

IRREGULAR MIGRATION FROM THE PHILIPPINES

Old and New Issues in the Time of COVID-19

Migration and COVID-19 Watch No. 2



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The suspension of economic activities during the COVID-19 pandemic has caused massive job losses in the Philippines. This is compounded by the return of hundreds of thousands of overseas Filipino workers (OFWs) and stranded OFWs who were displaced or unable to return to their overseas-based jobs. It is feared that the desperation to find employment, especially for better-paying overseas jobs, will result in an increase in irregular migration and trafficking in persons in the time of COVID-19.¹

Based on data from the Philippine Overseas Employment Administration (POEA), this policy brief examines trends and patterns in irregular migration before and during the pandemic. It presents data on three specific facets that throw light on irregular migration: (a) illegal recruitment committed by nonlicensed recruitment agencies; (b) recruitment violations committed by licensed recruitment agencies; and (c) POEA processing of direct hires. The full extent of irregular migration is difficult to get at because it is a phenomenon that occurs outside of legal processes. Indications of irregular migration suggested by these data reflect only those that are reported to POEA.

There is no universally accepted definition of irregular migration. The term is used to refer to “movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination” (IOM, 2019: 116–117). Migrants in an irregular situation encompass a variety of conditions. The Migrant Workers and Overseas Filipinos Act (Republic Act No. 8042, as amended by Republic Act No. 10022) defines irregular or undocumented Filipino workers as referring to the following:

(1) Those who acquired their passports through fraud or misrepresentation;

(2) Those who possess expired visas or permits to stay;

(3) Those who have no travel document whatsoever;

(4) Those who have valid but inappropriate visas; or

(5) Those whose employment contracts were not processed by the POEA or subsequently verified and registered onsite by the POLO [Philippine Overseas Labor Office], if required by law or regulation.

A legally deployed OFW may become a migrant worker in an irregular situation abroad if he or she overstays. In the case of OFWs who left the Philippines on tourist visas but with the intention to work overseas, they may be legal foreign workers in the eyes of the receiving country once they secure work permits, but they are in an irregular situation in the eyes of the Philippine Government. They can become documented OFWs if they apply for registration at the Philippine Overseas Labor Office (POLO) and secure overseas employment certificates (OEC) during their visits to the Philippines. These few examples show how the status of regularity or irregularity of migration is fluid.

¹ Irregular migration and trafficking in persons are related but distinct phenomena. Irregular migration covers movements of persons that are outside of the regulatory frameworks of origin, transit and destination countries, and formal, legal channels. Trafficking in persons is a specific type of irregular migration. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also known as the Trafficking in Persons Protocol) is the first legally binding treaty that provides an internationally recognized definition of human trafficking. Countries that have ratified the treaty (including the Philippines) are legally obliged to criminalize human trafficking, develop anti-trafficking legislation and align current laws with the Protocol's legal framework and provisions. States parties must ensure that victims of human trafficking receive protection and that their human rights are respected (UNODC, 2020). In contrast, there is no international treaty that defines irregular migration, and which binds States to take actions to criminalize irregular migration, draft laws to combat it, and protect victims of irregular migration. While States parties are obliged to provide protection and support to victims of trafficking under the Trafficking in Persons Protocol, irregular migrants are viewed as violating migration laws and regulations (for details, see Battistella and Asis, 2003).

ILLEGAL RECRUITMENT COMMITTED BY NON-LICENSED AGENCIES

Regulation of the recruitment industry is one of the core functions of POEA. This function includes monitoring and curbing illegal recruitment activities, which falls under the purview of the Anti-Illegal Recruitment Branch (AIRB) of POEA. As of 23 December 2020, there were 1,251 licensed recruitment agencies (851 land-based

agencies, 395 manning agencies).² However, there are an unknown number of non-licensed recruitment agencies or individuals that victimize aspiring OFWs. Non-licensed agencies may also act with licensed recruitment agencies to conduct illegal recruitment activities. POEA can only regulate licensed recruitment agencies.

The Migrant Workers and Overseas Filipinos Act defines illegal recruitment as follows:

For purposes of this Act, illegal recruitment shall mean any act of Canvassing, Enlisting, Contracting, Transporting, Utilizing, Hiring, or Procuring workers and includes Referring, Contract services, Promising or Advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or nonholder of authority [italics added] contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines (Republic of the Philippines, 2010: 9–10).³

Violations committed by non-licensed agencies can be gleaned from data on the number of individuals seeking legal assistance and those filing legal action for wrongs committed (see Table 1). Comparing data for the periods January–June 2019 and January–June 2020, Table 1 shows more individuals who were provided with legal counselling and more cases prosecuted in 2019 than in 2020. The number of scams, however, increased in 2020 compared with 2019.

Data for 2019 are all based on those who personally came to the POEA Legal Division to seek legal

assistance, while data for 2020 include walk-ins and those who were provided with online legal assistance. POEA launched the online legal assistance to continue providing this service during the strict lockdown between March and June (POEA, 2020a). The fewer numbers who were given legal assistance in 2020 could mean a decline in the number of people needing legal assistance, or a decline in the number of people who could not access legal assistance during the lockdown. The latter includes those who were prevented from coming to POEA, as well as those who could not navigate the online platform.

Table 1: Number of victims who filed reports or were assisted by the Philippine Overseas Employment Administration, January–June 2019 and January–June 2020

Item	January–June 2019	January–June 2020
Legal counselling: number of individuals assisted	3 344	2 076
Prosecution of cases: number of victims assisted	87	31
Reports of scams (can be reported by email)	267	281

Source: Data are from the presentation of De Guzman (2020). Data were provided by the Legal Assistance Division, AIRB, POEA.

² See POEA, Status of Recruitment Agencies, available at www.poea.gov.ph/cgi-bin/agList.asp?mode=act.

³ Trafficking in persons falls under the general category of irregular migration. In the Philippines, the definition is provided by the Anti-Trafficking Act (Republic Act No. 9208, as amended by Republic Act No. 10363), which basically conforms to the universally accepted definition provided by the Trafficking in Persons Protocol. The Philippine and international definitions of trafficking in persons require that three elements must be met – act, means and purpose – to determine if a person is a victim of trafficking.

The prosecution of cases refers to actual victims of illegal recruitment. Of those who sought legal counselling or who reported being scammed or recruited, 87 filed cases for illegal recruitment in 2019, a number that declined to 31 in 2020. The lockdown made it difficult to process these cases because they require personal appearance. Although POEA introduced online notarization and online conduct of hearings and other legal processes since the lockdown, AIRB encountered significant technical and logistical difficulties in applying these online processes, which could affect the integrity and validity of the procedure and/or admissibility of evidence. To address these difficulties, POEA advised the affected individuals to file their complaints directly with local police offices.

The increase in advertisements for overseas jobs by text messaging suggests unabated recruitment activities by non-licensed entities during the pandemic. The text schemes offer interview slots or reservations for deployment in 2021 to prized destination countries such as Canada or New Zealand. These schemes collect fees of Pts3,000–5,000 from aspiring OFWs to

reserve slots. It is difficult to catch the perpetrators because the SIM cards used for sending these text messages are not registered. Victims of text scams do not file complaints because their financial loss is not substantial. Furthermore, the length of time and the process of pursuing complaints discourage victims from seeking redress.

AIRB has also noted the proliferation of online advertisements for overseas jobs, especially for domestic workers, some of which appear on buy-and-sell portals. Job openings posted on such portals are disturbing, as they treat workers like goods that can be traded. AIRB contacts the administrators of these ads, but they mushroom quickly. Travel and tour companies continue advertising for jobs in countries such as the Republic of Korea, Canada and New Zealand. They usually charge up to Pts100,000 for fake visas. POEA has received 100 complaints during the pandemic (De Guzman, 2020). The ban on nonessential travel⁴ in place in many countries has somehow contributed to a decline in the number of those traveling on tourist visas but with the purpose to work abroad.

RECRUITMENT VIOLATIONS COMMITTED BY LICENSED AGENCIES

The Migrant Workers and Overseas Filipinos Act does not limit recruitment violations to non-licensed agencies only, but also considers licensed agencies liable for committing violations. According to the Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016 (hereafter the 2016 Revised Landbased Rules), POEA “shall exercise original and exclusive jurisdiction to hear and decide all cases which are administrative in character, involving or arising out of: (1) violations of recruitment rules and regulations, including refund of fees collected from OFWs and (2)

violations of the conditions for the issuance of the license to recruit OFWs”.⁵

POEA also has original exclusive jurisdiction to hear and decide disciplinary action cases against the OFWs and the principals/employers, which are administrative in character. Cases involving money claims are under the jurisdiction of the National Labor Relations Commission (Sec. 138, Rule 1, Part VI of the 2016 Revised Landbased Rules). Complaints come from direct filers and those referred by POLO through ROCO and other government agencies.

⁴ The Inter-Agency Task Force lifted the restriction on non-essential travel on 21 October. Those traveling for tourism purposes must have a round-trip air ticket and health insurance, and they must sign a declaration acknowledging the risks of travel (Canlas and Reyes, 2020).

⁵ Available at www.poea.gov.ph/laws&rules/laws&rules.html.

On average, the Legal Division receives around 6,000–8,000 cases per year. For the periods of January–September 2019 and January–September 2020, Table 2 indicates that the total number of newly docketed cases went down by 60 per cent in 2020 relative to 2019. The number of recruitment violations

docketed was almost halved in 2020. The decline started in April; in fact, in April, there were no cases docketed. This decrease may be attributed to the lockdown, the introduction of the system, and the introduction of the online legal assistance by the Anti-Illegal Recruitment Branch (Bautista, 2020).

Table 2: Docketing of cases, January–September 2019 and January–September 2020

Docketing of cases	January–September 2019	January–September 2020
Cases docketed	3 180	1 137
1. Newly received	3 024	1 011
Recruitment violation	792	371
Disciplinary action versus employer	1 156	374
Disciplinary action versus worker	1 076	266
2. Re-docketed	156	126
Recruitment violation	1	0
Disciplinary action versus employer	50	49
Disciplinary action versus worker	105	77

Source: Data are from the presentation of Bautista (2020). Data were provided by the Case Management System, POEA.

Recruitment violations are classified according to the level of severity of the offence committed: serious offence, less serious offence, and light offence.⁶

Before the pandemic, data regarding cancellation and suspension orders issued by POEA showed a gradual drop since 2016.

⁶ Examples of serious offences are reprocessing, overcharging of placement fees, or charging of fees when the country of destination does not allow collection, transfer, or change of ownership; and allowing a non-Filipino citizen to head or manage the agency. Examples of less serious offences are deploying a worker below the minimum age requirement, non-issuance of receipt for payments made by workers, misrepresentation, charging or collecting fees/goods/services before employment is obtained for workers, and contract substitution. An example of light offence is not deploying a contracted worker within 60 days from issuance of an OEC.

Table 3: Cancellation and suspension of licensed recruitment agencies, 2016–2019

	2016	2017	2018	2019
Cancellation (the penalty for serious offences)	49	42	36	14
Cancellation reiterated	503	275	107	26
Suspension (the penalty for light offences)	258	132	37	31

Source: Data from the presentation of Bautista (2020).

Due to the pandemic, POEA expects to see a surge in reprocessing cases and the deployment of workers who did not go through POEA processing. Reprocessing pertains to workers processed for nonexisting job orders, for different positions, or for different employers. There could also be a possible increase in the departure of workers who were not processed by POEA and those who will be using the tourist channel, with the lifting of outbound non-essential travel on 21 October. POEA has issued

an advisory to warn the public that the use of tourist visas for overseas employment is prohibited, and may even lead to arrest if violators are apprehended by authorities in destination countries (POEA, 2020b). As mentioned earlier, complainants have accessed POEA online legal assistance. Since 1 October, POEA has resumed in-person hearings on a by-appointment basis. Appearance on scheduled hearings is limited to the litigants and their counsel (POEA, 2020c).

DIRECT HIRES PROCESSED BY THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION ARE LEGAL MIGRANTS

The direct hiring of Filipino workers by employers is not allowed, as provided by Article 18 of the 1974 Labor Code of the Philippines (see also Sec. 123, 2016 Revised Landbased Rules).

The ban was imposed to protect OFWs from risks such as irregular migration and trafficking in persons. Nonetheless, a small number of employers are exempted from the ban: (a) members of the diplomatic corps, (b) heads of international organizations, and (c) heads of State and government officials with the rank of at least deputy minister, or other employers as may

be allowed by the Secretary of Labor and Employment (Sec. 124-125, POEA 2016 Revised Landbased Rules).⁷ Although the scope for direct hiring has been expanded, the direct hiring option is still restricted for the many workers who found overseas employment without the assistance of recruitment agencies. Unlike the situation in the 1970s, today, workers and employers can directly contact each other. Those who do not fall under the categories exempted from the direct hire ban, or those who find the processing of direct hires lengthy or complicated, may skip the POEA process altogether and leave the Philippines as undocumented workers.

⁷ Other than those hired by exempted employers, the Secretary of Labor and Employment may allow direct hires for the following: other employers who are of lower rank (in (a), (b) and (c) above), if endorsed by POLO or head of mission; professionals and skilled workers with duly executed/authenticated contracts, but no more than five OFWs; and workers hired by relatives/family members who are permanent residents of the host country, except those hiring domestic workers or caregivers (see Sec. 124 of the POEA 2016 Revised Landbased Rules and POEA (2018)). POEA (2018) reiterates the category of exempted employers and expands the scope of direct hires by specifying several non-exempted employers. Note that domestic workers are only allowed as direct hires for exempted employers.

Direct hires who go through the POEA process are legal OFWs, while those who are not processed by POEA are at risk of irregular migration and trafficking in persons. Direct hires who are processed by POEA undergo a verification process that is handled by the Direct Hiring Assistance Division. If an applicant is found ineligible as a direct hire, he or she will be advised to apply with a licensed recruitment agency. The processing of directly hired OFWs was suspended during the lockdown and resumed on 18 May 2020.

In 2019, the top 10 destinations of direct hires were China, Kuwait, Singapore, Japan, Bahrain, New Zealand, Thailand, Canada, Australia and the United Arab Emirates. A total of 2,099 direct hires were processed and were issued OECs in 2019. As of September 2020, 988 OFWs were processed as direct hires and were issued OECs, a 53 per cent drop compared with the same period in 2019.⁸ In 2020, the top country destinations were similar, except for their rankings: Australia, United Arab Emirates, Bahrain, Canada, New Zealand and Singapore. Direct hires encompass a variety of occupations, including domestic workers, nurses, teachers, service workers and software engineers. As of September 2020, POEA has processed more professional service workers than domestic workers (Angeles, 2020).

The processing of direct hire applicants is the same under the pandemic. Due to general safety protocols, applicants must secure online appointments to process their applications. Phase 1 is the evaluation of employment documents, which include POLO verification or authentication by the Philippine Embassy, and work permits or visas. For employers who belong to the non-exempted category and have not reached the maximum limit of five direct hires, the OFWs must wait for approval of the request for clearance from the direct hiring ban. The approval of the POEA clearance will be posted on the POEA website. For employers who belong to the exempted category, there is no need for employer verification. Phase 2 entails verifying the e-registration and completion of other requirements – such as pre-employment orientation, pre-departure orientation seminar, comprehensive pre-departure programme (for household service workers), medical certificate and life insurance coverage – for the issuance of the OEC. Once the OEC has been issued, OFWs must monitor travel advisories from the Department of Foreign Affairs to be guided in scheduling their departure. The Direct Hiring Assistance Division can only entertain 20 appointments per day for step 1, and 25 appointments per day for step 2.

⁸ Note that not all direct hire applicants who were processed and issued OECs actually left the country; some have no records of having left the Philippines.

CONCLUSION AND WAYS FORWARD

While the pandemic has intensified the pressure to migrate, health protocols and travel restrictions aimed at containing the spread of the virus have limited international travel. Also, the cautious resumption of economic activities implies that – other than the demand for key workers, mostly in the health-care and seafaring sectors, overseas labour markets have yet to reopen. The use of the tourist channel to skirt many regulations for migrant workers is still limited (despite the lifting of restrictions for non-essential travel from the Philippines). Geographically, other than proximity to Sabah from Tawi-Tawi and Palawan, the Philippines is relatively isolated from other countries.⁹ These factors somehow reduce the possibility for irregular migration from the Philippines during this period.

Data from the POEA indicate that, during the pandemic, fewer individuals were given legal assistance, and fewer filed cases against the illegal recruitment activities of non-licensed agencies. The drop in 2020 could be due to restricted access to seeking help or reporting irregularities because of the lockdown, although online legal assistance was made available. What has increased during the time of COVID-19 are text messaging schemes and online recruitment that bypass POEA documentation. The use of Facebook and online platforms for recruitment increases the risk of direct hiring that ignores POEA requirements and renders applicants vulnerable to scams. On the other hand, recruitment violations by licensed agencies that led to cancellations or suspensions have been declining since 2016. There are concerns, though, that some prohibited acts, ranging from light to serious offences, may increase during the pandemic. Data on license cancellations and suspensions in 2020 will help address the issue. Since licensed agencies are subject to monitoring by POEA, their irregular practices can be subject to sanctions from POEA.

During the pandemic, AIRB moved its anti-illegal recruitment and trafficking in persons campaign online. In pre-pandemic times, the POEA team used to fly to target communities and conduct a completeday lecture with an audience of 200–300 persons. Online platforms are cheaper and can reach a larger audience. POEA also established a more visible social media presence to disseminate information and to address queries from the public. POEA responds to 20–30 queries per day (De Guzman, 2020). For those who need legal assistance, POEA also made this service available, thereby enabling access to legal support, especially during the lockdown.

The challenge during this pandemic and beyond is the unabated recruitment violations committed by non-licensed entities, especially the nameless ones that operate text scams and online advertisements. Their nefarious activities are the ones promoting “direct hiring”, which serve as a conduit for irregular migration and trafficking in persons. Public awareness about the ban on direct hiring, and of the need for eligible direct hires to submit to POEA requirements and procedures, is low. The reasons for the ban on direct hiring and the fact that, for those who are eligible, the direct hiring documented by POEA is safe, regular and orderly migration, are core messages that should be communicated to the public for more informed decision-making.¹⁰

The Philippines has established various policies and initiatives to stem irregular migration at the source, yet irregular migration persists, often victimizing women migrants in domestic work (Battistella and Asis, 2018). Several deficiencies noted in existing efforts – “migration pressure, inadequate implementation and monitoring of policies, the difficulty to reduce unethical practices in the recruitment industry, the insufficient incentive for migrants to avoid irregular migration, and inadequate international cooperation” (Battistella and Asis, 2018: 331) – suggest possible areas for improvement.

⁹ Migration from the Philippines to Sabah (traditionally, from Western Mindanao, particularly from Tawi-Tawi) has a long and complex history. Curbing irregular migration in this migration corridor is challenging because of well-established networks and geographical proximity (Battistella and Asis, 2003). This topic requires separate analysis.

¹⁰ The ban on direct hiring was the subject of a policy research project, jointly undertaken by OM-Philippines, POEA and the Scalabrini Migration Center. Findings from the study, tools for OFW and employer education, and policy recommendations will be available in a forthcoming report.

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