will begin to emerge from the agreements themselves which will provide insight into the motivations for both negotiating parties. One dominant theme which runs throughout the spectrum of agreements included in this chapter is the effort to maximize efficiency in sending and receiving migrant laborers. By exploring various efforts at increasing efficiency in the process, a model of efficiency in creating future agreements could be developed as an enticement to states that are reluctant to enter bilateral labor negotiations with the Philippines. As we will see in the cases of the Philippines-Japan and Philippines-South Korea agreements, improvements in efficiency can be a powerful motivating factor in convincing states to both enter the negotiating process as well as to finalize agreements.

In order to find a model agreement that might be attractive to Saudi Arabia, BLAs with four countries and four Canadian provinces will be analyzed. By choosing two states from the Middle East, two from East Asia, and one from North America, a broad yet representative view of BLAs forged with different states, with a variety of motivations, will emerge. The test of representativeness of the cases used is whether they provide broad geographic

¹³ Robert Holzmann, Johannes Koettl, and Taras Chernetsky, *Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices*, presented at the Global Commission on International Migration, May 23, 2005, 4.

¹⁴ Go, “Asian Labor Migration 2007.”

coverage, and collectively account for approximately 250,000 or roughly 1/6th of deployed OFWs in 2009. Table 6.1 illustrates the number of migrant workers deployed and re-deployed between 2004 and 2009 in each of the five states included in this chapter, as well as Saudi Arabia which does not currently have a BLA with the Philippines, but is the number one destination for OFWs.

Table 6.1

Deployed Land-based Overseas Filipino Workers by destination (New hires and Rehires) 2004-2009

Labor Agreement Country	2004	2005	2006	2007	2008	2009	Growth Rate '04- '09
Bahrain	8,257	9,968	11,736	9,898	13,079	15,001	82%
United Arab Emirates	68,386	82,039	99,212	120,657	193,810	196,815	188%
Japan	74,480	42,633	10,615	8,867	6,555	6,418	-91%
Canada	4,453	3,629	6,468	12,380	17,399	17,344	289%
Saudi Arabia*	188,107	194,350	223,459	238,419	275,933	291,419	55%
Korea	8,392	9,975	13,984	14,265	12,367	14,851	77%
Worldwide (Millions)	0.93	0.98	1.06	1.07	1.23	1.42	53%

* Saudi Arabia does not have a BLA with the Philippines but is the top OFW destination.

Source: Philippine Overseas Employment Administration, Overseas Employment Statistics, 2009, http://www.poea.gov.ph/stats/2009_OFW%20Statistics.pdf.

By taking up a discussion of bilateral labor agreements between the Philippines and the following five states, a model may emerge of the possible benefits, shortcomings, challenges, and opportunities in structuring and proposing future BLAs with states reluctant to move forward with the process, such as Saudi Arabia.

Labor destination country case studies

Japan

On January 12, 2009 the Republic of the Philippines and Japan signed a Memorandum of Understanding on the deployment and acceptance of Filipino candidates as nurses and caregivers. The negotiations behind the agreement took place between the POEA and the Japan International Corporation of Welfare Services (JICWELS). The MOU is expressly applicable for two types of employment in Japan, Registered Nurses, referred to by their Japanese name “Kangoshi” and Certified Care workers, or “Kaigofukushishi.” The statement of purpose explains that the document’s objective “is to clarify the process of deploying Filipino candidates for Filipino ‘Kangoshi’, and Filipino ‘Kaigofukushishi’... and establish a concrete framework for cooperation between the POEA and the JICWELS with respect to the deployment and acceptance of Filipino candidates.”¹⁵ Filipino nurses and caregivers will only move beyond the ‘candidate- trainee’ status upon completion of the relevant examinations under Japanese law.

The limited scope of the MOU is catered toward specific occupational shortages in Japan and the capacity of the Philippines to provide qualified nurses and caregivers. The Philippines-Japan MOU is a perfect example of states engaging in mutually beneficial labor agreements for much the same reasons trade negotiations and agreements are pursued. Some migrant workers welfare groups may take issue with the MOU’s lack of attention to worker’s welfare, but will likely welcome the job security offered through a more rigorous contract framework between employer and employee. There is a brief comment included in the agreement requiring host employers to pay USD 25 into a ‘worker welfare fund’, but no

¹⁵ Memorandum of Understanding (MOU) Between The Philippine Overseas Employment Administration and The Japan International Corporation of Welfare Services, Manila, Philippines, 2009, 2.

further details are provided regarding this fund.¹⁶ It is assumed that this passage is referring to the migrant worker insurance scheme administered by the Overseas Worker Welfare Administration (OWWA), which currently requires a twenty-five dollar fee for participation in the program and provides emergency benefits to OFWs and their families. The section of the MOU which covers contract guarantees and guidelines was likely high on the priority list of the POEA negotiators, while minimum worker qualification standards and training verification were undoubtedly high on the JICWELS priority list. Another important aspect of the MOU is the framework established to deal with ongoing maintenance of the program and possible future problems. Establishing a cooperative framework and working relationship between sending and receiving states is invaluable for the long term health of the bilateral agreement.

Background verification and credibility is not limited to the prospective migrant worker side of the agreement, but extends also to the Japanese hospitals and medical facilities wishing to participate in the program. These host institutions are not only required to pay a fair legal wage, but also must uphold the aforementioned contract requirements with migrant workers. Mutually beneficial for both states is the section in the MOU which establishes guidelines for worker health inspections prior to departure. This section seems particularly appropriate considering the nature of the work (healthcare) migrants will be engaged in. This protects the host country from exposure to health risks, but also ensures that migrant workers will be fit enough to cope with the difficulties of working overseas.

There seems to already be movement on both sides to capitalise on the new cooperative framework. In early 2009 the JICWELS website, for example, listed information on

¹⁶ This is a standard fee paid by all OFWs before departure in accordance with Philippine law.

application procedures and announced two eight-hour candidate information sessions in both Mindanao, and Cebu, with four eight-hour sessions in Manila.¹⁷ Evidently the JICWELS is taking the arrangement seriously and aims to utilize the MOU to meet its nursing and care worker labor shortfalls. Although the Japan-Philippines MOU is limited in scope to two types of specialized workers, the document is inclusive of all aspects of the overseas migrant worker process from beginning to end. The Japan – Philippines MOU is an excellent example of how specific occupational shortages in destination states can be met by human resources from the labor supplying country in a mutually beneficial way.

An obvious benefit of the MOU to migrant nurses and caregivers is clear knowledge of what expenses they will incur in participating with the scheme. The POEA has outlined where and by whom specific cost burdens will be borne:

- Medical exam – worker
- Medicare premium – worker
- POEA processing – employer
- OWWA contribution – employer
- Airticket (PTA) – employer
- Visa – worker
- Cost of training – free
- Board and lodging – free while on language training¹⁸

In the past, unforeseen charges and fees have been unfairly placed upon the migrants themselves. These unforeseen expenses are one of the major problems and sources of anguish and often debt for Filipino workers seeking employment abroad. Although the fee responsibilities outlined by the Philippines-Japan MOU are clear and given up front, they are not as generous as those given by the Canadian provinces (discussed below).

¹⁷ Japan International Corporation of Welfare Services, 2009, accessed June 22, 2012, http://www.jicwels.or.jp/html/EPA-Philippine_setsumeikai.htm.

¹⁸ Philippine Overseas Employment Administration, Deployment of Nurses and Caregivers for Japan, 2009, accessed February 25, 2009, <http://www.poea.gov.ph/jpepa/q&a.html>.

Although the Philippines-Japan MOU establishes a comprehensive framework for mutually beneficial cooperation, the limited scope of the agreement, namely only including nurses and caregivers, demonstrates a common problem in bilateral labor agreements. Recent statistical data available for Filipino deployments to Japan show that only one nurse deployed in 2009, but 1,536 of the 1,822 newly hired workers deployed as choreographers and dancers (broadly referred to as entertainers).¹⁹ Therefore an agreement which included the statistically more significant entertainers group would have benefited more Filipino workers who are currently deployed. A shortage of nursing and caregiver staff in Japan made a targeted MOU attractive enough to overcome lingering Japanese reservations about such agreements, but it seems that other employment areas have not reached the same critical level from which the Japanese are willing to undertake similar agreements. In essence, the motivation behind the decision to forge a BLA with the Philippines came through cooperation and coordination among the Japanese government and Japanese businesses. It was announced in February 2010, that the recruitment process for a second batch of nurses and caregivers had begun, and that “77 nurse positions and 101 caregivers for...82 Japanese health and caregiving institutions” had commenced.²⁰ Despite the tremendous efforts in forging this agreement, not to mention its ongoing maintenance, these figures are low even when simply comparing them to the total number of OFWs deployed to Japan: 6418 (as of 2009, the most recent year for which statistics are available; see Table 6.1 above).

¹⁹ Philippines Overseas Employment Administration, *Deployment per Country per Skill per Sex*, 2009, accessed June 22, 2012, http://www.poea.gov.ph/stats/Skills/Country_Skill_Sex/Deployment%20per%20Country,%20Skill%20and%20Sex%202009.pdf.

²⁰ Philippines Overseas Employment Administration, *News Release: Japan Recruits 2nd Batch of Nurses, Caregivers*, 2010, accessed June 22, 2012, http://www.poea.gov.ph/news/2010/PR_Feb2010_JICWELS%20INTERVIEW.pdf.

Although the process will probably be smooth for the 178 workers chosen from the POEA's manpower registry who are successful in securing positions at the aforementioned 82 Japanese health facilities, this outcome can hardly be considered widely beneficial to the majority of Filipino workers migrating to Japan. This also does little to alleviate the current surplus of qualified Filipino nurses and caregivers in the Philippines who have passed the relevant board examinations, but have not yet been successful in finding work at home or abroad. Nursing industry leaders in the Philippines are wrestling with serious issues related to the numbers of qualified nurses currently being produced in the country, and the extraordinarily low levels of job placement for those who pass the board exam. For example, in 2008, 39,455 nursing graduates passed the qualification exam, but only 22,727 nurses and caregivers deployed overseas as 'new hires'. While millions of poor Filipinos lack access to affordable health care, there are not enough positions available domestically to employ the thousands of health workers with demonstrated qualifications in the field. Consequently those health workers not placed overseas languish in unemployment or underemployment.²¹ Ultimately, this problem needs to be addressed internally in the Philippines, and Japan should not be faulted for 'not providing' as many nursing jobs as the POEA, nursing colleges, and individual nurses would like.

Canada

In contrast to all other bilateral labor agreements with the Philippines, individual Canadian provinces have opted for separate MOUs rather than a single national agreement. Alberta, Manitoba, Saskatchewan, and British Columbia have all agreed to separate MOUs outlining their respective labor relationships with the Philippines. The reason for this approach seems

²¹ Mark Merueñas, "39,455 Pass Nursing Board Exam; Baguio Grad is No. 1," *GMA News*, February 20, 2009, <http://www.gmanews.tv/story/149672/39455-pass-nursing-board-exam-baguio-grad-is-no-1>.

to be that each agreement can be adapted to the specific needs of each province.

Saskatchewan led the way by first signing its MOU in December 2006, with the remaining three all signing in 2008. There are common themes among all four documents, but each seems to vary on its specific objectives. Each of the four provincial MOUs are discussed in chronological order, from the oldest to the most recent.

The Saskatchewan government seems to take a very different approach than Japan to the forging of a bilateral labor relationship with the Philippines. After the MOU was signed, an official press release from the Saskatchewan government explained that “initially, this initiative will focus on meeting critical labor market needs in occupations such as welding, metal fabrication, long-haul trucking and health care. Saskatchewan employers will gain access to a large pool of skilled workers who intend to settle in the province.”²² Provincial Immigration Minister Pat Atkinson added “Opening our doors and helping people from around the world choose Saskatchewan will build our economy and make life better today for everyone, including new immigrants and build a strong future here for our young people.”²³ It seems from the language used, that Saskatchewan views the MOU as a means for permanent settlement. The MOU itself lists as a second ‘purpose’ that “the participants intend to work collectively for Filipino workers to work in, and/or immigrate to Saskatchewan under a process that is effective and clearly communicated to Saskatchewan employers and workers.”²⁴

²² Government of Saskatchewan, *Government Signs Immigration Agreement with the Philippines to Bring More Skills Workers Here*, Press Release, last modified December 18, 2006, <http://www.gov.sk.ca/news?newsId=ed0aaa78-f727-4a0d-8850-75a8dedb88d8>.

²³ Ibid.

²⁴ Employment and Human Resource Development, *Memorandum of Understanding Between DOLE and AEE Concerning Cooperation in the Fields of Labour* (Saskatchewan, Canada, 2006): 2.

British Columbia was the second province in Canada to sign a MOU with the Philippines.

The MOU is more precise than the Saskatchewan agreement with more specific details included under the sections on *recruitment and selection of workers, costs of recruitment of workers, offers of employment and labour contracts, protection of workers, human resource development, and costs*. Similar to the Saskatchewan MOU, but unlike the Japan MOU, specifics are not given regarding targeted job categories or industries. Clarification was given in a press release from the Ministry of Economic Development explaining that “the agreement will target sectors most in need of skilled workers: tourism and hospitality, retail and construction.”²⁵

The third Canadian provincial MOU with the Philippines was signed with Manitoba on February 8th, 2008. The first stated purpose of the MOU is “to clarify and articulate the participants’ current intentions to promote and strengthen areas of co-operation in the fields of labour, employment and human resource development and employment.”²⁶ The MOU does not mention specific types of migrant labor to target, but instead seems to broadly address all Filipino migrants to Manitoba. Five priorities for collaboration and cooperation include:

- I. ensure that the needs of Employers for Workers with the appropriate skills are met through training and credential recognition activities;
- II. expedite the approval of selected individuals for employment opportunities in Manitoba, including efforts to support the work of the Canadian visa office in Manila in its processing of Workers’ work permits and visas;
- III. promote sound, ethical and equitable recruitment and employment practices;
- IV. share information to support initiatives, subject to privacy laws of the participants; and;

²⁵ Victoria Klassen, “B.C., Philippines Sign Worker Agreement,” (British Columbia, 2008), last modified January 29, 2008, http://www2.news.gov.bc.ca/news_releases_2005-2009/2008ECD0001-000116.htm.

²⁶ *MOU between DOLE and LIM Concerning: Co-operation in Human Resource Deployment and Development*, (Manila, Philippines 2008), 2.

- V. on prior agreement, explore a role for the International Organization of Migration to support the foregoing initiatives.²⁷

Although these five priorities seem rather general, each is elaborated upon, in turn, in later sections of the MOU.

It should be noted, that the fifth point establishes a link between the MOU and a possible role for the International Organization for Migration (IOM) on related multilateral initiatives. The MOU does not specify which initiatives are being referred to, but an official press release from Manitoba Premier Gary Doer outlined several programs which involved trips to the Philippines by both provincial labor officials and business leaders to open up additional cooperation opportunities for both increased migrant labor to Manitoba as well as goods and services export opportunities to the Philippines from Manitoba. Speaking of the value of the MOU, Doer stated that “this agreement builds on the close relationship that already exists between Manitoba and the Philippines” and that “by working together, we can ensure the ethical movement of people, improve the application process, strengthen worker protection and better meet the needs of employers.”²⁸ Through their actions it is clear that the Philippine government considers the creation of new MOUs to be in its best interest, but it is statements from destination country officials such as those expressed by Premier Doer that illustrate how both sides can view bilateral labor agreements as beneficial. When Doer speaks of “ethical movements of people,” he is likely trying to assuage the concerns of a domestic constituency that doesn’t want Manitoba involved in exploitative practices. There are likely such constituencies in Japan, Korea and the other Canadian provinces but not in authoritarian regimes like those in Bahrain, the UAE, and Saudi Arabia.

²⁷ MOU Philippines-Manitoba, 3.

²⁸ Province of Manitoba, Canada. *Manitoba Signs Immigration Agreement with the Philippines*, Press Release, February 8, 2008, <http://news.gov.mb.ca/news/index.html?archive=2008-2-01&item=3074>.

The most recent Canadian province to sign an MOU was Alberta in October 2008. The Alberta MOU seems to have taken cues from the previous three agreements as it has the most comprehensive coverage of all stages of the migrant worker experience. In previous MOUs there is occasional reference to labor laws in both the Philippines and the destination country, but the Alberta agreement expressly lists the relevant labor laws and codes applicable in both the Philippines and Alberta. Another feature of this MOU is its focus not only on migrant worker's welfare, but overall experience including economic compensation. The MOU attempts to remove one of the most negative financial aspects of overseas migrant labor from a Filipino perspective, namely placement fees. The POEA, DOLE, and the Philippine Congress have all established rules regarding the placement fees charged by recruitment agencies. Currently placement fees are not to exceed the value of one month's salary for the prospective position.²⁹ This of course can be a major sacrifice for workers who are in essence paying money up-front to secure a job. The Alberta MOU has mandated that "employers will cover all recruitment costs related to the hiring of Filipino workers...hence, Employers and Sending Agencies in Canada and the Philippines are not allowed to charge recruitment fees in any form from the hired Workers bound for Alberta."³⁰ The same policy also exists in the other previously mentioned Canadian agreements although Alberta's goes the farthest in explicitly looking out for the best interests of the migrant.

²⁹ Philippine Overseas Employment Administration, *How to Avoid Illegal Recruitment*, 2006, http://www.poea.gov.ph/html/how%20to_ir.html.

³⁰ *MOU Between DOLE and E&I Concerning Cooperation in Human Resource Deployment and Development* (Manila, Philippines 2008), 5.

Bahrain

In April 2007 the Philippines and Bahrain signed a MOU on health services cooperation. Like the Philippines-Japan MOU, this document focuses on healthcare related migrants. The second of the stated *General Objectives* is to:

Create alliances between the Philippines and Bahrain's recognized healthcare and educational institutions to produce sustainable international education, training, and professional/technical development programs that will increase the supply and improve the quality of competent human resources for health.³¹

Next the MOU outlines five specific objective areas to address: *exchange of human resources for health; scholarships; academic cooperation; investments; and technology cooperation*. The first category, *exchange of human resources for health*, includes five subcategories of its own that are worth mentioning and applicable to the actual exchange of migrant labor. These subcategories include, *recruitment; rights of workers; capacity building; mechanisms for sustainability of the development of human resources for health; and mutual recognition agreement on human resources for health*. The *recruitment* section contains general information on the need for labor contract creation which is legally acceptable in both states as well as internationally. The recruitment subsection leaves all other matters related to contract creation up to the 'contracting parties'.

The next section on the *rights of workers* addresses compensation and worker welfare by simply stating that migrants "shall be provided equal employment opportunity in terms of pay and other employment conditions...the right to due process in cases of violation of the

³¹ MOU between the Government of the Republic of the Philippines and the Government of the Kingdom of Bahrain on health Services Cooperation (Manama, Bahrain 2007), 1.

employment contract.”³² Reference is made to ‘relevant International Labour Organization (ILO) conventions’ but specific rights and responsibilities of Filipino migrants are not elaborated upon. The last three subsections only make optimistic statements about future cooperation in the areas of capacity building, program sustainability, and agreements on mutual qualifications recognition.

Two of the MOUs more interesting main objectives involve scholarships and academic cooperation. The section on scholarships proposes that:

Scholarships under this Memorandum shall aim to develop human resources for health that can also serve as educators. The Bahraini Government shall provide graduate and post-graduate scholarship programs that may be administered by providing scholarships to Filipino human resource for health to leading Bahrain Universities. Upon completion of the program, the scholars shall be required to return to the Philippines under the administrative guidelines of the Philippine Government were they shall be required to serve in hospitals, universities and other health institutions.³³

This scholarship program seems to be a mutually beneficial arrangement for both states.

The Philippines will gain valuable assets in those returning from post-graduate study in health related fields. The returning person will not only benefit the Philippine health care system, but will also be a valuable teaching resource to healthcare students. From the Bahraini perspective investing in top notch education for health care workers and then requiring them to return home in order to educate others makes perfect sense as it will improve the skill levels of health care workers coming to Bahrain in the future. Equally beneficial to both states is the next section which proposes guidelines for health care student exchanges and internships.

³² *Ibid*, 2.

³³ *Ibid*., 3.

Although the Philippines-Bahrain MOU covers the basics in terms of labor cooperation, its limited scope (health care workers only) brings forward some of the same problems related to the Japan-Philippines MOU. Similar to Japan where Filipino entertainers make up the highest number of migrant workers, the dominant occupation of Filipino migrants in Bahrain are domestic workers. A tremendous amount of effort has gone into formalizing a framework that benefits relatively few migrant workers. It seems that once again an agreement could only be reached between both parties when the destination country expresses a strong need for a particular type of migrant, and consequently ignored all other migrant worker groups regardless of number (see Table 6.2).

Table 6.2
Deployed Land-based OFWs by Skill - New hires, 2008-2009

Skill	2008	2009	% Change
Household Service Workers	50,082	71,557	43%
Waiters, Bartenders and Related Workers	13,911	11,977	-14%
Charworkers, Cleaners and Related Workers	11,620	10,056	-13%
Nurses Professional	12,618	13,465	7%
Caregivers and Caretakers	10,109	9,228	-9%
Laborers/ Helpers General	9,711	8,099	-17%
Plumbers and Pipe Fitters	9,664	7,722	-20%
Wiremen Electrical	8,893	9,752	10%
Welders and Flame-Cutters	6,777	5,910	-13%
Total Deployments - New Hires	376,973	349,715	-7%

*This table depicts the top 9 occupational categories for newly hired land based OFWs. This does not represent a comprehensive list of occupational categories, thus the sum of the nine categories does not equal the cumulative yearly new hire figure given above. For a more comprehensive list of newly hired deployment skill categories please refer to the POEA's statistical page.

Source: POEA, 2009.

United Arab Emirates

The MOU between the Philippines and the UAE was signed within a few days of the Bahrain agreement in April 2007, but has a drastically different structure than all previously discussed agreements. Instead of topical sections and sub sections the MOU simply has

fourteen articles and is significantly shorter than previous agreements. The MOU focuses on joint initiatives toward contract formulation and approval through both the UAE Ministry of Labour and the Philippine Government. Included are specific conditions for advertising job openings in the UAE which must include information on “conditions of employment especially the salary, accommodation, transportation and any other relevant terms which shall be verified by the Ministry of Labour in the UAE.”

Articles seven through nine deal specifically with migrant rights and avenues of redress. These three articles seem to target areas where there have previously been problems, matters of jurisprudence, remittance rights, and a dispute resolution process. Article seven specifies that labor contracts must be written in both English and Arabic and that in case of a legal dispute in UAE courts the Arabic text will prevail over English. This may not be ideal for Filipino migrants, but in the very least having this crucial distinction determined beforehand will allow migrants to know where they stand legally. Article eight unequivocally decrees that migrants are free to “remit all their savings to their country of origin or elsewhere in accordance with the financial regulations of the UAE.”³⁴ The right to remit savings is central to a migrant’s core reason for undertaking overseas labor in the first place, thus reassurances of this fundamental right is a welcome inclusion to the MOU. Last, article nine outlines the migrant dispute process explaining that complaints will first go through labor authorities, and if no settlement can be reached the dispute will go to the UAE judicial system. Overall the UAE-Philippines MOU is a good starting point for future negotiations, but really must be expanded upon considering the high number of Filipinos living and working there (see Table 6.1).

³⁴ *MOU UAE-Philippines*, 3.

Republic of Korea

In May, 2009 the Philippines and the Republic of Korea signed two BLAs. The first simply outlined a relational framework “on cooperation in the field of labor and manpower development”, and the second established the most comprehensive labor migration scheme ever attempted between the Philippines and a worker receiving country. The second MOU formally brought the Philippines into a migrant labor scheme in operation in Korea since 2004, known as the Employment Permit System (EPS). The EPS established a state to state relational migration structure which manages the process from beginning to end, and prohibits involvement by recruitment agencies. Korea’s efforts in establishing the program were aimed squarely at the problem of illegal immigration and widespread reports of abuses of migrants by recruitment agencies both inside and outside of Korea.

Like many of the previously discussed documents the agreement does outline the various costs involved in the scheme, and roughly describes which parties will be responsible for what expenses. The bulk of the expenses, including an application fee, fall on the workers. Before describing the fee breakdown the following explanation is given:

The POEA, in consultation with the MOL [Korean Ministry of Labor], undertakes to publicly inform the workers of the legitimate fees to be paid on the following:

- a) Sending Fees
 - (1) Application Fees
 - (a) EPS-KLT Fee
 - (b) Medical Examination Fee
 - (2) Preliminary Training Fee
 - (3) Re-Medical Examination Fee (only for those with lapsed medical certification)
 - (4) Processing and other Fees
 - (5) Visa Fee
 - (6) Airfare
- b) On-site Fees

- (1) Return Cost Insurance Premium
- (2) Casualty Insurance Premium³⁵

Although it is certainly helpful to have an outline of the fees a worker should expect to pay ahead of time, it seems in this case that cutting out the recruitment agency has only made modest cuts in the totals costs to be borne by OFWs. Including airfare, insurance, and assorted fees, it is highly unlikely that OFWs will start working in Korea without having spent at least US \$1,500. This amount is possibly less than what might normally be paid by a worker deployed through an agency, but this amount would not be ‘painless’ from the perspective of OFWs and could still require families to borrow from unscrupulous lenders.

Beyond the discussion of fees there are some promising signs in how the agreement frames the relationship and lays out cooperation on a variety of fronts. It seems that despite the relative complexity of the program it does allow certain aspects of the process to move quickly. By eliminating the recruitment agencies, the POEA acts as the sending agency and the Korean Ministry of Labor acts as placement agency filling the needs of Korean employers.

From the Philippines ‘sending country’ perspective there are quite a few responsibilities being undertaken by the POEA in its role as ‘sending agent’ within the scheme. Firstly, the POEA has committed to maintaining a ‘roster of applicants’ who meet the needs of listed skills provided by the Korean Ministry of Labor and the Human Resources Development Service of Korea. Related to the roster, the POEA has committed to ‘provide assistance and support’ for the Employment Permit System – Korean Language Test (EPS-KLT). The POEA manages applications to take the test, schedules testing venues, and even provides Korean

³⁵ *MOU between the Department of Labor and Employment, Republic of the Philippines and the Ministry of Labor, Republic of Korea on the Sending and Receiving of Workers under the Employment Permit System of Korea* (Seoul, Republic of Korea 2009), 3.

language study aids with sample test questions on its website. Applicants to the EPS can only be included on the roster once they have passed the EPS-KLT. Once on the roster, workers' names will be available to Korean employers for one year; if they are not placed within that time frame they will need to re-apply but not re-take the EPS-KLT unless it has been longer than two years since they successfully completed the test. Other POEA responsibilities include communicating with the Ministry of Labor once a worker has accepted the terms of the contract, providing a pre-departure orientation seminar on Korean customs and culture, collecting all necessary worker documentation in order to lodge visa applications on their behalf, and assisting workers in arranging flights to "ensure that workers enter Korea on the scheduled date."³⁶ Although the POEA has direct-hire programs with other states, exactly how efficient the POEA will be in implementing these procedures remains to be seen.

On the destination side, the Ministry of Labor has committed to a standardized contract process which should help avoid contract disputes or miscommunications related to contract terms such as contract duration, pay intervals and amount, work hours, vacation time, and explanation of duties.³⁷ By forcing all Korean employers wishing to participate in the scheme to use a standardized contract, there should be fewer contract disputes; handling disputes that do arise should also be less complicated. Two stated objectives related to standardized contracts in the MOU is that first jobseekers "can fully understand it [contract] and decide whether or not to accept the offer based on his/her own free will" and that "the parties will exert sustained efforts through close mutual cooperation to find workable solutions to minimize labor contract cancellations by either employers or foreign

³⁶ *MOU Philippines-Korea*, 8.

³⁷ Philippines Overseas Employment Administration, *Standard Labor Contract*, <http://www.poea.gov.ph/docs/korea%20eps%20slc.pdf>.

workers and inform each other of measures that they have taken.”³⁸ Contracts are to be renewed every year up to the three year limit for the program, at which time the worker must return to his/her home country.

Closely related to contract issues, the Ministry of Labor has also established a broad framework for handling ‘grievance counselling and handling’. Korea has decided that its recently amended Labor Standards Act applies to both foreign and domestic workers. Among other things, this act sets forth 40 hours as the standard work week, with rules related to overtime, pay, workplace safety, and harassment. The Industrial Safety & Health Act also applies to the work places of migrant workers under the scheme. Rather than relying on the overseas representatives of DOLE, the POEA and the Philippine DFA to act as primary advocate for OFW rights, the Ministry of Labor has opened its Employment Support Centers around the country as well as in Seoul to take up grievance issues and to find workers new employment if necessary. This system shows a level of commitment to OFWs and overseas migrants more generally, than any of the agreements previously discussed. Despite their relative strengths the Canadian and Japanese agreements do not offer such concrete mechanisms for the resolution of disputes and other problems, potentially leaving migrants feeling isolated with no one to advocate for them.

Another interesting aspect of the destination side of the scheme is the reliance on mandatory insurance for migrant workers. Mandatory insurance for OFWs has been a hot topic in the Philippines with recent legislation (see Chapter Five) that requires all newly hired workers to have coverage, paid for by their recruitment agency before departure. In this case, there are four types of insurance coverage required for participation in the

³⁸ *MOU Philippines-Korea*, 6-7.

scheme including departure guarantee insurance, guarantee insurance, return cost insurance, and casualty insurance. The first two, departure guarantee insurance and guarantee insurance are paid for by the employer, and cover potential employer costs for severance payments, and overdue wage protection for the worker. The second two insurance types are paid for by the worker and cover their return airfare home after the three year contract limit is reached, and coverage for “casualty, disease, or accident other than an occupational accident.”³⁹ Rather than placing the burden of these insurance requirements on the worker up-front, the program allows for the insurance premiums to be directly debited from the worker’s account within 15-80 days of starting their employment.

There is considerable skepticism toward this BLA from the recruitment industry in the Philippines.⁴⁰ Recruitment agencies who once deployed workers to Korea, but have been excluded since the introduction of the EPS, have expressed skepticism that the POEA has the ability to get skilled workers through the process as efficiently as they once did. One key argument made against the new arrangement, is that it places an even higher cost burden on a Korea-bound OFW. To make their case, recruiters point to the number of fees which previously fell on them, but now fall on the worker under the EPS scheme. A prominent recruitment agency owner explained:

We were one of the first companies to open up Korea. During that time we were charging the workers something like 35,000 [pesos] per head. The government took it away because Korean government was then complaining – oh, the workers [have] paid too much and the agencies are charging too much and 35,000 pesos is too much so it has to be a government to government thing. Now, that this is being done by POEA, ask each and every worker that goes to Korea from their own pocket, they pay their own ticket,

³⁹ Republic of Korea Ministry of Labor, *Four Major Insurances of the Employment Permit System*, accessed March 12, 2010, <http://www.eps.go.kr/wem/en/contents/insurances01.jsp>.

⁴⁰ Based on interviews with recruitment industry leaders conducted in Manila between August and December 2009.

they pay their own orientation, everything, on their own pocket. And how much are they spending now? 70,000 pesos at least! Double. So if you really look at it, are we not talking about welfare? Of course. In some of the meetings we say what percent is the welfare but is this really the right kind of welfare where in you double the cost of getting work in a particular country? Korea is the biggest joke, POEA is the one sending them and every worker is paying 70,000 pesos. [Yet] they allow the workers to buy their own ticket just to reach Korea. If my workers would pay their [own] ticket, immediately my license is cancelled. [Sic]⁴¹

His figures, although not independently verified, do illustrate a possible flaw in the logic of state-state hiring schemes. When the private sector deploys a worker from the Philippines, the POEA has mandated a maximum amount (generally equal to one month's salary in the destination state) that the agency can charge the worker. If the agency is no longer involved, and the destination employer is not covering airfare or other related fees, then these fees fall on the OFW.

The recruitment industry's attacks on the POEA and its perceived shortcomings may turn out to be true, but are somewhat irrelevant, as it was Korea who introduced this program and approached the Philippines to sign the MOU that ultimately excluded the recruiters from the Korean market. The latest figures available show 14,851 deployments to Korea of which 13,657 were re hires, the remaining 1,194 new hires (see Table 6.1).⁴² The 2008 numbers showed a -13.3 percent decline in deployments from 2007, though numbers have picked up again in 2009. The decline was possibly due to the global financial crisis which severely impacted Korea's economy, particularly its manufacturing and heavy industry sectors. It will be interesting to follow the trends for the next few years find out how this new program might affect deployment statistics.

⁴¹ Recruitment agency owner and industry leader, interviewed by author, Manila, Philippines October 2009.

⁴² Philippine Overseas Employment Administration, *Compendium of OFW Statistics*, 2009, 7.

Overall the Philippine-Korea EPS agreement seems to be a model of efficiency with the welcome inclusion of worker focused protections and benefits. The agreement seems to have struck the appropriate balance between the needs of employers and the needs of migrant workers. There are shortcomings, such as airfares being paid by workers, and the prohibition of workers bringing along their families, but these drawbacks are counter-balanced by clearly defined labor protection clauses, fair wages, paid vacation leave, and Korean supplied support services for migrants. It is difficult to neatly compare the Philippine-Korea EPS with the other agreements discussed previously because of its unique framework for labor cooperation, but as with the other agreements there are significant advantages and disadvantages which leave room for future improvements. The framework created bilaterally between Korea and the Philippines has been duplicated in bilateral agreements between Korea and other migrant sending states from the region. Thus, the system is multi-lateral in scope but is governed bilaterally through negotiated state to state agreements.

Conclusion

As evidenced by the case studies there are identifiable strengths and weaknesses in each agreement. Some of the strengths of the Japanese agreement were a firm commitment to bilateral maintenance of the agreement, clearly delineated fee responsibilities, focus on program efficiency, and its comprehensive coverage of all stages of the process. The largest weakness however was the decision to limit the agreement to nurses and caregivers. The Canadian agreements excelled in their broad inclusion of many job categories, the absorption of costs by employers, openness to permanent settlement, focus on Philippine development, and inclusion of IOM labor laws. Unfortunately the Canadian agreements

omit procedures for future agreement maintenance and cooperation which may make it more difficult to deal with future challenges in the relationship. The agreement with Bahrain also has several strengths, such as its focus on developing Philippine healthcare through education and scholarship programs, its inclusion of a broad range of issues of concern to migrant workers, and reference to the IOM conventions. The Bahrain agreement shares the same large weakness of the Japanese agreement in that it only applies to one category of migrant workers encompassing relatively low numbers (namely, healthcare workers), thus excluding the largest category of Filipino migrants in Bahrain, domestic workers, from coverage. The UAE agreement does not have any outstanding strengths beyond its mentioning of up-front information on pay and working conditions, which is universally understood to be a basic right of migrant workers. Two weaknesses in the UAE agreement are the preeminent status given to Arabic in dispute resolution and the monopolization of agreement oversight by the UAE Ministry of Labour. Lastly, the Korean agreement, by far the most comprehensive, excels in several areas, namely: clearly delineated roles for relevant agencies in both states, standardized contract usage, high levels of protection and service access for migrant workers that in essence gives them comparable support and access to that which is available to Korean citizens. The agreement falls short in its assignment of high fees to workers despite removing recruitment agencies from the picture. The issue of mandatory insurance in the program could end up as either a strength or weakness depending on how well it meets the needs of migrants.

Although no single agreement can be considered perfect, common strengths include fee coverage by employers rather than migrants, defined mechanisms for worker protection and welfare, and arrangements for ongoing maintenance of the bilateral agreement and

relationship. The most obvious weakness from the case studies is the restrictive scope placed on some of the agreements, thus limiting their effectiveness in improving circumstances for the largest number of workers. Vagueness and the non-binding nature of BLAs are also common weaknesses among many agreements, including those not discussed in this chapter but listed in Appendix 1. Although these weaknesses are difficult to overcome within a tough negotiating environment, perhaps negotiators could convince interested states to use one of the stronger completed agreements, such as the Korean, Canadian, or Japanese agreements, as templates from which to start negotiations. This would both show the prospective state what can be accomplished through coordination on the exchange of labor and would likely prove a better starting point for negotiations than the more vague, less formalized, agreements with Bahrain and the UAE.

Aggressively pursuing new BLAs is a primary policy objective in Philippine overseas migration policy. As for states not wishing to engage in BLA negotiations who host large numbers of Filipino workers, one possible strategy for the POEA, DOLE, and the DFA would be to highlight the potential benefits of such agreements rather than requesting worker protections that can be perceived as costly, entirely unnecessary or even insulting by the receiving state. Certainly the Korean EPS and Japanese-Philippine agreement show how efficiency can be improved when the processes of sending and receiving migrants is streamlined and simplified in mutually beneficial ways. It is clear from the Korean case that many welfare related protections can come as a result of pursuing greater efficiency. There is potential for cost and time savings for both the migrants and the employers wishing to hire them when the recruitment and deployment process is formalized through agreements. Because issues like compensation, vacation/sick leave, working conditions, dispute

resolution, and employment contract standardisation are handled ahead of time, it is likely that judicial systems in places like Saudi Arabia would not be burdened with as many labor dispute cases, and incidents of employee absenteeism, abuse, and workers fleeing their jobs would be reduced. Rather than framing BLAs solely around worker protection, perhaps efficiency, cost/time savings, and general improvements to the labor relationship should also be emphasized. In pursuing better worker protection an additional negotiation strategy could be to suggest the inclusion of relevant ILO conventions previously ratified by both states in the text of the agreement, as was done in the Bahrain MOU. Including reference to specific ILO conventions would lend the legitimacy of international labor norms to the agreement and make up for any inadequacies in the area of worker protection in destination states. If both states have ratified the ILO agreements, neither has strong grounds to object to their inclusion in a BLA—regardless of whether or not the agreement is binding.

Domestic support for BLAs fluctuates widely among countries and across the specifics of the BLA. As mentioned previously, the conspicuous absence of states like Saudi Arabia, and the limited scope of professions included in certain agreements, diminish their impact on a large number of OFWs. Some NGOs have even questioned the merit of dedicating so much time and resources into forging such weak agreements.⁴³ Where both private and public sector organizations stand on particular BLAs depends largely on where they sit. Worker welfare NGOs, for example, have pushed hard for more bilateral labor agreements, although they would prefer to see them as binding legal agreements which codify worker protections. NGOs are correct in their assertion that non-binding BLAs do not do enough to protect the welfare of workers, but considering the disinterest in non-binding BLAs by some states and

⁴³ “Migrants Rights Groups and Trade Unions,” 4.

the important need for better protection, surely non-binding efforts to protect workers are better than no agreed-upon protection at all. Philippine government officials in and out of the POEA have played a more tempered role, aggressively pursuing new agreements wherever possible that are as beneficial as possible to Filipino migrants. Although worker welfare seems to be the dominant motivation by both NGOs and the Philippine government for forging BLAs, it would be constructive in the future if more consideration was given to how these agreements could fit into a comprehensive development strategy for long term sustainable economic development. As mentioned earlier, efficiency should also be ample motivation to convince states to enter into BLAs. Savings in time and capital will benefit all parties involved in the process, but particularly the migrants themselves who would relish the opportunity to cut out the overly complex paperwork, fee structures, and hasten the commencement of work and the receipt of salaries.

As the global financial crisis has impacted economies around the world, it is interesting to see how nations are coping with migrant workers and how it has impacted efforts to forge new BLAs. Korea, which has been hard hit by the economic slowdown, was scheduled to sign the agreement in January 2009. It was announced in January that negotiations had been suspended and would resume in March. No reason was given for the delay, but considering the difficulties facing the Korean economy, this might have been a contributing factor to the delay.⁴⁴ The agreement was ultimately signed in May 2009. It seems that there may be less interest in BLAs during lean times, much the same as interest in trade

⁴⁴Veronica Uy, "Renewal of RP-Korea Labor pact deferred," *Inquirer.net*, January 16, 2009., <http://globalnation.inquirer.net/news/breakingnews/view/20090116-183776/Renewal-of-RP-Korea-labor-pact-deferred>.

liberalization initiatives has waned amid the current global financial crisis. Indeed, there have been concerns that a return to protectionism which could damage recovery efforts.⁴⁵

In labor relations it seems there is also a risk of a return to protectionism. Fears of protectionism in matters of labor during lean times are just as serious as in matters of trade although they are often overlooked. When unemployment rates rise in receiving states, migrant workers are often targeted by locals as a group to blame for their frustrations. It sometimes can be politically convenient for politicians to use migrant workers as a scapegoat, and in extreme cases even deport them. For example, the governments of both Saudi Arabia and Malaysia recently issued orders to “fire expats first should they need to slash their work force as a result of the global economic crisis.”⁴⁶ Nations that have signed BLAs could choose not to renew them when they expire, and states may be less willing to undertake new agreements in bad economic times. Deployment data from 2009 (see Table 6.1) however has shown that deployments have risen from 1.23 million in 2008 to 1.42 million in 2009, largely allaying fears of massive OFW layoffs.

After reviewing the case studies, what can the Philippines learn from the BLAs it has completed thus far? It is clear that while aspects of the case study agreements could be used as a model in convincing reluctant states to engage in bilateral labor negotiations, no single archetypal model agreement exists. The major constant is that the Philippines has crafted all agreements from a relatively weak position. The above analysis of the content of completed agreements highlights how each receiving state has widely differing rationale for

⁴⁵ Kevin Carmichael, “Despite G20 pledge, global trade friction heating up” *The Globe and Mail*, September 28, 2010, <http://www.theglobeandmail.com/report-on-business/economy/despite-g20-pledge-global-trade-friction-heating-up/article1731322/>.

⁴⁶ Kimberly Jane T. Tan, “IOM appeals for host countries not to fire migrant workers first during layoffs” *GMANews.TV*, February 5, 2009, <http://www9.gmanews.tv/story/147458/iom-appeals-for-host-countries-not-to-fire-migrant-workers-first-during-layoffs>.

entering into bilateral labor negotiations, most often related to acute labor shortages in their own country. There also seems to be widely differing objectives in crafting the content of individual agreements. The role then for Philippine policy makers and negotiators is to be proactive in determining what the Philippines can offer reluctant states, and to customize their efforts in tailoring negotiations to the needs of target states. This will not be easy, but by carefully emphasizing aspects of a prospective BLA most attractive to a specific state, diplomats will increase the likelihood of reaching the negotiation stage as well as seeing it through to a completed agreement. Creative thinking and carefully crafted proposals will likely be required to forge a negotiation opening with the most reluctant states.

In the case of Saudi Arabia, policy makers could propose a program to return stranded and runaway workers as well as those who have overstayed their visas to the Philippines. There has been a longstanding problem in the kingdom of how to deal with stranded workers who lack the means to arrange their own return transportation.⁴⁷ By focusing on proposing a solution to something perceived as a problem by the Saudis, sufficient interest may be generated on the Saudi side to engage in negotiations. For some states the prospect of greater process efficiency or speed may work; in others, the prospect of a more controlled or orderly process of deployment may be attractive. The task of policy makers and diplomats is to determine what changes to the status quo would be appealing enough to the destination state to motivate them into engagement on BLA negotiations.

As illustrated in the previous chapters there are no clear signs that government and business relations are more cooperative regarding BLA formulation than they are across any

⁴⁷ Jerrie M. Abella, "Some 800 Filipinos still stranded in Jeddah – OWWA," *GMA News.TV*, August 15, 2010, <http://www.gmanews.tv/story/198618/some-800-filipinos-still-stranded-in-jeddah-owwa>.

area of the overseas employment program. Predictably, there is even open antagonism toward agreements which exclude the private sector entirely, as in the Korean case above. While the Japanese and Korean agreements exclude private sector participation in the sending state, the agreements with the Canadian provinces, the United Arab Emirates, and Bahrain all allow the private sector to fulfil a role within the agreement structure. Through the relationships that they have cultivated with businesses in destination states, the Philippine recruitment industry could be a valuable resource for policy makers and diplomats in helping to create a demand for improved bilateral labor relations. If there was a new focus on enticing reluctant states into BLA negotiation through an emphasis on the benefits to those states, perhaps the recruitment agencies with their networks and contacts in destination states could help negotiators in the DFA and DOLE determine which types of changes to the bilateral labor relationship might prove attractive enough for them to reciprocate with enhanced welfare protections for workers. Many such relationships run deep, and have been forged over the nearly four decade history of the program. As we saw in the case of Japan, it was the Japanese healthcare industry that pushed the national government to move forward on formalizing the bilateral labor relationship in order to expedite and streamline the process of finding, verifying, and placing workers as quickly and efficiently as possible. Rather than allowing BLAs to become a wedge issue driving them apart, the relationship between government and business could prove to be the government's most valuable resource in successfully completing ever more mutually beneficial agreements.

Recent developments have shown that the Saudi Arabian elephant in the room is beginning to be noticed by Philippine policy makers. In January 2011, the House of Representatives

Committee on Overseas Workers Affairs issued a report entitled *Final Report of the Investigating Mission of the Committee on Overseas Workers' Affairs to Saudi Arabia*. The report they produced is perhaps the most in-depth exploration of the Saudi-Philippine bilateral labor relationship, and specifically the myriad of problems facing OFWs in the kingdom, conducted by politicians since the beginning of the overseas employment program. Following a detailed breakdown of a number of the most serious issues facing OFWs in Saudi Arabia, the committee made 12 recommendations to the Philippine government. The first three recommendations have particular relevance for this chapter's topic:

1. Decertify Saudi Arabia as a country fit to receive domestic workers in accordance with Section 3 of Republic Act 10022, which states that "the Department of Foreign Affairs, through its foreign posts, shall issue a certification to the POEA, specifying therein the pertinent provisions of the receiving country's labor/social law, or the convention/declaration/resolution or the bilateral agreement/arrangement which protect the rights of migrant workers."
2. Urgently press the Saudi government to negotiate a bilateral labor agreement with the Philippine government that would secure respect and iron-clad protection for the rights of all classes of Filipino overseas workers. This recommendation of the earlier mission to Saudi Arabia consisting of Reps. Rufus Rodriguez, Luz Ilagan, and Carlos Padilla (Nov 2009) is one that our mission strongly reiterates.
3. Coordinate with other labor-sending countries such as Indonesia, Sri Lanka, and India to gain leverage vis-a-vis Saudi Arabia in order to secure respect for overseas workers' rights.[Sic]⁴⁸ (Please see Appendix 2 for a complete list of the committee's 12 recommendations)

The committee has taken a strong stance from the outset (recommendation 1 above) calling for Saudi Arabia to be declared unfit "to receive domestic workers" citing provisions in RA

⁴⁸ Philippine House of Representatives, Committee on Overseas Workers' Affairs, *Final Report of the Investigating Mission of the Committee on Overseas Workers' Affairs to Saudi Arabia*, (Quezon City, Philippines 2011).

10022 as discussed in Chapter Five. This recommendation is significant as the number of vulnerable lower skilled workers, domestic workers in particular, is high in the kingdom (as attested by Ambassador Antonio Villamor, quoted at the outset of this chapter). Although comprehensive statistics (new hires and rehires) are not available, we know that there were 6,954 newly hired domestic workers deployed to Saudi Arabia in 2009, with many thousands more likely re-deploying for domestic work.⁴⁹ Thousands of additional lower skilled workers deployed and re-deployed in 2009, meaning that the at-risk “low-skilled” worker pool could be quite large if the ambassador’s “30%” lower skilled worker figure is extrapolated to the 1.1 million (2008) total OFW stock in Saudi Arabia.⁵⁰ Banning domestic work in the kingdom could potentially impact tens of thousands of OFWs. If this recommendation was implemented, it is likely that there would be considerable outcry from domestic workers in Saudi Arabia who have not experienced hardship or persecution, as well as opposition from the recruitment agencies who specialize in deploying domestic workers to the kingdom.

Recommendation 2 confirms the assertion put forth in this chapter that forging a BLA with Saudi Arabia is an increasingly important policy imperative that must be pursued aggressively. This recommendation will likely be welcomed by NGOs and individual OFWs, but does not provide recommendations as to how diplomats might find success in attracting Saudi Arabia into negotiations. Likewise, recommendation 3 is an excellent idea but seems to frame the bilateral (or should other states get involved in negotiations, multilateral) relationship with Saudi Arabia as a zero-sum game. As argued throughout this chapter, further steps and new creative approaches are required. In this regard the House

⁴⁹ Philippine Overseas Employment Administration. *Overseas Employment Statistics*, 2009, http://www.poea.gov.ph/stats/2009_OFW%20Statistics.pdf.

⁵⁰ Philippine Overseas Employment Administration, *Stock Estimates of Filipinos Overseas*, 2008, http://www.poea.gov.ph/stats/stock_est_2008.pdf.

committee has neglected the basic need in diplomacy for each side to perceive a benefit or gain in order for them to be willing give up something, in this case a certain amount of sovereignty for Saudi Arabia. While it would be useful for Philippine negotiators to team up with like-minded diplomats from “Indonesia, Sri Lanka, and India”, if they are not collectively proposing something that will bring tangible benefits to the Kingdom of Saudi Arabia, such as those things identified in this chapter’s case studies, what reason does the kingdom have to negotiate, notwithstanding the numbers of sending states facing them in solidarity across the table? A better balance can be achieved in using the tools of marketing and diplomacy to entice Saudi Arabia into a mutually beneficial agreement, rather than an over-emphasis on leverage and turning what should be an effort toward creating mutual benefits into a confrontational exercise. Leverage, of course, will and should be used in the negotiations, but need not be the only mechanism by which agreements are pursued.

An interesting area for future research would be to gauge the feelings and opinions of the migrants themselves toward the agreements they are operating under, especially the new efforts at improving efficiency. It will be important to track the statistical data coming out of states where BLAs have been implemented to find out what if any changes they have had to migrant trends and remittance figures. The Philippines might also concentrate on more effective use of remittance incomes on the return side to leverage development at home. Within the framework of bilateral labor agreements, the Philippine government could establish mechanisms to incentivize remittance dollars for small business investment or migrant savings schemes. This would allow the domestic economy to grow in a more focused way rather than by spending remittance dollars on household consumption.

Overseas Filipinos could then become investment partners and stakeholders in developing the domestic economy.

Chapter Seven: Comparative Approaches to Migrant Labor Programs

This chapter analyzes three overseas employment programs from a comparative perspective. As one of East Asia's newly industrialized economies, Korea historically participated in overseas labor migration on a grand scale not dissimilar to that of the Philippines. There are striking similarities between the objectives of Korea's overseas employment program and the one undertaken by the Philippines. There are also stark differences, chief among them is that by the late 1980s Korea all but discontinued exporting workers and by the early 1990s had become a net importer of labor. This chapter endeavors to explore the similarities and differences of overseas employment policy approaches between Korea and the Philippines, with the goal of understanding what if any successful elements of the Korean approach could enable Philippine policy makers to improve national the developmental economic benefits of the overseas employment program. In addition to a comparative analysis of Korea's program, overseas employment program structures and strategies utilized in Indonesia will be explored as a counter-point example. By investigating the various program arrangements in place across three states, I will seek insights into what policies have been successful, as well as how some states have pioneered innovative approaches to program management and benefit maximization. Special attention will be paid to the interplay between government and business in relation to the framework established in Chapter Two. This chapter argues that although it will be difficult for the Philippines and Indonesia to replicate the development success achieved in Korea, the application of selected strategies and techniques utilized in Korea's earlier overseas employment program could help bring better coordination of overseas employment programs with national economic development outcomes.

Korea

Program History

Academic interest in the topic of out-migration from Korea almost perfectly mirrors the phenomenon's rise and fall. That is, during the period in which Korea was a net-labor exporter, there was interest in the phenomenon from scholars. In the years since Korea became a net-labor importer, research focus has shifted to this more recent phenomenon, with little to no research being published looking at the out-migration period as a whole, from a historical perspective. Similarly, there has been little effort to situate the now discontinued program within Korea's larger economic development strategy. Shortly before the transition, Oh-Seok Hyun, director of the International Economic Policy Division of the Economic Planning Board (EPB) published perhaps the most comprehensive analysis of the role out-migration played in Korean economic development. A key objective of his study mirrored one of the objectives of this dissertation, namely "to deal with strategic policy issues including policies for maximizing the impact of remittances on development with respect to the Korean economy and mechanisms for integrating the migration phenomenon into the process of national development plans and policy formulation."¹ Shortly after his study, Korea transitioned away from the large-scale exportation of laborers, but the objectives he identified have yet to be acknowledged or pursued in the Philippines. Consequently, understanding the rise, decline and ultimate discontinuation of overseas labor migration from Korea could provide valuable insight toward an understanding of how

¹ Oh-Seok Hyun, *The Impact of Overseas Migration on National Development: The Case of the Republic of Korea, from To the Gulf and Back: Studies on the Economic Impact of Asian Labour Migration* (New Delhi: Asian Employment Programme, 1988).

the Philippines' overseas employment program might be better utilized as a component of a larger national economic development strategy.

The story of Korea's overseas employment program began with the Park Chung-Hee's rise to power through political coup in 1961. As head of the military junta (before his formal election in 1964) Park's government immediately set to work reforming national development strategy, starting with a shake-up in the relationship between government and business. Haggard et. al. described the junta's initial out-reach toward the business community:

Two weeks after the coup, thirteen major businessmen were arrested. Although eight of these were induced to make large "contributions" to the government and were released, the investigation was broadened to include another hundred and twenty businessmen. The definition of "illicit" wealth covered the entire range of rent-seeking and rent-granting activities that had been pervasive, if not unavoidable, under Rhee: illegal contributions to political funds; illicit purchase of vested properties; profiteering from preferential access to government contracts and loans; and misallocation of foreign funds. Though the government seized all outstanding shares of commercial bank stocks, thus gaining control of a powerful policy instrument, it compromised with large manufacturing and construction firms. In August 1961, the final decision of the investigation committee demanded that thirty entrepreneurs refund an amount that was much lower than the initial estimates of illegally accumulated wealth. The reason for this shift in policy is summarized neatly by Kim Kyong-dong: "the only viable economic force happened to be the target group of leading entrepreneurial talents with their singular advantage of organization, personnel, facilities and capital resources" (Kim 1967:470).²

In order to legitimize their revolution, Park's regime needed to penalize the business community for their perceived wrongs and collaborative corruption with previous governments. However, had they taken any meaningful punitive actions against the

² Stephan Haggard, Byung-kook Kim, Chung-in Moon, "The Transition to Export-led Growth in South Korea: 1954-1966," *The Journal of Asian Studies* 50, no. 4 (1991): 858-859.

prominent business leaders identified through the commission, this might further harm the country's economic prospects as well as their own developmental strategies.

Rather than continuing on the path of import substitution industrialization (ISI), pioneered under Syngman Rhee (1948-60) and continued by his successor Yun Bo-seon (1960-62), Park pursued an export-oriented industrialization strategy (EOI) and relied on the same business people who his commission had investigated for corruption to accomplish his goals.

Additionally, Park and his junta had to figure out how they could enact the structural and strategic changes to the nation's economy without going through the enormously difficult task of completely rebuilding Korea's government institutions and bureaucratic structures. To accomplish this, their "approach was to use the existing governmental apparatus, but to superimpose on top of it the Supreme Council for National Reconstruction and to appoint military men to key positions throughout the administrative structure."³

As described in Chapter Two, key among the recommendations made by the new Supreme Council for National Reconstruction was the introduction of the EPB which would sit at the apex of the bureaucracy, enabling it to both make macro-economic decisions for the country as well as enforce its policy objectives through oversight.

From its initiation, the EPB came to have a powerful say over other ministries through the budget. The EPB's Bureau of Budget prepares the broad guidelines for the annual budget, collects annual proposals from the other ministries and evaluates their feasibility. The EPB's power lies in its ability to designate specific projects for which other ministries prepare the budgetary implications and, above all, in its power to adjust the budget estimates submitted by the ministries. A capital import bureau was also established in 1961, and the EPB's power extended to the area of foreign borrowing. European investors refused to lend unless the government extended guarantees on loan repayment. Seeing an opportunity to further expand the

³ Haggard et. al., "The Transition to Export-led Growth in South Korea," 860.

EPB's powers, the Bureau of International Cooperation, which oversaw aid relations and was the dominant bureau throughout the early 1960s, persuaded Park to establish more extensive controls on the import of foreign capital. In July 1962, the EPB was given the power to extend government guarantees to loans and to audit and oversee the activities of the borrowing firms. Finally, the EPB was given the power to select those capital goods imports and importers which qualified for government-aided deferred payment privileges. When coupled with new laws that transferred the power to approve and extend incentives to foreign direct investment from the Ministry of Finance to the EPB, the new ministry effectively gained complete control over Korea's import of foreign capital. These laws naturally gave the EPB a strong say over the money supply and industrial policy as well. In 1963, the special status of the EPB within the cabinet was further enhanced when its minister was also given the title of Deputy Prime Minister.⁴

Although it may not seem immediately clear how Park's imposition of the EPB and structural administrative changes are relevant to Korea's overseas employment program, these changes and institutional arrangements put in place the necessary foundations to support Korea's new EOI strategy from which, as we will discuss below, workers became one of those exports.

Between 1962 and the mid-1960s there were several programs that sent Korean workers overseas. In 1962 for example, "an agreement between the governments of Germany and the Republic of Korea made it possible for 247 young Koreans to work as miners in Germany."⁵ Later, as many as 10,000 Koreans worked on various projects in Vietnam for the United States.⁶ These early out-migration experiences were only a glimmer of what was to come for Korean workers. Like the Philippines, Korea's foray into overseas labor migration only really started once the oil boom of the early 1970s was underway.

⁴ Ibid., 860.

⁵ Hyun, *The Impact of Overseas Migration on National Development*.

⁶ Ibid.

Through their newfound authority Park and the EPB (as mentioned above and in Chapter Two) were able to steer business decision making through incentives, loans, threats, and other methods to pursue export-oriented economic opportunities. One such opportunity identified and pursued by the EPB was the major construction projects going out for bid in the Middle East. Flush with “petrodollars,” Middle Eastern oil-exporting states embarked on massive infrastructure projects which far exceeded their own construction and manpower supply. The scale of the petrodollar spending by oil-exporting states was remarkable with nearly \$301.8 billion dollars spent on a variety of “physical and social infrastructure” projects between 1974 and 1986 in Saudi Arabia alone.⁷ Like the overall national economic EOI strategy, the “export” opportunity identified by the EPB in regard to the Middle East oil boom was Korean construction expertise.

A fundamental difference between the approach of Korea when compared with the Philippines was the “packaged” corporate nature of the laborer sending process utilized by Korean construction firms. While the Philippines engaged in “manpower only” exchanges between foreign employers and Philippine recruitment agencies, Korea offered all-inclusive “arrangements through which firms would contract not only to supply materials and design and supervision but also the workers required and to care for these workers off the job.”⁸ This approach is consistent with the export-oriented nature of Korea’s economic development strategy, and also demonstrates that overseas labor migration from Korea was a component of a larger economic approach to national development. The Korean “model” of sending migrants was inherently corporate in nature. The same chaebols (business

⁷ Chung In Moon, “Korean Contractors in Saudi Arabia: Their Rise and Fall,” *The Middle East Journal* 40, no. 4 (1986): 614.

⁸ Robert LaPorte Jr., “The Ability of South and East Asia to Meet the Labor Demands of the Middle East and North Africa,” *Middle East Journal* 38, no. 4 (1984): 705.

conglomerates) that dominated Korean business and industry, and through which Park and the EPB pursued their policy objectives, aggressively pursued international construction contracts throughout the Middle East at the encouragement of government economic planners. Disney explained that “in 1966 South Korea won a mere \$11 million in construction contracts from the Middle East...[but that] between 1973 and March 31, 1977 South Korea had signed \$4.2 billion [cumulatively, not annually] worth of construction contracts in the Middle East.”⁹

With the organizational might of the chaebols behind the effort to dominate booming construction demand in the Middle East, the numbers of Korean workers deployed to the region to work on large-scale projects likewise boomed. The types of workers ranged widely and included both highly skilled workers, low-skilled laborers, as well as managerial and support staff. While discussing Korea’s chaebol corporate style to doing business, Cumings described their method toward overseas labor migration:

This extreme form of corporatism is perhaps best seen in the masses of construction teams that Hyundai has long sent to the Middle East; every worker would depart in Hyundai T-shirts and caps carrying Hyundai bags, would live and eat in Hyundai dormitories, and would use Hyundai tools and equipment to build Hyundai cities in the desert.¹⁰

Deployment statistics (see Table 7.1 below) show a massive increase in the number of workers going to the Middle East during the oil boom years, coinciding with increasingly aggressive pursuit of contracts by Korean construction companies. The final destination for approximately 70 percent of all overseas Korean migrants was in fact to the Middle East.¹¹ Although Middle Eastern states were perfectly eager to allow foreign companies to build the

⁹ Nigel Disney, “South Korean Workers in the Middle East,” *MERIP Reports*, no. 61 (1977): 23.

¹⁰ Bruce Cumings, “The Korean Crisis and the End of ‘Late’ Development,” *New Left Review* 231 (1998): 64.

¹¹ Hyun, *The Impact of Overseas Migration on National Development*.

infrastructure required across the Middle East, there was some trepidation about having so many foreign workers entering the region without guarantees that they would leave once the projects were completed. This problem persists today in places like Saudi Arabia (see Chapter Six). The Korean model of packaging all aspects of the construction project, including the laborers, was attractive to states that feared being overrun by foreigners. Halliday explained that:

Sensing a long-term danger, Saudi Arabia, like Kuwait, seeks to contain the flood as best it can. That is why it likes the new-style Korean contracts. The contractor brings his entire workforce with him. He takes it away when the job is done. The Koreans have next to no contact with the local population while they are there.¹²

Table 7.1

Trends in Korean Overseas Migration											
	Year										
	1963-76	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Land-based	93,049	55,549	91,829	100,403	124,787	147,558	165,603	153,085	118,606	81,030	52,524
Sea-based	59,002	14,074	18,169	20,587	21,649	27,556	31,252	31,192	34,067	39,215	42,751
Total	152,051	69,623	109,998	120,990	146,436	175,114	196,855	184,277	152,673	120,245	95,275

Source: Korean Ministry of Labour, adapted from Hyun, Oh-Seok, (1989) pp. 146.

It should be noted, that not all Korean migrant workers deployed overseas worked for Korean companies. There was a sizeable number of workers who deployed to work for other foreign firms, including international shipping companies. In these cases, the Korean government exercised a great deal more involvement in these contracts than is the case in most “manpower only” sending states. Arnold and Shah described the high level of oversight the Korean government exercised over foreign companies hiring Korean workers.

In Korea, for workers employed by non-Korean firms, the Ministry of Labor examines contract conditions in terms of wage levels, duration of the contract, working hours, casualty insurance, transportation costs and living

¹² Fred Halliday, “Labor Migration in the Middle East,” *MERIP Reports*, no. 59 (1977): 6.

conditions before it gives contract approval to KODCO (the Korean Overseas Development Corporation), one of the two recruiting agencies for workers employed by foreign companies in Korea. Furthermore, the Korean government has set minimum requirements for accommodations, toilet facilities, sports and recreation facilities and drinking water in the camps and has forbidden workers to form labor unions while abroad.¹³

This is a major departure from the weak oversight exercised by the Overseas Development Board in the Philippines during the 1970s, but may have been due to the types of Korean workers foreign employers were wishing to deploy. If these workers were skilled, highly valued or desperately needed abroad then the Korean government could make these demands without significant objection. Given that the Philippine work force consisted largely of low-skilled laborers, it is hard to see that such demands could have been made on employers. Although we do not have a clear picture as to the level of skill levels of Korean workers deployed by foreign firms, we do however know what types of workers were deploying through Korean firms.

Migrant workers employed by Korean firms include two categories of workers: regular employees posted to the branch offices and temporary workers who are employed on a contract basis only for the duration of overseas work. Both types of workers are housed in the same work camp without exception. However, the two groups differ in many respects. The former consists mostly of non-manual workers such as executives, managers, engineers and clerks, while the latter consists entirely of manual, mostly skilled labourers ... the former the regular staff of the company, represent the authority at the work camp while the latter are subordinates.¹⁴

As illustrated in the quote above, although there were both permanent and temporary Korean workers constructing Middle East infrastructure, the vertically integrated structure of the "Korean Model" meant that despite the authoritative and subordinate roles of

¹³ Fred Arnold and Nasra M. Shah, "Asian Labor Migration to the Middle East," *International Migration Review*, 18, no. 2 (1984): 313.

¹⁴ Hyun, *The Impact of Overseas Migration on National Development*.

migrant workers, they were all working for the same single company operating under the oversight of the Korean government.¹⁵ No middlemen or third party destination state businesses complicated the arrangement nor added costs to either the employer or migrants themselves.

By the late 1970s Korea's packaged approach to overseas construction projects had won them a dominant position in the Middle East construction boom. As part of packaged projects, the numbers of Korean workers in the Middle East rose steadily throughout the 1970s and into the 1980s (see Table 7.1). By the early 1980s, however, the seeds for the programs ultimate demise began to be noticeable. This was due largely to rising domestic wages associated with the meteoric improvement in the Korean economy. As the economy boomed, wages rose and the relative advantage of taking contract labor abroad eroded. A further reason for the decline was the Korean government's implementation of stricter guidelines on what types of skilled laborers could and could not be deployed overseas. This was due to rapidly increasing domestic demand for certain types of skilled workers. If critical skilled workers had been allowed to continue going abroad, this could have undermined the EPB's economic development strategy. As seen in Table 7.1 above, the numbers of deployed Korean workers declined rapidly after 1983, likely due to the decline of oil prices in the early 1980s resulting in fewer construction projects in the Middle East. With rising wages in Korea, lower wage economies such as the Philippines, Bangladesh, and Indonesia became increasingly more competitive.

¹⁵ *Vertical Integration* refers to a type of corporate organizational structure where many aspects of a particular business, industry, or supply chain are owned and utilized by a single company. In the case of Korean construction companies in the Middle East, this means a single company provided the materials, expertise, management, laborers, and tools to complete an infrastructure project.

Korea's transition from "labor exporter" to "net-labor importer" took place between the late 1980s and early 1990s and occurred for a variety of reasons. Primary among the reasons was the aforementioned rise in domestic labor costs, although some scholars have argued that the decline in the number of large construction projects in the Middle East was also to blame.¹⁶ Regarding this transition period, Kim explained that:

During the rapid industrialization period of the 1960s–70s, South Korea was a typical example of a labor force exporter country, sending workers to the U.S., Germany, Japan, and the Middle East. However, rapidly increasing domestic wages and the population's reluctance to engage in so-called 3-D jobs ("dirty, difficult, and dangerous") as an unpleasant concomitant aspect of South Korea's remarkable economic growth has resulted in a shortage of necessary labor power in some manufacturing sectors, particularly those that affect small firms in labor-intensive, service areas.¹⁷

This did not however spell the end of Middle East construction projects for Korean companies, as they continued to pursue major regional opportunities (see Table 7.2 below). Due to higher wages in Korea, they needed to hire less expensive workers in order to stay competitive, resulting in the recruitment of a variety of workers from both South and Southeast Asia. Throughout the 1980s and into the early 1990s the ratio of Korean workers versus workers from other countries on Korean construction projects dropped markedly as demonstrated in Table 7.2 below.

¹⁶ Sooyong Kim, "The Korean Construction Industry as an Exporter of Services," *The World Bank Economic Review* 2, no. 2 (1988): 234.

¹⁷ Wang-Bae Kim, "Migration of Foreign Workers into South Korea: From Periphery to Semi-Periphery in the Global Labor Market," *Asian Survey* 44, no. 2 (2004): 317.

Table 7.2

Korean/Foreign Worker Employment Ratio in South Korean Overseas Construction Projects						
	1980	1983	1986	1989	1992	1994
Korean Workers %	89.1	72.9	57.3	33.8	18.9	12.9
Foreign Workers %	10.9	27.1	42.7	66.2	81.1	87.1

Source: Korea Overseas Construction Association, Adapted from Kybang, Lee, *South Korean Construction Industry in Southeast Asia*, pp. 147 from *ASEAN and Korea: Trends in Economic and Labour Relations* by Siregar, Reza Y., 1997.

Developmental Contributions

The corporate approach to overseas labor migration has both advantages and disadvantages that can be easily identified throughout Korea's experience in the Middle East. Among the advantages is low-uncertainty from the workers perspective in regard to what the circumstances and particulars of his or her work will be in the foreign state. This can be attributed to the package style utilized by the Koreans. By keeping the contractual agreement between an employee and a single domestic employer, subject to the jurisdiction and oversight of the Korean government, it is possible to avoid abuses, contract violations, and related problems that plague the "manpower only" model utilized by the Philippines, Indonesia, and other states. The worker further has all of their personal needs (food, shelter, recreation) provided through their Korean employer. Expenses related to transporting the worker to and from the destination state were also shouldered by the employer, further reducing the workers up-front financial burdens. An additional advantage to Korean workers was that by deploying together, workers were not required to learn a new language in order to interact with workers from different states. They were also more likely to cultivate camaraderie and even friendships among their countrymen/co-workers, which likely contributed to higher morale and job satisfaction.

As mentioned above, the vertically integrated structure of Korean construction companies provided some advantages to the arrangement, particularly in terms of strict government regulation over all stages of the process such as living conditions, contract standards, working conditions, and wages. LaPorte explained that:

By using the enclave-type contract approach, the Korean government attempts to ensure that the maximum economic benefit from overseas employment accrues to the government, while concern for the safety and welfare of its overseas workers contributes to worker productivity and quality control. These factors in turn contribute to improved managerial control and hence improved management efficiency, since direct government involvement in the contracting and recruiting of qualified workers leaves little to chance.¹⁸

Many of the problems which plague migrant-sending states stem from the multi-tiered nature of overseas employment and the inability to implement effective oversight at the various levels of the process when workers are deployed through the “manpower only” model. Keeping structural program arrangements “all-inclusive” appears to diminish many of the worst aspects of overseas labor migration. This is not to say, however, that the approach is not without its disadvantages.

The disadvantages to the Korean model were numerous, and varied widely from social and cultural challenges to economic difficulties. Preeminent among the disadvantages was the hard existence of being a worker in the Korean labor camps. Although their needs were met, the rigor of the work and living conditions were hard. After describing a program where Korean soldiers could receive an early discharge from military service by working overseas, Disney described conditions in Korean construction work camps in the Middle East.

¹⁸ LaPorte, “The Ability of South and East Asia to Meet the Labor Demands,” 707.

Once they get to the Middle East, these ex-soldiers will find life little different from that in the army. The workers are housed in isolated compounds built by the construction firms where they are supplied with Korea food, tapes of Korean TV shows and cassettes of Korean music. They are isolated from other workers, both from the indigenous population and from other countries, and from any danger of political 'infection'. At one stage, South Korean workers marched to job sites in military formation wearing their job uniforms.¹⁹

The isolation and difficulty associated with adapting to this military-style work and living environment must have made the experience even more difficult for some workers. In 1977, the Korean government and construction companies responded quickly to improve conditions in the camps after Korean workers rioted and caused damage to the port they were constructing in Saudi Arabia.²⁰ In response conditions, wages, and other creature comforts were improved for workers although the mythos of the unflinchingly diligent and long-suffering Korean laborer was shattered.

Another disadvantage, not unique to the Korean case, was the difficulty faced by workers after they returned home to Korea. Many workers found it challenging to re-integrate into Korean society at large, or even their own family, as well as the more practical difficulty of finding a job once back home. Some of these complications were perhaps exacerbated by the highly regimented, if not militaristic, conditions returning migrant workers had grown accustomed to while abroad. To combat the problem of securing employment once back home, the Korean government "launched an experimental retraining programme in early 1986 for displaced workers with vocational training centre facilities."²¹ Additionally, the climate of the Middle East was significantly different from that to which workers were accustomed. Hard physical labor in such a demanding climate meant that returning workers

¹⁹ Disney, "South Korean Workers in the Middle East," 23-24.

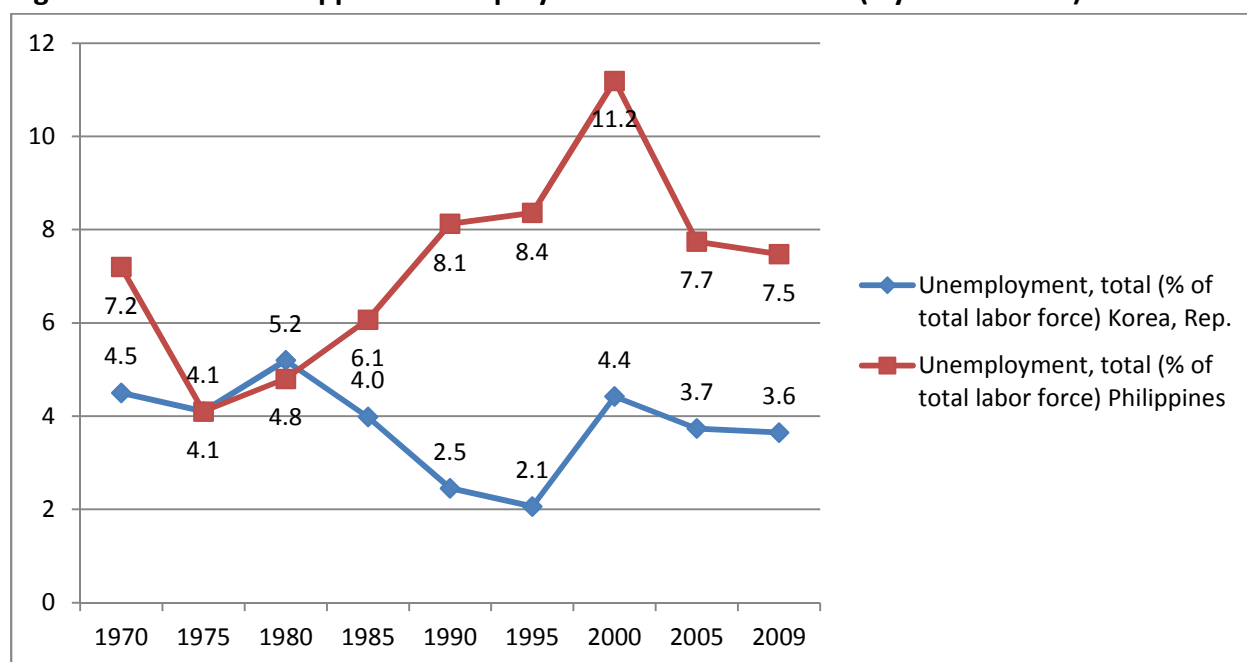
²⁰ Ibid, 23.

²¹ Hyun, *The Impact of Overseas Migration on National Development*, 161.

often reported “deteriorating health” problems.²² The “3-D” (Difficult, Dirty, Dangerous) nature of the construction work in the Middle East may have exacerbated the health impacts on migrant Korean laborers.

Figure 7.3 below illustrates the unemployment rates in both the Philippines and Korea. Between 1980 and 1990, it can be observed, Korean unemployment dropped from 5.2 percent to 2.5 percent. As the booming Korean economy drove domestic labor demands ever closer to full employment wages and competition for workers increased, thus decreasing wage incentives for Korean workers to go overseas.

Figure 7.3: Korea - Philippines Unemployment Rate 1970 - 2009 (5 year intervals)



Source: 1980-2009 World Bank, Korea 1970 & 1975 Hyun, 1989, Philippines 1970 & 1975, Solon & Floro 1993.

The issue of wages cannot be overstated in its importance to the overall decline of out-labor migration from Korea. As illustrated in Table 7.4 below, from 1976, when Korean labor migration started to experience its largest yearly increases, until 1983 when the phenomenon began to decline steadily, the wage variation between Middle Eastern versus

²² Ibid.

domestic employment dropped from an average of 4.1 times the domestic rate down to 2.7 times the wages for the same jobs in Korea. Thus, the “3-D” jobs abroad transitioned away from Korean to foreign migrant workers, as Korean workers demanded prohibitively high pay to do such work.

Table 7.4

Comparison of Wages of Domestic and Overseas Employment						
(Unit: 1000 Won)						
	1976			1983		
	Middle East (ME)	Domestic (D)	Difference (X higher)	Middle East (ME)	Domestic (D)	Difference (X higher)
	Total Wage	Total Wage	ME/D	Total Wage	Total Wage	ME/D
Odd-jobman	-	54.3	-	459.3	155.8	2.9
Carpenter	339.7	62.9	5.4	522.2	262.3	2
Electrician	314.3	89.8	3.5	573.2	165.8	3.5
Welder	328.4	64.4	5.1	614.7	218.8	2.4
Piping Worker	294.7	92.1	3.1	572.6	210.4	2.7
Other Const'n						
Skilled worker	285.8	86	3.3	555.4	200	2.7
Heavy Equip't						
Operator	363.4	84.5	4.3	667	283.4	2.4
Average	321.1	76.3	4.1	566.3	213.8	2.7

Note: Wages in 1976 are for employees working only in the Middle East. Wages of overseas employees in 1983 are for employees working in all foreign countries.

Exchange rates: 1\$: 485 Won in 1980, 1\$: 761 Won in 1983.

Source: Park and Chae (1984), adapted from Oh-Seok Hyun, pp. 161, 1989.

By the early 1990s, Kim explained, it was “not an exaggeration to say that South Korea has begun to enter the advanced country syndrome, where cheap labor acquired from other countries becomes necessary due to acute domestic labor shortages.”²³ In 1990, only “56,000 Korean workers went abroad, a reduction of 72 percent compared to 1982, the peak year for overseas migration of Korean workers.”²⁴

²³ Kim, “Migration of Foreign Workers,” 317.

²⁴ UNESCO, *Issues Paper From The Republic of South Korea*, Asia Pacific Migration Research Network (APMRN).

As mentioned in Chapter Three, it was the lure of petrodollars that also motivated Park and Marcos to formalize their countries' involvement in the oil boom construction spree.

Speaking of the demand for skilled construction workers in the Middle East, Gibson and Graham explained that:

Skilled tradesmen such as carpenters and electricians compose a large proportion of the migrants. Filipino labor is in particular demand because workers are fluent in English and are more likely to be able to converse with the professional construction elite drawn from many different nationalities. More importantly, Filipino labor is competitively priced. In 1979 Filipinos worked for 60 percent of the wages received by South Korean laborers.²⁵

Exactly why Korean laborers were higher paid can be speculated upon, but the more important point is that Filipino workers were perceived as valuable workers because of their ability to speak English as well as the relatively low cost of employing them. Korean workers may have been more expensive due to the higher wages they negotiated in order to make working abroad justifiable from their perspective, especially as the domestic labor market became more competitive, whereas Filipino workers had fewer domestic employment options and were thus willing to take work abroad for less.

Perhaps the most important direct developmental benefit of Korean overseas migration was the remittances that workers sent home. In 1976, before domestic wages caught up (see Table 7.4 above), a carpenter working overseas could expect to make 5.4 times the wage of a carpenter performing the same labor back home. By 1983 however, this same carpenter was only making double the domestic carpenter's wage which might have made the hardships associated with working abroad less bearable. Simply put, wage incentives for

²⁵ Katherine Gibson and Julie Graham, "Situating Migrants in Theory: The Case of Filipino Migrant Contract Construction Workers," *Capital & Class* 10, no. 2 (1986): 48.

seeking work abroad decreased dramatically as domestic pay rose.²⁶ This was especially true for workers maintaining a family back home. Single workers could still take advantage of higher pay rates abroad while having their living expenses covered, saving a great deal over the period of the contract.

In 1996, a year prior to the financial crisis which rocked Korea as well as the rest of Asia, Chaudhuri described the remarkable transition that had been wrought upon the Korean economy.

The economic condition of South Korea in the 1950s was dismal. In fact when Park took over, the economy was passing through a severe crisis with decreasing growth and rising unemployment (Schwartz, 1989, p. 240). In the 1950s, South Korea like India was a typical low income Third World country. Today she is way ahead. ... As a result of rapid economic growth, manufacturing became more important than agriculture by the late 1980s, with the former accounting for 27.7 percent of the employment and the latter 20.7 per cent (Yoo, 1990, p. 7).²⁷

Foreign construction projects and overseas employment were clearly a component of a larger national economic development strategy in Korea. The benefits of the overseas employment program were maximized in relation to national development goals. The program itself was eventually discontinued when the benefits of continuing it diminished to the point that it no longer contributed to national economic development goals in a substantial way.

Indonesia

Relatively late in joining the labor export game, Indonesia did not begin large-scale international labor migration until the 1980s. The fact that Indonesia would get involved in

²⁶ Hyun, *The Impact of Overseas Migration on National Development*.

²⁷ Sudip Chaudhuri, "Government and Economic Development in South Korea, 1961-79," *Social Scientist* 24, no. 11/12 (1996): 18.

exporting labor is not surprising considering the religious ties the country has with the Middle East, Saudi Arabia in particular as the destination of those conducting the pilgrimage to Mecca. What is surprising, however, is the fact that Indonesia was so late to enter the labor export game. Indonesia only deployed 3,675 workers abroad in 1977, but that figure jumped to 46,014 by 1985 (see Table 7.5 below).²⁸ Since the 1980s the numbers have continued on a similar upward trajectory to the Philippines, reaching 632,172 in 2009.²⁹

Table 7.5

Number of Indonesian Workers Deployed Overseas Through the Ministry of Manpower 1980 - 2009 (5 year increments)				
Year	Middle East	Malaysia/Singapore	Other	Total
1980	7651	720	2007	10378
1985	35577	6034	4403	46014
1990	60456	18488	5130	84074
1995	99661	57390	19130	176180
2000	129160	217407	88640	435210
2005	177010	226974	70317	474310
2009	375217	156693	100262	632172

Source: (1980-2005) Anis Hanim Asyari, "Indonesia's Administrative and Legislative Measures on Labor Migration From a Rights-Based Perspective," (PhD diss, Mahidol University, 2008) / (2009) Ministry of Manpower and Transmigration, Indonesia 2011

<http://pusdatinaker.balitfo.depnakertrans.go.id/katalog/download.php?g=2&c=17>.

Similar to the situation in the Philippines, private business plays a dominant role in facilitating overseas labor migration from Indonesia. Government involvement and regulation of overseas migration has been a relatively late development. Asyari explained that "until the late 1980s, the migration of Indonesian workers took place without any significant intervention of the Indonesian government."³⁰ Many scholars (Lindquist 2010, Asyari 2008, Spaan 1994) have identified the domination of international migration from

²⁸ Anis Hamim Asyari, "Indonesia's Administrative and Legislative Measures on Labor Migration From a Rights-Based Perspective," (PhD diss., Mahidol University, 2008), 17.

²⁹ Ministry of Manpower and Transmigration, (Indonesia, 2011), <http://pusdatinaker.balitfo.depnakertrans.go.id/katalog/download.php?g=2&c=17>.

³⁰ Asyari, "Indonesia's Administrative and Legislative Measures," 19.

Indonesia by middlemen and brokers. With little government oversight these conditions fostered widespread abuses against workers seeking opportunities abroad. Similar to the black market recruiters in the Philippines, each time a broker or middleman is inserted into the deployment process prices go up, usually for the worker.

The gendered nature of migration from Indonesia is also similar to the overall picture from the Philippines, with a large number of female migrants leaving to work as domestic helpers. In 2006, “80 percent of the migrants [sent abroad] were women”, a problem that can be traced back to the 1980s.³¹ By the time Indonesia developed greater interest in pursuing overseas employment opportunities in the early 1980s, the nation faced two problems. First, other states with more firmly established presences across the Middle East (Bangladesh, Pakistan, and the Philippines) had connections and relationships, which meant they received the lion’s share of the more lucrative “highly skilled” labor contracts. Second, by the mid-1980s the explosion of construction and infrastructure projects across the region began to slow, thus increasing competition among the longer established states in the Middle East. Unable to crack the more lucrative contract labor categories but still wishing “to extend employment opportunities, to mitigate the unemployment problem, to increase skills and working experience abroad and to improve the foreign exchange position,” Indonesia aggressively pursued lower skilled domestic contract labor which was experiencing rapid increases in demand.³²

Demand for domestic workers across the Middle East and greater Asia grew steadily from the 1980s and provided foreign currency based employment for migrants willing to risk the

³¹ Johan Lindquist, “Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry,” *Pacific Affairs* 83, no. 1 (2010): 118.

³² Georg Cremer, “Deployment of Indonesian Migrants in the Middle East: Present Situation and Prospects,” *Bulletin of Indonesian Economic Studies* 24, no. 3 (1988): 78.

well documented problems associated with domestic labor. As seen in Table 7.5 above, Indonesian participation in overseas migration increased steadily throughout the 1980s and 1990s, reaching 176,180 annual deployments in 1995. Between 1995 and 2000 two related events further boosted overseas migration numbers from Indonesia. The first was the Asian financial crisis in 1997, which severely impacted the value of Indonesian currency (Rupiah), and resulted in widespread layoffs and high unemployment. The second was the 1998 downfall of President Suharto who had ruled Indonesia since 1967.

The impact the financial crisis had on out-migration is difficult to directly correlate, but from a purely numerical analysis (Table 7.5) the increase from 176,180 in 1995 to 435,210 in 2000 shows a very large increase in a short time-span. The likelihood that high domestic unemployment and a devalued national currency motivated a rapid increase in overseas employment participation is not an unreasonable conclusion to make. Nevertheless, it seems to be an assertion that can only be made tenuously considering the serious lack of data on the subject. Evidence in regard to the impact of Suharto's resignation on the management and future direction of Indonesia's overseas migration program, however, is far clearer. Throughout the Suharto period, as mentioned previously, recruitment agencies were the primary drivers of overseas migration. While there was limited governmental oversight of private sector labor recruitment prior to the 1998 end of Suharto's rule, major migration-related legislation, reform and government action have occurred since that time.

In the political turbulence of the years following the departure of Suharto a variety of migration-related reforms were implemented beginning with Ministerial Decree No. 204 (1999), which urged the "various stakeholders to undertake reform" and required them to

issue regular progress reports on their efforts.³³ Following the policy groundwork laid down in Ministerial Decree No. 204 the Ministry of Manpower and Transmigration went even further in 2002 issuing Ministerial Decree No. 104A which:

Set the tone for the development of public management of Indonesian labour migrant placements and was an early prototype for the formal recognition by the government of the need to regulate labour migration from Indonesia. Indonesian labour migrant export business circles and social networks had commenced working with national manpower officials before the regime collapsed in 1998 to outline the need to implement a policy on trade in manpower not only at the national level but on an international scale. Ministerial Decree No. 104A was thus predominantly a tool to support labour migration of Indonesian nationals while attempting to protect workers in especially vulnerable sectors by focusing on the least regulated sectors such as domestic workers and caregivers.[sic]³⁴

Both Ministerial Decree No.s 204 and 104A sought to begin a process of shifting the regulatory role of the Indonesian government over migration from one of loose oversight to one more similar to the “welfare/protection” focused regulation already in existence in other major labor exporting countries, the Philippines, in particular.

Much like the introduction of RA 8042 in the Philippines, the high point of legislative efforts to reform the overseas employment in Indonesia, and specifically government regulation over it, came in 2004 with the introduction of Law No. 39: the *National Law on the Placement and Protection of Indonesian Overseas Workers*. Ananta argued that the three-part mission of Law No. 39 was “to bring about (1) better management of migration flows (2) [the] establishment of institutional mechanisms for the placement and protection of

³³ International Organization for Migration, “Labour Migration From Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East,” *International Organization for Migration* (2010): 12.

³⁴ Ibid.

Indonesian migrant workers; and (3) advocacy.”³⁵ Structurally, Law No. 39 created the Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (National Agency for Placement and Protection of Indonesian Overseas Workers or BNP2TKI), a national body dedicated to managing the overseas employment program under the direct supervision of the president. Prior to the creation of BNP2TKI under direct control of the president, the Centre for Overseas Employment (1984-1994) and the Directorate of Overseas Manpower Services (1994-2007) operated as appendages to the Ministry of Manpower.³⁶

The primary focus of Law No. 39, as the new “keystone” legislation for the Indonesian overseas employment program, seems to be a new emphasis on an enhanced yet flawed worker welfare focus and program efficiency improvements aimed at addressing the old goal of utilizing overseas employment to reduce domestic unemployment.³⁷ Clearly absent from the post-Suharto reform era is any coherent legislative or bureaucratic attempts to place Indonesia’s rapidly growing overseas employment program, and its subsequent remittance income, into a national development strategy framework as was done in South Korea. Also conspicuously absent from the reformed overseas employment program bureaucracy is any association with the Indonesian equivalent of Korea’s EPB which could coordinate all economic activities at home and abroad in order to maximize their developmental potential for Indonesia.

Unfortunately for individual migrants early reports of the effectiveness of the new worker welfare focus have been less than outstanding. Citing 2006 remarks given by Indonesian President Susilo Bambang Yudhoyono, Ananta explained that “there [have] been many

³⁵ Aris Ananta, “Estimating the Value of the Business of Sending Low-Skilled Workers Abroad: An Indonesian Case,” Paper presented at the *International Population Conference*, Marrakech, Morocco (2009): 4.

³⁶ The Indonesian name for the Centre for Overseas Employment is Pusat Antar Kerja Antar Negara while the name for the Directorate of Overseas Manpower Services is the Direktorat Jasa Tenaga Kerja Luar Negeri.

³⁷ International Organization for Migration, 14.

brokers operating in both departing and returning overseas workers, that those brokers and sponsors had created vulnerability and discomfort [for] the overseas workers ... for instance, there [has] been many cases of falsification of documents, too high fees, illegal fees, and illegal placement of overseas workers.”[sic]³⁸ The International Organization for Migration (IOM) has been critical of the structures and new policy emphasis enshrined in Law No. 39, stating that:

Despite recent initiatives at the national level, government reforms have, overall, been ad-hoc in nature and have not constituted a coherent and comprehensive strategy towards addressing the many complex issues pertaining to labour migration management in Indonesia, especially the protection of labour migrants’ rights and the extent of irregular migration. National Labour migration laws and policies in Indonesia are still primarily concerned with reducing local unemployment, and thus tend to focus more on facilitating the outflow of migrant labour rather than creating a protection mechanism for migrants.³⁹

Improvements are clearly being made but there is a desperate need in Indonesia for both improved worker protections as well as strategic alignment between the program and the national economic development strategy.

Conclusion

While the Philippines, Korea and Indonesia are vastly different states with divergent histories, religions, and cultural heritages, each has engaged upon a path of economic development, and each has at one time engaged in a formalized overseas employment program with some degree of governmental involvement or oversight. The fact that Korea is no longer a net exporter of migrant labor but rather a net importer actually makes its inclusion in the analysis particularly valuable. One of the purposes of this chapter was to

³⁸ Ananta, “Estimating the Value of the Business,” 6.

³⁹ International Organization for Migration, 14.

discern what steps, events, decisions, led to this transition and whether or not Korea's migration program directly contributed to that country's rise from developing to developed nation status.

In exploring these questions, some answers were forthcoming while others remain elusive. In regard to the question regarding the role overseas employment played in Korea's economic development, there can be no doubt that the overseas employment program did aid in national economic development efforts. However the extent of the aid rendered through direct remittances seems less crucial than the "total-package" approach to overseas construction projects pursued (at the Korean government's request) by Korean construction firms utilizing Korean laborers. In Korea, the EPB incentivized the private sector into moving in directions most in line with their economic goals. This same principle applied to the types of skills and experiences planners desired Korean migrant workers to gain while abroad. They closely regulated the type and number of migrants allowed to go abroad, thus preventing any possibility of strategically important worker shortages or brain drain. This was particularly important for Korea as the bulk of their developmental efforts were not through migration but domestic industry and manufacturing.

The Philippines, when compared with cases used in this chapter, falls as a middle example of an organized approach to managing an overseas employment program but without clear overarching goals to guide the program within a larger development framework, as was the case in Korea. Though originally motivated by the same desires to reduce domestic unemployment pressures that motivated Indonesia and to some extent Korea, the original temporary intent of the overseas employment program in the Philippines has become "permanently temporary" (described in Chapter Three). This has created an intense

dependence on the program for the health of the national economy. In contrast to Korea, the Philippines not only has less bureaucratic capacity but also a total absence of any meaningful overarching strategic planning body similar to Korea's EPB able to ensure that the program is used for maximum economic benefit and effectively linked to the broader national economic development strategy. The National Economic Development Authority (NEDA), as described in Chapter Three, has some of the needed expertise to fulfill such a role, but none of the authority or the mandate held by Korea's EPB. While Korea was restrictive in the type and number of certain categories of workers which were allowed to go abroad the Philippines has not been so selective. This is perhaps due to the lack of any meaningful national development strategy based domestically that would require a particular type of worker or skill set. In fact, whole new industries have been spawned to train workers, nurses for example, not to fill domestic requirements but specifically to cater to overseas demand.

Indonesia, as a late entrant into the overseas employment game, stands as a third example of a state that neither has the bureaucratic structure of the Philippine overseas employment program (though it is making good strides toward such) nor Korea's big-picture strategic view of utilizing overseas employment as a component within a larger development strategy. Indonesia's post-Suharto efforts to move from a laissez-faire approach to a more managed overseas employment program has seen considerable progress in a short period of time, but the overwhelming consensus seems to be that considerable more reform is needed. Additionally, like the Philippines, Indonesia suffers from a total absence of any correlation between economic development planning and the overseas employment program. If temporary "unemployment pressure relief" is really the full extent of the

governments' view of the program's purpose, why then go to so much effort in the post-Suharto era to improve efficiencies, worker welfare, and program management and promotion? The obvious answer is because the program has proven its ability to generate substantial remittance income. It could prove more beneficial if program management is improved.

There is much room for further improvement in how Indonesia approaches management of its overseas employment program. In particular, emphasis should be paid to program objectives, and how the program fits into the national economic development plan. Should they continue to follow a path of the "Philippine model" and fail to address the important step of integrating its overseas employment program with the context of national economic development goals and strategies, they may face the same problems that currently exist in the Philippines today. Namely, they will have highly organized and robust program structures and institutions driving a large overseas employment phenomenon that affects millions of citizens directly and indirectly without any overarching goals or objectives to work toward or achieve. Depending on how much attention Indonesia pays to "other" aspects of its national economic development strategy, it could also find that pursuit of the Philippine model may lead to an intractable dependence on remittances and continued overseas migration as the domestic economy and industry atrophy to unsustainable levels.

The acute labor shortages faced by Korea in recent years, the origins of which are mentioned above, have culminated in the creation of the Employment Permit System. This is part of a highly regulated governance structure to manage incoming migrant laborers (see Chapter Six). Similarly, the export program as it existed in the 1970s and 80s was also highly orchestrated with a large measure of government prodding, interaction, and oversight over

the businesses involved in facilitating worker migration overseas. This government-led transition was overseen by highly qualified economic planners in the EPB. We have no proof to date of a state developing its economy purely through overseas employment migration, but Korea stands as an example of a state which maximized such a program's potential in conjunction with other economic efforts and in concert with a national development plan.

The key ingredient in Korea's apparent migration-toward-development synergy seems to have been first, having capable economic planners with the skills and authority to coordinate national developmental efforts, and second to have the foresight to see beyond the temporary benefits of short-term overseas employment in favor of a longer term vision that placed overseas employment programs as a component of a wider national economic development strategy. The prospect of implementing these key ingredients in the Philippines and Indonesia will pose tremendous challenges, but is not an unachievable goal.

The Philippines has, and Indonesia is creating, a governmental structure intended to effectively manage large overseas employment programs. Both states also have ongoing national development plans (short, medium and long term) run by dedicated development planning agencies. It would thus be a matter of empowering the development agencies, assuring the qualifications and capabilities of those working within it, and tasking them with integrating their respective overseas employment programs within the larger national development strategy. The capacity and embedded autonomy (see Chapter Two) of both the Philippine and Indonesian bureaucracies will need to be strengthened and improved if any of these changes are to take place. As argued in previous chapters, since the programs exist and are so highly developed why not utilize them toward achieving greater economic development? If Indonesia and the Philippines were to do so, they too like Korea might

eventually reach a point where their overseas employment program is no longer necessary. Although the road to accomplishing such a course correction would be difficult, the pursuit of such a goal would certainly pay dividends in both the short and longer term.

Crucially important of course, given the scenario I just described, is the quality and integrity of the “other” development strategies implemented alongside the new developmentally focused overseas employment programs. If economic planning bodies are improved, strengthened, and empowered it is likely that all avenues of their development planning would likewise improve including their domestic economic initiatives. Were they also to be empowered like Korea’s EPB they could be given oversight and regulatory authority thus enabling them to discern weak links in the government bureaucracies historically plagued with acute corruption. Budgetary control was a key “check” exercised by the EPB to assure that other governmental agencies and departments went along with their national economic development plans and strategies. Such control could be given to NEDA as well as the equivalent body in Indonesia to further empower them to firmly take the reins of economic development policy and implementation. Entrenched interests and corruption are not easily done away with, but by setting goals along these lines, and by making structural and policy changes in line with the tactics utilized in Korea, both the Philippines and Indonesia can move along a path eventually achieving results similar to what has occurred in Korea. Even though the path from the current reality in both states to the Korean experience is a long one, it is a path worth traversing as the rewards are great. Even if the Philippines and Indonesia are not fully able to replicate the success of Korea, if emulating their success even brings minor developmental improvements to both states then the effort will not have been in vain.

Chapter Eight: Bringing Government and Business together to maximize developmental outcomes

This chapter draws out the main themes of the thesis with the goal of placing them into a single coherent picture that may be of some help to government planners and policy makers in the Philippines. After combining the key points from previous chapters, a series of policy recommendations are made regarding the future of the overseas employment program in the Philippines. Lastly, final thoughts on key concepts are shared and areas of potential future research stemming from this thesis are considered.

Review of Chapters

In Chapter One, I briefly introduce the rationale for exploring the interaction between government and business within the overseas employment program. Given the overseas employment program's contributions to the Philippine economy, I then propose that it should be established as a central component of the national economic strategy. The chapter concludes with a brief history of early external migration from the Philippines and an overview of chapters.

Chapter Two introduces the government-business framework, and some of the ideas and concepts pioneered by Evans, Haggard, Maxfield, Schnieder, Woo-Cumings, MacIntyre, and Hutchcroft. The logic of two-level game theory, I demonstrate, enables us to examine the dual national and international nature of the overseas employment program. By applying the government-business framework, combined with two-level game theory, I reconceptualize the overseas employment program, and the primary actors who drive it, within the larger context of a coherent national development strategy. The analysis then proceeds to show how the government-business framework was successfully applied by

Korea, Japan, and Taiwan. These states combined long-term development planning by an empowered central planning authority, with embedded ties promoting its cooperation and coordination with the private business sector. Although the government-business framework has traditionally been characterized by industrialization-based development strategies, I argued that the same principles, practices and techniques could be applied to the overseas employment program in the Philippines.

In Chapter Three I traced the major historical developments of government-business relations in the overseas employment program from its origins in 1974 through the early 1990s. I argued that major tension and not infrequent animosity has existed between government and business since the earliest days of the program. Furthermore, through careful analysis, it was demonstrated that the program has evolved piece by piece with no single objective or overarching goal as to what the program's objectives should be. The Marcos, Aquino, and Ramos Administration's failure to position the overseas employment program squarely within the national economic development plan or to set achievable goals and targets for how the overseas employment program could contribute to developmental outcomes, I argue, helped to make overseas labor migration from the Philippines "permanently temporary."¹

My focus in Chapter Four is on what remains the largest single legislative attempt at regulating the rapidly growing overseas employment program. The 1995 act, RA 8042, had its genesis as result of public outcry related to the execution of OFW Flor Contemplacion in Singapore in 1995. The Contemplacion saga and the subsequent creation of RA 8042, I

¹ Rene Ofreneo, "Migration and Development: When Will the Turning Point Come?," in *Philippine Institutions: Growth and Prosperity for All*, ed. Filomeno S. Sta. Ana III. (Anvil Publishing, 2010): 264.

argue, signaled the new predominance of ‘workers’ welfare’ which has dominated every aspect of the overseas employment program ever since. Through in-depth analysis of this legislation, two major themes emerged: first, a lack of acknowledgement of how important the overseas employment program had become to the Philippine economy, and a lack of guidance for development planners (such as the National Economic Development Authority [NEDA]) to include the program as a component in future national development plans, and second, an absence of plans to improve cooperation among stakeholders (including overseas Filipino workers [OFWs]) in the overseas employment program, thereby improving welfare and program benefits through coordination and mutual respect rather than antagonism, mistrust, and threats.

Chapter Five chronologically covers events from the conclusion of Chapter Four to the present, but is at its core a case study on another major piece of overseas employment program legislation. This bill, RA 10022 (2010), was an attempt to correct many of the mistakes made in the rush to pass RA 8042 in 1995, and the problems that had developed in the intervening years. Through interviews with key actors and policy makers, my analysis provided insight into the troubling shortage of communication, dialogue, and mutual understanding among major program actors—particularly among Congress and nearly everyone else: the Philippine Overseas Employment Administration (POEA), the recruitment agencies (RAs), and non-governmental organizations (NGOs). My analysis showed that the constructive relational framework between government and business, as described in Chapter Two, is woefully lacking from both the policy making process itself as well as the relationship among key program actors generally. I argued that much of the blame for the shortcomings of the bill rest with the legislature, but that the executive branch essentially

abdicated its responsibility to provide leadership on this critical issue. The executive could have shored up its key agency, the POEA, which had much to contribute to major policy formulations. The executive seems not to have done this. But we do have an example of a strong executive aggressively pushing reform, specifically Ramos in the 1990s in regard to matters outside the overseas employment program, and it is this example from Philippine policymaking that could be emulated today.

The international side of government-business relations was the focus of Chapter Six, which centered around the Philippines recent strategy of pursuing bilateral labor agreements with states which host Filipino workers. Analysis of completed agreements between the Philippines and Japan, four Canadian Provinces, Bahrain, United Arab Emirates, and Korea was used as a case study to explore how government-business relations were impacted by completed agreements, and how government-business relations impact the negotiations of new agreements. I argue that a better balance can be achieved using the tools of marketing and diplomacy to entice reluctant states that host a large number of OFWs like Saudi Arabia into a mutually beneficial agreement, rather than over-emphasizing leverage. The goal should be the creation of mutual benefit and the minimization of confrontation.

Finally, Chapter Seven explored the mechanisms and policies used to manage overseas employment programs in Korea, Indonesia, and the Philippines. The Korean case, in particular, was significant because Korean development planners successfully used overseas labor migration as a component of a larger national economic development strategy that eventually eliminated the need to send workers abroad. Although it would of course be difficult for the Philippines and Indonesia to replicate the development success achieved in Korea, attempts to apply certain Korean strategies and techniques would have the potential

to foster better coordination of their overseas employment programs with national economic development strategies. Through my analysis, I conclude that significant challenges stand in the way of both Indonesia and the Philippines achieving results on the same miraculous scale as Korea, but that, if followed, the Korean example could lead to meaningful improvements for both states.

Major Themes and Observations

A detailed exploration of the Philippines' official state policy toward the overseas employment program has been undertaken throughout this thesis. From the program's inception, through the furor of the Flor Contemplacion saga and even until today, presidents, legislators, and top bureaucrats have commonly referred to the program as "temporary" or "stop-gap" and rarely acknowledged the economy's very heavy reliance upon it. Indeed, if the program was discontinued immediately or unexpectedly interrupted, the Philippine economy would likely collapse. Despite occasional claims to the contrary, the overseas employment program must be considered a major (if not *the* major) component of national development strategy. This reality is highlighted by the fact that other states, as mentioned in Chapter Two, including Indonesia have modeled their overseas employment program structures on those supporting the Philippine program.²

Section 2 of RA 8042 contains a clearly defined policy position on where the overseas employment program belongs within Philippine economic development planning: "the state does not promote overseas employment as a means to sustain economic growth and

² Center for Migrant Advocacy, "The Philippines: A Global Model On Labor Migration?," *Friedrich Ebert Stiftung*, 2nd ed., June 2009.

achieve national development.”³ In response to this passage, Graziano Battistella argued that:

At first sight this statement appears a major declaration, that should settle the issue once and for all. However, additional scrutiny is warranted. What lies behind is a controversy with political consequences. The number of Filipinos going overseas has reached such magnitude that any observer would easily conclude that the state has a deliberate labor export policy. Those actively supporting such policy simply indicate that the current level of unemployment and underemployment in the Philippines makes overseas employment inevitable. The Philippines has such a large number of overseas workers because it can count on a qualified work force and has developed the recruiting and deployment process to a level of sophistication unknown to other countries. In this regard, the recruiting industry deserves the recognition for its accomplishments.⁴

It has been said that the first step toward fixing a problem is admitting that you have one.

In the case of economic development in the Philippines, the first step toward making progress is to first admit that the overseas employment program is the keystone to its development strategy and second, figure out how this program can be used in conjunction with other strategies to achieve meaningful developmental progress.

National Development Strategy and Institutional Deficiency

In Chapter Seven, a great deal of time was spent analyzing the role migration has played in Korean economic development. There is a significant body of literature dealing with both Import Substitution Industrialization (ISI) as practiced in Korea before the time of Park, and Export Oriented Industrialization (EOI) as it was pursued after he came to power. Analysis of these development strategies has been explored by many others, and this debate clearly

³ Republic of the Philippines, 9th Congress, *Republic Act 8042, Migrant Workers and Overseas Filipinos Act of 1995*, Section 2 (c).

⁴ Graziano Battistella, "The Migrant Workers and Overseas Filipinos Act of 1995 and Migration Management" in *Filipino Workers on the Move: Trends, Dilemmas and Policy Options*, ed. Benjamin V. Carino (UNESCO-Most 1998): 90-91.

falls beyond the scope of this thesis although they are important contextual pieces to understanding national economic development strategies. From the Korean "packaged" approach to labor migration, migrant workers were an export (although well looked after) like other export products being offered to the world. So in order to understand Korean labor migration, one must understand their EOI strategy. As mentioned in Chapter Three, Marcos also attempted to implement an EOI strategy for which his overseas employment program was a part. For the reasons covered in Chapter Three, his EOI strategy never really got off the ground. Hawes offered a comparative explanation as to why EOI took off so successfully among the East Asian tigers, but faced such difficulties in the Philippines.

In two important ways, then, the Philippine transition to export oriented development differed from that in Taiwan and South Korea. First, the political sphere was much broader in the Philippines during the import-substituting phase. This was so not just domestically but also in the sense that international investors had stronger links to local capitalists and through them more influence in shaping the local path to development. Second, because the political sphere was broader in the Philippines, *the state had less relative autonomy*. The transition to export-led development, in consequence, involved greater conflict....In this the Philippines was again more like Latin America than Taiwan and South Korea. [emphasis added]⁵

As outlined in Chapter Two, Evans argued for the need for embedded autonomy between the private and public sector in order for meaningful economic development to occur.

Throughout this thesis it has been shown that this necessary component was missing from both national economic policy as well as within the overseas employment program. Hawes, in the quote above, confirms that the pluralistic demands of politics in the Philippines have acted as a hindrance to striking the right "autonomy" balance. Central economic planning authorities in Japan, Korea, and Taiwan not only had the necessary knowledge and expertise

⁵ Gary Hawes, *The Philippine State and the Marcos Regime: The Politics of Export*, (Ithaca, NY, Cornell University Press, 1987): 38-39.

to get their countries on the right track, but also the authority (autonomy) to do so. This is desperately needed in the Philippines, particularly at NEDA, but also at the POEA in regard to the overseas employment program. They currently have much, but not enough, of the necessary knowledge and skills to get their respective charges on target, but wholly lack the authority to do so. The time has come for the Philippine legislature to step back from its present micro-management approach on both the economy and the overseas employment program, and instead empower and support entities like NEDA and the POEA so that they can more effectively fulfill their mandates.

Overseas labor migration has become the latest in a series of strategies designed to allow the economy to limp along without the development of a coherent development strategy. In the Marcos era, as explained in Chapter Three, development plans laid down by NEDA were subordinated to the interests of Marcos' cronies.⁶ As Hutchcroft succinctly put it, "as long as the system was being lubricated by external funds, there was no need to make any hard decisions regarding contending economic paths."⁷ Prior to the closure of the US bases, foreign loans and international aid (particularly from the United States) filled that role. Since the bases closed however, overseas labor migration, and their subsequent remittances, have taken over as the economic life-raft that inhibits sustained efforts toward the emergence of a more coherent economic development strategy. On this point Battistella added that "labor export avoids the social unrest that would emerge from an additional number of unemployed or underemployed workers and provides the government with foreign exchange to sustain a type of development which perpetuates the need for

⁶ Mark R. Thompson, *The Anti-Marcos Struggle: Personalistic Rule and Democratic Transition in the Philippines*, (New Haven: Yale University Press, 1995): 56.

⁷ Paul D. Hutchcroft, "Oligarchs and Cronies in the Philippine State: The Politics of Patrimonial Plunder," *World Politics* 43, no. 3 (1991): 426.

many to go abroad.”⁸ The task for the future is to put the overseas employment program at the center of development planning.

Bureaucratic Reorganization and Reform

The overseas employment program bureaucracy is large, inefficient, with too many overlapping and unclear responsibility and authority arrangements. Some of the functions held by various agencies could easily be merged into sub-organizations, or even simply departments, within the POEA. Some offices, such as the Overseas Workers Welfare Administration (OWWA) could simply be absorbed into the POEA. These changes would benefit program efficiency, but would also simplify the paperwork process for OFWs.

On a larger scale, as previously mentioned, the unique international nature of the overseas employment program presents particular challenges to all government departments tasked with governing its various parts. Many problems center on the jurisdictional and expertise mismatch between the Department of Foreign Affairs (DFA) and the Department of Labor and Employment (DOLE), where the DFA has responsibility over foreign affairs but does not necessarily have expertise in labor matters, while DOLE has responsibility over labor matters but does not have expertise in foreign affairs. DOLE, which oversees the POEA but has responsibility for all matters related to labor, is in need of being separated from the POEA to enable it to better focus on its domestic responsibilities. The POEA, which is able to commit the full measure of its attention to the overseas employment program, needs to be separated from DOLE and given greater responsibility as lead agency on overseas employment program matters. One possible solution would be to transform the POEA into the Department of Overseas Employment, with the new department head elevated to a

⁸ Battistella, “The Migrant Workers and Overseas Filipinos Act,” 90-91.

member of the President's cabinet. DOLE would retain its current mandate and responsibilities, albeit limited only to domestic labor and employment issues. All matters related to the overseas employment program, including oversight of the private recruitment agencies participating in the program, would be managed by this new department. If the overseas employment program is important to the national economy, it therefore must play a larger role in the nation's economic development strategy and it would therefore be appropriate to elevate, streamline, and generally improve the bureaucracy that oversees the program.

Many of the failures of the program bureaucracy in the past few decades, particularly the appalling lack of support for OFWs while abroad (Chapter Six), have occurred as result of the acutely dysfunctional and disharmonic relationships that exist between the POEA, DOLE, and the DFA especially in dealing with issues in the destination state. Under the suggested solution, there would only be two entities—DFA and the new Department of Overseas Employment—that would need to cooperate on matters such as terms for new bilateral labor agreements (BLAs), verification of foreign employers, and general OFW assistance while abroad. Once the overseas employment program is elevated to its proper place both structurally within the national economic development plan, and psychologically within the national psyche as something that the Philippines is capable of doing better than anyone else, having a cabinet-level department representing this undertaking could be easily justified. The creation of this new department would show that the Philippines takes its program seriously.

NEDA and the National Development Plan

As demonstrated at length in Chapter Two, and mentioned throughout many other chapters, the Philippines is in desperate need of a central planning authority to fill the roles played by such agencies in Korea, Japan, and Taiwan. This agency or department must not only be adept in economic planning but must also be given the necessary authority to pursue a consistent long-term, realistic, development strategy. Unfortunately NEDA has within its history demonstrated the former skills but not the latter authority. In many cases, they are given the privilege of creating reports and development plans that are then ignored by the executive and legislative branches as well as the rest of the government bureaucracy. Despite the tremendous work that would be required to turn NEDA into an organization on par with Korea's Economic Planning Board (ECB) or Japan's Ministry of International Trade and Industry (MITI), it is the best organization to fill the role considering that it has a mandate as "the country's independent economic development and planning agency" in the 1987 constitution.⁹ NEDA's 2004 medium term development plan for the country contained shockingly little on the overseas employment program and how it fit into the country's larger developmental objectives. After exuberantly praising the redeeming nature of OFW remittances on the Philippine economy, the extent of the migration-specific language of the development plan was remarkably vague:

Notwithstanding the positive effects of overseas employment, there is also a need to address its pitfalls such as the problem on brain drain (caused by the exodus of Filipino professionals) and the need to introduce interventions that would translate the overseas Filipino workers' remittances into productive investments. The promotion of migration and development for productive investments from remittances shall also be pursued. This means that migrant workers shall channel their resources to productive pursuits where the

⁹ Constitution of the Republic of the Philippines, Article XII, Section 15, 1987.

country would continue to gain from labor migration while at the same time minimizing its downsides.¹⁰

There is no action-plan or outlined steps for how these apparent goals will be accomplished.

After repeatedly expressing the important role that OFW remittance income plays in

rescuing the national economy, how is it that NEDA planners could decide that the topic

literally does not warrant more than four or five sentences attention in a 315-page report?

Prior to listing the “goals” above, the updated medium term development plan made these statements about the role that remittances have played in promoting economic growth and stabilizing the Philippine economy:

- Record levels of overseas remittances coupled with increasing export earnings led to an improvement in the country’s credit outlook.
- For 2007, the country’s BOP surplus more than doubled to a record high of US\$8.6 billion, given the reversal of the country’s capital and financial account balance, from a net outflow in 2006 to a net inflow. The surplus is partly attributed to the strong surge in OFW remittances, growing at an annual average of 19.1 percent for the period 2004-2006.
- Strong consumer demand supported by record levels of remittances from overseas Filipinos and a liberalized environment in transport, communications, and retail trade spurred growth in the [services] sector.
- The trade services sector gained from strong remittances from overseas Filipinos...
- Foreign investments flowed in and overseas Filipino remittances increased, driving the peso to appreciate against the US dollar.¹¹

If OFW remittances were so crucial to positive outcomes in the national economy, surely the topic warrants greater attention be paid to it in the national development plan. NEDA has the mandate, so the next step should be to put together a plan to improve its capacity in order to better emulate Korea’s ECB and Japan’s MITI.

¹⁰ National Economic Development Authority, *Updated Medium-Term Philippine Development Plan, 2004-2010*, 140, 146, accessed June 21, 2012, http://www.neda.gov.ph/plans_and_reports/MTPDP/Updated_MTPDP%202004%20to%202010.pdf.

¹¹ National Economic Development Authority, *Updated Medium-Term Philippine Development Plan*, 11, 14, 17, 130.

Speaking of the importance of competent bureaucratic administration over development policies Haggard et. al. explained that:

Economic development strategies are not simply packages of discrete policies, but involve the development of *administrative capacities, both to permit their coherent formulation in the first place, and to insure their implementation*. The economic reforms usually associated with Korea's take-off were predated by administrative reforms and an alliance with the military that dramatically enhanced the position of the technocrats within the bureaucracy (emphasis added).¹²

As highlighted throughout this thesis, there is a serious lack of consistent, realistic, long-term economic development planning in the Philippines. Unfortunately, what development planning that does occur is completely ignored by those who shape national policy. Highly educated and well-compensated central planners with the authority to promote long-term sustainable economic development could lead to dramatic improvements for the Philippines. Imagine what they could do toward building a balanced development plan with the already booming overseas employment program at the center of the nation's economic portfolio. Rather than always pursuing policies reactively, a realistic long-term plan with overseas employment situated in the center, the country could pursue whichever other economic strategy goals they wished to complement it. Planners could then develop a plan to maximize remittance income toward accomplishing those goals. It has been repeatedly argued through this thesis that the overseas employment program is already up and running. Why not make it part of the plan?

¹² Stephan Haggard, Byung-kook Kim, Chung-in Moon, "The Transition to Export-led Growth in South Korea: 1954-1966," *The Journal of Asian Studies* 50, no. 4 (Nov., 1991): 869.

The Recruitment Industry and Government-Business relations

Throughout this study the story of the government-business relationship has remained largely the same. As one studies the overseas employment program, there are a variety of descriptive words that come to mind including: adversarial, distrustful, suspicious, and corrupt. As noted in Chapter Three, President Corazon Aquino referred to OFWs as “Bagong Bayani” or new heroes because of their willingness to seek employment opportunities abroad thereby rescuing the beleaguered Philippine economy. These sentiments have not changed since President Aquino coined the phrase in 1988. As mentioned in Chapter Five, senators and current leaders are still making reference to how crucial OFW remittances are to the vitality of the national economy. While these references may simply be populist political propaganda tools, they also serve as clear acknowledgment of how crucial the overseas employment program has become to the national economy. Regardless of the motives of those politicians who use these phrases, and without any lack of respect and appreciation due to the tremendous dedication and sacrifice made by millions of OFWs, they may have missed one correlation that must be drawn if the “new hero” narrative is to be fully appreciated. Rene Cristobal, a widely respected businessman who practices what he calls “ethical recruitment” and does not charge any of his workers fees, made the following observation in an interview:

I am glad you are touching on the recruitment industry because it is not given the right credit for what it is doing. Because it is the recruiters who are promoting overseas employment and the government is not supposed to do that. Whereas they say the savior of the [country], I am Bagong Bayani foundation chairman, and we are going to give awards now and we call them

the new heroes, but who made them the new heroes? Who deployed them there? It's the private sector, it's not the government!¹³

There is a fair measure of sense in the argument Mr. Cristobal makes that without the recruitment industry there would not be OFWs, and by association nor would there be an economic lifeline for the national economy. At the same time, the government has a necessary role of ensuring basic minimum standards and, as described in Chapter Four, most “good” recruitment agencies operating on the legal side of the program favor regulation as a way of weeding out the “bad” RAs and the unfair competition that they provide.

In the course of this study it became clear that the vast majority of RAs operating within the legal framework, long for the day when they will be embraced as partners and not enemies. There are also many examples of recruitment agencies who even today go above and beyond what is required of them regarding their obligation to the workers they deploy. These satisfied OFWs choose to re-deploy through them when their contracts expire rather than to deal directly with foreign employers, despite the higher cost of deploying through an agency. In other words, RAs play a vital role in accomplishing the overseas employment program. Not all of them are predatory toward OFWs, but those that are predatory are often very predatory. As a result government (primarily the legislature) finds the industry a convenient place to assign blame when an OFW dies or is tragically mistreated while abroad. Although there is a tension between the POEA and the recruitment industry, the POEA does not generally publically blame the entire industry as does the legislative and executive branches. On this matter, Battistella argued that “if labor export is a clear government policy, then the government is directly responsible for the problems affecting migrant

¹³ Rene E. Cristobal, Chairman, DCL Group of Companies, Interviewed by author Makati City, Philippines, November 20, 2009.

workers.”¹⁴ The tension that exists between the recruitment industry and the POEA is more one of program participant (RAs), and the POEA’s status as program gatekeeper. So disputes arise over issues of licensing, fees, and other more mundane program minutia. It is not likely that the tension among the actors involved in the operation of the overseas employment program will be completely diminished by formally positioning the program within the national development plan, but a little tension among program actors, preferably much less than exists now, would not necessarily be a bad thing. The industry must be consulted with more on policy decisions related to the overseas employment program. There have been too many examples, such as the bilateral labor agreements (BLAs) from Chapter Six, where the recruitment industry offers advice on key issues, is ignored, and ultimately is proved right. The pitfalls it warned against could have been avoided. The tension will persist regardless of the extent of their involvement, but with greater input, they would be able to assist government policy makers (both at the POEA bureaucratic level, and the legislative level) to see the reality of the situation at home and abroad.

Migration is the development strategy: Acknowledge it and utilize it

At various points in this thesis the argument has been put forth that despite occasional claims to the contrary the overseas employment program is in reality a major element of the national economy and therefore deserves acknowledgement. Acknowledgement of the program’s status, it would seem, is a necessary first step before the program can be adapted more effectively into the national economic development strategy to maximize program benefits for developmental outcomes. Former Ambassador Reynaldo Paruñgao offered a possible explanation why national leaders (and the nation as a whole) have been so

¹⁴ Battistella, “The Migrant Workers and Overseas Filipinos Act,” 90-91.

reluctant to embrace the reality of the Philippines dependency on the overseas employment program.

Today you try going to Taipei and you hold a Philippine passport, you have not done anything, they don't even classify you, as to what class of Filipino do you belong. They think that you are a contract worker and you will do some monkey business there. See, so that's how bad the situation has become.... When we travel we have a way of disguising ourselves so that's the situation. There are social consequences; obviously we are a proud people and a proud country so we do not admit openly that we have a program to send our people, our warm bodies, outside for work. So this is a program, this is something we call a "phenomenon" not a program that is deliberately pursued by government as a matter of strategy, you see? So there are ambivalent positions even with government, why? We know that there is some kind of stigma that goes with it, and you know pride is something that's built in us. So whenever we see a doll of a Filipino manufactured in London depicting the Filipino as a domestic helper you can imagine the uproar that happened here. That happened in London, that happened in another country, Spain I think. So this became an international matter for us. I have to confess, the point is we are also hypocrites in not admitting what really is our status today in the eyes of the international community.¹⁵

In Chapter Five, during the discussion on the Senate's role in the creation of RA 10022, several examples were given of senators hailing the importance of the program to the national economy. There seems little point in continuing to deny the obvious reality that the overseas employment program is a (if not *the*) dominant economic driver of the Philippine economy today and it should therefore take a prominent place in the national economic development strategy. The sentiments shared above by Ambassador Paruñgao highlight one of the key reasons that until now has prevented leaders and the national consciousness generally from admitting this reality. The problem is inherently psychological. As Paruñgao mentioned, the Philippines is a proud country. Indeed the

¹⁵ Reynaldo B. Paruñgao, Former Philippines Ambassador to Iraq and DOLE official, interviewed by author Makati City, Philippines, December 2, 2009.

Philippines has a rich culture and a robust history, and many would find it a blow to national pride to acknowledge that millions of Filipinos must work abroad for the foreseeable future in order to keep the country afloat.

Nevertheless, how does the continual denial of the current reality of the importance of the overseas employment program, and the country's reliance and dependence upon it, change anything? It is time for national leaders to overcome their apprehension. Instead of being ashamed of the overseas employment program, and what other states might think or say about them, it would be more constructive to embrace the overseas employment program and make it as well-run and as developmentally effective as it can possibly be. There have been moments of pride for the overseas employment program, when groups like the IOM and other states have looked to the organization of the Philippine program as a model of how to build a national labor export program. OFWs are proud of the work they do abroad, and even prouder of the role they play in supporting their country and families back home. Their spirit contradicts those who continue to want to pretend that this massive effort—sanctioned, overseen, and encouraged by all levels of government, and implemented by a huge industry in the private sector—is only a temporary phenomenon and thereby not worth including in strategic economic development planning. While other industries have risen and fallen in the Philippines over the past 40 years, only one has maintained a steady positive trajectory and continues year after year to do more for the national economy. Overseas labor migration is the reality in the Philippines and it should be fully embraced as such.

The President and Congress

In tracking major legislation through the nearly four-decade history of the overseas employment program, this thesis has highlighted several patterns of behavior regarding how the executive and legislative branches differ in how they interact with the program. The ongoing denial of its official status aside, the executive and legislative branches have seemed content to ignore the program completely except in rare circumstances where some political advantage could be achieved through very public legislative or executive action. This was certainly the case for the most recent major legislative overhauls in 1995 and 2009. In the case of RA 8042 (1995), action only occurred after the national uproar over the execution of Flor Contemplacion. In the case of RA 10022 (2010), it seems, at least anecdotally, to have been motivated by campaign politics as a public relations exercise. In both cases political expediency seems to have taken precedence over careful methodical policy proceedings in making certain that whatever policies were decided upon really would be beneficial to OFWs and would improve the overseas employment program overall.

The December 2008 administrative order by President Macapagal-Arroyo, described in Chapter Five, ordered the POEA to ramp up its efforts in finding opportunities for OFWs. This came only after there was a perceived threat to the continuing inflow of remittance income. Prior to issuing the administrative order, President Macapagal-Arroyo took little interest in the inner workings of the POEA and the overseas employment program generally. Not only does her sudden concern for the welfare of the program in the face of the global financial crisis betray the program's true importance and its central role in stabilizing the Philippine economy, but it is consistent with the pattern of behavior for all presidents from Marcos until today: ignore the program except when there is a problem or when an idea

occurs to them of how the government might avail themselves of a larger piece of the remittance pie. The latter can be traced to the early 1980s, with Marcos's aborted attempts to skim remittances by requiring their transference through official government-controlled channels (see Chapter Three).

The similarity then between the executive and legislative branches in regard to the overseas employment program is that they both seem not to care about the program except when they absolutely must, or when attention to it will benefit them politically, or when a failure of attention to it could hurt them politically. The executive and legislative branches are dissimilar to each other in regard to how they actually interact with the program during the rare moments that they do become involved. While the legislature seems to think that they are qualified to micromanage program policies (and, in the case of RA 10022, completely ignore the advice and consent of all relevant program actors), the executive branch has seemed content with occasional but not consistent attention to program directions. During the Contemplacion saga, for example, Ramos ordered the creation of the Gancayco Commission which, after conducting its investigation, made recommendations to the President and the legislature.

It seems unfortunate that throughout the various case studies and chronological policy studies conducted in the chapters of this thesis, more often than not the legislative and executive branches seem to be themselves obstructing the smooth operation of the program. The overseas employment program has enough difficulty simply overcoming routine operational challenges because of the inherently international nature of the enterprise, which makes executive and legislative branch meddling, as was the case during the Marcos years and appears to be the case again during the RA 10022 saga, even more

burdensome on the OFWs and those charged with facilitating the program. If the “meddling moments” described throughout these chapters have proven anything, it is the need for an independent planning authority more closely resembling those utilized by the Asian tigers in their well-documented rise from developing to developed nation status. Under this new arrangement the President, who appoints the head of NEDA, could coordinate closely with the planning authority and play an active role in helping the nation accomplish the development goals they have set. The long-term, consistent vision that these central planning authorities provided could do wonders for the Philippines as opposed to the current business-as-usual patchwork approach to development planning which has been driven by the executive and legislative branches. Recruitment industry leader and advocate Loreto B. Soriano explained his theory on the relationship between the actions of the executive and legislative branches and their collective sense of guilt.

They [government] have to do something because of that guilt feeling. They have to do something about it so that they are the champion even if they are over it already. By letting [OFWs] go [the government] already failed in [its] constitutional duty to provide them jobs in the country, so there is a guilt there. So to offset that guilty thing themselves and in the public mind they come up with the rules.¹⁶

The guilt-as-motivation angle is as difficult to prove as is the premise, put forth in Chapter Five, that political expediency and election year populism also could have motivated their decision making. Nonetheless, guilt may indeed be a motivating factor to consider when assessing the behavior and policy-making decisions taken by the legislative and executive branches in recent years and throughout the history of the program.

¹⁶ Loreto B. Soriano, CEO – President, LBS Recruitment Solutions Corporation, interviewed by author Manila, Philippines, October 12, 2009.

Necessary Steps

Educational training

While a great deal of professionalism exists in both government and business spheres of the overseas employment program, there are presently no degree or certificate programs in the Philippines to train and prepare either business people or future civil servants to work in the unique environment that exists within the program. Leading universities in the Philippines offer advanced degrees in Public Policy, Public Administration, Leadership, and Governance. The University of the Philippines' National College of Public Administration and Governance (NCPAG) and Ateneo de Manila University's Graduate School of Leadership and Public Service both have strong reputations for training future leaders and civil servants. These learning centers and the curriculum they rely on, though outstanding, does not include courses or seminars on the unique challenges involved in managing a large international scheme with the complexity and scale of the overseas employment program. New degree and certificate programs should be added which combine recruitment management training with the traditional Public Policy/Public Administration curriculum. As with these existing programs, it would be prudent to include emphasis on ethics training. Rather than simply learning how to be a civil servant, it is not difficult to imagine how educational training with a migration management focus could benefit the government agencies that manage the demands of the overseas employment program. Salaries, of course, would have to be high enough to really attract the best and brightest into government service—and to curb temptations for private gain at the expense of public good. Once established, these programs might also attract students from other migrant sending countries and employees at agencies such as the POEA looking to improve their skills and credentials. As mentioned

many times throughout this thesis, the overseas employment program is unique and complex so it stands to reason that like any complex field some specialized training would be beneficial. It might be easier for the universities mentioned above to start out by offering a few courses toward these ends, eventually working toward creating a certificate program or degree minor emphasis in overseas employment administration.

The above educational improvement recommendations are targets specifically to enhance the capability of government workers destined for or already employed within the large overseas employment program bureaucracy. As discussed in Chapter Two, the Asian Tigers' various planning bodies consisted of elite professionals educated at top schools from around the world. If NEDA is to be more effective at filling its mandate as the central development planner, it will need to provide competitive salaries in order to attract the best and brightest. The development agencies in Korea, Japan, and Taiwan not only got the best and brightest to work there, but they paid them accordingly to keep them. The best and brightest will not continue working at NEDA for long if they are underpaid, and all their recommendations and plans are ignored. This is where close coordination with the President could pay dividends by elevating the status of NEDA from an often-ignored agency to the center of a new development-focused government philosophy and program. If a restructuring of NEDA is not possible because of territorial intransigence, or if other considerations prohibit such a reorganization, then a new entity should be created and staffed from the ground-up, bringing in only the best and brightest. This step will be a crucial one as the country's future will be put in this planning authority's hands and they must be worthy of that trust.

A third recommendation is one that has come from the recruitment industry themselves. In the course of interviews, several key leaders expressed a desire for the creation of degree programs in business management with an overseas employment emphasis. Much in the same way that there are specializations available at business schools and within business curriculum it seems appropriate, considering the size and importance of the recruitment industry, to create degree programs that cater to the industry's special needs. Once these programs are started it might be possible at some future date to make formal training (including ethical training) a prerequisite for any person wishing to obtain a license to operate a recruitment agency. Improving the level of industry specific education would benefit the industry, its relationship with government, and potentially reduce the frequency of illegal or unethical violations committed by licensed recruitment agencies.

It should be noted that teaching ethics to students of public administration and business will only go so far, and is in no way a substitute for better regulation and for punishment of wrongdoers. This recommendation would not solve the illegal recruitment problem, but could possibly raise the ethical bar somewhat for those participating in and overseeing the industry.

New focus on International Relations

A prudent next step would be to find new ways to focus on improving the relationships the Philippines maintains with destination states that host large numbers of OFWs. As explained in Chapter Six, this effort is to some extent already underway, but more effort and emphasis must be placed on formalizing sending and receiving arrangements among states. Evaluations of the impact of the already functioning BLAs can be used to convince destination states of the many advantages that can be achieved through formalizing the

sending and receiving process. This does not necessarily have to mean a pure government-to-government arrangement as is being utilized in Korea, but instead a structural arrangement that can result in cost and time savings to all parties involved in both the sending and receiving state. The DFA does remarkable work for the nation and for OFWs, especially when one considers the enormous tasks that they are asked to accomplish and the resources they have available to accomplish them. Interviews with DFA officials, however, reveal that they often feel unqualified for the labor-related responsibilities that they are asked to cover. The sheer quantity of OFWs in some states can also be overwhelming for DFA officials. If the number of program players was reduced, and the Department of Overseas Employment was created, the DFA could partner closely with them in managing destination services as well as in forging new BLAs. There even could be cross-training for individuals qualified in diplomacy/ foreign affairs and overseas labor migration management (perhaps from one of the new academic programs recommended above). By enhancing cooperation and reducing the number of government “participants” in the management process, improved efficiency would be achieved and better service will be rendered for and on behalf of OFWs. By transferring some of the DFA’s OFW-related responsibilities at foreign posts to representatives from the Department of Overseas Employment, the DFA could better pursue its mandate and traditional responsibilities. This would include aggrieve pursuit and negotiation of BLAs and more binding treaties and agreements.

Worker Welfare and Future Research Directions

While there is significant scholarly expertise on issues related to overseas labor migration from the Philippines, very little of it extends beyond documenting the overseas employment

program's many flaws and the numerous cases of abuses of workers. In other words, the issue of worker welfare has dominated migration scholarship in recent years, particularly in regard to migration from the Philippines. Upon careful reading of this thesis one will find that the central importance of worker welfare has never been questioned and at many points emphasized emphatically. This study was not intended to belittle or diminish the importance of welfare issues. These issues have been, and hopefully will continue to be explored by both academics and civil society groups alike.

Explaining the traditional emphasis of academic studies on overseas labor migration

Lindquist explained that:

Labour recruitment, and the migration industry more generally, has often been overlooked by researchers who have tended to focus attention on migrants, their families, and communities, rather than entrepreneurs and brokers....However, if we are to grasp the changing structure of contemporary forms of transnational labour migration it is critical to consider the infrastructure, or "migrant institutions," which allow people to move. This perspective suggests a shift of attention away from – without denying the importance of – the emotional experiences of migrants and the often predictable forms of injustice they face in destination countries to the brokerage systems that move them from one place to another.¹⁷

Instead of focusing specifically on the immensely important "worker welfare" aspects of the overseas employment program, this study has focused on big picture political, economic, and relational questions that have been overlooked in previous investigations into the overseas employment program from the Philippines. If the Philippines is truly going to face reality and embrace the overseas employment program as a component of its national economic development strategy more scholars must investigate the convergence and complementarity of migration and development. Internationally, there is a great deal of

¹⁷ Johan Lindquist, "Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry," *Pacific Affairs* 83, no. 1 (2010): 117.

scholarship combining these two areas, but only a few scholars in the Philippines, such as Tigno and Go, are looking at migration issues beyond the welfare approach.

While conducting archival research for this thesis in 2009 and 2010, two areas of statistical data deficiency began to stand out as a serious problem. The first was the serious lack of information on the recruitment industry as a sector of the economy, and the second was the spotty nature of data related to the tracking of returned OFWs. A healthy amount of data exists on remittances, deployments, contract processing, and other aspects of the OFW deployment process but when it comes to returned OFWs or data related to the recruitment industry there is almost no data available at all. The Bureau of Labor and Employment Statistics (BLES), contained within DOLE, is chartered to track vital statistics on labor and employment issues in the country. While BLES captures statistical information across all major sectors of the economy, no data has been captured on the recruitment industry—despite its major contribution to the national economy through the remittances that come in as a result of their facilitation of OFW deployments. When asked about the lack of coverage, the archivists at BLES concluded that the recruitment industry was not considered a “sector” or “industry” in the same way as agriculture and manufacturing. Consequently, no data were available. Recruitment industry data are essential for proper economic analysis of the Philippines. Even if policy makers in the Philippines choose not to embrace the overseas employment program as a permanent fixture of the Philippine economy and an integral component of the national economic development strategy, these reasons do not justify the wholesale discounting of an industry that employs literally thousands of Filipinos domestically. Recruitment industry leader Victor Fernandez argued that the lack of data was the result of a combination of embarrassment and shame. He explained that “it

would be disgraceful because it will show to the entire world that our economy is dependent on overseas remittances and that is the issue”.¹⁸ While this may be true, similar to the discussion above about the national reluctance to embrace the overseas employment program openly, additional statistics on the recruitment industry itself would add to the collective understanding of the program as a whole. It would not demonstrate the Philippines’ reliance on overseas migration any more starkly than the ratio of remittances to GDP already does.

Likewise, on the second data deficiency issue, whether the responsibility falls with the Department of Immigration or the POEA itself, more effort must be put into tracking the return of OFWs back into the country. If the skills, experiences, and financial resources of returned OFWs are to be more effectively utilized for the developmental benefit of the country, it is essential to put in place a mechanism implemented to track their return and remain in contact with them regardless of whether they decide to stay home or to re-deploy abroad. A secondary benefit of tracking the status and intentions of returned OFWs would be to show the ongoing flows in and out of the country, the ratios of which might offer insight into what effect the overseas employment program is having on the workforce and population generally.

Final thoughts

By researching the major questions and themes brought forward through the lens of the government-business framework, this thesis has provided insight into how key relationships have shaped policymaking and often get in the way of meaningful progress toward improving the program—or even simply making it more efficient and beneficial for all

¹⁸ Victor E.R. Fernandez Jr., President, Philippine Association of Service Exporters, Inc. (PASEI), interviewed by author Mandaluyong City, Philippines, November 7, 2009.

involved. If improvements to the program are ever going to be made, the recruitment industry has legitimate grievances and must be accepted as a partner with government rather than a frequent enemy. Likewise, the recruitment industry, with the help of government, needs to do whatever it can to stamp out the things that stain their reputation. Exactly what those things are will no doubt have to be determined by the industry itself and the POEA which directly oversees it, but the large size of the industry and the sheer number of participants will make meaningful reform difficult. Recruitment industry leaders assert that they are perpetually blamed for all the program's woes. While wholesale blame of the recruitment industry for all program and OFW woes is unjustified, some of the industry's problems are inadvertently self-inflicted, as was the case with RA 10022. As described in Chapter Five, when they recommended the idea for liability insurance to legislators they received a bill that mandated insurance but to a far greater extent than they were prepared for or desired. This created a situation where the insurance they had pursued so vigorously ultimately became a burden rather than a benefit. While in the end industry leaders justifiably blamed Congress, the Senate in particular, they should have expected that their original proposal would not remain unaltered considering the track record of the legislature and the pattern of behavior that Congress has demonstrated on previous overseas employment program related legislation, particularly RA 8042. Despite all this, it is clear that once accepted at the negotiating table as a partner rather than enemy, the will exists within at least some leading figures in the recruitment industry to make meaningful changes to industry practices and the program at-large that will benefit all parties involved.

As mentioned in Chapter Three, the government's perpetual framing of the overseas employment program as temporary has led Rene Ofreneo to dub the program "permanently

temporary”.¹⁹ This apt characterization illustrates in a single catchphrase many of the reasons why the program has persisted and grown from something originally intended to be temporary, into something permanently fixed in the Philippine economy. Indeed, the economy reached the point where it can no longer function without it. The dependency of the Philippine economy on the overseas employment program and the resulting remittances is now permanent; it is far past time that leaders and policy makers admitted this reality that everyone knows to be true but that some do not want to admit. Not only is the Philippine economy unquestionably reliant on remittances for its ongoing survival, but over the nearly 40 year history of the program overseas labor migration has forever changed Philippine culture. In the modern Philippines it has become more fashionable to work abroad, and be paid in dollars or another international currency than to work domestically for pesos. This issue was illustrated in 2009 while attending a job fair at the Tinoma Mall in Quezon City. The job fair was divided in half with domestic companies seeking workers for good paying jobs in the Philippines on one side, while foreign employers or recruitment agencies seeking qualified persons for jobs abroad on the other side of the fair. While a few dozen prospective workers mingled about on the domestic side of the job fair, the line for the international side wrapped around the central atrium several times with perhaps thousands of prospective workers waiting patiently for their turn.

The time has come for the Philippines to chart a new course for itself, and the overseas employment program is positioned to be a central plank in the strategy that will put the nation on a sustainable path toward economic prosperity. There is a critical need for the program to be first acknowledged as vital to the country and then placed within a larger economic development strategy. This strategy, as explained in Chapter Two and again

¹⁹ Ofreneo, “Migration and Development,” 264.

above, will require a central planning authority with the right mix of authority and know-how to develop a sustainable long-term economic development strategy and then resolve to stick to the plan—making any necessary adjustments, of course, as time goes on. If policy makers and leaders do not wish to acknowledge the permanency of the overseas employment program then they must ask this newly empowered economic development planning authority to utilize the program now while at the same time pursuing other supplementary strategic development plans and objectives. Korea, as described in Chapter Seven, utilized their overseas employment program as one element in a much larger strategy that was primarily focused on the enhancement of domestic industry and manufacturing. Once those efforts reached a certain level of profitability and growth, the Korean overseas employment component of the development strategy was no longer needed and could be discontinued. This could certainly happen in the Philippines but not until a great deal of progress is made in developing whichever “other” strategic efforts are made in conjunction with the overseas employment program. Once they are ready, like Korea, the Philippines could phase out its “temporary” overseas employment program and Filipino workers would then only have to go abroad to find work if they really wanted to. With proper coordination and proper planning, there could come a day in which overseas labor migration is a supplement rather than the centerpiece of Philippine economic growth.

Appendix 1

Philippine Bilateral Labor Agreements

Country	Status	Year signed	Title	Implementing agency
Great Britain, for North Borneo	Unknown	1955	Agreement...migration of Filipino labor employment in British North Borneo	National Employment Service
Great Britain, for North Borneo	Unknown	1955	Sample contract of employment for 1955 Borneo Agreement	National Employment Service
United States	Superseded by 1985 agreement below	1968	Agreement, employment of Filipino Citizens by US military in US military bases in the Philippines	DOLE
Libya	Unknown	1979	Agenda for Cooperation in the Field of Labor, Employment and Manpower Development	DOLE
Papua New Guinea	Expired, according to "Philippine Bilateral Agreements" by DOLE (2006)	1979	MOU in relation to the Employment of Filipino Citizens for the Performance of Duties Under and Employment Contract as Non-Citizen Contract Employees in the State Services...PNG	POEA
Jordan	Expired, according to "Philippine Bilateral Agreements" by DOLE (2006)	1981	MOU	POEA
Iraq	Expired, according to "Philippine Bilateral Agreements" by DOLE (2006)	1982	MOU Relating to Mobilization of Manpower	DOLE, POEA (Focal implementing agency)
United States	Unknown	1985	MOU amending May 27 1968 agreement	DOLE
International Catholic migration Commission	Unknown	1988	MOU	na
Jordan	Unknown	1988	Agreement of manpower	POEA

			Agreement between the US and the Philippines relating to the employment of the Philippine nationals in the US military bases in the Philippines. (MOA amending agreement of 1985 and 27 May 1968)	
United States	Unknown	1989		DOLE
Canada	Unknown	1991	MOU concerning National Commission on the role of Filipino Women	na
Cambodia	Unknown	1995	MOU on rural Health Development Cooperation	DOH
Canada	unknown	1996	MOU concerning National Commission on the role of Filipino Women	na
Bahrain	Unknown	1997	MOU on the establishment of joint commission on manpower, economic, commercial, educational, cultural and technical cooperation	na
Kuwait	In force	1997	MOU on Labor and Manpower Development	POEA
Qatar	In force	1997	Agreement Concerning Filipino Manpower Employment in the State of Qatar	DOLE, POEA (Focal implementing agency)
Myanmar	Unknown	1998	MOU on the package of assistance for Human Resource Development for the Union of Myanmar	na
Taiwan	Replaced	1999	MOU regarding Special Hiring of Workers	DOLE, MECO, TECO, POEA
Norway	Expired, according to "Philippine Bilateral Agreements" by DOLE	2001	Agreement on Transnational Cooperation for Recruiting Professionals from the Health Sector to Positions in Norway	POEA
Taiwan	Replaced	2001	MOU on Special Hiring Program for Taiwan	DOLE, MECO, TECO, POEA
Switzerland	In force	2002	Agreement, exchange of professional and technical trainees	DOLE and Department of Justice through Bureau of Immigration

Switzerland	Unknown	2002	Agreement between RP and the Swiss Confederation on the Readmission of Persons with Unauthorized Stay	DFA
United Kingdom	Unknown	2002	Recruitment Agreement	POEA
Bahrain	For ratification, according to Philippine Bilateral Agreements by DOLE (2006)	2003	MOU on technical education	TESDA
Indonesia	Unknown	2003	MOU Concerning Migrant Workers	DOLE, OWWA (Focal implementing agency)
Taiwan	Replaced	2003	MOU on Special Hiring Program for Taiwan	DOLE, MECO, TECO, POEA
United Kingdom	In force	2003	MOU, Health Care Cooperation	DOLE, DOH
United States	Unknown	2003	Partnership for distressed Filipino nationals in the United States of America seized between the Department of Foreign Affairs and the National Federation of Filipino-American Bar Association of Greater Washington DC	DFA
Italy	In force	2004	Agreement on the Assisted Return and Readmission of Persons	Department of Justice
Korea	replaced by 2006 EPS	2004	MOU on the Sending of Workers to the Republic of Korea	DOLE, POEA (Focal implementing agency)
Lao	For ratification 2005	2005	MOU on Technical Cooperation on Labor and Employment	DOLE
Saudi Arabia	In force	2005	MOU For Cooperation in the Field of Technical Vocational Education and Training	TESDA

Canada, Saskatchewan	In force	2006	MOU between RP (DOLE) and her Majesty the Queen in the Right of the Province of Saskatchewan as represented by the Minister Responsible for Immigration and the Minister of Advanced Education and Employment (hereinafter referred to as AEE) (2006)	DOLE, (and will include attached agencies: (i)POEA, (ii) OWWA, (iii) TESDA, and (iv) PRC)
International Organization for Migration	Unknown	2006	MOU	na
Korea	in force	2006	MOU on the Sending and Receiving of Workers under the Employment Permit System	DOLE, POEA (Focal implementing agency)
Libya	In force	2006	MOU	POEA
Spain	In force	2006	MOU on Cooperation for the Management of the Migratory Flows	POEA
Taiwan	Replaced	2006	MOU on Special Hiring Program for Taiwan	DOLE, MECO, TECO, POEA
Bahrain	In force	2007	MOU on health services cooperation	DOH
France	unknown	2007	Joint statement between the ambassador of the Republic of the Philippines and the Secretary General of the Inter-Ministerial Committee on Immigration Control of the Ministry of Immigration, Integration, National Identity and co-development of the Republic of France	na
Northern Marianas Islands	Unknown	2007	MOU	DOLE, POEA (Focal implementing agency)
United Arab Emirates	In force	2007	MOU in the Field of Manpower	DOLE, POEA (Focal implementing agency)
United Arab Emirates	In force	2007	Implementation of the UAE Employment Agreement for Domestic Workers and Sponsors	DOLE, POEA (Focal implementing agency)

Canada, Alberta	In force	2008	MOU Concerning Cooperation in HR Deployment and Development	DOLE, (and will include attached agencies: (i)POEA, (ii) OWWA, (iii) TESDA, and (iv) PRC)
Canada, British Columbia	In force	2008	MOU Concerning Cooperation in HR Deployment and Development	DOLE, (and will include attached agencies: (i)POEA, (ii) OWWA, (iii) TESDA, and (iv) PRC)
Canada, Manitoba	In force	2008	MOU Concerning Cooperation in HR Deployment and Development	DOLE, (and will include attached agencies: (i)POEA, (ii) OWWA, (iii) TESDA, and (iv) PRC)
Japan	In force	2008	Economic Partnership Agreement	na
New Zealand	Unknown	2008	MOA on Labor Cooperation	DOLE
Qatar	In force	2008	Additional Protocol to 1997 Agreement	POEA
Taiwan	Replaced	2008	MOU Between TECO and MECO (Joint Implementing Guidelines)	DOLE, MECO, TECO, POEA
Jordan	In force	2010	MOU on Labor Cooperation	DOLE, POEA

Appendix 2

Recommendations from the Final Report of the Investigating Mission of the Committee on Overseas Workers' Affairs (COWA) to Saudi Arabia, January 9 – 13, 2011

1. Decertify Saudi Arabia as a country fit to receive domestic workers in accordance with Section 3 of Republic Act 10022, which states that “the Department of Foreign Affairs, through its foreign posts, shall issue a certification to the POEA, specifying therein the pertinent provisions of the receiving country’s labor/social law, or the convention/declaration/resolution or the bilateral agreement/arrangement which protect the rights of migrant workers.”
2. Urgently press the Saudi government to negotiate a bilateral labor agreement with the Philippine government that would secure respect and iron-clad protection for the rights of all classes of Filipino overseas workers. This recommendation of the earlier mission to Saudi Arabia consisting of Reps. Rufus Rodriguez, Luz Ilagan, and Carlos Padilla (Nov 2009) is one that our mission strongly reiterates.
3. Coordinate with other labor-sending countries such as Indonesia, Sri Lanka, and India to gain leverage vis-a-vis Saudi Arabia in order to secure respect for overseas workers’ rights.
4. Upgrade the Pre-departure Orientation Seminars (PDOS) to familiarize OFWs headed to Saudi about the conditions—both good and bad—they are likely to face in that country.
5. Urge members of Congress to work with LGUs in launching information campaigns to dissuade people from going to Saudi to engage in domestic work and related occupations such as “washers” and “beauticians.”
6. Prosecute recruitment agencies that have a record of deploying domestic workers to households and establishments that maltreat workers.
7. Prosecute recruitment agencies that are party to substitute contracting and similar activities under the Anti-Trafficking Act.
8. Ensure that the budget for Assistance to Nationals and the Legal Assistance Fund is not reduced and, if possible, increased.
9. Increase efforts to secure the release of death row victims as well as other nationals currently detained in Saudi jails on various charges.
10. Pressure the Saudi government to agree to a bilateral agreement that would normalize the situation of children born of Filipino or mixed parentage in Saudi Arabia and facilitate their repatriation to the Philippines.
11. Increase the personnel complement of the Embassy, Consular, and POLO staffs to reduce overwork and meet growing demands.

12. Conduct an aggressive information campaign among OFWs in Saudi Arabia regarding the benefits they can get from different government welfare programs such as Pag-IBIG and Philhealth.

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