

Governance and Making Public Policy in the Philippines:  
RA 8042 and Deregulating the Overseas Employment Sector<sup>\*</sup>

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Significance to Public Administration and  
the Governance of Policy-Making

On 7 June 1995, then-President Fidel V. Ramos signed the Migrant Workers and Overseas Filipinos Act of 1995 or Republic Act (RA) 8042<sup>[1]</sup> into law. The shaping and final stages of its promulgation were preceded by the controversial execution of a Filipina domestic helper in Singapore and the popular outcry that ensued leading to the dismissal of two cabinet members as well as a host of other ranking public officials of the Ramos administration right at the heels of the May 1995 elections.

The measure was drafted and finalized by the legislature during the time that Ramos had called for an extended session of Congress (from 22 to 27 May 1995) in the wake of the Flor Contemplacion incident.<sup>[2]</sup> While the House of Representatives was able to turn up an early version of the measure that did not contain any provisions on deregulation as early as the middle of February 1995 (i.e., a month before the execution of Contemplacion which took place on 17 March 1995), it was not until during the special session of Congress (or after the elections of May 1995) that both chambers were able to come up with a final combined version.

The law seeks to overhaul and manage the overseas employment sector and program which is a highly complex, dynamic, and often intractable phenomenon and public policy. Republic Act 8042 can be considered a significant departure from the previous policy framework and program as defined in the Labor Code of 1974 or Presidential Decree (PD) 442. The law applies a more protective framework that takes into account the plight of Filipinos overseas who are in distress, including those who are undocumented.

But while previous policy initiatives on labor out-migration have focused more on strengthening the country's comparative labor advantage and on setting up stricter regulatory mechanisms and institutions to protect the welfare and rights of Filipino migrants overseas, RA 8042 is more oriented towards the protection and promotion of migrants' rights and welfare through deregulation and labor market development or management. The law seeks to reduce if not remove altogether those restrictive

bureaucratic procedures and mechanisms and allow for the simplification of relations to just “strictly a matter between the worker and his foreign employer” (Section 29).

This paper is significant in the sense that it tries to provide a more rational explanation for why the deregulation provisions were incorporated into RA 8042 despite the fact that the earlier House version for it did not contain such provisions. But while the whole Contemplacion affair (i.e., in terms of how the public and policy-makers have responded to it) and the atmosphere surrounding the crafting and promulgation of RA 8042 could not be divorced from the fact that elections were about to take (and had already taken) place in May 1995, the manner by which the decision-making process has been managed or governed in the Ninth Congress can be interesting to students of public administration and governance.

The Contemplacion case was certainly a dramatic event (highlighted further by the fact that it came in the heels of the May 1995 elections) enough to cause a national trauma and compel both the executive and legislative branches to enact legislation protecting OFWs worldwide. However, these two coincidences cannot completely explain the inclusion of the specific deregulation provisions in RA 8042.

A similar high profile case in the past failed to instigate the kind of deregulation framework contained in RA 8042. In 1991, a Filipina entertainer in Japan named Maricris Sioson died under mysterious circumstances. As a response to this, the Aquino administration declared a total ban on the deployment of Filipina overseas performing artists (OPAs). This ban, however, was later relaxed and rescinded through the institution of new guidelines on the testing, certification, and deployment of OPAs. In its place the Artist Record System was introduced by virtue of Department Order Numbers 2 and 10 dated 6 January 1994 and 26 December 2001, respectively. The same directive also specified guidelines on the training and accreditation of performing artists as well as the issuance of the Artist Record Book (ARB) to qualified entertainers.

The Contemplacion episode (and the elections that accompanied it) acted as a policy catalyst that triggered the chain of events leading to the enactment of RA 8042 and its deregulation provisions. It can be argued that the tragic incident became the medium for the policy making institutions of the country and gelled the need among policy-makers to assume a rapid and more direct response (i.e., in the form of RA 8042) to the labor migration issues that were unraveling at the time. However, even as it catalyzed the policy-making process, the Contemplacion incident alone cannot fully explain the adoption of the deregulation provisions in RA 8042. The causal proposition that the Contemplacion tragedy directly brought about the deregulation policy framework instituted in RA 8042 is indeed disputable and insufficient.

## Market-Centered Policies and The Overseas Employment Program

At the start of his administration, Pres. Ramos launched Philippines 2000, “a vision and program of reform and sustainable development for improved quality of life for the Filipino” (Habito 1996,44). In pursuit of this vision, the Ramos administration embarked on a strategic policy that is largely market-centered where “the private sector and the market system should be the prime mover of the economy” (Habito 1996,45). Through the 1992-1998 Medium Term Philippine Development Plan (MTPDP), NEDA under the Ramos administration is able to systematically carry out programs that are in pursuit of these market-centered objectives.

Since the beginning of the program, one policy pronouncement that has remained is the government declaration of protection to overseas workers. As early as 1975, with the enactment of Presidential Decree 442 otherwise known as the Revised Labor Code, the declared policy of the State is “to protect every citizen desiring to work locally or overseas by securing for him the best possible terms and conditions of employment”.<sup>[3]</sup>

Another major public policy pronouncement pertaining to the implementation of the overseas employment program is the intent to regulate the participation of the private sector. In PD 442, the State is mandated to “rationalize the participation of the private sector in the recruitment and placement of workers, locally and overseas, to serve national development objectives.”<sup>[4]</sup> In practice, however, the government sees its function as essentially providing for an environment for private enterprise to thrive.

The implementation of the country’s overseas employment policy and program has yielded substantial results over the last 25 years. Between 1975 and 1991, the number of Filipinos processed for overseas contractual work grew by almost 2,000 percent from a little over 36,000 to almost 700,000 (Cariño 1992,6). According to statistics from the Philippine Overseas Employment Administration (POEA), from 1984 to 1995 a total of almost 6.3 million Filipinos have been deployed for overseas jobs as seen in Table 1 below.

**Table 1: Deployed Land-based Workers By Major World Group**

Year	Africa	Asia	Americas	Europe	ME	Oceania	Trust Terr.	Total
1984	1,843	38,817	2,515	3,683	250,210	913	2,397	300,378
1985	1,977	52,838	3,744	4,067	253,867	953	3,048	320,494
1986	1,847	72,536	4,035	3,693	236,434	1,080	3,892	323,517

1987	1,856	90,434	5,614	5,643	272,038	1,271	5,373	382,229
1988	1,958	92,648	7,902	7,614	267,035	1,397	6,563	385,117
1989	1,741	86,196	9,962	7,830	241,081	1,247	7,289	355,346
1990	1,273	90,768	9,557	6,853	218,110	942	7,380	334,883
1991	1,964	132,592	13,373	13,156	302,825	1,374	11,409	476,693
1992	2,510	134,776	12,319	14,590	340,604	1,669	11,164	517,632
1993	2,425	168,205	12,228	13,423	302,975	1,507	8,890	509,653
1994	3,255	194,120	12,603	11,513	286,387	1,295	8,489	517,662
1995	3,615	166,774	13,469	10,279	234,310	1,398	7,039	436,884

Source: Philippine Overseas Employment Administration (POEA), 1996

Likewise, their occupations are mainly concentrated in production process work (e.g., construction workers and laborers), services (e.g., household work), and professional undertakings (e.g., nurses, doctors, entertainment workers, etc.) as seen in Table 2 below.

**Table 2: Skills Distribution of Filipino Migrant Workers  
1975, 1980, 1985, 1987, 1995 (In Percent)**

	1975	1980	1985	1987	1995
Professionals	53.5	15.5	22.5	27.6	20.5
Managerial	0.6	0.5	0.4	0.4	0.2
Clerical	1.8	3.4	4.5	3.6	1.6
Sales	0.5	0.3	0.8	1.0	1.0
Service	22.0	14.9	27.1	33.7	38.0
Agricultural	0.9	1.0	0.4	0.6	0.5
Production	20.8	64.4	44.4	33.2	38.2
Not Classified	0.0	0.0	0.0	0.0	0.1
Total	100%	100%	100%	100%	100%
	12,501	157,394	337,754	382,229	214,130

Source: Table 3 "Towards the 21st Century: Whither Philippine Labor Migration?", Stella Go, in *Filipino Workers on the Move: Trends, Dilemmas and Policy Options*, Benjamin Cariño, ed. (Quezon City: PMRN, 1998), p. 15.

The sending of foreign exchange remittances of Filipino workers abroad is a major aspect of the overseas employment sector. Since 1984, income remittances from overseas workers make up about 50 percent of total recorded remittances reflected in the country's balance of payments account (Albuero 1993,272). Foreign exchange remittances coming from Filipino workers abroad represent more than one percent of the Philippines' gross domestic product (GDP) (Mercado 1997,1 and 4). For the first quarter of 1992, migrants were able to remit US\$ 424 million, an amount almost equal to the country's number one dollar earner, the garments industry, which gained US\$ 541 million during the same period (Limlingan 1992,18). According to the

Commission of Filipinos Overseas (CFO), the total average value of these inward contributions by Filipinos abroad is about US\$ 1 billion annually. The International Labor Organization (ILO), meanwhile, estimated in the mid-1990s that these inward remittances can go as high as US\$ 3 billion annually – equivalent to more than 20 percent of export earnings, and as much as four percent of GDP.<sup>[5]</sup>

The Philippine government has tried to manage the way that the overseas employment program has been carried out by regulating the outflows of labor. Private labor recruitment agencies have always been the target of these management policies given that these entities have historically dominated the sector. In 1975, government placement was able to accommodate as much as 48 percent of total placements for that year while the rest was taken up by private recruitment agencies. By 1985, government placements had gone down to a meager 6 percent of the total as indicated in Table 3 below while private agencies took on the bulk of these deployments.

**Table 3: Processed Land-based Workers  
By Type of Placement (1982-1995)**

Years	Private	Govt.	Direct	Total
1982-1985	844,241	30,217	-	874,458
1986-1990	1,009,990	32,041	37,610	1,079,641
1991-1995	1,213,636	14,606	112,577	1,954,099

Source: Philippine Overseas Employment Administration (POEA), 1996.

Each year, however, thousands of hopeful Filipinos are victimized by agencies that over-charge on recruitment and other documents and processing fees. Back in 1974, the maximum legal amount that could be charged to a worker as processing and placement fee under the Bureau of Employment Services (BES) was only P500. By 1983 through the MOLE Memorandum Circular (MC) Number 6, this ceiling was raised to P2,500. Two years later (1985), this placement fee was doubled to P5,000 by virtue of MC Number 5. By the early 1990s, that legal ceiling had settled at P5,000, but it also required workers to pay their recruiters one month of their salary for Filipinos to be employed in Taiwan and P15,000 for those going to Korea.<sup>[6]</sup> The fee to be paid was also inclusive of all documentation and other processing costs such as the passport, and visa fee, among others (Alegado 1997,23).

However, as indicated above, what may be the formal policy directive may not conform to the effective policy outcome. An undated POEA internal paper noted that “regulations on placement fee (sic) have been more often than not violated and subjected to what is commonly known in the industry as ‘paper compliance’”.<sup>[7]</sup> Actual placement fees charged to the worker are much higher than what is stipulated in the government directive. In 1987, the average actual placement fee was already P8,000 while many paid as much as P15,000 and higher (Mangahas 1988,12). Market

forces often dictate the price at which a laborer is to be deployed overseas. The higher the anticipated income, the higher the placement fee will be. In a 1996 survey of Filipino workers in Taiwan, it was shown that almost 60 percent of them paid a placement fee that ranges from P 60,000 to P 80,000 per worker. This would include even the workers' airfare costs.<sup>[8]</sup> The role of the private sector as the "prime mover" of economic growth and principal exponent of social stability cannot be divorced from the dynamics of implementation of the overseas employment program.

### Governing the Overseas Employment Sector

Historically, the main agency of government mandated to pursue the overseas employment option is the Department of Labor and Employment (DOLE). In 1974 by virtue of Presidential Decree 442 or the revised Philippine Labor Code, several public management institutions were created under the then-Ministry of Labor and Employment (MOLE) that were collectively tasked to develop, promote, regulate, and implement a comprehensive overseas employment program. These were the Bureau of Employment Services (BES), the Overseas Employment Development Board (OEDB), and the National Seamen Board (NSB). The OEDB is principally responsible for directly pursuing the country's emerging overseas employment agenda. Meanwhile, the NSB was created for the purpose of developing and maintaining "a comprehensive program for Filipino seamen employed overseas."<sup>[9]</sup>

By 1982, the organizational structures that underlie the implementation of the overseas employment program in the country underwent a significant streamlining effort. By virtue of Executive Order 797, the Ministry underwent a major reorganization. The BES, OEDB and NSB were subsequently collapsed and their functions absorbed by the newly-created Philippine Overseas Employment Administration (POEA). The POEA effectively took on all the functions of the three previous and separate Bureaus from standards-setting and regulation to welfare protection as well as labor recruitment and deployment and even market development.

In the beginning the intent of government in regulating the overseas employment program in the early 1970s was actually to reduce the number of private recruitment entity-participants in favor of the nationalization of the sector. This meant the phase-out of private labor recruitment agencies that were charging fees to workers to be replaced by one government agency, the OEDB, at the time. Private entities were seen as just profit-making ventures that do not have a strategic vision for their sector as a whole and much less for the country.

By the second half of the 1970s, however, the surge in the demand for migrant labor in the Gulf proved to be too much for government to handle by itself creating the conditions that would eventually lead to a reversal of the attrition policy. Mangahas

(1989) had observed “this growth in demand for Filipino contract workers could not be accommodated within the traditional avenues for recruitment” (4). As a result, private recruiters proliferated. The reason behind this despite efforts to regulate and even reduce their numbers may be partly due to government’s inability to enforce its own licensing regulations; partly because of the manner in which such private entities can be established; and partly because of the involvement of government officials in such activities.

But by the early 1980s, government again began to consider limiting the participation and number of private job intermediaries through a cessation of the issuance of new licenses to recruiters. The reason for stems more from the perception that the overseas employment sector had become “overcrowded” with private entities rather than the strategic need for government to take over the private sector by that time. Alongside this new policy, however, Mangahas (1989) observed that new forms of recruitment were legally recognized and to some extent encouraged. As a result, even though there was an explicit attrition policy this was implicitly rendered ineffective because of the emergence and prevalence of other recruitment activities.

In 1987, government reopened the issuance of new licenses to manning agencies as well as service and construction contractors and instituted a minimum mobilization requirement of 200 workers per year per agency. Earlier, the minimum mobilization requirement was 400 workers per year per agency. The reduction in the minimum mobilization requirement for private agencies meant that they could still operate in spite of the difficulties they experienced in recruiting for overseas jobs due to competition between agencies. Essentially, such a condition meant that the market had become saturated by private entities. However, rather than eliminate under-achieving agencies, government chose to reduce the mobilization minimum to accommodate (and perhaps even increase) the number of private agencies operating at the time.

In the beginning of the program, the public policy goal was for government to monopolize the selection, deployment and actual employment of workers by virtue of overseas government-to-government contracts. Due to certain administrative and international circumstances, government was unable to deal with the recruitment and deployment procedures and was thus constrained to rely heavily on private sector participation. As a result, government hired workers made up only a small portion of total hiring with the private recruitment agencies taking up almost the entire slack for government. There had emerged a de facto deregulation policy framework for overseas employment.

The policy pronouncement during the Aquino administration underscored the importance of protecting the rights and welfare of Filipinos living and working abroad

(especially those belonging to vulnerable work groups including women). Its reorganization of the POEA in part reflects this policy orientation. However, as far as regulating the private sector is concerned, the Aquino administration appears to exhibit an ad hoc position on deregulation. The administration appears to be unable as well to regulate the substantial role of the private sector. While on an official level, the Aquino administration has seen the need to restrain the proliferation of private recruitment entities, it has nevertheless tolerated their continued operation even to the extent of allowing for the issuance of new licenses to recruitment agencies.

While it also seeks to continue the overseas employment program and policy, the Ramos administration does attempt to re-evaluate the role that such a development strategy has had on the country. This eventually led to a de jure situation on the matter of regulating private recruitment entities involved in overseas employment through RA 8042.

An illustration of how these different programs and strategies have been government from Marcos to Ramos is seen in Figure 1 below.

Figure 1: Labor Out-Migration Strategies From Marcos to Ramos and Deregulating the Overseas Employment Sector

Marcos (1974-1986)	<ul style="list-style-type: none"> <li>· Institutionalization of the Overseas Employment Program (PD 442)</li> <li>· Early Phase Out Policy (1974)</li> <li>· Reversal of Phase Out Policy (Late 1970s)</li> <li>· Discontinue Issuance of New Licenses to Labor Recruiters (Early 1980s)</li> <li>· Rise in “New Recruitment Entities”</li> </ul>	<ul style="list-style-type: none"> <li>· De Facto Deregulation</li> </ul>
Aquino (1986-1992)	<ul style="list-style-type: none"> <li>· POEA Reorganization (EO 247)</li> <li>· Continuing Overseas Employment</li> <li>· Inclusive Decision-Making</li> <li>· Greater Emphasis on Welfare Protection</li> </ul>	<ul style="list-style-type: none"> <li>· Ad Hoc Deregulation</li> </ul>
Ramos (1992-1998)	<ul style="list-style-type: none"> <li>· Continuation of Overseas Employment Program</li> <li>· Review Overseas Employment (White Paper)</li> <li>· Overseas Employment as a Phenomenon</li> <li>· Managing Overseas Employment</li> </ul>	<ul style="list-style-type: none"> <li>· De Jure Deregulation</li> </ul>

## A Legislative History of RA 8042

Legislative initiatives in the post-Marcos period concerning overseas employment and Filipinos working abroad certainly did not begin with RA 8042. Between 1987 and 1991, a total of 23 Senate Bills and 32 House Bills were filed (See Asis 1992). However, from 1987 up to the time of the Ninth Congress and its ratification of RA 8042, only one law was passed by the legislature. RA 7111 ("An Act Establishing the Overseas Workers Investment Fund to Provide Incentives to Overseas Workers, Reduce the Foreign Debt, and Other Purposes") was also coincidentally passed by the Ninth Congress during its first regular session on 22 August 1992.

A major input to the deliberations of the members of Congress preceding the promulgation of RA 8042 (particularly in the Senate and in the Bicameral Conference Committee Meetings) is the Gancayco Commission Reports that came out from April to May 1995.<sup>[10]</sup> It is interesting to note at this point that the Gancayco Commission recommendations conveyed the position that the government would be better off by phasing out certain aspects of overseas employment (e.g., phasing out the deployment of domestic helpers to the Middle East or the Gulf region; of entertainers to Japan and other countries; as well as the permanent ban on private agencies engaged in illegal recruitment practices) and not to phase out the regulatory functions of government altogether. Indeed, if any, the Commission even recommended "the tightening up [of] deployment and departure procedures including the strict implementation of pre-departure orientation seminar [sic], strict verification of employment contracts and accreditation of employers."

The final version of RA 8042 in the Lower House began with House Bill (HB) 14314 originally titled "An Act Providing a Magna Carta of Overseas Filipinos" filed by House Speaker Jose de Venecia with Reps. Jaime Lopez and Andrea Domingo, along with 50 others and filed as early as December 1994. House Bill 14314 sought to rationalize in one comprehensive legislation the government's overseas employment program underscoring the need to protect the well-being of Filipinos abroad as well as reintegrate them into the mainstream of Philippine society and tapping their talents and skills for national development goals. Its main objective is to strengthen the regulatory function of government by granting it "the right to intervene to defend and uphold the national dignity" and in pursuit of the rights and welfare of Filipinos working abroad (Section 2). Deregulation as a policy framework had not yet been proposed in HB 14314.

On 1 February 1995, HB 14314 was submitted for Second Reading to the House of Representatives. During its Third Regular Session, on 14 February 1995, HB 14314 was passed on Third Reading with 128 votes in favor and no one voting against it and no abstentions.

At the time that HB 14314 was filed and eventually approved on Third Reading in February 1995, there was no counterpart bill in the Senate. The final version of RA 8042 in the Upper House is derived in part from SB 2077 (“An Act to Institute the Policies of the Overseas Employment Program and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers and for Other Purposes”) sponsored by Herrera and Ople on 24 May 1995, some two months after the Contemplacion execution.

In the wake of the Contemplacion incident, Ramos in early April 1995, by virtue of Executive Order 581, called for a special session of Congress from 22 to 26 May 1995 in order to “pass a bill seeking to protect migrant workers and other urgent measures” including a proposed Magna Carta for Overseas Filipinos which is in apparent reference to HB 14314 (See *Philippine Daily Inquirer* 1995,1,10).<sup>[11]</sup>

The Senate, constituting itself (at least the 12 members that were left) as a Committee of the Whole, undertook a review of the policies and programs on overseas employment in late May 1995 particularly in light of the scores of bills and resolutions mentioned above that have been filed in the Upper Chamber. Such a policy examination and appraisal, however, was not the first time that the Senate had acted on a matter that pertains to the conditions of Filipinos abroad especially the migrant workers. Previously, different Senate Committees investigating the conditions of Filipinos working abroad had held their hearings.

From 22 to 24 May 1995 – the period for the special session of Congress – a series of public hearings were conducted by the Committee of the Whole of the Senate.<sup>[12]</sup> The Committee was co-chaired by Herrera and Ople (chairs of the Senate committees on labor and foreign affairs, respectively) and attended by 11 other Senators (e.g., Angara, Leticia Shahani, Romulo, Ernesto Maceda, Orlando Mercado, Heherson Alvarez, Arroyo, Biazon, Anna Dominique Coseteng, Neptali Gonzales, Santanina Rasul, Roco, Vicente Sotto III, Tatad, and Freddie Webb), heard the statements and testimonies of resource persons from the government (e.g., the Departments of Labor, Foreign Affairs, the Gancayco Commission, the Philippine Overseas Employment Administration, and the Overseas Workers Welfare Administration), the religious (e.g., the Episcopal Commission for Pastoral Care of Migrants and Itinerants / Catholic Bishops Conference of the Philippines, the Center for Overseas Workers, and the Scalabrini Migration Center), and private sectors (e.g., Philippine Association of Service Exporters, Inc., the Overseas Placement Association

of the Philippines, and Philippine Constructors Association) as well as other non-governmental organizations (e.g., MIGRANTE, Philippine Migrants' Rights Watch, and the BATIS Center for Women) and guests including former Labor and Foreign Affairs Secretaries Nieves Confesor and Roberto Romulo.

It was on the first day of the hearings, on 22 May 1995, that Confesor, along with Acting Labor Secretary Jose Brillantes, submitted a White Paper on Overseas Employment to the Committee of the Senate. By the end of the series of hearings, the Committee of the Whole submitted its Report Number 999 dated 24 May 1995 containing SB 2077 consolidating the bills mentioned above and taking into consideration the testimonies of the attending resources persons.

The White Paper on the Overseas Employment Program is a publication of the DOLE and dated April 1995. The principal intention of the 1995 White Paper is to clarify the position of the government at the time in regard to its pursuit of the policy on overseas employment. It basically redefines the overseas employment program along the lines of constituting it as a means for the Philippines to gain a competitive advantage in the global economy without sacrificing the well-being of Filipinos working abroad.

The point that the 1995 White Paper makes is that the government policy on overseas employment needs to shift from one of patently exporting labor to one of “managing effectively the natural process of labor migration – which will continue even if we **ban** the outflow of our workers” [underscoring not mine] (DOLE 1995,1). The 1995 White Paper also foresees that “over the next five years... the flow of migrant workers slackens” and recommends “a progressive policy of deregulation... where the migration of workers can become strictly a matter between the worker and his or her foreign employer” (DOLE 1995,51).

It was based on this premise that the principal author of SB 2077, Senator Herrera, decided to include the deregulation provisions specified in the 1995 White Paper in their proposed measure. Senate Committee Report Number 999, with SB 2077 as its main subject matter, came out on 24 May 1995. SB 2077 was considered for Second Reading on the same day whereupon Herrera made his sponsorship speech for the measure. On 26 May 1995, SB 2077 was approved on Third Reading in the Senate.

On the same day (26 May 1995) that the Senate approved SB 2077 on Third Reading, a Bicameral Conference Committee was constituted to reconcile the differing provisions in HB 14314 and SB 2077. The Committee then met from 29 to 31 May 1995. Heading the Senate Panel (composed of Ople, Shahani, Webb, Romulo, and Maceda) was Herrera while Lopez headed the House Panel (composed of

Representatives Emigdio Bondoc, Bonifacio Gillego, Romeo Candazo, Roque Ablan, Jr., Alberto Veloso, Dante Liban, Leonor Ines Luciano, Edcel Lagman, Manuel Roxas, and Tomas Concepcion).

At the end of the three days of deliberations within the Bicameral Conference Committee, both chambers went on to approve the Committee Report on SB 2077 and HB 14314 incorporating the draft provisions of what was later on to become RA 8042. The draft of RA 8042 was then transmitted to the President on 6 June 1995 and was signed into law the next day, 7 June 1995. A summary of the important events that transpired before and up to the signing of RA 8042 into law obviously indicates that the deregulation provisions appeared only after May 1995 specifically during the hearings of the Senate Committee of the Whole by way of the presentation of the White Paper document by Confesor (See Figure 2 below).

Figure 2: A Legislative History for RA 8042

1987-1991	· 23 Senate Bills and 32 House Bills filed; 1 Bill enacted (RA 7111)	· No Deregulation Provisions
February 1995	· HB 14314 Approved on Third Reading	
March 1995	· Execution of Flor Contemplacion	
April 1995	· Drafting of the 1995 White Paper · Ramos Calls for Special Session in May 1995	
May 1995	· Congress Conducts Special Session · Presentation of the 1995 White Paper to the Senate · SB 2077 Approved on Third Reading · Bicameral Conference	· Deregulation Provisions
June 1995	· Bicameral Conference Report Approved · RA 8042 Signed Into Law	

### Deliberations Leading to Deregulation

The subject of regulation was raised during the House Committee hearings but more in reference to the deployment of migrant workers to countries where they would be placed at high risk. There were discussions during the hearings at the House in mid-November 1994 about “the option of the government to regulate the deployment of OCWs” as stated by then-POEA Administrator Felicisimo Joson (See House of Representatives 1994). While it was not actually brought up, some resistance was

raised during the hearings to the matter of government eventually taking over the recruitment of Filipinos from the private sector. The representative of the private recruitment entities in the hearings, Victor Fernandez, said that any proposal to transfer job recruitment to government would be “against the privatization program” (See House of Representatives 1994). In effect, the position of the private sector speaker was that government should not go against the prescribed national policy to promote private enterprises. However, what was not indicated was the extent to which private recruitment entities are responsible for the recruitment and labor problems experienced by OFWs.

As discussed and illustrated in the previous section, the deregulation policy framework as it actually feeds into RA 8042 was first articulated during the first hearing day of the Senate Committee of the Whole on 22 May 1995 in which the White Paper on Overseas Employment was presented by the Confesor and Brillantes. The drafting of the White Paper, however, was supervised by Confesor who at the time that it was being drawn up was the Labor Secretary.

At the hearings of the Senate Committee of the Whole, concerns were raised by Angara and Ople about the prospect of government withdrawing its regulatory function in regard to the overseas employment sector and how this would affect the issue of protecting Filipino workers overseas (See Senate 1995). 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. Senator Herrera even commented that there are 1.8 million undocumented Filipino workers abroad “who do not want to be regulated by government” (Senate 1995,37). Senator Ople expressed some degree of frustration when he pointed out that, in the past, government had tried to take over the entire overseas employment sector (including the recruitment stage) but had faced significant difficulties resulting in a constant switching from one of regulation to deregulation but eventually ending up with the argument that government cannot handle recruitment and that such an activity “is better left to the private sector” (Senate 1995,43,44).

The deregulation provisions were brought up on the first day of the meeting of the Bicameral Conference Committee in the context of the government’s policy statement on overseas employment, i.e., whether or not it is an important and permanent undertaking (See House of Representatives 1995). Senators Herrera and Maceda indicated that the development of the national economy is the more stable

approach to problems resulting from the overseas employment of Filipinos and that the deregulation provision in the Senate version best reflects this perspective.

The deregulation provisions in the Senate version were discussed during the deliberations on the second day (30 May 1995). Senator Herrera commented that the provision does not mean that the government will abandon its responsibility to take care of the migrant workers. On the contrary, it will strengthen “the protective arms of the government” by liberating it from its earlier mandate of enforcing inappropriate regulations (See House of Representatives 1995). Senator Maceda clarified that it is actually a compromise provision to an earlier bill filed by Angara, Herrera, and Ople creating a Department of Overseas Employment (SB 2071) and which would effectively abolish the POEA (See House of Representatives 1995).

Senator Maceda explained further that the deregulation provision in the Senate version actually comes from the White Paper on Overseas Employment drafted by Confesor and where the five-year timetable was first specified (See House of Representatives 1995). Senator Ople adds that deregulation in the context of the way it is provided for in the Senate version “is simply to eliminate the red tape that so many of our workers complain of and this means debureaucratization” (House of Representatives 1995,82-83).

Different groups and stakeholders involved in the overseas employment sector expressed different views and sentiments on the matter of government regulation and the subsequent deregulation policy articulated in RA 8042. Some were of the position that the deregulation timetable should even be shorter than the five-year time frame in RA 8042.

Representatives of the private labor recruitment and placement agencies during the public hearings of the Senate Committee of the Whole said that the time frame for the proposed deregulation program of the government being considered should even be shortened and combined with a thrust towards professionalizing the bureaucracy (Senate 1995,176,191).<sup>[13]</sup> The sea-based sector, meanwhile, had indicated its position to be governed and regulated separately from the land-based sector including the creation of a separate welfare fund for seafarers (Senate 1995,98).<sup>[14]</sup>

These private recruitment entities are also of the position that government’s regulatory function pertaining to private labor recruitment entities is inconsistent with its own recruitment and deployment functions. In regard to the position of the NGO and private sector stakeholders on the deregulation provision proposals contained in RA 8042, Melgar (1999) observed that they were ambivalent about deregulation and the phase-out provisions (130).

On the whole, however, the participation of civil society groups in the deliberations leading to the firming up of the deregulation provisions in RA 8042 had not been as extensive as in previous deliberation. Several factors may account for this. One is the fact that the Lower House had just concluded its deliberations and hearings on the issue where several NGOs and civil society groups had already participated. Another factor that may explain the lack of full participation from civil society groups is the fact that the deliberations were conducted during a special session of Congress where the other stakeholders may not have had sufficient notification of the hearings and the issues to be discussed in the agenda. As Melgar (1999) had observed, “the enactment of RA 8042 too soon caught them [i.e., the NGOs] off-guard” (Melgar 1999,135). A third explanation still is the fact that the elections of May 1995 may have preoccupied the attention of many of the NGOs involved with labor out-migration issues.

As far as the Executive Branch is concerned, it would appear that the interest of Malacañang at the time was for Congress to come up with legislation that extends protection to Filipino migrant workers in the immediate aftermath of the Contemplacion incident. At first, Ramos endorsed a bill creating a magna carta for overseas Filipinos in apparent reference to HB 14314. Later, the President certified SB 2070 as urgent for legislation. And then much later, the President endorsed SB 2077. Malacañang’s main concern at that time was to come up with legislation no matter the kind so long as it addresses the immediate safety concerns that people have over the problems resulting from overseas employment in the wake of the Contemplacion execution.

### Conclusions

There seems to be no indication to suggest that the deregulation provisions (as these pertain to overseas migrants) form part of any existing legislative agenda in the Ninth Congress. Earlier measures proposed (including HB 14314) drew a more stringent application of existing regulations if not the enforcement of stricter standards and rules such as the selective deployment of migrants and the outright ban on the deployment of migrant workers to specific countries. On the whole, much can be said about the nature of Congress as a body. Congress continues to be a generally reactive public policy institution. Its capacity to initiate public policy is circumscribed by its electoral-political agenda. The members of the Lower House serve only for a term of three years as opposed to the six-year term of the Senate and the President. This would allow the President a measure of resilience not found among the members of the House of Representatives making the former less susceptible than the latter to public political outcries such as the one that prevailed over the Contemplacion tragedy.

The case of the members of the Senate, however, is somewhat unique. While Senators have a six-year term (the same as the President’s), they are more likely to be

open to a less reactive position than the members of the Lower House. At the same time, the electoral timing of the policy decision can also affect the attitude of the Senate. It is possible to say that if a policy decision were to be made by the Senate at a time when there is no presidential election, there is a likelihood that its members will adopt of the position of Malacañang on the matter. Alternatively, if the policy decision were made within a presidential election year, it is likely that the Senate may go against the decision of Malacañang such as its decision to reject the US Military Bases Treaty in 1992.

In the wake of the Contemplacion incident, Malacañang may have played a key role in convincing members of the House of Representatives and the Senate to reconcile their differences and eventually accept the deregulation provisions later to be found in SB 2077. A number of conditions or factors can increase the receptivity of Congress to pressure from the Executive Branch. One factor that can raise this likelihood is if the matter concerns an issue that the current members of Congress have no known expertise at the time the policy is proposed. Deregulating the overseas employment sector can be such an issue where the members of the Legislative Branch at the time had not yet developed enough competence to assess its implications.

Another factor that can affect Congressional resistance or receptivity to Executive initiatives is when it is an election year. However, it may be said that an election year in itself does not explain Congressional receptivity. As the case of RA 8042 illustrates, it would have to be an election for members of the legislature (i.e., for all the members of the House of Representatives and half the members of the Senate) only and not a presidential election. Such was the case in 1995. This condition would constrain the ability of Congress to counter-balance the Executive and which would in turn strengthen the position of the president.

A third condition is when the issue being decided upon by Congress evokes a strong public outcry such as the celebrated tragedy of Flor Contemplacion. This would compel the members of the legislature to seek a speedy solution and response to the public outcry and eventually open the body to “suggestions” from the Executive.

In the context of the strong impact that executive agencies have had on the legislature in regard to the crafting of the provisions of RA 8042, the paper proposes that the Legislative Branch must develop its own capabilities to evaluate and assess social and national problems and to formulate its own legislative measures and policy alternatives beyond formal-legal terms more as a counterpoint to executive decisions. Congress can also develop a predisposition to outsource its policy analyses by engaging strategic policy research institutions.

In regard to the adoption of the deregulation policy, the government will need to develop benchmarks to establish relevant and accurate evaluation parameters for its strategy to deregulate the overseas employment sector. While efforts to empower migrant workers appear to be the centerpiece argument for a deregulated policy environment, there is still a need to establish standards as well as principles or values especially among employers and labor recruiters so as to prevent the exploitation of migrants. A code of ethics governing a deregulated policy framework on overseas employment would be a step in the right direction.

#### SOURCES

- Albuero, F. (1993) "Remittances, Trade and the Philippine Economy." *Asian and Pacific Migration Journal*, No. 3, pp. 269-284.
- Alegado, D. (1997) "The Labor Export Industry and Post-1986 Philippine Economic Development." *Pilipinas*, 29 (Fall), pp. 19-38.
- Cariño, B. (1992) "Migrant Workers From the Philippines," in G. Battistella and A. Paganoni, eds., *Philippine Labor Migration: Impact and Policy*, Manila, Scalabrini Migration Center.
- Department of Labor and Employment (DOLE) (1995) *White Paper; The Overseas Employment Program*. unpublished (April).
- Department of Labor and Employment (DOLE) (n.d.b) Towards an Equitable and Rational Placement Fee Policy." Unpublished.
- Go, S. (1998) "Towards the 21st Century: Whither Philippine Labor Migration?," in B. Cariño, ed., *Filipino Workers on the Move: Trends, Dilemmas, and Policy Options*, Quezon City, Philippine Migration Research Network and Philippine Social Science Council.
- Gonzalez, J. (1998) *Philippine Labour Migration; Critical Dimensions of Public Policy*. Singapore, Institute of Southeast Asian Studies (ISEAS).
- Habito, C. (1996) "Philippines 2000: A Vision of Development in the Market Economy," in L. Dejillas, ed., *Towards a Strong and Stable Market Economy in the Philippines; Readings on the Market Economy and the Philippine Experience*. Makati City, Institute for Development Research and Studies and Konrad Adenauer Foundation, pp. 44-53.

House of Representatives (1994) Minutes of the Meeting of the Committee on Foreign Affairs (16 November).

Limlingan, V. (1992) "Economics of Overseas Contract Workers." *Philippine Daily Inquirer* (17 August), p. 18.

Mangahas, A.A. (1989) "Response to New Market Opportunities: The Case of the Overseas Employment Sector." *Working Paper Series No. 89-11*, Philippine Institute for Development Studies (PIDS) (June).

Melgar, M.V.A. (1999) "The Migrant Workers and Overseas Filipinos Act of 1995: Status and Implications." unpublished masteral thesis, University of the Philippines School of Labor and Industrial Relations (October).

Mercado, J. (1997) "OFWs Moving From Middle East to Asia." *The Manila Times* (4 August), pp. 1,4.

Migrants Standing Committee, Saint Christopher's Parish Pastoral Council (1996) "A Survey on Placement Fees Paid by Taiwan-Bound OFWs to Philippine Agencies." unpublished (October-December).

*Migration News* (1996). 3(9) in <<http://migration.ucdavis.edu/mm21/Skeldon.html>>.

Osborne, D. and Gaebler, T. (1993) *Reinventing Government; How the Entrepreneurial Spirit is Transforming the Public Sector*. Reading, Addison-Wesley Publishing.

*Philippine Daily Inquirer* (1995) "Senate Extends Session." *Philippine Daily Inquirer* (20 February), p. 3.

Senate (1995) Records of the Senate (3 June).

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[1] Its full title is "An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families, and Overseas Filipinos in Distress, and for Other Purposes."

[2] For a discussion on the Flor Contemplacion case, see Joaquin Gonzalez III, *Philippine Labour Migration; Critical Dimensions of Public Policy* (Singapore: Institute of Southeast Asian Studies, 1998).

[3] Article 1(b), Book One, Philippine Labor Code (1975).

[4] Article 12(f), Book One, Philippine Labor Code (1975).

[5] *Migration News*, September 1996, Volume 3 Number 9, in <<http://www.migration.ucdavis.edu/mn/index.html>>.

[6] Department of Labor Order Number 2 (1993).

[7] This is according to an undated policy paper entitled "Towards an Equitable and Rational Placement Fee Policy," submitted to the Philippine Overseas Employment Administration (POEA).

[8] This is according to an initiative of the Migrants Standing Committee, Saint Christopher's Parish Pastoral Council, "A Survey on Placement Fees Paid by Taiwan-Bound OFWs to Philippine Agencies," unpublished (October-December 1996), p. 2.

[9] Article 20, Title I, Chapter II, Book I, PD 442.

[10] Known as the Presidential Fact-Finding and Policy Advisory Commission on the Protection of Overseas Filipinos, the Gancayco Commission was headed by Justice Emilio Gancayco and was created through EO 231 dated 20 March 1995, two days after the execution of Flor Contemplacion.

[11] Actually, there were two Executive Orders that were issued. The first one, EO 577 called for a special session of Congress for one week from 21 May 1995 which was a Sunday. The second EO 581 corrected the dates for the special session from 22 to 27 May 1995.

[12] According to Senator Blas Ople, the constitution of a Senate Committee of the Whole has only happened twice in the Ninth Congress and the first one was when the Upper Chamber considered the Treaty on the GATT-World Trade Organization (WTO). See Senate Archives and Records Division, Public Hearing of the Committee of the Whole in Reviewing the Overseas Employment Policy and Program, 23 May 1995, Manila.

[13] This is the position of Caroline Rogge of the Overseas Placement Association of the Philippines (OPAP) and Atty. Francisco De Guzman of the Philippine Association of Service Exporters (PASEI) although it is not clear who or what government agency or sector is to be professionalized.

[14] This is the position expressed by Vicente Aldanese, President of the Filipino Association for Mariners Employers, Incorporated (FAME, Inc.).