

THE BAN ON DIRECT HIRING OF OVERSEAS FILIPINO WORKERS:

Policy Review and Moving Forward

Final report submitted by the Scalabrini Migration Center to
the International Organization For Migration

26 May 2021



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(Prepared by Maruja MB Asis, Scalabrini Migration Center.)



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ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
BM	<i>balik-manggagawa</i> (return worker)
CSO	Civil Society Organization
DHAD	Direct Hiring Assistance Division
DOLE	Department of Labor and Employment
FDG	Focus Group Discussion
GCM	Global Compact for Safe, Orderly and Regular Migration
GPB	Government Placement Branch
ILAB	International Labor Affairs Bureau
ILO	International Labour Organization
IOM	International Organization for Migration
IT	Information Technology
JSL	Joint And Several Liability (also Joint and Solidary Liability)
KI	Key Informant
KII	Key Informant Interview
MC	Memorandum Circular
MWOFRC	Migrant Workers and Overseas Filipinos Resource Center
NGO	Non-Governmental Organization
OEC	Overseas Employment Certificate
OFW	Overseas Filipino Worker
OWWA	Overseas Workers Welfare Administration
Pag-ibig	Home Development Mutual Fund
PDOS	Pre-Departure Orientation Seminar
PEOS	Pre-Employment Orientation Seminar

PhilHealth	National Health Insurance Program
POEA	Philippine Overseas Employment Administration
POLO	Philippine Overseas Labor Office
PRA	Private Recruitment Agency
RA	Republic Act
RADDGs	Risk Assessment and Due Diligence Guidelines
RCSOs	Regional Centers and Satellite Offices
ROCO	Regional and Overseas Coordinating Office
SD	Standard Deviation
SDGs	Sustainable Development Goals
SEC	Standard Employment Contract
SMC	Scalabrini Migration Center
SSS	Social Security System
TESDA	Technical Education and Skills Development Authority

EXECUTIVE SUMMARY

The ban on direct hiring has been in place and enforced in the Philippines since the beginning of the overseas employment programme. Direct hiring means securing overseas employment without the assistance of a private recruitment agency. The ban on direct hiring is provided in the 1974 Labor Code of the Philippines:

ART. 18. Ban on direct-hiring. - No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from this provision.

However, while there is a ban on direct hiring, selected employers are exempted from the ban, allowing them to directly hire Filipino workers.

In the 1970s, State participation in labour migration was new and the Middle East destinations were uncharted territories. Hence, the ban on direct hiring was established to protect Filipino workers from irregular migration and abusive working conditions. To meet the growing demand for Filipino workers while ensuring their protection, the Government allowed the participation of licensed private recruitment agencies (PRAs) to handle the recruitment and placement of Filipino workers, with the Government focusing on the licensing and regulation of the recruitment industry. Three types of recruitment eventually developed in the Philippines: agency hiring, direct hiring (such as by exempted employers and others as may be allowed by the Secretary of Labor) and government-to-government. Agency hires comprise the majority, typically 90 per cent of annual deployment. Because PRAs have gone through licensing and accreditation, and due to the joint and solidary liability (also known as joint and several liability, or JSL) of PRAs, from the perspective of the Philippine Overseas Employment Administration (POEA), overseas Filipino workers (OFWs) are more protected than direct hires and government hires, and for this reason, POEA keeps a tight lid on OFWs as non-agency hires. However, labour migration trends and the global labour market have changed, and PRAs are not always necessary to link and match jobseekers and employers. Over the years, there has been a growing clamour to open direct hiring as an option for Filipino workers seeking overseas employment.

More voices are calling to rethink the ban because they believe that the premises of the ban are no longer in sync with current realities. This research project was carried out to conduct a comprehensive review of the ban on direct hiring. The research objective of the project aims to provide evidence on key issues surrounding the direct hiring scheme and its impact on migrant workers and other key stakeholders, and to propose policy recommendations concerning the direct hiring policy. The action objective intends to contribute to workers' and employers' education programmes. Research findings are expected to inform the development of risk assessment and due diligence guidelines (RADDGs) for Filipino migrants and foreign employers, and to provide inputs to improve the pre-employment orientation seminars for OFWs and the design of an orientation programme for foreign employers.

Primary data collection took place from February to December 2019. Data collection involved the collection of qualitative data through key informant interviews (KIIs) and focus group discussions (FGDs), or consultations with relevant stakeholders. In the Philippines, the participants were key officials and personnel of the POEA Head Office, Regional Centers and one Satellite Office; labour attachés; representatives of international organizations; and job applicants and OFWs following up their papers at POEA offices. Field work was conducted in six destination countries representing different migration and labour market contexts – Singapore, Malaysia (Kuala Lumpur), the United Arab Emirates (Dubai), Canada (Vancouver), New Zealand (Auckland) and Thailand (Bangkok). In the destination countries, interviews and consultations were sought with the Philippine Overseas Labor Office (POLO) and Philippine Embassy officials and personnel, OFWs, wards staying at the Migrant Workers and Overseas Filipinos Resource centres (MWOFRCs), Filipino community leaders, foreign employers or their representatives, and representatives of civil society organizations (CSOs). Altogether, a total of 271 research participants were consulted in the Philippines and six destination countries. In addition, a survey of 248 direct hire OFWs who were completing their pre-departure orientation seminars and a survey of 11 foreign employers were accomplished.

Following are the key findings of the study:

- a. The ban on direct hiring, its rationale, and the risks it poses for OFWs are not known or understood by OFWs. Workers who secure jobs abroad without the assistance of PRAs cannot understand why they must go through PRAs, and they find it unjust to pay a placement fee to PRAs, which did not have a role in their job search. In fact, the policy that they must go through PRAs can be misconstrued by OFWs as corruption, of POEA colluding with PRAs. From the OFWs' perspective, the notion that PRAs provide protection to workers is alien; they see PRAs as fee-charging entities and some associate PRAs with illegal recruitment and other irregular practices.
- b. The merits of the JSL, which many government key informants (KIs) highlight as protective for OFWs, are not seen as protective by OFWs. The long wait for a decision granting monetary claims is also discouraging to OFWs. Ultimately, the protection provided by the JSL can be a case of too late, too small or inimical to OFWs' plans to continue working abroad.
- c. Consultations with OFWs and key stakeholders in the six destination countries suggest that skill level or occupation and destination matter in migrant workers' protection, and not the type of hiring per se. Across all destinations, the professionals and highly skilled are less likely to report problems or seek assistance from POLOs and embassies. OFWs in less skilled occupations, mostly domestic workers, were more likely to report problems and seek assistance from the POLOs or embassies. In general, the OFWs in the shelters in Kuala Lumpur and Dubai were largely domestic workers, and between the two sites, the number of wards in the Dubai shelter were far more numerous than those in Kuala Lumpur.
- d. The Government's concern that direct hiring may foster irregular migration and trafficking is not fully supported by the study. Like the unintended effect of deployment bans, the ban on direct hiring, in fact, indirectly leads to irregular migration. Again, occupation and the destination country matter in OFWs' access to securing work permits on site.
- e. Overall, OFWs want to comply with POEA registration, but are discouraged from doing so because of the voluminous requirements and the lengthy process. Philippines-based PRAs and foreign employers also mentioned the numerous requirements and the laborious process in hiring Filipino workers. The long process means more expenses, delayed deployment or lost job opportunities for Filipino workers. Although employers prefer Filipino workers, the bureaucratic process discourages them from hiring Filipino workers. The results of the employers' survey confirm employers' exasperation over the documentation process.
- f. Considering all key stakeholders' perspectives, findings from the study call for a rethinking of the ban. As various informants underscored, the ban needs to consider the skill level or occupation of OFWs: the ban can be relaxed for professional and highly skilled migrants, but maintained for migrants in less skilled occupations. The streamlining of requirements and procedures will also facilitate the direct hiring registration process. Foreign employers and Philippines-based recruitment agencies also call for simplifying requirements and procedures.

The main recommendation of the study is to relax the direct hiring ban. Since 1974, some aspects of the ban on direct hiring have been modified through memorandum circulars (MCs) and administrative orders. The proposal to liberalize direct hiring may consider the following pathways, which entail short-term, medium-term and long-term actions and timelines:

- a. POEA Governing Board resolution: The Governing Board may issue a resolution to facilitate the employment of professionals and the highly skilled without losing sight of the protection of their rights. The change is motivated by easing the process, and it should not lead to punitive actions against OFWs.

- b. Executive order by the President of the Philippines: As a directive from the President, it has the same power as a law. It is in force until it is cancelled, revoked or deemed unlawful. This pathway may take longer than the Governing Board resolution because it will require advocating with the President to issue.
- c. Repeal of the direct hiring ban or legal amendment by Congress: The change has legal basis and is permanent, unless repealed by another law. However, this pathway will take years, and in the meantime, OFWs will continue to contend with numerous requirements, the lengthy process and the possible loss of employment opportunities.

Other recommendations pertain to workers' education, foreign employers' education on hiring policies, and promoting a culture of innovation and inquiry in POEA. As the overseas employment programme approaches 50 years of age, POEA will have to step up and innovate to navigate a more complex policy environment in the twenty-first century.



I. INTRODUCTION

A. BACKGROUND AND OBJECTIVES

The governance of international labour migration in the Philippines is marked by a complex institutional and legal framework aimed at the promotion and protection of the rights of OFWs at all stages of the migration process. At the critical recruitment phase, the foundational framework to regulate the recruitment, employment and protection of OFWs was established by the 1974 Labor Code of the Philippines (also known as Presidential Decree 442). The Labor Code has been amended several times since, and significant institutional, legal and policy developments have supported and sustained overseas employment over the years. One provision which has guided the governance of temporary labour migration through the years is the ban on direct hiring:

ART. 18. Ban on direct-hiring. - No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from this provision (DOLE, 2017: 8).

The ban on direct hiring was established to protect Filipino workers from unscrupulous foreign employers, and the dangers of irregular migration and trafficking in human beings. Throughout more than four decades of unceasing labour migration, the ban is not widely known, except for media attention from time to time. In 2008, for example, migrants' rights groups in the Philippines, Saudi Arabia and Hong Kong Special Administrative Region, China, criticized the issuance of Memorandum Circular (MC) No. 04, Series of 2007, Guidelines on the Direct Hiring of Filipino Workers, which was to take effect on 15 January 2008 (MFMW and APMM, 2008; GMA News, 2008a, 2008b). Among others, the guidelines reiterated the ban on direct hiring, and required employers who wished to directly hire a Filipino to provide for a performance bond equivalent to three months' of the worker's salary and repatriation bond worth USD 5,000 or its peso equivalent. Then Secretary Arturo Brion of the Department of Labor and Employment (DOLE) explained that the measures were intended to reinforce and strengthen the protection of OFWs (POEA, 2008). In 2017, the direct hiring ban was under the spotlight anew because of allegations of corruption, which led to the suspension of the processing of direct hires between April and November, resulting in confusion and delay in the departure of OFWs (Medenilla, 2017; ABS-CBN News, 2017; Interaksyon, 2017). During these times, the processing of direct hires and their overseas employment certificates (OECs) were centralized and were handled by the Office of the Secretary of Labor. The decision was meant to investigate allegations of corruption, but instead it fanned speculation of corruption at the highest level.

Although the ban is intended to protect OFWs, this is not apparent to migrant workers and advocacy groups. Not all aspiring migrant workers who find jobs abroad on their own (or who are recruited directly by employers) may be allowed to leave as a direct hire. Even if workers find jobs without the help of licensed PRAs, if their employers are not among the exempted categories or deemed qualified for direct hiring, applicants must be processed by fee-charging licensed recruitment agencies. Aspiring migrant workers and OFWs do not see this process as protection. Instead, they see placement through licensed PRAs as an expensive process, and unfair, especially if they find overseas jobs on their own. If workers complain about the ban and its restrictions, the recruitment sector also raises questions as to why the direct hiring ban is allowed (even if it is limited). Recruitment agencies view the direct hiring facility and the Government Placement Branch (GPB) as aiding in the recruitment of OFWs, which they see as a conflict of interest. According to the recruitment sector, POEA is a regulatory body, and it should not engage in recruitment-related activities.

The issue of direct hiring raises fundamental policy questions about migrants' protection, the right to migrate and the right of migrant workers to exercise their choices in recruitment options. OFWs and employers have long advocated expanding or relaxing the types of employers who may be exempted from the ban. Bills to liberalize migration for

employment, particularly for professionals and the highly skilled, have been proposed during the 17th and 18th Congresses (see, for example, House Bill (HB) No. 8842, 17th Congress; HB No. 331, 18th Congress).¹

The basis for the ban can be understood in relation to the context of temporary labour migration in the 1970s. The world has changes since then, and more voices are now calling to rethink the ban, since its premises are no longer in step with current realities. The ban raises questions about many concerns. Is it truly effective in reducing the risks of migration? Does it effectively protect migrant workers? How are migrant workers affected by the ban? Is it still relevant in the current times? What are the ways forward? These are the questions that motivated the conduct of a comprehensive review of the ban on direct hiring.

The project has a two-fold objective. The research objective aims to provide evidence on key issues surrounding the direct hiring scheme and its impact on migrant workers and other key stakeholders, and based on the findings, to propose policy recommendations concerning the direct hiring policy. The action objective intends to contribute to workers' and employers' education programmes. Research findings are expected to inform the development of risk assessment and due diligence guidelines (RADDGs) for Filipino migrants and foreign employers, and to provide inputs to improve the pre-employment orientation seminars for OFWs and the design of an orientation programme for foreign employers.

Dissemination activities to share and validate the findings and recommendations of the project were planned for March and April 2020. However, due to the COVID-19 pandemic and restrictions on mobility and gatherings in the Philippines since mid-March, these activities, including work on the RADDGs, were rescheduled. In 2020, the Government's attention was focused on addressing the displacement of Filipino workers in affected sectors; the repatriation of OFWs; the reception, testing and quarantine of OFW arrivals; and the daunting challenge of reintegration in Philippine society.² Findings from the study, key recommendations and draft RADDGs for OFWs and employers were presented in consultation with two groups – POEA officials and civil society organizations – in April 2021. Discussions from these consultations are integrated in this report.

B. METHODOLOGY

The study adopted a multi-stakeholder, multi-sited and multilevel approach in the collection and analysis of data. In carrying out the study, the team endeavoured to be participatory and inclusive, exerting best efforts to include the voices of relevant stakeholders. The team adhered to ethical principles in the conduct of the study – voluntary participation, informed consent, no harm to research participants and respecting the participants' privacy. In presenting and discussing the findings, the names or sources of information are either withheld or anonymized.

Prior to the collection of primary data, a review of the literature was done. The dearth of materials on direct hiring and the fact that available resources are mostly about the Philippines seem to suggest that this policy and practice are quite unique to the Philippines. The literature review consisted mostly of examining the relevant provisions in the 1974 Labor Code of the Philippines and administrative documents related to direct hiring (and administrative orders, memorandum circulars, resolutions and advisories). One of the contributions of this study is to construct the history and evolution of the philosophy and enforcement of the direct hiring policy.³

Primary data collection took place between February and December 2019. Data collection largely involved the collection of qualitative data through key informant interviews (KIIs) and focus group discussions (FGDs), or meetings where there were fewer than 6 or more than 10 participants. The study also conducted a survey of direct hire OFWs prior to their departure. A total of 248 direct hire OFWs who were taking the pre-departure orientation seminar (PDOS) at the POEA Head Office participated in the OFW survey. The study also designed a survey for employers.

¹ The wording and content of HB No. 331 are the same as HB No. 8842 (see Annex 1).

² In the latter part of 2020, the project conducted three policy webinars on the topics of policymaking on labour migration in the time of COVID-19, irregular migration and short-term labor migration prospects. The policy papers based on these webinars were scheduled for release in May 2021.

³ Some personal websites by OFWs offer advice on how to apply as direct hires; some have sections on the history of direct hiring, but these sites do not identify their sources, and some interpretations are not accurate.

However, despite best efforts and an extended timeline, only 11 company employers responded to the survey. The OFW survey was made possible with the cooperation of POEA and the Overseas Workers Welfare Administration (OWWA), the agency in charge of PDOS, while the employers' survey was coordinated with POEA.

The research sites included the Philippines and six selected destination countries. In the Philippines, fieldwork was done at the POEA Head Office and DOLE–International Labor Affairs Bureau (ILAB), and in three regional offices of POEA in Mindanao (Davao), Visayas (Cebu) and Luzon (La Union), as well as in one satellite office (Pampanga). The six destination countries included the following: Singapore, Malaysia (Kuala Lumpur), the United Arab Emirates (Dubai), Canada (Vancouver), New Zealand (Auckland) and Thailand (Bangkok). These destinations were selected based on data on direct hires provided by POEA, the kind of labour market that they represent, and the challenges and prospects represented by these destinations. In each of these countries, the research team – composed of two persons from IOM, SMC or POEA – interviewed stakeholders involved in direct hiring. For the consultations overseas, the primary point of contact was usually the Philippine Overseas Labor Office (POLO), or where there was no POLO (such as in the case of Bangkok and Auckland), the research team either sought help from the Philippine Embassy and personal contacts, and social networks also helped in introducing the team to the Filipino community. The project's data collection activities are presented in Annex 2. Altogether, a total of 271 research participants were consulted in the Philippines and six destination countries.

Although the study made efforts to reach out to key stakeholders – policymakers, implementors, employers, migrants, private recruitment agencies and civil society organizations – there were difficulties in accessing some sectors, and thus some sectors are more represented than others in this report. In the Philippines, OFWs (direct hire applicants, direct hire OFWs, and *balik-manggagawa* (BM) or return OFWs) were relatively easy to reach; they were interviewed while they were transacting business at POEA offices. For the survey of OFWs, POEA and OWWA granted permission to conduct the survey of direct hire applicants who were attending the PDOS session held at the POEA Head Office between 16 July and 1 August 2019. Similarly, with the assistance of POEA, arrangements were made to contact company employers who directly hired OFWs. An invitation to participate in the study was emailed to employers by POEA. The plan to include employers of domestic workers did not materialize, because POEA did not have the employers' email details. Despite best efforts and an extended time frame (16 September to 11 December 2019), only 11 foreign employers completed the questionnaire. Key officials and personnel in the POEA Head Office, Regional Centers and extension unit, and labour attachés who were in the Philippines, were generally willing to participate in the study as key informants. Representatives of private recruitment agencies, civil society organizations, the International Labour Organization and academia organized the Consultative Conference on the Future of Recruitment and Direct Hiring in a Changing World of Work and Migration, held on 20 September 2019 in Makati City. The conference aimed to share preliminary findings from the direct hiring study, and to hear their recruitment sector's perspectives on the future of recruitment and direct hiring.

Data collection was challenging in the destination countries, particularly in countries where there is no POLO (New Zealand and Thailand). In Philippine Embassies and Consulates that have POLOs, the labour attachés and their teams assisted in the recruitment of research participants – OFWs, recruiters, immigration consultants, employers and civil society organization (CSO) representatives. The OFWs who were interviewed in the destination countries were a varied group that included domestic workers, information technology (IT) professionals and other highly skilled workers in Singapore; mostly domestic workers in Malaysia; professionals and domestic workers in the United Arab Emirates; mostly caregivers in Canada; carpenters, an accountant, IT and other professionals in New Zealand; and mostly teachers in Thailand. Interviews with residents in the Migrant Workers and Overseas Filipinos Resource Centers (MWOFRCs) in Kuala Lumpur, Malaysia and Dubai, the United Arab Emirates, provided specific information on distressed workers. Officials and key staff of the POLO and Philippine Embassy or Consulate served as key informants for their insights and experiences in implementing the direct hiring policy, the situation of overseas Filipinos in their jurisdiction, and migration prospects. Other than in Thailand, the team was able to interview foreign recruitment agencies in the five other destinations. In addition, in Canada and New Zealand, Filipino community leaders, CSO representatives and immigration consultants were among the stakeholders with whom the team held meetings. Employers were extremely difficult to reach; the team, therefore, tried to interview human resources personnel to obtain information and insights on recruitment policies and practices. In Singapore, the team was able to interview the employer representative of an aircraft maintenance company; in Malaysia, the informants included an employer of

a domestic worker and two company representatives; in Dubai, United Arab Emirates, the team met with Philippine human resources practitioners, a recruitment agency owner, and the manager of a company that has Filipino workers; in Bangkok, the team had a chance to speak with the owner of an English language school.

The multi-sited, multi-stakeholder and multilevel design of data collection allowed the research team to gather experiences and insights on the enforcement of the ban on direct hiring and its impact on various stakeholders, especially OFWs and foreign employers. The means of reaching and recruiting participants was not based on probability sampling and the data obtained are largely qualitative. Thus, unlike data from surveys based on probability sampling, the data gathered in this study cannot be generalized to the population of direct hire applicants and OFWs. Also, considering the wide distribution of OFWs in more than 200 countries and territories, the six destinations cannot be considered representative of all the destinations where OFWs are present. Due to budget considerations, the research team was limited to research missions in six destination countries, and a specific site within each country. In a destination such as Canada, where provinces have their own migration policies, the migration policies of British Columbia cannot speak for all of Canada. Despite these limitations, the research project is useful in several ways: (a) it presents research-based evidence assessing the relevance of a policy formulated in the 1970s in current and emerging realities; (b) it documents the origins and evolution of the policy; and (c) the multisectoral consultations bring together the perspectives not only of the governing authorities, but of the governed as well.

C. ORGANIZATION OF THE REPORT

The report is organized into four major sections, which discuss the following:

- a. The evolution of the recruitment system over time and how direct recruitment figures in the current and emerging migration governance framework;
- b. The philosophy and rationale behind the ban, how it was enforced over the years, and the current enforcement and management of the direct hiring ban;
- c. Findings from the interviews, FGDs, survey of OFW direct hires, survey of employers conducted in the Philippines, and interviews and consultations in the six destination countries; and
- d. The concluding section, which brings together key findings, the perspectives of different stakeholders, and recommendations on how to move forward.

II. REGULATING RECRUITMENT AND MIGRATION GOVERNANCE

A. OFW RECRUITMENT AND CHANGING LABOUR MARKETS

When the Middle East labour market opened in the 1970s, temporary labour migration was a new experience for the Philippines and the labour-importing Middle East countries. At the time, the Government, through the Overseas Employment Development Board under DOLE, initially handled the recruitment and placement of Filipino workers. In addition, foreign employers or their representatives were coming to Manila to “directly” hire Filipino workers, a situation that alarmed government authorities because of what could befall the workers once they were overseas. As the demand for Filipino workers continued and at ever-increasing numbers, the Overseas Employment Development Board could not meet the burgeoning demand for workers. Not wanting to lose foreign exchange earnings, the Government then decided to allow private sector participation in recruitment, and devised a system of licensing and regulating the recruitment industry. The transfer of recruitment to the private sector called for the quick expansion of the delivery infrastructure, while simultaneously attending to the protection of Filipino workers.

The enactment of the Labor Code in 1974 provided the legal basis for setting up the overseas employment programme architecture. As had been mentioned, Section 18 of the Labor Code of the Philippines provided for the ban on direct hiring. This restriction was not completely oblivious to market forces. Along with the goal to regulate what could have been an unwieldy situation, the ban allows large-scale recruitment to take place in a more organized, accountable and efficient manner. As such, the direct hiring ban and the restricted recruitment by GPB have been kept in check ever since. As shown in Table 2, for the years 2007–2017, agency hires accounted for 90 per cent of annual deployment; the same table shows that direct hires usually account for 1 to 7 per cent of OFWs who were deployed or processed every year. There was a sharp spike in the number of direct hires in 2011, followed by declining numbers thereafter. The latter trend may suggest an increasing number of OFWs who are skipping POEA documentation. Table 1 outlines the different groups of direct hires *from* the Philippines. Categories 1 and 3 are direct hires who are captured by POEA documentation, while categories 2 and 4 are not documented by POEA. Third country hiring also eludes the POEA documentation process; this refers to Filipino workers who depart from a foreign country to move to another destination – for example, a domestic worker in Hong Kong SAR, China, who migrates to Canada as a caregiver.⁴ This scenario was not anticipated by the ban on direct hiring; Article 18 was premised on the notion that Filipino workers are recruited from the Philippines. The low number of direct hires in 2017 may be due to the temporary suspension of direct hire processing and the confusion that it triggered.

In allowing the private sector to handle the recruitment and placement of workers, POEA focused on fine-tuning the rules and regulations for the recruitment and overseas employment of OFWs. These rules and regulations were first formulated in 1985 and have been revised thrice – in 1991, 2002 and 2016.

⁴ The 2018 National Migration Survey recorded a higher share of Filipino international migrants who were direct hires (that is, directly hired by employer). In the first country abroad where they worked, 33.6 per cent were direct hires, 59 per cent were agency hires, and 7.4 per cent reported being hired through other means. In the last country abroad where they worked, 29.8 per cent were direct hires, 65.1 per cent were agency hires, and 5.1 per cent were hired through other modes of recruitment (PSA and UPPI, 2019: 114, 120).

Table 1. Leaving from the Philippines as direct hires: documented and undocumented

Departure from the Philippines	Documented by POEA?	Documented in the destination country?
Went through the POEA process (OFW applied for direct hiring in the Philippines); legally deployed from the Philippines, with OEC	Yes	Yes
Did not go through the POEA process; not legally deployed from the Philippines, no OEC	No	Yes – once the worker secures a work permit (Remains undocumented by POEA if the worker does not register at POLO or the Philippine Embassy)
Did not go through the POEA process, not legally deployed, no OEC; became documented on site, will be issued OEC by POEA	No (Will be documented after registering onsite)	Yes – once the worker secures a work permit (Documented by POEA once the worker's contract has been verified by POLO or authenticated by the Philippine Embassy)
Did not go through the POEA	No	No

Notes:

1. An OEC is a document certifying that a Filipino worker has gone through the POEA process and is a documented OFW.
2. The most at risk are those who left without an OEC and have not secured a work permit in the destination (category 4). They are unauthorized from the point of view of the Philippine Government and the host government.

Despite the rules and regulations, violations and irregular practices by PRAs are not uncommon. The charging of excessive placement fees is a common violation. As in other origin countries, it did not take long for fee-charging PRAs (and other intermediaries) to shift from charging employers to charging migrant workers. Between the limited number of employers and unlimited number of job aspirants, clearly there is more to be gained from charging the latter. The Philippines was one of the countries that moved to put a cap on placement fees – the equivalent of one month's salary – that can be legally charged by PRAs (except in the case of domestic workers since 2007, seafarers, or unless the employer or destination country government does not allow charging workers).

Table 2. Annual deployment of land-based new hire OFWs by type of hiring (agency and direct hires), 2007–2017⁵

Year	Total new hires deployed	Agency hires deployed (%)	Direct hires (%) (deployed, 2007–2010; processed, 2011–2017)
2007	313 260	272 517 (87.0%)	31 210 (10.0%)
2008	376 973	347 000 (92.0%)	25 263 (6.7%)
2009	349 715	326 156 (93.3%)	19 660 (5.6%)
2010	341 966	322 198 (94.2%)	13 249 (3.9%)
2011	437 720	--	45 483 (10.4%)
2012	458 475	--	23 148 (5.0%)

⁵ Data on annual OFW deployment included in POEA Annual Reports or statistics shared on the POEA website are not always reported by type of hiring (agency, GPB and direct hires). For some years, the data refer to deployment; for others, they refer to processed direct hires. The difference between the number of processed and deployed direct hires should be small (see Table 2).

Year	Total new hires deployed	Agency hires deployed (%)	Direct hires (%) (deployed, 2007–2010; processed, 2011–2017)
2013	464 888	--	20 052 (4.3%)
2014	639 679	--	21 004 (3.3%)
2015	515 217	--	14 624 (2.8%)
2016	582 816	--	11 271 (1.9%)
2017	419 955	--	5 255 (1.3%)

Source: Data provided by POEA.

Actors in the recruitment sector have evolved over the years. Until the 1980s, employers of Filipino workers in the Middle East also included Philippine-owned international construction contractors – such as the Construction and Development Corporation of the Philippines, EEI Corporation, AG&P and others – which were at the forefront of infrastructure development in the Middle East. These big companies were working with international contracting giants from the United States of America, France, Japan, the Republic of Korea and other countries. The business contracts required these contractors' on-site project management presence and payroll management. The Philippine contractors, rather than the foreign employers, were the legal employers of Filipino migrant workers.

As the construction market in the Persian Gulf matured in the 1980s, and as human resources requirements shifted to the less labour-intensive operations and maintenance field, Philippine contracting business was reduced to labour subcontracts that rendered the category of “contractor’s license” less relevant in the marketplace. Eventually, the contractor’s license was discontinued as an option in obtaining authority to recruit for overseas employment in the 1991 POEA Rules and Regulations (POEA, 1991), a policy change driven by the behaviour of the market. The shifting needs of the Gulf labour market in the late 1980s coincided with the geographical and occupational diversification of the overseas labour market portfolio of the Philippine overseas programme. Also, in the latter part of the 1990s, the so-called “mega-recruiters,” a cartel of recruiters in the Gulf region, appeared on the scene seeking to establish business with their counterpart recruiters in origin countries such as the Philippines.

Beyond the Gulf, Filipinos found opportunities in other regions, and new modes of recruitment emerged as well. Recruitment agreements between foreign employers and Filipino recruiters expanded to involve the role of recruiters in the countries of destination, which the Philippine Government referred to as Foreign Placement Agencies. This system characterized the recruitment of Filipino workers, mostly domestic workers, to then-emerging destinations in the 1980s, such as Hong Kong SAR, China, and Singapore. In the early 1990s, job opportunities opened in the Republic of Korea and Taiwan Province of the People’s Republic of China, where employers relied on the services of their own “manpower brokers” to recruit workers for the manufacturing sector. These manpower brokers could communicate and liaise in English, and facilitated recruitment business tie-ups with recruiters from migrant origin countries. Employers turned to brokers to free themselves from the burden of recruitment transactions so that they could focus on production targets and sales. However, the participation of unauthorized, informal brokers resulted in the influx of irregular OFWs to Taiwan Province of the People’s Republic of China and the Republic of Korea. Migration policies also contributed to irregular migration – the one-time single entry of Taiwan Province of the People’s Republic of China and the use of the trainee system by the Republic of Korea generated irregular migration. Over the years, Taiwan Province of the People’s Republic of China increased the maximum number of years of foreign workers’ employment, but the single-entry policy remained. Lobbying by civil society organizations in both destinations led to improved policies that reduced irregular migration. In the case of the Republic of Korea, it not only acknowledged its need for foreign workers, but also launched the Employment Permit System in 2004, a unique government-to-government agreement the Republic of Korea forged with 16 origin countries. Central to this agreement is the non-involvement of PRAs and the waiving of placement fees charged to migrant workers (SMC, 2019).

As the foregoing discussion shows, early in the overseas employment programme, the Government turned to licensed PRAs to handle the recruitment of Filipinos for overseas employment, focusing on regulating the recruitment industry. The market development efforts of the recruitment industry contributed greatly to the expansion and diversification

of overseas labour markets for Filipino workers. If it were solely government efforts, overseas employment would not have expanded as significantly as it had. Indeed, the Philippine Government started out with a market orientation in its approach to overseas employment. In the 1985 POEA Rules and Regulations, Rule I centres on the promotion and development of overseas employment (POEA, 1985). In the 2002 POEA Rules and Regulations, Rule 1, Statement of Policy, was less about market development, and was more geared toward worker protection (POEA, 2002). This was further emphasized in the 2016 POEA Rules and Regulations (POEA, 2016).

B. RECRUITMENT AS A COMPONENT OF MIGRATION GOVERNANCE

Recruitment is a central focus of migration governance at the national, regional and global levels. In the Philippines, the State took an active role in shaping the overseas employment programme, but over the years, non-State actors became part of migration governance. By the latter half of the 1970s, the State allowed private sector participation in the recruitment of workers to meet the rising demand for Filipino workers. By the 1980s, migrant-oriented non-governmental organizations (NGOs) came onto the scene, representing a distinct voice in advocating for workers' protection and welfare. Initially, State–NGO relations were conflictual, but over time, although they did not always share the same perspective, a critical collaboration emerged between these two entities. By the 1990s, the Government recognized the role of NGOs as partners in promoting the protection and welfare of migrant workers.⁶

Also, the national approach to migration increasingly made room for bilateral engagements with destination countries and regional consultative processes, with IOM playing a significant role in promoting the latter. The 1990s saw the emergence of legally binding and non-binding agreements on international migration. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the United Nations General Assembly in 1990, was a breakthrough. For countries such as the Philippines (which ratified it in 1995), the convention could have furthered the protection of OFWs, except that, up until now, the States parties are all countries of origin. Similarly, conventions concerning migrant workers adopted by the International Labour Organization (ILO) (Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and Domestic Workers Convention, 2011 (No. 189)) are not widely ratified.⁷ The low ratification rate of these legally binding instruments weakens their real impact for migrant worker protection, a condition that reveals the lack of consensus and lack of commitment to promote the protection of migrant workers. Non-binding processes, such as regional consultative processes, stepped in, providing a forum to bring together origin, transit and destination countries. They are useful for fostering discussions, but whatever agreements come out of these processes, they are not legally binding actions. These processes will expand in the coming decades.

By the 2000s, global attention to migration and development led to the holding of the High-Level Dialogue on International Migration and Development in 2006 and 2013. The momentum for global conversations was reinforced by the annual Global Forum on Migration and Development, held since 2007. The inclusion of migration-related targets and indicators in the 2015 Sustainable Development Goals (SDGs) upped the ante on global-level initiatives. The refugee crisis in 2015 called for shared responsibility in addressing growing forced displacement. World leaders pledged to save lives, uphold rights and share responsibility for these actions, as indicated in the 2016 New York Declaration for Refugees and Migrants. A two-year global consultation followed to formulate the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact for Refugees. Both were completed in 2018. The United Nations General Assembly endorsed the GCM on 19 December 2018 and affirmed the Global Compact for Refugees on 17 December 2018.⁸ The Philippines is distinguished by its active participation in these multilevel discussions on migration.

6 Section 2 (h) of RA 8042 or The Migrant Workers and Filipino Act of 1995 explicitly provides that legitimate NGOs are State partners in protecting OFWs and promoting their welfare.

7 The Philippines has also ratified the Maritime Labour Convention, 2006 (MLC, 2006), an instrument that promotes the protection of seafarers. The ban on direct hiring applies mainly to land-based workers. The ILO Private Employment Agencies Convention, 1997 (No. 181) has a provision, Article 7 (1), which states: "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers." The Philippines has not ratified this convention.

8 See United Nations, "General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants", 19 December 2018, available at www.un.org/press/en/2018/ga12113.doc.htm; and Office of the United Nations High Commissioner for Refugees (UNHCR) "The Global Compact on Refugees", available at www.unhcr.org/the-global-compact-on-refugees.html.

As regards migrant workers, multilateral instruments are of two types: legally binding and non-legally binding (see Figure 1). Under the former, the Philippines is a State Party to all four conventions of the United Nations and ILO. Under the latter, the Philippines is also among the countries that endorsed the SDGs and the GCM objectives. Note that recruitment-related issues are covered in both agreements: target 10.7 in the SDGs – Facilitate orderly, safe, regular, and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies; and Objective 6 in the GCM —Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work (see Box 1).

Box 1. Recruitment in the SDGs and GCM

The SDGs are the blueprint to achieve a better and sustainable future for all. In 2015, all United Nations Member States adopted the 2030 Agenda for Sustainable Development, whereby the world's leaders agreed to work towards achieving the 17 SDGs by 2030; the Goals are, in turn, broken down into 169 targets. There is no specific goal on migration; instead, it is an issue that cuts across several goals. The key reference to migration is under Goal 10 – reduced inequalities – and is articulated in target 10.7: “Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.”⁹ The SDGs were adopted by world leaders in September 2015 and have been enforced since 1 January 2016.

The GCM is regarded as a milestone in the history of the global dialogue and international cooperation on migration. It is “meant to be consistent with target 10.7 of the 2030 Agenda for Sustainable Development in which Member States committed to cooperate internationally to facilitate orderly, safe and responsible migration”.¹⁰ The GCM consists of 23 goals, each of which contains a commitment and a range of actions considered to be relevant policy instruments and best practices. Six goals are related to the recruitment process:

- Goal 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work;
- Goal 9: Strengthen the transnational response to smuggling of migrants;
- Goal 10: Prevent, combat and eradicate trafficking in persons in the context of international migration;
- Goal 11: Manage borders in an integrated secure and coordinated manner;
- Goal 12: Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral;
- Goal 23: Strengthen international cooperation and global partnerships for safe, orderly and regular migration.

The SDGs and the GCM are non-binding. Both are widely endorsed by the global community, and governments are expected to develop action plans to attain the agreed-upon goals and objectives.

IOM has proposed the migration governance framework as a benchmark to assess whether countries meet conditions for well-managed migration policies. These are anchored on three principles for good governance: (a) adherence to international standards and fulfilment of migrants' rights; (b) evidence-based policymaking and whole-of-government approach; and (c) engaging with partners to address migration and related issues. These principles should translate into objectives that aim to (a) promote socioeconomic well-being of migrants and society; (b) effectively respond to the

⁹ See United Nations Department of Economic and Social Affairs, “The 17 Goals”, available at <https://sustainabledevelopment.un.org/sdgs>.

¹⁰ Migration Data Portal, “GCM Development process”, 9 June 2020, available at <https://migrationdataportal.org/themes/global-compact-migration>.

mobility dimensions of crises; and (c) ensure that migration is safe, orderly and dignified (IOM, 2015). The Philippines has long been recognized as a model of migration governance. A study applying the Migration Governance Index to 15 countries confirmed this – the Philippines received high ratings across all five indicators of migration governance. The 15 countries were classified into four categories: nascent, emerging, developed and mature. The Philippines was rated “mature” in terms of four indicators: institutional capacity, migrant rights, safe and orderly migration, and regional and international – and “developed” for labour migration management (The Economist Intelligence Unit, 2016).

Turning specifically to the governance of OFW recruitment, Figure 1 shows the national, bilateral and global factors that bear on the recruitment of OFWs. For each migration system, both the Philippines and the destination country have their own migration policies and key stakeholders. At both ends, there are licensed as well as unlicensed intermediaries extending assistance to OFWs. Both countries have an official presence in each other’s countries through their foreign missions. In the case of the Philippines, it has also established a Philippine Overseas Labor Office (POLO) in key destinations – currently, there are 40 POLOs in countries with a large concentration of OFWs – to undertake such functions as accreditation of Foreign Placement Agencies and employers, contract verification, and attending to the labour-related concerns of OFWs. Parallel institutions and actors in both countries – licensed recruiters, unlicensed brokers and social networks – can facilitate the recruitment of OFWs.

Figure 1. The architecture of recruitment and labour migration governance



LEGEND:

- – refers to institutions or actors that the Philippines may be able to regulate.
- – refers to institutions or actors that the destination country may be able to regulate.
- – refers to institutions or actors that neither the Philippines nor destination country may be able to regulate.
- – refers to binding international instruments (for countries that have ratified these instruments).
- – refers to non-binding international agreements (notably SDGs and GCM).

As Figure 1 suggests, OFW recruitment through official channels is not the only means to secure overseas employment. Unlicensed brokers can mediate between workers and employers; social networks can also play a bridging role. Moreover, the Internet has greatly facilitated direct contact between workers and employers, thereby rendering PRAs and other mediators unnecessary. Compared with the recruitment and migration context in the 1970s, current realities are more complex. The regulatory functions of POEA apply only to licensed PRAs, which are a small part of the universe of intermediaries. In particular, POEA has no control over the actions of unlicensed brokers, social networks, and the flow of information and transactions conducted online. The migration policies of destination countries are also outside the influence of origin countries. For example, destination countries need not require POEA registration to be able to hire Filipino workers who are already on site or are migrating from another country. In a milieu where Filipino workers and employers have easy access to each other, it is time to rethink the idea that going through PRAs is the option that can best protect Filipino workers.

C. RECRUITMENT OPTIONS: PROS AND CONS

Although the Philippines developed a tri-modal recruitment system – through the PRAs or agency hiring, direct hiring, and government or GPB hiring – until now, roughly 9 in 10 OFWs deployed legally every year are agency hires. Direct hiring has been restricted because of the ban, while GPB hiring has been limited to accommodating the hiring of Filipino workers under government-to-government arrangements, such as that between the Philippines and the Republic of Korea under the latter’s Employment Permit System programme, and that between the Philippines and Germany under the triple-win programme for the recruitment of nurses.

Going through the legal channels – which means undergoing the documentation or registration process of POEA – is a basic condition for the protection of OFWs. Legally deployed OFWs are protected by the following mechanisms: the standard employment contract (SEC), which is “the POEA prescribed contract containing the minimum terms and conditions of employment” (POEA, 2016: 4); educational programmes aimed at promoting workers’ empowerment (the pre-employment orientation seminar (PEOS) and the pre-departure orientation seminar (PDOS));¹¹ welfare benefits through OWWA membership (the membership fee of USD25 or its peso equivalent must be paid by the PRA or employer); and social protection (through workers’ contributions to the National Health Insurance Program (PhilHealth), Home Development Mutual Fund (Pag-ibig), and the Social Security System (SSS)). The three types of hiring offer different levels of protection, advantages and disadvantages to workers (see Table 3).

Table 3. Protective mechanisms by type of hire

Agency hire	GPB hire	Direct hire	
		From the Philippines	On-site (BM)
<ul style="list-style-type: none"> • SEC • Mandatory insurance provided by the PRA or employer • PEOS • PDOS • OWWA membership • Other social protection (PhilHealth, Pag-ibig, SSS) • Joint and solidary liability (JSL) (+) 	<ul style="list-style-type: none"> • SEC • Insurance (purchased by employer or worker) • PEOS • PDOS • OWWA membership • Other social protection (PhilHealth, Pag-ibig, SSS) 	<ul style="list-style-type: none"> • SEC • Insurance (purchased by employer or worker) • PEOS • PDOS • OWWA membership • Other social protection (PhilHealth, Pag-ibig, SSS) 	<ul style="list-style-type: none"> • SEC • Insurance (purchased by employer or worker) • OWWA membership • Other social protection (PhilHealth, Pag-ibig, SSS)
Placement fee (-)	No placement fee (+)	No placement fee (+)	No placement fee (+)

Notes:

1. JSL covers only the first contract negotiated by the PRA for the OFW. When the OFW renews the contract with his/her employer, the PRA is usually out of the picture and the JSL ceases to apply for the contract renewal.
2. “+” and “-” represent advantage and disadvantage, respectively.

¹¹ Note that on-site hires do not undergo PEOS and PDOS, unlike OFWs whose documentation was processed from the Philippines. As such, POEA informants are of the view that on-site hires are likely to be less informed about migrants’ rights and government programmes and services.

Given POEA's regulation of the PRAs, agency hiring helps "to ensure that the employment [of Filipinos] is fully regulated by the government through agencies/entities authorized to conduct recruitment and placement activities" (email communication with POEA, 24 February 2020). In case problems arise, POEA can go after PRAs in the Philippines; for direct hires, POEA has no jurisdiction over foreign employers. Compared with GPB and direct hires, agency hires have the additional advantage of being provided insurance coverage by the PRA or employer. For POEA, a particularly important protection for agency hires is the joint and solidary liability (JSL, also referred to as joint and several liability).

JSL is defined as "the nature of liability of the principal/employer and the licensed recruitment agency, for any and all claims arising out of the implementation of the employment contract involving Overseas Filipino Workers. It shall likewise refer to the nature of liability of partners, or officers and directors with the partnership or corporation over claims arising from an employer–employee relationship" (POEA, 2016: 2).

With JSL, "the workers are assured that should they return to the Philippines with unpaid salaries and other claims which were not settled by the employer prior to their repatriation"; the workers may file for monetary claims with the National Labor Relations Commission (email communication with POEA, 20 February 2020). Monetary claims filed by an aggrieved agency hire cover the following cases: abuse by the employer, the employer's failure to pay wages, illegal termination of contract, and charging of exorbitant and illegal fees by PRAs. Direct hire OFWs (and GPB hires) do not have this safety net. Should a direct hire OFW encounter a problem with their employment contract, the POEA or POLO cannot compel foreign employers to pay monetary claims. For these reasons, key informants from POEA (including former officials), consider agency hiring as providing more protection to OFWs than either direct hires or government hires. This point is revisited in the next section.

On the downside, while agency hiring offers safety nets, most PRAs charge a recruitment or placement fee for their services (except for domestic workers, seafarers and applicants to countries that prohibit the charging of recruitment fees to workers).¹² One of the reasons OFWs and employers go through direct hiring is to avoid what they perceive as costly recruitment fees. For OFWs and employers who do not need the services of a PRA, it does not make sense that they must go through a PRA for their application to be processed by PRA. Workers' and employers' perspectives on this issue are discussed in a later section.

¹² To date, there are only a few non-fee charging PRAs in the Philippines. The Association for Professionalism for Overseas Employment, Inc. (ASPROE), founded in 1986, is an exception in the recruitment industry because its members do not charge recruitment fees from workers. The few non-charging recruitment agencies usually recruit skilled workers, and they deal with company employers. In 2012, POEA initiated discussions on ethical recruitment.

III. THE BAN ON DIRECT HIRING: A UNIQUE PHILIPPINE POLICY?

A. ORIGINS AND RATIONALE

Following the oil price hike in the 1970s, Saudi Arabia and other oil-rich countries in the Middle East launched massive infrastructure projects. Lacking workers, they turned to Asian countries, such as the Philippines, to meet their labour needs. Prior to the enactment of the Labor Code, Filipino workers were already being directly recruited to work in the Middle East. The ban on the direct hiring of Filipinos for overseas employment was intended to bring order to an unwieldy situation and to ensure the protection of Filipino workers.¹³

As stated in Article 18, the protection of Filipino workers at the recruitment stage will be secured “through the Boards and entities authorized by the Secretary of Labor”. At the time, the two boards under the Department of Labor and Employment were the Overseas Employment Development Board and the National Seamen Board. These two were later merged into the Philippine Overseas Employment Administration (POEA), which was established in 1982 and reorganized in 1987. By limiting the hiring of Filipinos to those authorized by the Secretary of Labor, “overseas employment is fully regulated by the government through agencies/entities authorized to conduct recruitment and placement activities” (email communication with POEA, 20 February 2020). In allowing the private sector to participate in recruitment and placement activities, the Government focused on the regulation of the recruitment industry.

From the standpoint of POEA, the hiring of Filipino workers through authorized or licensed recruitment agencies provides protection to OFWs. Two POEA officials amplified this point:

The ban was established because the general policy established by POEA for the hiring of Filipino workers by foreign employers is through the private recruitment system. This is the system promoted by POEA because it has safeguards and a very unique feature of our recruitment policy which is the JSL. The agency is made liable because we cannot make the foreign employers liable since they are subject to their country's rules. The [Philippine] recruitment agencies assume responsibility through the partnership and accreditation system in case the workers cannot seek remedy in their job site. In seeking redress, first, we subscribe to the rules of the host country in running after the employer. But should the worker be unable to seek redress, then there is always an agency liable under Philippine rules and regulations.

Yes, I agree that the workers should have some degree of freedom on how to choose which track of employment they would like to consider, but you see, the Government also has a duty. The Government has to protect the welfare of our workers, that is where the police power of the State comes in. That is why we do have regulations to avoid the abuses against our workers.

Interviews with most POEA key informants highlight how agency hires are protected by JSL and the mandatory insurance. Data from this study indicate that OFWs do not share this view – in the first place, they are not how the JSL protects them. Most of them have a one-dimensional view of PRAs, that of being fee-charging entities. POEA's appreciation of the protection and services PRAs offer does not cascade to OFWs – this can be one of the areas that must be covered in workers' education.¹⁴

Despite its lofty intentions, the JSL falls short of benefiting migrant workers due to the following factors: the lengthy and tedious legal process (which incentivizes workers to settle); insufficient funds to cover monetary claims, or the

¹³ This historical footnote was provided by Ms Thetis Mangahas at the Consultative Conference on the Future of Recruitment and Direct Hiring in a Changing World of Work and Migration, held on 20 September 2019 in Makati City.

¹⁴ Thanks to Labor Attaché Saul DeVries for this observation, which was shared at the dissemination forum conducted in April 2021.

agency has ceased operations; limited access to affordable and effective legal assistance; and abusive foreign principals/employers who are not accountable for violations committed against migrant workers (MFA, 2014). Interestingly, some key informants from the government sector are critical of the JSL, citing, among other reasons, that it is unfair to PRAs. Several key informants referred to the JSL as “legal fiction”. One key informant commented that, while the JSL is commendable, it is not implementable. If the foreign employer is at fault, that employer is absolved of any responsibility, while the Philippines-based recruitment agency is held accountable (see also MFA, 2014).¹⁵ An assessment of OFWs’ access to justice found that, as a safety net, the protective impact of the JSL has been diminished by the Single-Entry Approach (SENA).¹⁶ Under SENNA, OFWs tend to settle rather than pursue their cases at the National Labor Relations Commission. The speedy resolution of the case, however, reduces OFWs’ financial compensation by 25–30 per cent (CMA, 2015: 9). JSL, thus, has serious shortcomings from the perspective of advocacy groups.

B. MODIFICATIONS TO THE BAN ON DIRECT HIRING

The fact that 90 per cent of legally deployed OFWs are agency hires speaks of the “success” of POEA in enforcing the ban on direct hiring (and limiting government hiring). As noted earlier, Article 18 has a small window for the direct hiring of Filipino workers by specifying selected employers who are exempted from the ban: “Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from this provision.” Article 18 is silent on why these employers were exempted from the ban on direct hiring. According to several key informants, the exemptions were included for goodwill and political considerations. Moreover, by limiting the exemptions to diplomats, heads of State and heads of international organizations, the number of direct hires is not expected to approach the same number of workers that may be recruited by PRAs. There is also the assumption that, given their position, these employers are law-abiding and will treat workers justly. Several government key informants, however, questioned this assumption, citing cases of diplomats who have been found guilty of abusing domestic workers in their employ.¹⁷

Due to the list of exempted employers and other employers as may be allowed by the Secretary of the Department of Labor and Employment, a certain number of direct hire OFWs are included among the legally deployed or processed OFWs every year (see Table 2).¹⁸ It is interesting to note that, between the enactment of the Labor Code in 1974 and the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016 (POEA, 2016; hereafter referred to as the 2016 Revised POEA Rules and Regulations), the list of exemptions was modified, and employers who may be allowed by to directly hire OFWs was expanded (see Section 124.d):

SECTION 123. Ban on Direct Hires. – No employer shall directly hire an Overseas Filipino Worker for overseas employment.

SECTION 124. Exemption from the Ban on Direct Hiring. – The following are exempted from the ban on direct hiring:

- a. Members of the diplomatic corps;
- b. International organizations;
- c. Heads of state and government officials with the rank of at least deputy minister; or

¹⁵ Due to rising reports of abuses against OFWs, POEA is requiring foreign recruitment agencies to check on the status of deployed OFWs in their workplaces. Foreign recruitment agencies will transmit the report to their counterpart PRAs in the Philippines, which will then submit the report to POEA. PRAs thus ensure compliance of their foreign recruitment agencies, or they face sanctions (Medenilla, 2020).

¹⁶ SENNA was introduced in 2010 to prevent employee–employer issues from turning into legal disputes. Monetary claims by OFWs must first go through mandatory conciliation between the employee and the employer (CMA, 2015: 7).

¹⁷ According to one official, there was a time when POEA did not automatically process applications for domestic workers by diplomats and heads of State unless labour attachés were consulted. Those who had records of violations were de-listed/blacklisted immediately. Where labour attachés verified the contract of errant employers, the former had to explain their endorsement.

¹⁸ Data on annual OFW deployment included in POEA Annual Reports or statistics shared on POEA’s website are not always reported by type of hiring (agency, GPB and direct hires). For some years, the data refer to deployment; for others, they refer to processed direct hires. The difference between the number of processed and deployed direct hires should be small (see Table 2).

- d. Other employers as may be allowed by the Secretary of Labor and Employment, such as:
 - i. Those provided in (a), (b) and (c) who bear a lesser rank, endorsed by the POLO, or Head of Mission in the absence of the POLO;
 - ii. Professionals and skilled workers with duly executed/authenticated contracts containing terms and conditions over and above the standards set by the POEA. The number of professionals and skilled Overseas Filipino Workers hired for the first time by the employer shall not exceed five (5). For the purpose of determining the number, workers hired as a group shall be counted as one; or
 - iii. Workers hired by a relative/family member who is a permanent resident of the host country.

In 2018, Section 124 was modified anew by MC 8 of 2018: Implementing Guidelines on the Registration of Direct-Hire Overseas Filipino Workers (issued 26 April 2018). Item 3 was amended as follows: “Workers hired by a relative/ family member who is a permanent resident of the host country, *except domestic workers (live-in caregiver/care worker or household service worker)*”. The removal of domestic workers from the list of occupations that may be allowed to be hired by a relative or family member stems from concerns that direct hiring may be used as a migration channel. Also, the assumption that family members and relatives are good employers has been challenged by cases of abuse in family-based employment. Interviews and consultations in Vancouver, Canada, uncovered accounts of labour violations committed against caregivers employed by family members. Caregivers are constrained from reporting labour-related problems in the interest of preserving family ties.

Modifications to the list of exempted and allowable employers are not the only adjustments that have been made to the ban (see Box 2). The introduction of “name hires” was another attempt to modify the ban. The term “name hire” is not in the Labor Code. It is referenced in the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-based (POEA, 2002; hereafter referred to as the 2002 POEA Rules and Regulations). It defines name hire as referring “to a worker who is able to secure an overseas employment opportunity with an employer without the assistance or participation of any agency” – which is similar to the definition of direct hire. The term “name hire” is no longer mentioned in the 2016 Revised POEA Rules and Regulations; instead, the term “direct hire” is used. A POEA key informant explained that the change was made to make the terminology consistent with what is in the Labor Code. Likewise, what used to be the Name Hire Processing Unit was later renamed the Direct Hiring Assistance Division (DHAD).

Another key informant explained that the term “name hire” was introduced as a management decision. This decision came up because POEA encountered cases where PRAs were superfluous, such as workers who found overseas jobs on their own, or a reputable foreign employer who had complied with all the necessary requirements. As several key informants pointed out, most direct hires are domestic workers hired by heads of State and other exempted employers. Name hires provided an opening for employers to directly hire professional workers, for as long as the number of workers recruited did not exceed a given limit. The maximum number of name hires also underwent several changes. Initially, it was limited to five workers. Later, the ceiling was increased to 10, until the 2016 Revised POEA Rules and Regulations reset it to five. Beyond five direct hire workers, the employer will be advised to have their additional workers processed by a licensed PRA.¹⁹ As explained by a key informant, at the level of operations, there was no difference between name hires and direct hires. By adopting the term “name hire”, POEA exercised some flexibility to allow workers who secured excellent job offers to be processed as direct hires. Also, name hiring allowed POEA to test a new market or employer. Since name hiring was an operational decision, it can be introduced and abolished (and it happened); the same cannot be said of direct hiring, because it is enshrined in the Labor Code. Thus, the ban has been enforced since 1974, but over the years, adjustments and modifications have been introduced for various reasons: some recognition that there are other recruitment pathways, testing new labour markets, or facilitating the direct hiring process. These adjustments, however, tend to be conservative and cautious, leaving the premise of the ban untouched.

¹⁹ The five-worker limit can be availed of only once. The basis for five workers maximum (or 10 at one point) is not known.

Box 2. Modifications to the ban on direct hiring

Year	Details
1974	The 1974 Labor Code of the Philippines was enacted; Art 18 bans direct hiring
1985	The 1985 Rules and Regulations Governing Overseas Employment (as amended) mentions and defines hires
1994	The Name Hiring Processing Unit was set up in GPB
1996	The Name Hiring Processing Unit was transferred to the Landbased Center
2003	RCSOs were allowed to process name hires
2007	MC No. 04, Series of 2007 discusses two types of name hires: individual and institutional
2016	The Revised Rules and Regulations Governing the Recruitment of Landbased OFWs of 2016 mentions other employers who may directly hire OFWs; defines and mentions direct hire, name hire is dropped; reiterates 5 direct hires maximum
2017	The Direct Hiring Assistance Division was set up; RCOs must forward direct hire applications through ROCO
2018	The authority to approve and issue OECs for direct hires was reverted to POEA; MC 08, Series of 2018 removed family members who citizens or permanent residents abroad to directly hire HSWs
2019	MC 02, Series of 2019, Guidelines on the Processing of Returning Workers, made the requirements and fees similar to those applied to direct hires from the PH

C. THE DIRECT HIRING PROCESS

A worker in the Philippines who found employment abroad without the help of a PRA needs to process his/her application with DHAD. In general, assuming that requirements are in order, the process is shorter for direct hire applicants whose employers are exempted from the direct hiring ban. Box 3 outlines the process and requirements for direct hire applicants who are processing their documents in the Philippines and for on-site hires. (Further details about the requirements are provided in Annex 3.)

For direct hire applicants whose employers are not in the exempted categories, the direct hiring process has two phases.

- a. Phase 1: The objective is to secure clearance from the ban so that the employer can directly hire a Filipino worker. In Phase 1, DHAD evaluates the following documents: employment contract, passport, visa or work permit, company profile, certificate of employment, transcript of records or diploma and TESDA NCII for a skilled worker.²⁰ It takes about a week to secure POEA clearance approval; the list of approved applicants is posted on the POEA website. OFWs are advised not to book their flights until clearance is approved.
- b. Phase 2 is for the issuance of the overseas employment certificate (OEC). Phase 2 requirements include the submission of the following: e-registration, PEOS certificate, PDOS certificate, life insurance certificate, medical certificate, and original copy of the POLO-verified or Philippine Embassy-authenticated employment contract. Once Phase 2 requirements are completed, the OFW's information is encoded; he/she can proceed with payments; and finally, the OEC is issued.

²⁰ The Technical Education and Skills Development Authority (TESDA) issues a National Certificate (NC) to a candidate who has demonstrated competence in all units of competency that comprise a qualification.

On-site hires, such as tourists or students who found work overseas, are documented under *balik-manggagawa* (return worker or BM).²¹ For those who will be processed for the first time as BM, MC No. 17, Series of 2018, requires POLO verification or Philippine Embassy authentication of the employment contract, and the processing of their OECs in the Philippines through the nearest POEA Office.^{22, 23}

Box 3. The direct hiring process

A. From the Philippines (POEA Head Office):

1. For applicants whose employers are in the exempted categories (employers a-c, see MC No. 08, Series of 2018):

- Applicant submits Phase 1 and Phase 2 requirements to DHAD;*
- If all requirements are in order, the OEC may be processed in one day.

2. For applicants whose employers are not in the exempted categories (employers in d, see MC No. 08, Series of 2018):

- Phase 1:
 - » DHAD evaluates documentary requirements: employment contract, passport, visa or work permit, company profile, certificate of employment, transcript of records or diploma and TESDA NCII for a skilled worker.
 - » If requirements are positively evaluated, the clearance by the Administrator is recommended
- Phase 2:
 - » OFW submits the following: e-registration, PEOS certificate, PDOS certificate, life insurance certificate, medical certificate and original copy of the POLO- verified or Philippine Embassy- authenticated employment contract;
 - » Payment of OWWA membership (mandatory), PhilHealth, Pag-ibig and SSS (optional);
 - » Issuance of OEC.

B. From the Philippines (POEA Regional Centers and Satellite Offices (RCSOs)):

1. For OFWs whose employers are not in the exempted categories (employers a-c, see MC No. 08, Series of 2018); same as A1, except:

- OFW submits Phase 1 and Phase 2 requirements to RCSOs;*
- RCSOs forward documents to Regional and Overseas Coordinating Office (ROCO);
- ROCO endorses the documents to the Office of the Administrator;
- ROCO posts notices of approval on POEA website;
- ROCO sends approved clearance to the Regional Centers;
- Regional Centers issue the OEC.

²¹ As indicated in MC 2, Series of 2019, *balik-manggagawa* also refers to the following: workers who are registered with POEA who are vacationing for the first time and are returning to the same employer and jobsite to continue or to renew their contracts; and workers who are registered with POEA but changed employers on site.

²² Prior to MC 2, Series of 2019, the POLO could register and issue an OEC to those who were on site.

²³ The accession of the Philippines to The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, also known as the Apostille Convention, did not change the verification of employment documents by POLOs, or the issuance of a Certificate of Acknowledgment or of Authentication by Philippine Embassies or Consulates where there are no POLOs. For all others, the POEA may carry out the attestation of public documents according to appropriate guidelines. Also, the procedures for the submission of employment documents for employers seeking protection from the direct hiring ban are unchanged (POEA, 2019).

Box 3. The direct hiring process *Cont.*

2. For applicants whose employers are not in the exempted categories (employers in d, see MC No. 08, Series of 2018); same as A2, except:

- In Phase 1;
 - » OFW submits Phase 1 requirements to RCSOs;
 - » RCSOs forward requirement to ROCO;
 - » ROCO endorses the documents to the Office of the Administrator;
 - » ROCO sends approved clearance to Regional Centers.
- In Phase 2: Same as in A2, but:
 - » Applicants complete Phase 2 requirements in RCSO;
 - » Payment of OWWA membership (mandatory), PhilHealth, Pag-ibig and SSS (optional);
 - » Issuance of OEC.

C. From overseas or onsite: For OFWs who were hired on site:

1. Posts with POLO:

- OFWs go to POLO for employment contract verification (see Phase 1 and Phase 2 Requirements, except PEOS and PDOS);
- OFWs register in BM Online for schedule to get OEC;
- OFWs receive OEC at the nearest POEA office during their visit to the Philippines.

2. Posts without POLO:

- OFWs go to the Philippine Embassy for employment contract verification (see Phase 1 and Phase 2 requirements except PEOS and PDOS);
- OFWs register in BM Online for schedule to get OEC;
- OFWs receive OEC at the nearest POEA office during their visit to the Philippines.

POEA personnel and officials are aware of and understand the frustrations of direct hire applicants in meeting the requirements. According to them, the frustration stems mostly from the applicants' lack of knowledge about the ban on direct hiring. When applicants find out about the requirements and the process, they feel that the Government is blocking them from what could be life-changing opportunities. In implementing the direct hiring ban, POEA personnel have encountered innumerable questions, complaints and criticisms from applicants and employers. The requirement to submit a POLO-verified contract or Philippine Embassy-authenticated contract is one of the choke points in the application process. Many times, applicants thought that the contract from the employer or company would suffice – only to find out later that it must be verified or authenticated. They also cannot comprehend why, even if the terms of employment are acceptable to them – “we have good salaries; we are OK”—the POEA's view should prevail over their own judgment. The five-worker limit also creates frustration for workers and employers alike. When workers are informed that their employer or company has already reached the ceiling and workers will have to go through a PRA, workers and employers find this policy unfair.²⁴ POEA key informants shared that some employers would rather not hire a Filipino worker if they have to go through a recruitment agency.

The length of time required to comply with the requirements, and the transmission of documents between the regions and Central Office, or between POLO and POEA, has prompted some applicants to report POEA personnel to 8888, the national hotline for reporting complaints of poor government services (as well as fixers and irregular

²⁴ According to a key informant in the regions, since an employer had already directly hired five Filipino workers, POEA advised the employer to go through a PRA. When the PRA charged 30,000 Philippine pesos, the employer reported this to the media, which wrote about the incident as a modus operandi of POEA.

practices). According to POEA key informants, they spend considerable time responding to complaints, which are mostly applicants' non-compliance with requirements.

While officials and those on the front lines of implementing the ban believe that the ban aims to protect OFWs, they also recognize that it has posed difficulties for workers and employers. Those who have encounters with OFWs and employers have also seen how the ban has restricted opportunities for Filipinos; some have also expressed reservations about whether it serves the purpose of protecting Filipino workers. One of the dilemmas faced by those on the front lines is weighing the competing issues of preserving jobs versus workers' protection. Officials past and present insist on workers' protection as the primary policy consideration of overseas employment. As one key official underscored:

For me, the policy of protection is the highest [objective]. It cannot be negotiated because you want to expand the market or to bring wealth to recruitment agencies. Imagine the workers, no matter how empowered they are, even if they know the laws of the host countries and even our laws, they aren't empowered in that area [of verifying work contracts]. They are just empowered to find where the jobs are. They don't have the capacity to verify if the conditions [of the contract] are true, whether employers are good; they don't have the capacity.

Several officials subscribe to the view that direct hiring poses risks to workers. One key informant reasoned from a risk allocation perspective:

From the point of view of the workers, the riskiest is direct hiring. But from the point of view of the Government, we try to distribute this risk. For example, the recruitment agencies somehow shoulder some of the risks and there's JSL for the monetary claims that are borne by the agencies. The provisions on repatriation should be the direct responsibility of the employer and recruiter... In direct hiring, of course the worker is on his/her own. The only thing they can do is they go through POLO or the labour attaché and be a member of OWWA. They are without the assistance of a third party like the employer and the recruiter.

Moreover, in direct hiring, only two parties share the risk: the worker and the employer. The Government is not privy to the issues between the worker and the employer, unlike in the brokered system or agency hiring, which is an open process with checks and balances. This perspective of worker protection does not come up in public discourses about migration, and especially in the understanding of recruitment policies by OFWs.

Overall, the consultations with relevant government officials and key personnel point toward reforming the ban. There are two points of consensus. The first consensus is to open direct hiring to professionals and the highly skilled. As it is, the requirements and the process of direct hiring are very restrictive to professionals and the highly skilled. The default position to refer workers and employers to PRAs is not justifiable when these parties did not seek out the services of PRAs. Particularly in this information age, workers and employers have ways of connecting with each other without the mediation of PRAs. The stratified regulatory approach adopted by India may offer reflection points on selective and targeted regulation rather than a one-size-fits all approach (see Box 4). The second consensus is to maintain the ban for less skilled workers. Concerns that direct hiring will lead to irregular migration apply more to workers in the less skilled category. In addition to domestic workers, cleaners and restaurant workers were mentioned as being vulnerable. Although POEA officials highlight the protection emanating from JSL and mandatory insurance, other government stakeholders were sceptical about their real impact on migrant worker protection. Several government KIs also commented on the difficulty of containing mobility. As one KI put it: "It's important to look at the development of technology and Internet and its effect on the mobility of people. It is too presumptuous of us to say we can control the movement of people and demand that everything should go through POEA."

Box 4. The Indian model: a focus on regulating less-skilled migration

India is a giant in the world of migration. Globally, it is the number one source country of international migrants, and the largest remittance-receiving country (Rajan, Aggarwal and Singh, 2019).

To regulate the massive migration of Indian workers to the Middle East, the Government passed the Emigration Act of 1983, which repealed the Emigration Act of 1922. To protect Indians migrating for work, the Emigration Act of 1983 requires workers to obtain emigration clearance from the office of Protector of Emigrants.

Indian passports fall into two categories: those with a stamp “Emigration Clearance Required” (ECR), and those with a stamp “Emigration Clearance Not Required” (ECNR or Non-ECR).

- a. The ECR applies to those who have not officially passed their class 10 or 10th grade (secondary education) in an accepted Indian education system. They will have to obtain clearance from the Protector of Emigrants, which checks their contracts to ensure their protection. The clearance is required for Indians migrating for employment to certain countries. The clearance is required for 18 countries: United Arab Emirates, Saudi Arabia, Qatar, Oman, Kuwait, Bahrain, Malaysia, Libya, Jordan, Yemen, the Sudan, Afghanistan, Indonesia, the Syrian Arab Republic, Lebanon, Thailand and Iraq (emigration banned).²⁵
- b. Professionals, those with education above grade 10 and those going to non-ECR countries do not have to seek emigration clearance.

The Indian model thus regulates the migration of workers in semi- or less-skilled occupations, but is liberal on the migration of professionals.

A draft Emigration Bill of 2019 to replace the Emigration Act of 1983 is being discussed in India. The move to amend the 1983 Act acknowledges that it was enacted in a specific context, during heavy labour migration to the Gulf. The extant law needs to be amended because of different circumstances:²⁶

- Over three-and-a-half-decades down the line, the nature, pattern, directions and volume of migration have undergone a paradigm shift. The large-scale migration of our skilled professionals to developed countries, students pursuing higher studies abroad and increasing presence of our nationals in the Gulf for employment, are some of the salient developments. At the global level, the contemporary debate on migration management, as well as migration and development, has gained traction, and these issues are increasingly being mainstreamed in the global discourse. There is focus on safe, orderly and regular migration. Thus, there is a need to have a strengthened legislative framework that is fully aligned with the contemporary realities and harmonized with relevant international conventions (Ministry of External Affairs, Government of India, 2019).

²⁵ See Bureau of Immigration, Government of India, Ministry of Home Affairs, available at <https://boi.gov.in/content/encrecr>.

²⁶ Rajan, Aggarwal and Singh (2019) noted that, while the draft bill has expanded to include all emigrant workers and students, it excludes family and undocumented migrants. It also does not pay sufficient attention to the conditions of migrants in destination countries and upon their return to India, and generally lacks a rights approach.

IV. PERSPECTIVES OF OVERSEAS FILIPINO WORKERS

A. OVERSEAS FILIPINO WORKERS INTERVIEWED IN THE PHILIPPINES

1. Profile of direct hires

The survey of OFWs was participated in by 248 direct hires who attended the PDOS that was carried out in the POEA Head Office between 16 July and 1 August 2019. By the time direct hire applicants attend PDOS, they are almost complete with the documentation process. After completing the PDOS, the final step is obtaining the OEC, which they will present to immigration officers on the day of their departure. At the time of data collection, 60 per cent were due to leave for abroad within the week after completing the PDOS; another 36.3 per cent were scheduled or expecting to leave for abroad within two to four weeks; and the rest, 3.7 per cent, had other schedules.

According to Table 4, the respondents were about equally divided between men and women. The mean age was 34.4 years (standard deviation (SD)= 9.2 years). On the average, the men were older than the women. More than half – 53.3 per cent – were single; another 43.9 per cent were married (including those living with their partners); and the rest separated or widowed. In terms of regions of birth and current residence, the great majority were from Luzon, with Metro Manila alone accounting for more than 30 per cent, as the birthplace and current residence of respondents. In terms of education, about 75 per cent had some college education and above, which suggests that a majority of the sample had a relatively high educational attainment. About 85 per cent had previous working experience in the Philippines.

Table 4. Profile of respondents

		%	Mean, SD
Gender			
	Male	50.8	
	Female	49.2	
		(248)	
Age			
			x=34.4, SD=9.2
	Male		x=36.3, SD=9.8
	Female		x=32.4, SD=8.14
		(248)	
Educational attainment			
	Completed college and up	56.7	
	Completed some college	18.2	
	Completed high school	15.4	
	Other	9.7	
		(247)	
Marital status			
	Single	53.3	
	Married/living with a partner	43.9	

		%	Mean, SD
	Other	2.8	
		(246)	
Previously worked in the Philippines?			
	Yes	84.9	
	No	15.1	
		(245)	
Place of birth by region			
	Luzon	77.5	
	Metro Manila	31.4	
	Other Luzon	46.1	
	Visayas	12.7	
	Mindanao	9.8	
		(245)	
Place of usual residence by region			
	Luzon	83.9	
	Metro Manila	34.3	
	Other Luzon	49.6	
	Visayas	8.1	
	Mindanao	8.1	
		(248)	

Note: The numbers in parentheses refer to the number of cases.

According to Table 5, it will be the first time working abroad for a little over half (53.3 per cent) of the sample, while the repeat OFWs comprised 46.7 per cent. For the latter, the mean years of having worked abroad was 7.4 years (SD=6.1).

Table 5. Percentage distribution of first-timers and repeat OFWs

		%	Mean, SD
First time to work abroad?			
	Yes	53.3	
	No	46.7	
		(246)	
No. of years worked abroad			x=7.4, SD=6.1
		(98)	

To sum up, the survey data suggest that direct hire OFWs tend to be in their 30s, and have a high level of education; 8 in 10 had worked in the Philippines before migration; and close to half have experience working overseas.

Direct hires were bound for 57 countries, of which the top five destinations were: China (17.1 per cent), Japan (11.8 per cent), New Zealand (6.1 per cent), Singapore (5.7 per cent), and the United Arab Emirates (5.3 per cent). That more than 50 per cent were grouped as “Other” reflects the great diversity of destinations that direct hires will venture into (Table 6). Among the top five destination countries, China is a recent addition to the countries to which Filipino workers go.

Table 6. Top intended countries of destination

Intended country of destination	%
China (Mainland)	17.1
Japan	11.8
New Zealand	6.1
Singapore	5.7
United Arab Emirates	5.3
Other	53.9
	(245)

The occupations OFWs will take up abroad are also very varied. As shown in Table 7, the top five OFW occupations are: teachers (21.5 per cent), domestic workers (10.5 per cent), computer programmer or IT-related positions (8.5 per cent), managers (8.5 per cent), engineers (8.1 per cent) and factory workers (6.1 per cent).

Table 7. Occupations of OFWs

Occupations of OFWs (destination)	%
Teachers	21.5
Domestic workers	10.5
Computer programmers/systems analysts/IT-related	8.5
Managers ^a	8.5
Engineers	8.1
Factory workers	6.1
Technicians/mechanics/electricians	3.6
Chefs	2.8
Farmworkers	2.0
Cleaners	1.6
Other	26.7
	(247)

^a Managers include food and beverage industry managers (such as those who will work in coffee shops, food and beverage banquets, and restaurants).

2. Applying for overseas employment

In more than half the sample, respondents learned about the job abroad through recommendations and social networks. Online sources and companies' recruitment activities emerged as major sources of information on overseas employment opportunities (Table 8). Part of the application process entailed an interview with the employer, of which a video call was the most common means. About a third of respondents experienced face-to-face interviews through meetings with a company representative who came to the Philippines or the job applicant being invited to the company's office. Respondents were also proactive in learning more about the company they were applying to – they checked the company's website, asked questions about the company during the interview, and sought information about the company from family and friends.

Nine in 10 respondents had planned on working abroad; the decision to work abroad was not just random, but was part of their plans. Fifty-seven per cent of respondents had family members who were working overseas. Hence, it is not surprising that family members (as well as friends) were cited as sources of information about working abroad.

Although this survey was among direct hire OFWs, it is interesting to note that 29.1 per cent had considered using the services of a PRA (Table 9). Those who did not consider going through a PRA cited the following reasons: they were discouraged by the placement fees, salary deductions and getting lower salaries; they already knew someone in the company or destination country; they had a direct relationship with the employer; they did not trust or were afraid of scams or illegal recruitment; they could handle the process on their own; they found government-led processes sufficient; or there were no agencies for their work industry or country of destination. Those who considered getting the services of a PRA did not push through because of the following reasons: they were already being processed as direct hires, or had found the work opportunity unexpectedly; they would have had to pay fees; people known to them recommended them for the job; agencies were unable to find them a job; they had concerns about illegal recruitment; and they did not find agencies helpful.

Table 8. Learning about overseas job opportunities

		%
How they learned about the job		
	They were recommended to the employer/company	35.2
	A relative/friend told them about the job	22.7
	Through online sources	16.6
	Company recruited them	15.8
	Other	9.7
		(247)
Interviewed by employer? Means?		
	Yes	82.2
	By video call	39.1
	By phone	17.3
	By the employer/company representative in the Philippines	15.3
	Visited the employer/company's office abroad	10.5
	No	13.7
	Other	4.0
		(248)

		%
Steps taken to learn more about the employer		
	Checked company online	57.7
	Asked during interview	48.0
	Consulted a relative/friend	43.9
	Other	9.3
	Did not do anything	3.7
		(248 400 cases) *MR

Direct hiring has its share of advantages and disadvantages. The primary advantage of direct hiring is the lower costs because applicants do not have to pay the placement fee (Table 9). Respondents also appreciated the direct contact with employers and safety from illegal recruitment. On the other hand, the disadvantages are related to finding out about requirements and information on their own.

3. Philippine Overseas Employment Administration processing

After securing their job offers, workers will have to obtain an OEC, which will serve as clearance prior to leaving the country. Table 10 shows the various sources of information from whom respondents learned about the OEC requirement. Some of the main ones were POEA channels such as the website or through inquiries to its office (68.9 per cent), family or friends working abroad (34.8 per cent), the employer/company (24.2 per cent), other online sources (21.7 per cent), family or friends in the Philippines (15.2 per cent), the foreign embassies while applying for a work visa (13.9 per cent), and other sources (15.1 per cent).

Table 9. Private recruitment agencies: pros and cons

		%
Considered PRAs		
	No	70.9
	Yes	29.1
		(244)
Advantages of direct hiring		
	Less costly; no placement fee	37.9
	Deals directly with employer/company	25.5
	Information about the job comes directly from employer/company	14.0
	Less likelihood of being illegally recruited	11.9
	Other	10.7
		(243)
Disadvantages of direct hiring		
	Finding out about requirements on their own	36.5
	Finding information about job offers abroad on their own	25.0
	Having to cover all expenses on their own	20.1

	%
Cannot run after employer/company in case problems arise	7.8
Other	10.7
	(244)

Table 10. Sources of information about the OEC

Finding out about the OEC	%
Information from the POEA	68.9
Information from family members and/or friends working abroad	34.8
Information from the employer/company	24.2
Information from other online sources	21.7
Information from family members and/or friends in the Philippines	15.2
Information from the foreign embassy while applying for a work visa	13.9
Other	15.1
	(473 cases) *MR

Almost all of the respondents had their direct hire application processed at the POEA Head Office. About half of the respondents, 51 per cent, were able to complete the POEA requirements in less than a month; at the other extreme are the 12 per cent whose processing period exceeded two months (Table 11).

Table 11. POEA processing experience

		Percentage of cases
POEA office where they processed documents		
	POEA Head Office	97.1
	POEA Regional Center/Regional Extension Unit	2.4
	POEA Satellite Office	0.4
		(245)
Length of time it took to complete POEA requirements		
	Less than a month	51.0
	1 month	20.0
	More than 1 month to 2 months	17.1
	More than 2 months	11.8
		(245)
Most difficult documents to comply with		
	Verified or authenticated employment contract	47.1
	Valid work visa/entry visa/work permit	36.1
	Valid medical certificate	29.0

		Percentage of cases
	POLO endorsement letter	26.1
	Additional documents to support the job application	20.2
	Additional country-specific requirements	12.2
	Proof of certificate of insurance coverage	12.2
	Others	55.1
		(248 566 cases) *MR
Suggestions for POEA		
	Continue the same practice	39.8
	Relax requirements for the highly skilled workers, but apply stricter requirements to workers in vulnerable occupations	23.0
	Reduce or simplify the number of required documents	18.4
	Relax requirements for migrant-friendly countries, apply stricter requirements to those that are not	10.7
	Other	8.2
		(244)

The length of time it takes to complete the POEA requirements posed a problem for a third of the respondents (33.2 per cent). Some reported financial problems or incurring additional costs because of several trips to POEA, or having to rebook tickets because of the waiting time for the processing; others had concerns about losing the job offer because they could not report to work on time. There were also concerns about expiring documents because of the stretch of time it takes to complete the process, as indicated by these comments: “I am worried that my visa will expire before I complete all documents”, and “I had to repeat my medical exam because it already expired while I waited for my contract”. The processing was time-consuming due to various factors. Some mentioned the “many requirements” and difficulty in securing specific documents. For example, “processing time of authentication and verification from POLO takes a lot of time and [you’ll] need to send [a] hard copy back and forth”. Respondents also mentioned considerable delays in the initial stages, such as the matter of obtaining forms. “It took me three days, even though it could be done for one day... I just wanted to get a form but I was asked to get a queue number just to get a form, even though she [could have just given] it to me.” Respondents also shared problems in posting OEC announcements on the POEA website, which is crucial to completing the process. It becomes a problem for respondents when “...the list of approved clearance is not posted in real time”. Other respondents expressed a more systemic view about the processing of direct hires: “POEA operates by the book, even if the contract requirements are not applicable to the country of destination”; “[The] process could be simpler and more efficient – not all OFW cases should be treated as a blanket policy.”

After the submission of requirements, 53.5 per cent of the respondents obtained the clearance in 1–3 days, 30.5 per cent in 4–7 days, 5.6 per cent in 8–14 days, while 6.7 per cent of them were still unsure when they would be able to secure their clearance. About a quarter, 24.7 per cent, reported having problems with the length of time it took to secure clearance from the time of submission of requirements. Some workers felt that the release of the clearance could be accomplished in a shorter timespan.

In the in-depth interviews, informants often mentioned the long list of documents they had to comply with (see Box 5). Data from the survey reinforce challenges pertaining to documentary requirements. Among the various documents, securing the verified or authenticated contract was mentioned by 47.1 per cent of the survey respondents as the most difficult to obtain. Since this document must be processed by POLO or the Philippine Embassy or Consulate, this response is not surprising. The work permit or work visa ranked second, with 36.1 per cent of respondents citing this.

Box 5. More OFW education, fewer rules

Securing the verified contract from POLO stalled the departure of an engineering manager for Ireland. He accepted the job offer in February 2019, but months later, in July 2019, he was still submitting documents. His employer had complained about the many required documents. At some point the employer asked: “What’s this? I’m not giving anyone else this. Why should I give this to someone just because they’re Filipino? It doesn’t make sense.”

Although the job applicant appreciates the efforts to protect OFWs, the rules are a deterrent: “It’s sort of preventing people from getting jobs. They should think about the practicality of the rules and they shouldn’t be a deterrent.” The Government’s responsibility in protecting OFWs lies more in education: “I think it’s crazy that we think we can protect everybody. It’s all about teaching them [OFWs] how to protect themselves. The role of the Government is to help those who have problems, instead of preventing people from leaving” (male, 29 years old, hired as engineering manager, Ireland).

A *balik-manggagawa* OFW shared that the protection of workers is also the responsibility of the employer: “We have protection. Our company has a standard policy in case we are threatened. Once we feel that we are threatened, we can file a real time report to HR [Human Resources]. If management doesn’t take action, we can directly report to the police station. The HR supervisor explained that to us” (female, 24 years old, hired as restaurant assistant manager, Thailand).

While 39.8 per cent of the workers recommended that POEA continue the existing practice, the majority wanted to see changes in the process and requirements. About a quarter – 23 per cent – called for relaxing requirements for the highly skilled workers, but to retain strict requirements for those in vulnerable occupations; 18.4 per cent recommended reducing or simplifying the required documents; 10.7 per cent suggested fewer requirements for those bound for more migrant-friendly countries. Several suggestions put forward technology-related solutions, such as looking into online submission of requirements. Others touched on information and communication issues: “POEA agents must tell the OFW all the requirements at the first transaction [and] not provide information one at a time”; to improve coordination between different government agencies: “POEA must have the knowledge of each country on how to get visas; just like in Viet Nam, they need the ticket first before getting the visa so that the money will not be wasted”; to reduce redundancies in the process, “we already went through the eye of the needle in securing the work permit, why put us through the predicament”; and to provide the policy with flexibility to liberalize requirements based on applicant strengths, for example, “to reduce or simplify the numbers of required documents for OFW based on his/her number of years working abroad”.

Having gone through the POEA process, respondents were asked about their level of satisfaction with the services provided by POEA and POLO, or the Philippine Embassy or Consulate. The values ranged from 1, not at all satisfied, to 5, very satisfied. As presented in Table 12, the responses indicate satisfaction with the information provided on the website concerning requirements and processes, responsiveness of personnel in POEA and POLO or the Philippine Embassy or Consulate, and overall service.

Table 12. Satisfaction with government agency services

Government services	POEA	POLO or Philippine Embassy
Satisfied with information on required documents?	x=3.88 (SD=1.10; 244)	x=3.87 (211, SD=1.06)
Satisfied with information on the steps or processes?	x=3.84 (SD=1.12; 243)	x=3.86 (205, SD=1.10)
Satisfied with personnel responsiveness?	x=3.87 (SD=1.08; 243)	x=3.95 (192, SD=0.99)
Satisfied with overall service?	x=3.98 (SD=0.97; 242)	x=3.97 (191, SD=1.01)

4. Advantages of Philippine Overseas Employment Administration documentation

When it comes to the protection of OFWs, respondents considered it very important to receive protection from the Government – hence, the importance of being documented by POEA. On a five-point scale, with 1 as very important and 5 as not important at all, responses to this statement had a mean of 1.15 (SD=0.48). Respondents were less committal in their responses on whether the Government should be held responsible for untoward circumstances undocumented OFWs might encounter. On a five-point scale, 1 as strongly agree and 5 as strongly disagree, this statement garnered a mean of 3.07 (SD=1.31), suggesting that they neither agreed nor disagreed. The documentation process in POEA is also a means to extend social protection services to OFWs. Nine in 10 respondents considered membership in OWWA, Pag-ibig, PhilHealth and SSS as important.

B. OVERSEAS FILIPINO WORKERS' PERSPECTIVES IN THE DESTINATION COUNTRIES

This section presents findings from the interviews, discussions and consultations with OFWs in the six destination countries. First, it is important to situate their views and experiences in the migration context of the six destination countries, as summarized in Table 13.

Table 13. Migration and recruitment context by country

Item	Singapore	Malaysia (Kuala Lumpur)	Thailand (Bangkok)	United Arab Emirates (Dubai)	Canada (Vancouver)	New Zealand
Estimate and profile of Filipino migrants	200 000 60% professionals 40% domestic workers	900 000 300 000 are documented 50-80% in E. Malaysia 65 000 workers (20 000 professionals; 45 000 domestic workers)	17 000–30 000 13 000 are teachers	600 000–800 000 Filipinos work in various occupations	662 600 (Canada) 161 378 (Vancouver)	60 000
Ease of entry	Visa-free (Association of Southeast Asian Nations (ASEAN))	Visa-free (ASEAN)	Visa-free (ASEAN)	Visit visas, tourist visas are easy	Tourist visa has many requirements	Tourist visa has many requirements
Filipino social networks established?	Yes	Yes	Yes	Yes	Yes	Yes
Can a non-national apply for work permit on site?	Yes (tourist-to-work permit; student-to-work permit)	No	Yes (tourist-to-work permit; student-to-work permit)	Yes (visit/tourist visa-to-work permit)	Yes (tourist-to-work permit; student-to-work permit)	Yes (tourist-to-work permit; student-to-work permit)
Pathway for residence for temporary workers?	Yes (for highly skilled and professional migrants only)	No	No	No	Yes	Yes

Item	Singapore	Malaysia (Kuala Lumpur)	Thailand (Bangkok)	United Arab Emirates (Dubai)	Canada (Vancouver)	New Zealand
Other remarks	OFWs view Singapore as a rules-based society, an important basis for their sense of protection	Malaysian Government allows direct hiring of foreign domestic workers – but POEA and POLO Malaysia disallow it (February 2018)		Domestic worker deployment suspended since 2014; ²⁷ possibility to freelance	Considered migrant-friendly by KIs; offers avenues for redress	Considered migrant-friendly by KIs; offers avenues for redress

Sources: From interviews.

OFWs in the six destination countries have the same understanding of direct hires as defined by the Labor Code. OFWs also think of direct hiring as bypassing POEA documentation and processing. OFWs may not avail themselves of the services of licensed recruitment agencies in the Philippines, but they may have intermediaries in either or both the Philippines and the destination countries. Direct hiring is not limited to OFWs originating from the Philippines, but also includes on-site hiring and third-country hiring.

As Table 13 shows, Singapore, Malaysia, Thailand, and the United Arab Emirates are relatively easy to enter on a non-working visa compared with Canada and New Zealand. In the former countries, except for Malaysia, tourists have the possibility of converting their tourist visas to work visas. As a result, Singapore, Thailand and the United Arab Emirates have large numbers of OFWs who bypassed POEA and were hired as workers on site. Such workers are legal from the point of view of the governments of the destination countries, but are irregular or undocumented in the eyes of the Philippine Government. Thus, even if they are legally working in the destination country that provided them with a work visa, they need to be registered with POEA. This means registering with POLO, or the Philippine Embassy or Consulate (where there is no POLO). Otherwise, when they return to the Philippines, they will encounter problems in returning to their foreign employment if they cannot present the OEC.²⁸ In general, Filipinos intending to work in Canada and New Zealand need a working visa; hence, there are fewer instances of direct hires, particularly direct hires who encounter problems.

Students-turned-workers unknowingly bypass the POEA process. In Singapore, the student-to-worker transition is relatively smooth and simple, as was the experience of two KIs. One of them, Jay, was a recipient of a scholarship grant by the Singapore Ministry of Education. The scholarship came with a bond which requires the grantee to work in Singapore for three years following graduation. The condition of the scholarship thus segued into employment following graduation. Jay was able to find employment in an international research centre, and the paperwork to obtain a work permit was handled by the centre's human resources office. According to him, in less than a month, he was informed that he already had in-principle agreement, which is the main requirement needed to start working in the city-State. All throughout the documentation process in Singapore, the human resources department only complied with requirements of the Government of Singapore. Jay was not aware – and it did not cross his mind – that he also had to comply with Philippine requirements. He went home before he was going to start working. He was surprised when, at immigration check in Manila, he was asked to produce an OEC. Fortunately, he still had his university identification card, and he was able to leave as a student. In the case of Kate, she completed her Master of Arts degree in Singapore, and found employment as a researcher in the same university where she studied. Like Jay, all

²⁷ Following the Philippines–United Arab Emirates Joint Committee Meeting held last 1-2 March 2021, guidelines have been drafted to resume the recruitment of domestic workers from the Philippines (POEA, 2021).

²⁸ OFWs who were hired on site may continue to work in the destination countries without the OEC, and if they need to renew their passports, they can do so without any problem. It is important, however, that they be registered or start the process of securing an OEC in the destination country, so they will not have any problem when they visit the Philippines. Some OFWs who do not have an OEC are constrained from returning to the Philippines because of the fear that they will be stopped from returning to their workplaces.

the paperwork was handled by the university. Since her father was an OFW, she learned that she had to apply for an OEC so that she could travel to the Philippines and not worry about being stopped at the airport.

Singapore is very accessible to Filipino job-hunters: the flight is cheap, there is no need to apply for a tourist visa under the visa-free arrangement of member countries of the Association of Southeast Asian Nations (ASEAN), and the city-State needs migrant workers. According to the Philippine Embassy, there are around 200,000 Filipinos in Singapore, 60 per cent are highly skilled, and 40 per cent are domestic workers. Another key informant noted that Filipino domestic workers are well-treated compared to other countries; they receive a monthly salary of 570 Singapore dollars. According to an official, professional Filipinos have been lobbying with the Embassy to relax the requirements and the processing of direct hires.

During the consultations in Singapore, the team was able to interview several Philippine professionals in the city-State. None of the 13 migrants went through POEA. The necessity to go through a recruitment agency did not come up because of referrals by relatives or friends. IT professionals found jobs or were contacted by companies through LinkedIn. One Filipino IT professional shared that he did not look for a job; rather, the job found him. Applicants were usually asked to come to Singapore for an interview, after which the processing of the work permit by Singapore begins. Because of the urgent need of companies, workers skip the lengthy POEA process. To look credible as a tourist, one IT professional said that he took his whole family when he left for Singapore. The same key informant was anxious when he did not yet have his POEA contract verified by POLO Singapore. Another IT professional admitted that he wanted to abide by the POEA process, but the process was time-consuming, and the job could not wait for him. The discussion with Filipino community leaders confirmed the lack of awareness about the direct hiring ban policy of the Philippine Government. Key informants shared that their companies did not experience the same process in hiring other nationals. They have also shared that, because of the tedious process of hiring Filipinos, companies turn to other nationals instead. The idea that going through licensed private recruitment agencies offers protection to OFWs is difficult for them to comprehend. Recruitment agencies were perceived mostly as fee-extracting entities rather than as agents of protection. Because they found their jobs without the assistance of PRAs, they cannot understand why they would be required to get the services of PRAs and pay the placement fee, which is not deserved by the PRAs.

The visa-free entry in ASEAN countries greatly facilitates the migration of Filipinos to member countries. Those with pre-arranged jobs or those who can find jobs in Singapore or Thailand before their visit visas expire are able to legally work and reside in these countries. Due to its stricter immigration laws, it is more difficult to work in Singapore in an unauthorized way compared with Thailand. In Malaysia, the distressed OFWs who were staying in the Migrant Workers and Overseas Filipinos Resource Centers (MWOFRCS) included two who were on a tourist visa and five agency-hired domestic workers. The two “direct hires” were recruited through Facebook; they worked in a bar, earned much less than they were promised, and experienced difficult conditions. Many Filipinos also manage to enter the United Arab Emirates easily with the use of visit visas. At the time of the field research in Dubai, there were 362 women at the MWOFRCS, mostly domestic workers who arrived with visit visas. Due to the impasse in the discussions between the Philippines and the United Arab Emirates on the migration of domestic workers, the legal deployment of domestic workers has been suspended since 2014. The FGD and interviews with several wards in the shelter revealed that they negotiated with United Arab Emirates-based intermediaries via Facebook. Although some of the wards have had overseas employment, their previous experience did not incline them to be cautious about the quick process of going to the United Arab Emirates. The whole process was easy and quick, as they just sent a photocopy of a passport page, which contained personal details and the results of their medical exams. Some of them ran away before they were given a work permit because of difficult working conditions.

Other resource persons in Dubai shared that Filipinos of varying skill levels use the visit visa to enter the United Arab Emirates to find work. A human resources practitioner said her company was discouraged from hiring an architect through the POEA channel because of the length of time needed to accomplish all the requirements. In the end, the company used the visit visa route, and then applied for a work visa for the architect. Another human resources representative confirmed that his company preferred to use direct hiring, and indeed, the process was painstaking.

Canada and New Zealand rank high as destination countries for aspiring migrant workers because they offer higher salaries; moreover, the pathway for residence for temporary workers is a major pull factor for workers who

aspire to bring over their immediate family members. In recent years, both countries have increased their intake of temporary migrant workers. In addition to recruitment agencies, immigration consultants play an important role in attracting migrants. Although they are prohibited from engaging in recruitment practices, it is not uncommon for some immigration consultants to conduct recruitment activities as well. Immigration consultants not only provide information about job opportunities, but also educational opportunities as entry pathways for immigration to Canada. In Canada (more so than in New Zealand), the research team encountered many cases of caregivers (almost all were women) who migrated to Vancouver from other foreign countries, not from the Philippines. Among the caregivers who participated in the consultations, their countries/territories of origin included Hong Kong SAR, China; Singapore; Israel; and Greece. The OFWs had been working in these places from where they applied for immigration to Canada. OFWs who previously worked in Hong Kong SAR, China, for example, sought out families whose needs (for example, childcare) will earn more points when they apply to Canada.²⁹ Those who came from Greece migrated to Canada when Greece experienced a deep financial crisis, which started in 2009. In moving to Canada, none of them used the services of Philippines-based PRAs, and they did not have to go through POEA. They had intermediaries – some were immigration consultants, some were recruitment agencies (in Canada), many were family members and relatives – who helped them in securing employment. In many instances, they invested considerable money to fund their migration to Canada. From their countries of foreign of employment to Canada, OFWs engaged with a variety of intermediaries.³⁰

Filipinos who migrated to New Zealand for temporary employment resorted to different means. An accountant and two construction workers went through a Philippines-based PRA; none of the three paid any placement fee. This is in keeping with the agreement between the Philippines and New Zealand Governments that workers should not be charged a placement fee. New Zealand does not allow the charging of placement fees for workers. Construction workers comprise a growing number of temporary workers in New Zealand, and Filipinos account for a sizable share in this category. The high demand for construction workers started with the rebuilding in Christchurch after the 2011 earthquake, and recruitment agency representatives interviewed for the study anticipated a continuing demand for construction workers for another 10 years.³¹ Students also have the possibility to convert their status to work visas, but they must acquire New Zealand work experience. One of the research participants was a doctor who came to New Zealand on a student visa, and had completed a postgraduate programme in public health. She was able to convert her visa into a work visa, and was working as a researcher in a medical-related field. However, she is intent on practicing as a doctor, and she will have to undergo many processes and stages, which will take years.³² Another migrant, an IT professional, did not seek the services of a recruitment agency or an immigration consultant. He did not see the need to pay an agency or an immigration consultant, since all the needed information could be found from Immigration New Zealand. Overall, the Filipino workers and other resource persons considered New Zealand as a migrant-friendly destination. Particularly when it comes to workers' issues, including migrant workers', the Employment Relations Authority will ensure that workers' rights are protected.

OFWs and other resource persons interviewed in the six destination countries recommend the relaxation of the ban on direct hiring, particularly in relation to professionals and the highly skilled (see also Box 6). If workers' protection is the main issue, they reasoned that protection is not limited to the JSL and mandatory insurance under agency hiring. Professionals and the highly skilled are considered as generally aware and empowered to take care of themselves. Their work contracts with their companies are a source of their protection. Participants also cited the country context – Organisation for Economic Co-operation and Development countries – such as Canada and New Zealand, for example – have laws and policies that promote and respect the rights of migrant workers. In addition, trade unions and civil society organizations promoting migrants' rights and providing support are present in these countries.

29 For details on Filipino women migrant workers' attempts to build resources to move to other countries, see Paul (2017).

30 One exception is the case of a restaurant worker who attended an orientation on immigration opportunities in Canada while she was working in Singapore. After the orientation, she and her husband did their own research on how to immigrate to Canada on a student visa. The couple went to Canada on her husband's student visa. The visa allowed her to work. At the time of the interview in October 2019, she and her husband had already applied for residency.

31 The migration of Filipino construction workers to New Zealand is detailed in the film and other resources developed by Norman Zafra, a graduate student at the University of Auckland (www.obrerofilm.com). His work received an award from the International Labour Organization in 2018, and the Migration Advocacy and Media from the Commission on Filipinos Overseas in 2019.

32 Several informants lamented that Filipino professionals cannot practice their professions in New Zealand because they cannot meet certain requirements. For example, nurses must score a certain band in the IELTS (International English Language Testing System); this is a common stumbling block as to why Filipino nurses cannot land nursing positions in New Zealand.

Singapore is recognized by OFWs as a rules-based society, which gives them a sense of security, not only about their employment, but also about their day-to-day life.

Box 6. Relax the ban for the less skilled, too

Several key informants who were not in highly skilled occupations suggested that direct hiring should also extend to the less skilled: “These days, you need to finish school [university education]. What about us who have not finished school and people at my age?” She said that liberalizing direct hiring will open more opportunities to people who did not complete university education. She recognized there are risks to direct hiring, which is why this should be limited to “open countries” and restrict it in “dangerous countries” (female, 39 years old, hired as secretary, Bahrain).



V. PRIVATE SECTOR AND CIVIL SOCIETY

ORGANIZATION PERSPECTIVES

A. PHILIPPINES-BASED PRIVATE RECRUITMENT AGENCIES' PERSPECTIVES

At the Consultative Conference held in September 2019, participants representing the recruitment sector, largely corporate PRAs, commented on the need for a fresh approach in the regulation of the industry. There are no innovations in the system. According to them, Filipino workers are preferred by many overseas employers, but the procedure of hiring them is laborious and time-consuming. They give up and turn to other workers, which means lost opportunities for Filipinos. Several participants cited instances of losing projects because of the restrictions. Prior to the pandemic, Japan was a potential labour market with the opening of specified skilled visas; as of September 2019, the agencies were still waiting for the rules and regulations.

The inputs from the PRA representatives highlight that the requirements and procedures of legal deployment affect not only those who are seeking clearance from the ban on direct hiring, but also agency hiring. In the past, PRAs could complete the documentation process in two weeks. The regulations have made documentation cumbersome and lengthy. Their multinational clients cannot understand why POEA insists on its standard employment contract, even when the companies' package offers more benefits. POEA also imposes its rules and regulations on jobs, such as offshore work, which adhere to international standards.

PRA participants also commented on the one-size-fits-all approach of industry regulations, where corporate PRAs and those recruiting domestic workers are treated uniformly. According to them, these two types of recruiters should be treated differently. They lamented that problems and regulations affecting the agencies engaged in domestic worker recruitment have been applied to the whole industry, including awardee PRAs. The staff and time of POEA are spent on processing the documents of domestic workers, thereby neglecting the processing of the documents of corporate hires. Strict due diligence is applied even to long-term corporate employers. Any change in the documents submitted, such as one additional person for a job order, requires employers to travel to the POLO or Embassy, to prove that the additional job order is legitimate and valid.³³

The small number of legally deployed direct hires does not pose a threat to the business of PRAs, at least until now. Interestingly, they receive inquiries from direct hire applicants to process their papers, but PRAs are not receptive to this because they do not know the employers.³⁴ Despite other recruitment options, agency hiring offers distinct advantages, notably the screening of applicants, which are valued by employers. For PRAs, the threat to the recruitment sector is increasing regulations. The POEA regulation system is premised on making the PRAs ultimately responsible for the breaks or faults in the system, even if the fault lies with the worker, the employer or another party.

The main takeaway from the PRA participants is that increasing regulation, increasing documentation, and longer processing discourage foreign employers from hiring Filipinos, and these delays discourage employers from hiring Filipinos.

33 To streamline the processing of documents, PRA participants proposed to create a whitelist for employers who have established track records of providing decent work to OFWs, and to create different systems for the processing of documents by company employers and individual employers. These were discussed at the IOM-POEA-SMC webinar in October 2020. Administrator Bernard Olalia replied that POEA would consider these proposals.

34 For example, a company which has already hired five Filipino workers may ask a PRA to handle the processing of documents of their Filipino recruit. This also happens at the destination end. The head of a Singapore-based foreign placement agency shared that his agency receives requests to process the registration of foreign domestic workers who are already in Singapore. He said that he does entertain such requests because he did not screen the applicant.

B. FINDINGS FROM THE FOREIGN EMPLOYERS' SURVEY

As mentioned earlier, only 11 foreign employers participated in the survey. Although the number is small, the insights are illuminating. As shown in Table 14, the 11 companies that have recruited direct hire OFWs operate in nine countries and are engaged in various types of businesses – engineering, manufacturing, education, technology and software, research and consultancy, agriculture and community development.

The companies were of varying size in terms of number of personnel: seven had more than 100 employees, three had 21–50 employees, and one had 1–20 employees. Interestingly, three companies reported that they employed more than five Filipinos; most companies had one Filipino worker. The work Filipinos performed in these companies was largely professional, technical and managerial.

Table 14. Employers survey: country of operation and type of business

Country	F	Type of business
Japan	3	Engineering, manufacturing, education
Malaysia	1	Technology and software
Myanmar	1	Manufacturing
Pakistan	1	Manufacturing
Thailand	1	Research and consultancy
Netherlands	1	Technology and software
Argentina	1	Agricultural
Canada	1	Technology and software
United States and Thailand	1	Community development

Asked about their reasons for hiring Filipinos, based on multiple responses, the three topmost reasons employers gave were: they are trained/skilled/talented (10), they are hardworking (8), and they speak English (7). Also, their good experience with Filipino workers and the reliability of Filipino workers incline these companies to hire Filipino workers.

The recommendations by a colleague were the most cited means of how the companies recruited Filipino workers. Interviews with Filipino applicants were conducted in various ways, largely through video calls, and the rest were through sending a company representative to interview candidates in the Philippines, inviting shortlisted applicants to their office and, to a lesser extent, through telephone interviews.

Ten of the 11 companies did not have any experience of using the services of a PRA. The one company that did stopped doing so because of the excessive fees. Six of the 11 companies considered it important that they did not pay placement fees. The companies that resorted to direct hiring did not need the mediation of PRAs, because they contacted the worker directly or the worker applied directly to the company; direct contact was mentioned more than the fees charged by PRAs.

The companies obtained information about direct hiring through inquiries made at the Philippine Embassy or the POEA, or by visiting their websites. The completion of requirements from the time of job offer was more than two months for most companies. Respondents were divided on their assessment of the processing time – half said that it was reasonable, the other half considered the time as unreasonable.

It is difficult to get the insurance. It is difficult to get all the documents together in a timely way to get the permission processed. The fact that you have to wait until you have all of the documentation together before you can do the orientation. The fact that you have to do everything slowly, step by step, so there are long waiting times with nothing to do but wait. The fact that the director of our company needs to sign off on all of the hires. The fact that we had to apply to POLO first before we can apply for the Japanese visa, which is also a very time-consuming process. The fact that we have to go to the POLO office every time we need to hire people. . . We have found that a lot of Japanese companies will not hire Filipinos because of how difficult this process is, and how long it takes (basic education/secondary education institution, Japan).³⁵

We will probably never hire another person from the Philippines because of the costly and lengthy POEA process. It is so much easier to hire Americans and Canadians (community development, United States and Thailand).

Most of the companies (n=8) reported that it takes more than two months for workers to complete their requirements, a processing period that half the companies found reasonable and another half unreasonable. Employers viewed the POEA requirements as difficult to accomplish and requirements –the mandatory insurance and the certification from embassies – were some of the most difficult to secure. They also complained about the following:

Since the papers of the worker are approved by POLO, POLO should just have forwarded it to POEA and, in turn, POEA should only require the medical and visa from the employee.

Providing all the list of requirements to be submitted and the fees should be explained properly during the first visit. Some companies are far from Kuala Lumpur. Hopefully, employers don't need to visit the Philippine Embassy more than two times.

Going to POLO [was unnecessary]. POLO telling us to wait to process the Japanese visa. The orientation was not useful. It seemed to be more for domestic workers. Or for first-time travellers. Taking the online seminar by POEA and then having to print out a copy of the certificate even though we were submitting it back to POEA. So many things can be done online. We shouldn't have to go to the office so many times. It would be better to maximize the use of the online profile so that all the information can be in one place. Should have to make the profile at the start of the process, not the end.

I was completely frustrated with the process and had to send employees to Bangkok twice in this process, which cost us a lot of money. We have never had these costs or problems with workers from other countries.

Although companies generally agreed that Filipino workers should be documented, the requirements should be streamlined:

The direct hire processing should be smoother. The work visa issued by the embassy of the country of destination, together with the employer's details and official contract should be sufficient. Also, candidates transferring to a new employer should be processed faster whether they are previously under agency or direct hire. Having different policies and procedures and registration for agency and direct hire makes it complicated. The system should be standardized and automated.

Respondents were asked what information and services would be helpful to employers hiring Filipinos. In terms of information needs, they suggested the following: to make information about hiring Filipino workers readily available in the Embassy; to provide information in the language of the destination country; and to provide a step-by-step guide of the process. Regarding services, they suggested a seminar and orientation for employers, and the need to streamline the processing time and required documents. In relation to streamlining, they suggested to allow the submission of application and related documents online. Expenses and time could also be reduced with the use of video calls and conferences.³⁶

35 According to a migration researcher in Japan, Japanese employers found the requirement to show up personally at the POLO as costly and time-consuming for those who are based in faraway places such as Hokkaido. Videoconferencing can be one option (conversation, 5 February 2020).

36 A researcher mentioned that, in Japan, employers based in Hokkaido, for example, spend a considerable sum traveling to Tokyo for interviews or meetings with POLO.

C. OVERSEAS-BASED PRIVATE SECTOR AND CIVIL SOCIETY ORGANIZATIONS

Employers, recruitment agencies and immigration consultants were not easy to access. In some destination countries, the POLOs helped in linking the research team to some of these actors; in other instances, personal contacts paved the way to hear the perspectives of private sector representatives.

In Singapore and Malaysia, the study was able to reach recruitment agencies (also called employment agencies in Singapore), which are mostly engaged in the placement of Filipino domestic workers.³⁷ These agencies have counterparts in the Philippines. In the case of Singapore, the Government allows recruitment agencies to charge the equivalent of one month's salary per year or two months' salary for every two-year contract. The employer-pays principle may work for companies, but not for employers of foreign domestic workers. According to recruiters, workers can consider the fees as their stake or investment in their own security, because they can count on the agency for support. For example, in case the employer is transferred to another country (which can happen to expat employers), the agency will step in to find the worker another employer. In Malaysia, the recruiters charge the employers around 10,000 ringgit. Although the Malaysian Government allows direct hiring of workers, the Philippine Government did not allow the direct hiring of domestic workers. In both Singapore and Malaysia, the recruitment agency representatives wish to have their voices heard whenever there is a complaint filed against them. The Malaysian recruiters made a request that OFWs who break the employment contract without due reason should be recorded and flagged in POEA records. According to them, they had experiences of workers using Malaysia as a steppingstone to acquire some experience and then apply to other countries.

In Dubai, the owner of a recruitment agency shared that the widespread use of visit visas to bring in Filipino workers to the United Arab Emirates, and the establishment of tadbeer centres,³⁸ had negatively affected her business. Her agency had stopped recruiting Filipino construction workers; in her view, Filipinos cannot cope with the working conditions of construction work in the United Arab Emirates.

Filipino community leaders consulted in Singapore were all professionals and highly skilled, and almost all of them skipped the POEA process and applied for POEA documentation in the city-State (some are already permanent residents). They were not aware of the ban on direct hiring. They did not object to the documentation process; their main complaint was the lengthy process. They believe some requirements can be done away with. For example, the work visa issued by the Government of Singapore should be sufficient for documentation and OEC issuance, under the reasoning that Singapore's Ministry of Manpower has a thorough system. The Philippine Government's concern for worker protection should consider the system in place in the destination country and the number of problem cases. They reported that they had not heard of any problems encountered by direct hire professionals in the city-State, citing that employers would not dare violate the regulations of the Ministry of Manpower.

Similar sentiments were expressed by Filipino community leaders and CSO representatives in other destinations. In Canada and New Zealand, key informants cited the existence of redress and grievance institutions and legal frameworks that addressed migrant workers' concerns. In New Zealand, only companies that pass the Government's accreditation system can hire foreign workers. In general, migrant workers are protected by labour laws and institutions that protect national and migrant workers alike. Also, in New Zealand, employers are required to provide "pastoral services" (post-arrival services that are provided by suppliers) to temporary migrant workers. Moreover, CSOs, trade unions and Filipino organizations are present in these countries, which can provide a lifeline to Filipino workers in need of assistance.

It may be recalled that Sec. 4 of RA 8042 states that the OFWs will only be deployed to countries that meet the following conditions:

³⁷ Singapore has 800–900 employment agencies dealing with foreign domestic workers.

³⁸ Established and operated by the Ministry of Human Resources and Emiratization, tadbeer centres are one-stop centres for the hiring of foreign domestic workers and bringing them to the United Arab Emirates. The centres provide a range of services, which include recruitment and placement, transfer of sponsorships, health insurance of domestic workers, conflict resolution and promotion of the welfare of domestic workers. According to a key informant who owns an agency in Dubai, their recruitment business has been affected by the emergence of tadbeer centres.

- a. It has existing labor and social laws protecting the rights of migrant workers;
- b. It is a signatory to multilateral conventions, declaration 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
- d. It is taking positive, concrete measures to protect the rights of migrant workers.

RA 10022 reiterated this provision and added the role of the Department of Foreign Affairs in certifying whether a destination country offers conditions that protect the rights of migrant workers. However, in practice, since most countries are certified as safe destinations for OFWs, the usefulness of this process has come under question. This tool can be made more useful if relevant information about the destination countries is considered. For example, data on runaway workers, the number of workers who sought assistance from POLO or the Embassy, the nature of assistance sought by OFWs, the number of wards in MWOFRCS, or the number of OFWs in detention, provide a more nuanced picture of the conditions of OFWs.



VI. CONCLUSIONS AND RECOMMENDATIONS

This integrative and concluding section highlights key findings from the study and draws out implications and recommendations for moving forward.

A. KEY FINDINGS

Following are key findings and core messages from the study:

- a. As provided by the Labor Code, the ban on direct hiring has been enforced since 1974 for the purpose of protecting Filipino workers from irregular migration, human trafficking and dangers attendant to overseas labour migration. The ban has been effective in containing the number of direct hires, as indicated by the small share of direct hires among the OFWs legally deployed annually. Nine out of 10 OFWs legally deployed every year are agency hires, with the remaining 10 per cent comprising direct hires and GPB hires.
- b. For POEA, the ban on direct hiring ensures that the overseas employment of Filipinos is “fully regulated by the government through agencies/entities authorized to conduct recruitment and replacement activities”. Government KIs view direct hires as facing more risks compared with agency hires. Among the three recruitment options, government KIs argue that agency hiring poses the least risks to workers, citing the checks and balances in the system. The granting of a license to PRAs to operate comes with the responsibility of PRAs to monitor the situation of workers. A major part of worker protection is the JSL, primarily because POEA has jurisdiction over the PRAs. For direct hires, the POLO or the Philippine Embassy and POEA have limited power to compel the foreign employer to comply with the terms of the contract.
- c. The ban on direct hiring, its rationale, and the risks direct hiring poses for OFWs, however, are not known and understood by OFWs. For OFWs who secure overseas employment without PRAs, to be told that they must go through PRAs does not make sense, and to pay a placement fee to PRAs that did not have a role in their job search is not just. In fact, this recommendation can be misconstrued by OFWs as corruption, of POEA colluding with PRAs. From the OFWs’ perspective, the notion that PRAs provide protection to workers is alien; they see PRAs as fee-charging entities and some associate PRAs with illegal recruitment and other irregular practices. The merits of the JSL, which many government KIs highlight as protective for OFWs, are not known and not seen as protective by OFWs. In Singapore, for example, several professional OFWs said that they could protect themselves. Or in Canada, should caregiver OFWs encounter employment-related problems, they would rather opt to remain in Canada in the hopes of securing permanent residence, rather than seek monetary claims. The long wait for a decision granting monetary claims is also discouraging for OFWs. Ultimately, the protection provided by the JSL can be a case of too late, too small, or inimical to OFWs’ plans to continue working abroad.
- d. Consultations with OFWs and key stakeholders in the six destination countries suggest that skill level or occupation and destination matter in migrant workers’ protection, and not the type of hiring per se. Across all destinations, the professionals and highly skilled are less likely to report problems to or seek assistance from POLOs and embassies. OFWs in less skilled occupations, mostly domestic workers, were more likely to report problems and seek assistance from the POLOs or embassies. The wards in the MWOFRFC in Kuala Lumpur and Dubai were largely domestic workers. It is also important to highlight that, while domestic workers tend to encounter more problems compared with other OFWs, the scale of domestic worker problems differs by destination. At the time of the consultation, five of the seven wards at the MWOFRFC in Kuala Lumpur were domestic workers (who were agency hires), while there were 362 in Dubai (most came to the United Arab Emirates on visit visas).
- e. The Government’s concern that direct hiring may foster irregular migration and trafficking is not fully supported by the study. Like the unintended effect of deployment bans, the ban on direct hiring, in fact,

indirectly leads to irregular migration. OFWs who bypass the POEA process are irregular or undocumented migrants from the point of view of the Philippine Government. However, once they acquire a work permit in destination countries, they can legally work and reside in those countries. They become documented in the eyes of the Philippine Government when they apply for POEA registration at the POLO or Philippine Embassy. Even if they bypassed POEA, professional and highly skilled migrants are protected by the work contract and the work permit provided by their employers. In the case of less skilled migrant workers, leaving the country POEA registration can render them vulnerable for two reasons: their employers may not provide them with work permits, and the work they perform (such as domestic work) is not covered by national labour laws.

- f. Overall, OFWs want to comply with POEA registration, but are discouraged from doing so because of the voluminous requirements and the lengthy process. Philippines-based PRAs and foreign employers also mentioned the numerous requirements and the laborious process in hiring Filipino workers. The long process means more expenses, delayed deployment or lost job opportunities for Filipino workers. Although employers prefer Filipino workers, the bureaucratic process could discourage them from hiring them. The results of the employers' survey confirm employers' exasperation over the lengthy documentation process.
- g. Considering all key stakeholders' perspectives, findings from the study call for a rethinking of the ban. The ban was formulated in the 1970s – before globalization, before the Internet, before Filipinos had established social networks in various countries, before migration policies and institutions to govern labour migration were established in the Philippines and destination countries, and before bilateral and multilateral processes were in place. OFWs and foreign employers were unanimous in their call for easing the ban and, in relation to this, to rationalize and streamline the process. Otherwise, the numerous requirements and the long process could mean lost opportunities for Filipino workers, or they could inadvertently lead to OFWs leaving without POEA registration. OFWs question the one-size-fits all application of the ban. As various informants underscored, the ban needs to consider the skill level or occupation of OFWs: the ban can be relaxed for professional and highly skilled migrants, but maintained for migrants in less skilled occupations.

The rules and regulations for the recruitment of OFWs in the land-based and sea-based sectors have gone through four iterations (POEA, 1985, 1991, 2002, 2016) toward strengthening protection of migrant workers. However, as outlined in Figure 1, international labour migration now occurs in a highly globalized context that is characterized by the borderless flow of information through the Internet and various social media platforms, easy travel, and vast social networks established between overseas Filipinos and those at home. These changes open possibilities for direct contacts between jobseekers and employers, without the assistance of recruitment agencies and other intermediaries. The ban on direct hiring and the Government's primary objective to protect Filipino workers function like a firewall, delaying or denying the migration plans of Filipino workers. In the face of changes arising from globalization, POEA continues to rely on worker recruitment "through agencies/entities authorized to conduct recruitment and replacement activities". While POEA can regulate licensed PRAs and the deployment of OFWs coming from the Philippines, it cannot regulate the explosion of information available online, the information provided by social networks and the migration policies of destination countries. Until recently, Filipinos could only travel to a few countries and territories without a visa – for example, within ASEAN and to Hong Kong SAR, China and Macao SAR, China. In recent years, visa-free policies have facilitated travel to the United Arab Emirates and Taiwan Province of the People's Republic of China, among others. The visit visas to the United Arab Emirates, for example, have increased on-site hiring in the United Arab Emirates, a phenomenon that has long been observed in Singapore.

According to POEA, the ban remains valid and operative because there is no declaration or pronouncement from the Supreme Court that it is unconstitutional. Furthermore, since "the existing policy which allows the deployment of direct hires is based on the exemptions provided for by law and said scope may not be extended to cover situations which do not clearly fall within the purview of the law" (email communication with POEA, 24 February 2020), the ban remains.

If the ban needs to be amended, or modified so that the process can be streamlined, what are the possible pathways? Because the ban on direct hiring is provided by the Labor Code, a repeal or amendment can only be made through a

legislative process – it must be initiated in Congress. This would require a legislator who will sponsor a bill to amend the ban on direct hiring. As mentioned at the outset, House Bill No. 331, An Act Facilitating the Global Employment of Filipinos, was filed by Representative Rosemarie Arenas on 1 July 2019, at the 18th Congress (for the text, see Annex 1). The bill has been pending with the Committee on Overseas Workers Affairs since 23 July 2019. It is a reiteration of House Bill No. 8842, which was filed by Representative Jesulito Manalo, at the 17th Congress. The filing of the bill can be a starting point for pursuing this path, although further discussions will strengthen the bill's rationale and provisions. The legal amendment pathway, however, is a long process. The long road to the amendment of Secs. 29–30 of RA 8042, the Migrant Workers and Overseas Filipinos Act of 1995, which provided for the deregulation of overseas employment, is instructive. The move to amend this provision was spearheaded by NGOs that were concerned that deregulation was not prudent in the context of an uneven playing field. The said sections were repealed by RA 9422, An Act to Strengthen the Regulatory Functions of the Philippine Overseas Employment Administration, Amending for this Purpose Republic Act No. 8042, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995”. RA 9422 was enacted on 10 April 2007, 12 years after RA 8042.

Another path is suggested by how one provision in the Labor Code was enforced and then withdrawn via executive orders. The ban on direct hiring (Article 18) and mandatory remittances (Article 22) are both provided in the 1974 Labor Code of the Philippines.³⁹ Article 22 was under the radar until 1982, when then-President Ferdinand Marcos issued Executive Order No. 857, Governing the Remittance to the Philippines of Foreign Exchange Earnings of Filipino Workers Abroad and for Other Purposes. The executive order required OFWs to remit between 50 and 70 per cent of their earnings to their families in the Philippines, or their passports would not be renewed. Due to protests by OFWs, on 1 May 1985, President Marcos issued Executive Order No. 1021, On Encouraging the Inward Remittances of Contract Workers' Earnings through Official Channels, to Repeal the Punitive Provisions of Executive Order No. 857. Except for seafarers, who were required to remit 70 per cent of their monthly salaries to designated beneficiaries in the Philippines,⁴⁰ other OFWs were free to decide on remittance matters. The OFWs' victory in stopping the onerous Executive Order No. 857 was fought in the streets. It is hoped that the voices and views of OFWs captured in this report will be duly considered in rethinking the ban on direct hiring.

Contrary to the criticism raised by some observers of the Philippines as a broker State (for example, Rodriguez, 2010) or pushing for OFW deployment as a development strategy, government policies on overseas employment have increasingly prioritized the protection of OFWs. The policy shift to protection has intensified since the 1990s, as more women have participated in overseas employment. The Philippines pioneered the crafting of a law specifically to promote the protection of migrant workers, Republic Act (RA) 8042, which was amended by RA 10022 in 2010 to further improve the protection and promote the welfare of migrant workers, their families and other overseas Filipinos in distress. Also, the migrant sector and the Philippine public in general have begun demanding the Government's accountability for the protection of OFWs.

In its pursuit of OFW protection, the Government has assumed, or is expected by the public to assume, full responsibility for migrant workers, at the risk of creating dependency and taking away the agency of OFWs to make their own decisions (see Box 7). The protection of OFWs is a shared responsibility that involves the participation of PRAs (for agency hires), employers, the countries of destination and OFWs themselves. Other factors contribute to the protection of OFWs. According to OFWs, their work contract provides them protection. Societies which are rules-based and rights-based also give OFWs a sense of security and confidence that their rights are protected and that they have access to justice when they are wronged. The protection of OFWs can also be strengthened through skills certification. DOLE and TESDA have partnered to improve the skills and competencies of OFWs through on-

39 Article 22. Mandatory remittance of foreign exchange earnings. It shall be mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependents, and/or beneficiaries in the country in accordance with rules and regulations prescribed by the Secretary of Labor.

40 The POEA-standard employment contract of seafarers requires seafarers to remit at least 80 per cent of the seafarer's monthly basic salary, payable once a month to their designated allottees in the Philippines. Unscrupulous crewing agencies can profit from this by delaying the transfer to the allottees or by charging service fees or unfair currency exchange (Gorecho, 2021). In consultations with seafarers (in connection with another study by SMC), seafarers were asked what they thought about the mandatory remittance. They said that had no issue with this requirement, since their primary reason for working on board international vessels was to provide for their families. Given the very mobile nature of their work, for them, it is fine for their manning agencies to remit their salaries to their allottees.

site assessment and certification.⁴¹ A broader discourse on worker protection, which includes the responsibility and accountability of various stakeholders, including OFWs, should be part of public discussions in the Philippines.

Box 7. When the POEA and OFWs disagree on protection

As part of contract verification, POEA (for those who are hired from the Philippines) or POLO (for on-site hires) examines the terms of the contract to ensure that Filipino workers secure the best terms. However, what POEA defines as basic standards may not be shared by workers. During the evaluation of the contracts, when the basic salary is below the POEA-defined standard employment contract, this is grounds for disapproving the application, unless the applicant can persuade his/her employer to meet the POEA standard. Otherwise, this can be a source of tension between POEA/POLO and the applicant, particularly when the latter finds the salary acceptable.

The situation is particularly tricky for OFWs who are already on site. One of the KIs, an official based abroad, shared the situation of a POLO (based elsewhere) in charge of OFWs in Malta. There are an estimated 5,000 Filipinos in Malta, of whom 2,000–3,000 are in irregular situations. Unregistered workers who need or wish to return to the Philippines must secure an OEC (and thus become registered in the POEA system) so that they can return to their work in Malta without any problem. The POLO in charge is in a bind because the workers' salaries are below the POEA standard. However, the workers reason that they have no problem with what they are receiving. In this case, the workers are already in the destination country. By the OFWs' own account, they are fine, and they wish to continue working with their current employers. Although their monthly salaries fall below POEA's standard employment contract, they are perfectly fine with them. Most of them have family members or friends in Malta; thus, they can meet their needs and support their families in the Philippines. With this impasse, the OFWs are trapped in Malta; they are unable to return to the Philippines for fear that they cannot return to Malta. This situation causes anguish to workers. Shouldn't they know what is good for them? In this case, they have had actual experience in the workplace. Granting that their wages are not on par with the POEA standard, they must be getting something worthwhile in their workplace if they want to continue working for the same employer. Does not their voice count for something, too?

B. RECOMMENDATIONS

1. The need to rethink the ban

OFWs, employers and other participants in the study strongly call for a rethinking of the ban on direct hiring, mainly because of vastly different conditions and migration trends between the 1970s and the present. Findings from the study suggest that the ban on direct hiring neither curbs irregular migration nor provides better protection to OFWs. The risks of irregular migration, human trafficking and vulnerability to abuse are not necessarily inherent in direct hiring, but are more associated with OFWs' skill levels and the destination countries. The direct hires who encountered problems were mostly women in domestic work; they did not go through PRAs in the Philippines, but they had intermediaries in the destination countries.

The study recommends liberalizing the direct hiring of professionals and the highly skilled, but maintaining the ban on less skilled migrants. Liberalizing or relaxing the ban means removing the ceiling of five workers and streamlining the

⁴¹ POLO-Dubai offers on-site assessment for OFWs.

requirements to facilitate and not deprive professionals' access to overseas employment opportunities.⁴² Under the current cap of five workers, redirecting additional workers for the same employer to be processed by PRAs does not convey protection to workers. Simplifying the requirements to core requirements will not only facilitate the process, but will also enhance compliance. For example, a valid passport, a work visa from an Organisation for Economic Co-operation and Development country, and a work contract verified by the POLO or authenticated by the Philippine Embassy should be sufficient for Phase 1. Securing a work contract and a work visa means that the applicant has gone through a thorough evaluation process which finds the applicant eligible for employment in the destination country. For Phase 2, the PDOS for professionals and highly skilled migrants, particularly for those who had previous international migration experience, may be given the option to complete this online.

Since 1974, some aspects of the ban on direct hiring has been modified through memorandum circulars and administrative orders. The proposal to liberalize direct hiring may consider the following pathways, which entail short-term, medium-term and long-term actions and timelines:

- a. POEA Governing Board resolution: The Governing Board may issue a resolution to facilitate the employment of professionals and the highly skilled without losing sight of protecting their rights. The change is motivated by easing the documentation process, and it should not lead to punitive actions against OFWs.
- b. Executive order by the President of the Philippines: As a directive from the President, it has the same power as a law. It is in force until it is cancelled, revoked or deemed unlawful. This pathway may take longer than the Governing Board resolution because this will require advocating with the President to issue the executive order.
- c. Repeal or legal amendment by Congress: The change has legal basis and is permanent unless repealed by another law. However, this pathway will take years, and in the meantime, OFWs will continue to contend with numerous requirements, a lengthy process and the possible loss of employment opportunities.

2. The need to strengthen and innovate migrant workers' education

OFWs are not aware of the ban on direct hiring, the rationale for this policy, eligibility for direct hiring, the requirements and procedures. Most of the misunderstandings and complaints of OFWs about the direct hiring process arise from the lack of knowledge about the ban on direct hiring and recruitment options in general. Not all OFWs who found overseas employment without the help of a PRA automatically qualify as direct hires; they need to undergo the POEA process.

The project developed RADDG tools for OFWs and employers.⁴³ In addition, the project will produce three videos on recruitment issues – legal ways to obtain overseas employment, illegal recruitment and how to avoid it, and frequently asked questions on direct hiring. Content-wise, it is important to underscore the whys of the ban on direct hiring and the documentation of direct hires. The messaging about compliance with POEA documentation must be accompanied by presenting the benefits: better protection in general, access to support and assistance, welfare and social protection provided by membership in OWWA and other government programmes, exemption from the travel tax, refund for the airport fee, and training programmes. Moreover, the left-behind family members can also benefit from various programmes.

The online PEOS presents a relevant platform for sharing the RADDGs for OFWs and other resources on direct hiring because it is accessed by those starting the application process and key messages about legal channels, recruitment pathways, and requirements and procedures.

⁴² POEA may also have to assess its regulations on the migration of professionals considering the promotion of skills mobility in ASEAN (for details, see Yue, Kimura and Ha, 2019; Batalova, Shymonyak and Sugiharto, 2017). The migration of professionals and the highly skilled is expected to increase in the ASEAN region (Batalova, Shymonyak and Sugiyarto, 2017), and thinking ahead on how to manage this kind of migration would be beneficial.

⁴³ The project will conduct workshops and consultations with OFWs, employers and PRAs to validate the RADDGs for OFWs and employers in June 2021. The RADDGs for the two groups are expected to be finalized by July 2021.

The RADDGs and other resources may be shared on other platforms, such as the websites and Facebook pages (and other social media platforms) of POEA, POLOs and Philippine Embassies and Consulates; the Labor Education for Graduating Students carried out by DOLE; and public employment service offices, among others.

The study found that migrant workers check out the websites of POEA offices, embassies/consulates and POLOs. OFWs commented that information about direct hiring is not easy to locate and the format is text-heavy. The use of a flowchart to explain the steps and more visuals was suggested. Information presented in Filipino language would be helpful, too.

Presently, migrant workers' education consists not only of PEOS, but also PDOS and post-arrival orientation seminars in selected destination countries. The POLOs and/or Philippine Embassies conduct such seminars to newly arrived OFWs in Singapore, Malaysia (Kuala Lumpur), the United Arab Emirates (Dubai) and Canada (Vancouver). In New Zealand (Auckland), recruitment agencies or employers provide "pastoral services" (settling-in orientation) to temporary migrant workers. Overall, post-arrival orientation seminars focus on newly arrived OFWs. Long-time Filipino workers in Singapore, Malaysia and Dubai expressed an interest in participating in seminars and information programmes. For example, Filipino community leaders in Malaysia were interested to know about reintegration in the Philippines. Post-arrival orientation seminars and seminars for the Filipino communities in destination countries can also be vehicles for information dissemination on the perils of on-site and third country hiring.

3. The need to fill the gap in employers' education

As noted, educational programmes have been developed for migrant workers, and there is also an education programme for PRAs. Officers of PRAs in the Philippines are required to complete the Pre-Licensing Orientation Seminar as part of their applications for licenses to operate. In the post-qualification phase, they are required to undergo the Continuing Agency Education Program. To date, foreign employers are the missing link in the orientation programmes of POEA. As documented by the study, foreign employers or their representatives were not well informed about the ban on direct hiring. Information on recruitment policies, recruitment options and their attendant pros and cons, requirements and processes can be provided on the websites of POEA offices, POLOs and Philippine Embassies/Consulates. It would be useful if information could be provided in the language of the destination country (other than English).

Aside from employers, other relevant actors in destination countries – foreign placement agencies, immigration consultants and providers of pastoral services – who are involved in recruitment issues and providing services to migrant workers may be part of the target audience of information programmes. In Kuala Lumpur, Malaysia, POLO started to provide an orientation on the required documents and procedures.⁴⁴

4. More coordination between the Philippine Overseas Employment Administration Head Office, Regional Centers and Satellite Offices, ILAB/Philippines Overseas Labor Offices and Department of Foreign Affairs

Information on new MCs, administrative orders and other updates need to be communicated more systematically and more quickly from the POEA Head Office to RCSOs, ILAB (which will cascade the information to POLOs) and DFA. The use of chat applications such as Messenger, WhatsApp and Viber to relay information and exchange views has been suggested.⁴⁵

The ROCO is a linking and coordinating node between the POEA Head Office on the one hand, and RCSOs and ILAB/POLOs on the other. Dialogue with various key informants indicates communication gaps in the transmission of new policies. The ROCO can play a more active role in ensuring that updates are systematically shared with RCSOs

⁴⁴ This was shared by Labor Attaché Johnson G. Cañete at the April 2021 dissemination forum.

⁴⁵ POLOs in the Middle East and Asia, for example, have a chat group for information-sharing. (This information was shared by Labor Attaché Felicitas Bay at the April 2021 dissemination forum.)

and ILAB/POLOs. Within POEA, the annual planning meeting of all POEA offices presents an opportunity not only to explore operational challenges, but also to review the philosophy and rationale behind existing policies and practices. In relation to ILAB/POLOs, the participation of POEA in the annual conference of labour attachés can provide another venue for collective discussion and identification of steps for moving forward.

The coordination between POEA and DFA is especially crucial where there are no POLOs, and Philippine embassies and consulates assume responsibility in handling overseas employment matters. Likewise, the participation of POEA in annual meetings and conferences of ambassadors and consuls should be encouraged to promote dialogue and better coordination.

5. The need to establish Philippine Overseas Labor Offices in countries with growing numbers of overseas Filipino workers

Four of the six destination countries had POLOs at the time of field research (Singapore; Kuala Lumpur, Malaysia; Dubai, United Arab Emirates; and Vancouver, Canada). The POLO in Wellington, New Zealand was newly launched in November 2019. The presence of POLOs is a major boon to OFWs and foreign employers that can readily respond to labour-related or employment concerns; it also eases the workload of the embassy or consulate. There is no POLO in Bangkok. It makes good sense to establish a POLO there to attend to the needs of the OFW population in Thailand and the growing number of Filipino workers in neighbouring countries (Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam). Bangkok is the regional seat of many migration-related international organizations – IOM, ILO and the Office of the United Nations High Commissioner for Refugees (UNHCR) – and the presence of a POLO will enhance the Philippines' participation in regional discussions.

In New Zealand, the Philippine Embassy and POLO are in Wellington, but the largest concentration of Filipinos is in Auckland. Although there is an honorary consulate in Auckland, it is mostly run by volunteers. Filipinos in Auckland recommended the assignment of a dedicated, full-time staff in the consulate to address the various concerns of the community.

6. The need to address data issues

Real-time data on direct hire applicants, BM applicants (those on site and BM OFWs) who are getting their OECs in the Philippines must be readily available to interacting offices – POEA Head Office, POEA RCSOs and POLOs. The various sources of data on direct hires – those lodging their applications with DHAD, those who are getting their OECs through BM, and transactions pertaining to direct hires at the POLOs and embassies – need to be consolidated.

It was not possible to examine whether direct hires are less protected than agency hires because data on deployed OFWs collected by POEA and welfare data collected by the OWWA are not disaggregated by type of hiring.⁴⁶ However, administrative statistics are not disaggregated by type of hiring, so it was difficult to make empirical comparisons between direct hires and agency hires.

Studies on the displaced and repatriated OFWs due to the COVID-19 pandemic call for key details that go beyond total counts. Such a database will be important in understanding the scale, profile and home communities of repatriated OFWs for data-based planning and delivery of reintegration assistance.

⁴⁶ The POEA website used to provide useful statistics on yearly deployment: total number, breakdown by gender, land-based and sea-based, new hires and rehires, type of hiring, destination, and occupation (overseas) of legally deployed OFWs. In recent years, these statistics have been pared down to annual deployment and destination countries; more recent data are also desperately needed.

7. Investments in technological solutions

To date, most transactions require the physical presence of OFWs and foreign employers at POEA offices and POLOs. Travel, time and financial costs can be reduced by adopting technological solutions to many transactions, such as the online visa application used by many embassies.⁴⁷ A similar option may be explored for foreign employers, including the possibility of a videoconference.

8. Regional Centers and Satellite Offices need more personnel

POEA Regional Centers function like mini-POEAs, but with very lean staffing. The applicants interviewed by the team in the regions observed the lack of personnel, which they saw as one of the factors that delayed the processing of their documents.

9. Fostering a culture of inquiry and innovation in the Philippine Overseas Employment Administration

Although the Philippines is held up as a model for migration governance, various aspects of the overseas employment programme can benefit from periodic reviews and assessments. The programme is approaching 50 years of age, and policies and practices need to be evaluated and recalibrated in keeping with the changing times, and to be future-ready. Beyond operational issues, these reviews need to examine whether the justifications and assumptions of existing policies and practices still hold, whether the objectives are met or new ones need to be pursued. Also, areas in need of change need to be identified. This will entail fostering a culture of appreciation for data, evidence-based policymaking, continuing capacity-development of officials and personnel, and consultations and engagement with relevant stakeholders.

The goal of protecting workers cannot be accomplished by more regulations and requirements. If workers see the process of seeking exemption from a ban on direct hiring as *pahirap* (burdensome), there is a need to reflect on whether the existing policies and regulations fulfil public service. The legalistic rationale to maintain the ban needs to consider the views of those it seeks to protect, the impact of the ban on OFWs, and how it affects the goals of the Government's overseas employment programme now and in the future. In the realm of public service, a paradigm shift is also underway, considering changing dynamics between the Government and the governed. In particular, the view of the governed as clients and constituents in the "old public administration" is giving way to engaging them as citizens in the "new public service" (Robinson, 2015: 19). As the overseas employment programme approaches 50 years of age, POEA will have to prepare and innovate to navigate a more complex policy environment in the twenty-first century.

C. EPILOGUE

As the research part of this project was winding down, two developments unfolded in March 2020: (a) the passing of the third and final reading of House Bill No. 5832, An Act Creating the Department of Filipinos Overseas and Foreign Employment, Defining its Mandate, Powers and Functions, Appropriating Funds Therefor" (Cepeda, 2020); and (b) the displacement of OFWs, the repatriation of OFWs, OFWs being stranded overseas and in the Philippines, and reintegration challenges. Deployment levels hit rock bottom in April 2020, but by June, deployment started to pick up, but not at the same level as in pre-pandemic times.

Should the bill to establish a single Department of Filipinos Overseas and Foreign Employment be enacted, the findings and recommendations from the study will still be relevant. The recommendation to consider liberalizing

⁴⁷ Usually, the online application has a filtering system to determine whether an applicant is eligible to use this option. Those who do can proceed; they may be asked to submit some documents online; the rest, such as passports, may have to be submitted to a designated courier. The visa application system of the United States Embassy is a good example.

the ban on direct hiring for professionals and maintaining it for those in less skilled occupations is congruent with the primary goal of the bill to promote OFW protection. With the recommendation's targeted approach, the new department can focus its attention and resources on improving the safe, regular and orderly migration of OFWs in less skilled occupations. The other recommendations of the study will also be compatible with the envisaged powers and functions of the new department.

The Government crafted various assistance programmes to assist the unprecedented numbers of OFWs who were displaced and/or repatriated because of the pandemic. OWWA was at the forefront of coordinating massive repatriation efforts and developing reintegration programmes. For its part, POEA monitored the situation of OFWs who were able to continue working, and to assist stranded OFWs. On 26 March, POEA issued MC No. 08, Series of 2020 to all Philippines-based licensed recruitment agencies and manning agencies, requiring them to closely monitor and support OFWs and seafarers affected by COVID-19 (POEA, 2020). They need to coordinate with the POLOs in extending assistance to OFWs on site. Moreover, they are also directed to help newly hired OFWs and seafarers, including those who are stranded, due to changes or cancellations in flight schedules, or deferment by their principals. PRAs that fail to comply face administrative sanctions. POEA's regulatory powers over licensed PRAs and crewing agencies enable it to require these agencies to extend support to agency hires in critical times. During the pandemic, agency hires may have more access to support than direct hires and GPB hires.

POEA introduced interim policies and measures to manage the unsettling impacts of the pandemic on OFWs and the recruitment industry. POEA moved various services to the online platform to continue providing services amid mobility restrictions and health concerns. It is hoped that the ease and efficiency of online exchanges and the vital lessons learned during the pandemic will be part of a responsive and forward-looking POEA in a new normal where labour migration will not be business as usual.



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ANNEXES

ANNEX 1. HOUSE BILL NO. 331

<p>Republic of the Philippines HOUSE OF REPRESENTATIVES Quezon City</p> <p>EIGHTEENTH CONGRESS First Regular Session</p> <p>House Bill No. 331</p>	
<hr/> Introduced by Representative ROSE MARIE J. ARENAS <hr/>	
<p>AN ACT FACILITATING THE GLOBAL EMPLOYMENT OF FILIPINOS</p> <p>EXPLANATORY NOTE</p>	
<p>In today's world of shared economic benefits together with the advent of Information and Communication Technology, finding a job anywhere in the world from the comfort of one's home is now made easier. A foreign employer can now interview a job applicant in the Philippines on-line and the latter can submit the requirements of the former digitally or via the internet. This has made obsolete the role of intermediaries.</p> <p>"Liberty" includes the freedom to travel abroad, seek employment and reside overseas or to work there and seek greener pastures. It is an inviolable right of a citizen not to be deprived of life, liberty, or property without due process of law and not to be denied of the equal protection of the laws.</p> <p>Everyday, in our airports, privileged individuals with better resources are unhampered in their travels abroad or to seek greener pasture because of their substantial resources. Meanwhile the middle class and less privileged are subjected to numerous requirements to seek employment. They must pass through recruitment agencies and various government offices. This hampers their choices for better opportunities through excessive regulatory controls. Because of unnecessary government regulations that are no longer pertinent to this global economy, their right to liberty to seek better employment is violated.</p> <p>The right to travel of every individual is a constitutionally-guaranteed right. This is enshrined under Section 6 of the Bill of Rights, which provides:</p> <p style="padding-left: 40px;">Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. <u>Neither shall the right to travel be impaired</u> except in the interest of national security, public safety, or public health, as may be provided by law.</p> <p>Likewise, whenever a foreign employer has already ensured that a Filipino citizen will be hired and the latter has already accepted the job offer, there is already a meeting of the minds between the foreign employer and the latter even though there is no written contract yet. For the State to, in any manner, hamper or delay the departure of the latter to fulfill his part of the agreement to work for the said employer overseas, is tantamount to the State impairing the obligation of contracts which is violative of Section 10 of the aforementioned</p>	

Bill of Rights which states that, “No law impairing the obligation of contracts shall be passed.”

This bill therefore seeks to allow competent professionals who have passed government licensure examinations and other graduates of baccalaureate degrees, as certified by the Commission on Higher Education (CHED), such as those in the fields of medicine and health, law, engineering and architecture, information and communication technology, aeronautics, finance and commerce, education and other specialized fields, and those who are considered highly-skilled or experts in their respective trade, craft, industry or vocation, as certified by the Technical Education and Skills Development Authority (TESDA) or other government bodies – to work abroad without having to process their overseas employment through the Philippine Overseas Employment Administration (POEA).

For as long as the country of destination of a Filipino citizen (who is a professional and who wants to work abroad) complies with the requirements of Section 4 of Republic Act No. 8042, as amended, the citizen must be allowed to depart for the said country. The said requirements for the foreign country to meet before it can receive overseas Filipino workers are the following:

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

Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof.

They must of course also meet and satisfy all the travel requirements of the Philippine Bureau of Immigration.

Although the remittances of our OFWs are increasing, the number of our OFWs is declining. This is why the government must make sure that the deployment of OFWs, especially professionals and/or highly-skilled, must not be hampered nor delayed.

It is therefore imperative that instead of delaying and discouraging the deployment of Filipinos seeking employment abroad, the government must make it easier for them to obtain jobs and leave for abroad to work, earn and remit hard-earned foreign currencies to their families.

The timely approval of this urgent bill is indeed of absolute necessity.

This bill was first introduced by ANGKLA partylist during the 17th Congress.



ROSE MARIE J. ARENAS
Representative
3rd District, Pangasianan

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. **331**

Introduced by Representative **ROSE MARIE J. ARENAS**

AN ACT
FACILITATING THE GLOBAL EMPLOYMENT OF FILIPINOS

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. – This Act shall be known as the “Filipino Global Employment Act.”

SEC. 2. Declaration of Policy. – The State upholds the dignity of all its citizens, whether residents of the Philippines or overseas.

The State shall afford full protection to labor, local and overseas, organized and unorganized and shall promote full employment and equality of employment opportunities for all.

The State recognizes the right of all Filipinos to seek better life and better jobs in other countries and therefore adopts the policy of giving utmost support for their travel and employment abroad by ensuring the fastest issuance of their passports, NBI clearances, birth certificates, and similar other requirements within the shortest possible period of time without unnecessary and/or avoidable delay.

SEC. 3. Definition of Terms. – For purposes of this Act, the following terms shall be defined as follows:

- (a) “Professionals” refers to an OFW who passed a government licensure examination and other graduates of baccalaureate degrees, as certified by the Commission on Higher Education (CHED), such as those in the fields of medicine and health, law, engineering and architecture, information and communication technology, aeronautics, finance and commerce, education and other specialized fields.
- (b) “Highly-Skilled Individuals” refers to a person who possesses a specialized training and a thorough and comprehensive knowledge of his trade, craft, industry or vocation, or one who is considered a master or expert in his field, as certified by the Technical Education and Skills Development Authority (TESDA) or other competent government bodies.

SEC. 4. Filipinos seeking employment abroad shall be given, by the government and all its agencies, instrumentalities and all its officials and employees, the utmost support for their travel and employment abroad by ensuring the issuance of their travel documents and other documentary requirements, such as passports, NBI clearances and birth certificates among others, within the shortest possible time without unnecessary or avoidable delay.

SEC. 5. Professionals and Highly-Skilled Individuals seeking employment abroad shall not be required to go through any private recruitment agency nor through the Philippine Overseas Employment Administration (POEA) except for information purposes only. They shall not be required to obtain an Overseas Employment Certificate (OEC); Provided that their country or territory of destination and employment have met the guarantees of protection or are compliant with the requirements set forth under Section 4 of Republic Act No. 8042, as amended by Republic Act No. 10022.

SEC. 6. Filipinos seeking employment abroad are encouraged to become voluntary members of the Overseas Workers Welfare Administration (OWWA), PAG-IBIG Fund, Social Security System, Philhealth. They may also opt to be covered by an insurance policy, as what is provided under Republic Act No. 10022.

SEC. 7. Implementing Agency. – The Philippine Overseas Employment Administration (POEA) shall, within ninety (90) days after the approval of this Act, issue the necessary rules and regulations for its effective implementation.

SEC. 8. Separability Clause. – If any separable provision of this Act be declared unconstitutional, the remaining provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 9. Repealing Clause. – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

SEC. 10. Effectivity Clause. – This Act shall take effect fifteen (15) days after its publication in the Official Gazette and in at one (1) newspaper of general circulation.

Approved.

ANNEX 2. RESEARCH PARTICIPANTS BY COUNTRY/SECTOR

Country/sector	Office	Methodology	Number of persons
Philippines			
Officials and key personnel	POEA Head Office, DOLE-ILAB	KIIs, FGD, meetings	21
	POEA Regional Centers and Pampanga Satellite Office	KIIs	8
	Former officials	KIIs	2
Direct hire OFWs (applicants and BM)	POEA Head Office	KIIs	24
	POEA Regional Centers and Satellite Office	KIIs	25
Direct hire OFWs (applicants)	c/o POEA Head Office and OWWA	Survey	248
Foreign employers	c/o POEA Head Office	Survey	11
Others			
<i>International organization</i>	Makati City	KII	1
<i>Multisectoral (recruitment agencies, CSOs, academia, international organizations)</i>	Makati City	Consultative forum	30
Singapore			
Officials and key personnel, Philippine Embassy and POLO	Philippine Embassy, POLO	KIIs, FGD	8
Direct hire OFWs	POLO	KIIs	15
Foreign placement agencies	POLO	KIIs	5
Human resources personnel	POLO	KII	1
Filipino community leaders	Philippine Embassy	FGD	8
Key personnel dealing with foreign workers	Ministry of Manpower	Meeting	3
(Observation of post-arrival orientation seminar for domestic workers)	Philippine Embassy		
Malaysia			
Officials and key personnel, Philippine Embassy and POLO	Philippine Embassy, POLO	Meetings	6
Direct hire OFWs	POLO	KII	2
Foreign placement agencies	Philippine Embassy	Meeting	14
Residents in MWOFRC (shelter)	MWOFRC	FGD	7
Filipino community leaders	MWOFRC	FGD	7
United Arab Emirates (Dubai)			
Officials and key personnel	Philippine Consulate, POLO	Meetings	4
Labor attaché	POLO	KII	1

Country/sector	Office	Methodology	Number of persons
POLO personnel	POLO	Conversations	5
Residents in MWOFRFC (shelter)	POLO	Conversations	7
Residents in MWOFRFC (shelter)	POLO	FGD	7
Resident in MWOFRFC (shelter)	POLO	KII	1
Filipino human resources practitioners		Meeting	4
Recruiter/human resources representative	POLO	KIIs	2
Filipino community leaders	POLO	Meeting	2
Migration researcher	POLO	KII	1
(Visit to a printing press company which employs Filipinos of various skills)		(Observation, conversations)	
(MWOFRFC)	POLO	(Observation)	
(Haircutting class for shelter residents)	POLO	(Observation)	
Canada (Vancouver)			
Officials and key personnel, Philippine Consulate and POLO	Philippine Consulate, POLO	Meeting, KIIs	4
NGO representatives	Migrant Workers Centre	KIIs	2
NGO representatives (Filipino)	Multicultural Helping House	FGD	9
OFWs		KIIs	2
Filipino student		KII	1
Migration expert		KII	1
Immigration consultant/recruitment agent	POLO	KII	1
Filipino community leaders		Conversations	5
Filipino community leaders and caregivers (including direct hire OFWs)		Meeting	12
University of the Philippines Alumni Association programme for migrants and newcomers		Observation	30
New Zealand (Auckland)			
Filipino residents and NGO founders		Meeting	2
Filipino residents		KIIs	2
Filipino community leaders		KIIs	3
NGO representatives		KIIs	2
Filipino community leaders, Filipino recruitment agent, recent professional migrant		Meeting	4

Country/sector	Office	Methodology	Number of persons
Students (Filipino-Kiwis, international students from the Philippines)		Meeting, KII	5
Student-turned-worker		KII	1
Professional migrant		KII	1
Temporary workers (carpenters)		KIIs	2
Recruitment agent; immigration consultant		KIIs	2
Immigration adviser		Meeting	1
Officer, recruitment agency		KII	1
Thailand (Bangkok)			
Official, Philippine Consulate	Philippine Consulate	KII	1
OFWs (teachers)	Philippine Consulate	Conversations	2
Migration researcher	Coffee shop	KII	1
OFWs (teachers)	Asian Institute of Technology	Meeting	12
Human resource personnel	Asian Institute of Technology	KII	1
Student-turned-OFW (professor)	Coffee shop	KII	1
Owner, English language centre		KII (telephone)	1

ANNEX 3. CHECKLIST OF REQUIREMENTS FOR EVALUATION OF DIRECT HIRE APPLICATION

FM-POEA-04-EF-08-C
 Effective: June 20, 2018

Philippine Overseas Employment Administration
Pre-Employment Service Office- Landbased Center

CHECKLIST OF REQUIREMENTS FOR EVALUATION OF DIRECT HIRE APPLICATION
PROFESSIONAL AND SKILLED WORKERS
(All documents to be submitted must be in duplicates)

WORKER : _____
 EMPLOYER : _____
 WORKSITE : _____
 POSITION : _____

DOCUMENTARY REQUIREMENTS

PHASE 1

TIME RECEIVED:	Remarks
<input type="checkbox"/> Passport with validity period of not less than six (6) months	_____
<input type="checkbox"/> Valid Work Visa, Entry/Work Permit (whichever is applicable per country). If visa assurance or guarantee is issued by employer, the same should be noted/acknowledged by the Government or Immigration Office in the jobsite	_____
<input type="checkbox"/> Employment Contract: _____ Original copy of Employment Contract or Offer of Employment _____ Verified by the Employment Contract or Offer of Employment _____ Authenticated by the Philippine Embassy/Consulate for countries with no POLO	_____
<input type="checkbox"/> Company Profile, Business license/commercial registration of the employer	_____
<input type="checkbox"/> POLO Endorsement Letter addressed to the Administrator seeking exemption from the ban on direct-hiring	_____
<input type="checkbox"/> Additional country-specific requirements: a. Canada- Labor Market Opinion (LMO), Labor Market Impact Assessment (LMIA) for and Canadian Letter and Employer's Certificate of Registration from ECON (Province of Saskatchewan Executive Council) or Saskatchewan Immigration Nominee Program (SINP) approval are required from workers to Saskatchewan in lieu of LMO b. USA- Labor Condition Application and Notice of Action c. Middle East and African countries- Contingency plan issued by the employer	_____
<input type="checkbox"/> Additional documents to support Job application: _____ Certificate of employment or Business Permit: if self-employed _____ Diploma and Transcript of Records (TOR) _____ NC II/PRC license _____ Curriculum Vitae/Resume	_____
<input type="checkbox"/> Proof of certificate of insurance coverage covering at least the benefits provided under Section 37-A of RA 8042 as amended;	_____
<input type="checkbox"/> Notarized Statement on how the workers secured his/her employment with attached photocopy of employer's passport/ID and contact details	_____
TIME CLOSED:	
PHASE 2	
TIME RECEIVED:	
<input type="checkbox"/> Valid Medical Certificate from DOH-accredited medical clinic authorized to conduct medical exam for OFWs	_____
<input type="checkbox"/> Pre-Employment Orientation Seminar Certificate (PEOS)	_____
<input type="checkbox"/> Pre-Departure Orientation Seminar (PDOS) Certificate issued by OWWA	_____
<input type="checkbox"/> POEA Clearance (for employers under Section 124d of the POEA Revised Rules & Regulations)	_____
TIME CLOSED:	
ACTION TAKEN: _____ Returned due to incomplete documents _____ Others	
RECEIVING OFFICER: _____ PRINTED NAME & SIGNATURE DATE: _____	RECEIVED BY: _____ PRINTED NAME & SIGNATURE DATE: _____ QUEUE NO. _____

Philippine Overseas Employment Administration
Pre-Employment Service Office- Landbased Center

CHECKLIST OF REQUIREMENTS FOR EVALUATION OF DIRECT HIRE APPLICATION

HOUSEHOLD SERVICE WORKERS (HSWs)
(All documents to be submitted must be in duplicates)

WORKER : _____
EMPLOYER : _____
WORKSITE : _____
POSITION : _____

DOCUMENTARY REQUIREMENTS

PHASE 1

TIME RECEIVED:	Remarks
<input type="checkbox"/> Passport with validity period of not less than six (6) months	_____
<input type="checkbox"/> Valid Work Visa, Entry/Work Permit (whichever is applicable per country). If visa assurance or guarantee is issued by employer, the same should be noted/acknowledged by the Government or Immigration Office in the jobsite	_____
<input type="checkbox"/> Employment Contract: ____ Original copy of Employment Contract or Offer of Employment ____ Verified by the Philippines Overseas Labor Office (POLO) ____ Authenticated by the Philippine Embassy/Consulate for countries with no POLO	_____
<input type="checkbox"/> POLO Endorsement Letter addressed to the Administrator seeking exemption from the ban on direct-hiring	_____
<input type="checkbox"/> Additional country-specific requirements: a. Canada- Labor Market Opinion (LMO), Labor Market Impact Assessment (LMIA) for and Canadian Letter and Employer's Certificate of Registration from ECON (Province of Saskatchewan Executive Council) or Saskatchewan Immigration Nominee Program (SINP) approval are required from workers to Saskatchewan in lieu of LMO b. USA- Labor Condition Application and Notice of Action c. Middle East and African countries- Contingency plan issued by the employer	_____
<input type="checkbox"/> Certificate of Insurance coverage covering at least the benefits provided under Section 37-A of RA 8042 as amended;	_____
<input type="checkbox"/> TESDA National Certificate II (NC-II) for Domestic Workers	_____
<input type="checkbox"/> Notarized Statement on how the workers secured his/her employment with attached photocopy of employer's passport/ID and contact details	_____

TIME CLOSED: _____

PHASE 2

TIME RECEIVED:	
<input type="checkbox"/> Valid Medical Certificate from DOH-accredited medical clinic authorized to conduct medical exam for OFWs	_____
<input type="checkbox"/> Pre-Employment Orientation Seminar Certificate (PEOS)	_____
<input type="checkbox"/> Pre-Departure Orientation Seminar (PDOS) Certificate issued by OWWA	_____
<input type="checkbox"/> Comprehensive Pre-Departure Education Program (CPDEP) Certificate by OWWA	_____
<input type="checkbox"/> POEA Clearance (for employers under Section 124d of the POEA Revised Rules & Regulations)	_____

TIME CLOSED: _____

ACTION TAKEN: _____ Returned due to incomplete documents _____ Others

RECEIVING OFFICER:
PRINTED NAME & SIGNATURE _____
DATE: _____

RECEIVED BY:
PRINTED NAME & SIGNATURE _____
DATE: _____
QUEUE NO. _____



International Organization for Migration

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