PHILIPPINE INSTITUTIONAL AND LEGAL FRAMEWORK FOR LABOR MIGRATION

LUZVIMINDA G. PADILLA

MANAGING ORGANIZED RECRUITMENT
Moscow, Russia
May 2011
Europe

$US 17.35B (2009)
$US 18.76B (2010)

Middle East

Asia & the Pacific

Americas & Trust Territories

OFC Remittances

Source: CFO (*2008 data)

2009 Stock Estimate of Overseas Filipinos
8.579 Million

4.056M - permanent
3.86 M - temporary
.658 M - irregular
Deployment and Remittances (in US$ Billions)
2001-2009

Sources: POEA and Banko Sentral ng Pilipinas
3 waves of Philippine migration -
- 1900’s - sugar workers to Hawaii
- 1960’s - professional and highly skilled workers to North America
- 1970’s – construction and service workers to the Middle East
Migration is a personal decision of an individual for personal gain

Underlying goals of labor migration:

- **protection** of workers welfare - (Phil. Constitution, LCP)
- **dignity** of worker and country - (RA 8042)
- protection of **human rights** - (RA 8042)
- protection of **fundamental rights and freedom** - (LCP, RA 8042)
Policy and Legal Framework for Labor Migration

Labor Code of the Philippines (1974) – laid down the State objectives for labor migration -

- “promote full employment”
- “secure the best possible terms and conditions of employment for every citizen desiring to work overseas”
- “facilitate and regulate the movement of workers in conformity with national interest”
- “rationalize the participation of the private sector in the recruitment and placement of workers overseas”
Policy and Legal Framework for Labor Migration

Labor Code of the Philippines –

• Established a regulatory mechanism for migration management which included a licensing and regulation system
• Established institutional structures with clear mandates for its roles in the migration management framework
• Established an enforcement system for protecting migrants’ rights which include standards setting, private sector intermediation and dispute resolution
<table>
<thead>
<tr>
<th>Policy and Legal Framework for Labor Migration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Letter of Instructions No. 537</strong> – created a “<em>Welfare and Training Fund for Overseas Workers</em>” from membership contributions paid by overseas employers of Filipino workers, which would:</td>
</tr>
<tr>
<td>• Provide social and welfare services to OFWs</td>
</tr>
<tr>
<td>• Provide skills and career development services to OFWs and their replacements</td>
</tr>
<tr>
<td>• Undertake studies and researches for enhancement of the social, economic and cultural well being of OFWs</td>
</tr>
<tr>
<td>• Develop, support and finance projects for OFWs</td>
</tr>
<tr>
<td><strong>Policy and Legal Framework for Labor Migration</strong></td>
</tr>
<tr>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td><strong>PD 1694</strong> formally created the “<em>Welfare Fund for Overseas Workers</em>” as a corporate-like institution with a policy-making body - the Board of Trustees - representing government agencies whose functions involved migration management, and an administrative staff headed by an Administrator. It centralized fund collection, investment and management, and program implementation under one institution.</td>
</tr>
<tr>
<td>Policy and Legal Framework for Labor Migration</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td><strong>Executive Order 797 (1982)</strong> - streamlined the system and infrastructure for the recruitment and placement of workers for overseas employment and created the <strong>Philippine Overseas Employment Administration</strong> as the sole institution for management of labor migration in place of 3 government agencies. <strong>EO 797</strong> was amended by <strong>EO 247</strong> in 1987 which restructured the POEA for better clarity of its mandates, better effectiveness, for more meaningful welfare services to workers, better protection and adjudication of their rights.</td>
</tr>
</tbody>
</table>
**Policy and Legal Framework for Labor Migration**

**Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042)** – set a higher standard of protection for migrant workers and adopted a policy of selective deployment of OFW limiting it to destination countries where the rights of workers are protected, such as countries which:

1) Have labor and social laws that protect migrant workers, or

2) Are signatory to multilateral conventions relating to protection of migrants, or
RA 8042, cont.

3) Have bilateral arrangement with the Philippines for the protection of migrants, and

4) Are taking positive, concrete steps to protect the rights of migrant workers.

It institutionalized/established:

- A **Legal Assistance Fund** for migrants;
- An **Emergency Repatriation Fund** to be administered by OWWA;
- A **National Reintegration Center for OFWs** under the DOLE;
RA 8042, cont.

- The **Filipino Workers Resource Center**, funded and managed by DOLE, in areas with large concentration of OFWs;
- A **pre-departure loan program** and **family loan assistance** to be administered by OWWA for the benefit of workers seeking overseas employment;
- Created the Office of Legal Assistant for Migrants;
- Institutionalized the one country-team approach in protecting migrants in the foreign posts.
RA 10022 amended RA 8042 in 2010 and introduced the following additional measures for the protection of labor migrants:

- A system for **certification by the Philippine Missions** abroad attesting to the existence of the specific measures which protect the rights of migrants.

- Institutionalized the **joint and several liability** of Employer and recruitment agency for complaints by OFWs involving employer-employee relationship which shall be **incorporated in the employment contract**.
Policy and Legal Framework for Labor Migration

RA10022, cont.

• Institutionalized the conduct of information program for migrant workers by POEA, not only on their rights as workers but also on their human rights, and instruct and guide them on how to assert their rights and provide mechanism to redress violation of such rights.

• Intensify anti-illegal recruitment program and provide comprehensive PEOS that discusses the prevention of illegal recruitment and the issue of gender sensitivity;

• Provided for compulsory insurance for migrant workers at the employers’ and recruitment agencies’ cost;

• Renders government officials criminally liable for neglect of duty to protect migrant workers.
Other laws that enhance the protection and ensure the rights and welfare of OFWs and Overseas Filipinos:

- Overseas Absentee Voting Act of 2003
- Anti-trafficking In Persons Act of 2003
- Citizenship Retention And Reacquisition Act of 2003
- Balikbayan Act of 1989
Institutions and Structures Providing Support Services to Migrants

In the Home Country

- Department of Labor and Employment (DOLE)
- Philippine Overseas Employment Administration (POEA)
- Overseas Workers Welfare Administration (OWWA)
- Technical Education and Skills Development Authority (TESDA) and Accredited Training and Assessment Centers
- National Reintegration Center for OFWs (NRCO)
- Maritime Training Council (MTC)
- Professional Regulation Commission (PRC)
Institutions and Structures Providing Support Services to Migrants

- National Labor Relations Commission (NLRC)
- Department of Health (DOH) and Accredited Health Clinics and Facilities
- Department of Foreign Affairs – Office of the Undersecretary for Migrant Workers Affairs (DFA-OUMWA), Embassies and Consulates
- Maritime Industry Authority (MARINA)
- Department of Justice (DOJ)
- Department of Social Welfare and Dev. (DSWD)
- Department of Interior and Local Government (DILG)
<table>
<thead>
<tr>
<th>Institutions and Structures Providing Support Services to Migrants</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>At Worksite</strong></td>
</tr>
<tr>
<td>• DOLE – Philippine Overseas Labor Office</td>
</tr>
<tr>
<td>• OWWA – Welfare Officer</td>
</tr>
<tr>
<td>• Philippine Embassies and Consulates</td>
</tr>
<tr>
<td><strong>Private institutions</strong></td>
</tr>
<tr>
<td>• Banks and Money Remittance Offices</td>
</tr>
<tr>
<td>• Church-based and other charitable institutions</td>
</tr>
<tr>
<td>• Diaspora and Filipino communities</td>
</tr>
<tr>
<td>• Non governmental organizations</td>
</tr>
</tbody>
</table>
## Institutional Support Services for Labor Migrants

### Services for Preparing Workers for Overseas Employment

- Pre-employment and pre-departure orientation briefings
- Skills training, assessment and certification
- Pre-employment medical and physical examination
- Language training and culture orientation for vulnerable skills
- One-stop-shop employment documents processing and deployment clearance
<table>
<thead>
<tr>
<th>Institutional Support Services for Labor Migrants</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Services for Ensuring Fair Recruitment Practices and Favorable Employment Terms and Conditions</strong>—</td>
</tr>
<tr>
<td>• Licensing, inspection and evaluation of recruitment agencies, ban on direct hiring by foreign employers</td>
</tr>
<tr>
<td>• Standards setting for recruitment practices and documentation, collection of placement fees, minimum employment terms and conditions</td>
</tr>
<tr>
<td>• Verification of recruitment and employment documents to establish existence of the employer, its capability to comply with the terms and conditions of employment, and compliance of employment contract with standards set by law at home and in destination countries</td>
</tr>
</tbody>
</table>
Institutional Support Services for Labor Migrants

**Services for Ensuring Fair Recruitment Practices and Favorable Employment Terms and Conditions**

- Accreditation or registration of foreign principal or employer or project that seeks to hire OFWs
- Employment contract registration and clearance for deployment
- Imposition on recruitment agencies of joint and several liability with foreign employer for enforcement of employment contract
Institutional Support Services for Labor Migrants

**Services or Mechanism for Securing Compliance by Recruitment Agency and Foreign Employer with their Responsibilities**

- Imposition of bonds as requisite for licensing of agencies
- Arbitration of cases for violation of recruitment rules and regulations and imposition of penalties and fines on recruitment agencies, principals or employers
- Arbitration of employment contract violations and imposition of joint and several liability on recruitment agency and principal/employer in employment-related claims
Institutional Support Services for Labor Migrants

**Services or Mechanism for Securing Compliance by Recruitment Agency and Foreign Employer with their Responsibilities**

- Social and welfare services to distressed OFWs at worksite and assistance in settlement of employment-related disputes through conciliation and mediation or in filing cases with authorities of host country.
Institutional Support Services for Labor Migrants

**Services for Ensuring the General Welfare of OFWs**

- Provision of legal assistance to OFWs who are facing serious legal problems
- Pursuing bilateral agreement with host governments for the protection of OFWs
- Implementation of pre-departure loan program and family loan assistance
- Provision of education and skills upgrading assistance and scholarship to deserving OFWs
- Ban on direct hiring of OFWs by foreign employers especially HSW and female low-skilled workers
### Institutional Support Services for Labor Migrants

#### Services for Ensuring the General Welfare of OFWs:

- Provision of healthcare, disability benefits and rehabilitation services
- Provision of repatriation assistance to OFWs in distress especially underage workers
- Provision of temporary shelter for OFWs and family at the FWRC abroad
- Provision of reintegration assistance upon return to home country
- Arbitration services for employment-related claims
Challenges and Gaps in Migration Management

- Establishing a harmonized system for regulating the flow of migrants that balances workers’ freedom of movement and the State duty to restrain mobility when national interest and welfare is at stake, ex. imposing ban on deployment of workers to countries/destinations stricken by war, civil disorder or disaster. The raging issue in the Philippines is whether to stop deployment of HSW to the Middle East, in particular KSA.

- Harnessing remittance obtained from overseas employment to activities that would produce more enduring and positive results for the worker and his family and the home country;
<table>
<thead>
<tr>
<th>Challenges and Gaps in Migration Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Effectively addressing the social costs of migration</td>
</tr>
<tr>
<td>• Effective advocacy for support services or strategies for protecting migrants in destination countries</td>
</tr>
<tr>
<td>• Ensuring skills and technology acquired during employment produce development gains for the migrant worker and boost human capital in the country</td>
</tr>
<tr>
<td>• High skilled workers migration result in loss of the best and the brightest in the labor force, the challenge for origin countries is how to turn “brain drain” into “brain and resource gain”. Example of the Philippines’ MOU with Canadian provinces.</td>
</tr>
</tbody>
</table>
End of Presentation