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Stemming Irregular Migration at the Source: The Philippine Experience

Graziano Battistella and Maruja M.B. Asis

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edited by Philippe Fargues and Nasra M. Shah

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XVI

Stemming Irregular Migration at the Source: The Philippine Experience

*Graziano Battistella and Maruja M.B. Asis**

Abstract: The Philippines has developed an elaborate legal and institutional framework to govern the different aspects and phases of international labour migration. The institutionalisation of labour migration started in the 1970s, ushered by the country's first experience with state-organised labour migration in response to the need for workers in the Gulf countries. Although other destination countries have entered the scene, the Gulf countries continue to be major destinations for Filipino workers. Flow data on the annual deployment of overseas Filipino workers point to the enduring importance of the Gulf countries, with Saudi Arabia, the United Arab Emirates (UAE), Qatar, Kuwait and Bahrain figuring among the top ten destinations. Despite the regulatory mechanisms that have been in place for decades in the Philippines (and in the Gulf countries as well), irregular migration takes place. Of the stock estimate of 10.4 million overseas Filipinos as of 2012, 47% are permanent migrants, 40% are temporary migrants (largely workers), and 12.8% are migrants in an irregular situation. In West Asia, of the 2.8 million Filipinos in the region, the overwhelming majority are temporary migrants

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(86.4%), less than 1 percent (0.26%) are permanent migrants, and 13.3% are migrants in an irregular situation. Some country variations are notable: the UAE has the largest share, 22.2%, while it is relatively smaller in Saudi Arabia, 8.5%. Reports of stranded workers, absconding workers, distressed workers in Filipino Workers Resource Centers, passengers being offloaded from flights to Gulf destinations, and workers transiting through Gulf countries bound for other destinations provide some indication of the scale and facets of irregular movements. Overall, the picture of irregular migration from the Philippines to the Gulf countries is very patchy and is based mostly on media reports. In an attempt to understand this phenomenon, this chapter will review the literature, media reports, data, and policies and actions taken by the Philippine government to address the following questions: (1) what is the level of irregular migration from the Philippines to the Gulf countries? (2) What are the types of irregular migration in the Philippines–Gulf region corridor? What are the characteristics of migrants who are caught in an irregular migration situation? Related to this, how does irregular migration to the Gulf countries compare with irregular migration to other regions? (3) What are the policies and actions developed by the Philippine government to curb irregular migration and to support migrant workers? Efforts will be expended to interview labour attaches, welfare officers, recruitment agencies, and overseas Filipino workers concerning their experiences of and views about irregular migration in the Gulf region.

Introduction

Irregular migration has been one of the major concerns of policymakers, advocates for migrants' rights, and other stakeholders. Although irregular migration has been the object of research scrutiny (Battistella and Asis 2003; Bogusz et al. 2004; Levinson 2005; Battistella 2008; Koser 2010; Morehouse and Blomfield 2011; Haroff-Tavel and Nasri 2013; Shah 2013 and 2014, among others), it eludes generalisations, and research findings to date provide limited guidance on how to effectively reduce it. The emergence of different forms of irregular migration, their links with regular migration, and their intermingling with smuggling and trafficking in persons obfuscate the usefulness of traditional concepts and require a rethinking of anti-irregular migration policies.

Over ten years ago, based on a four-country study of irregular migration in Southeast Asia, we suggested that regular and irregular migration must be studied together because the root factors as well as the intermediate factors that lead to irregular migration are the same (Battistella and Asis 2003). To some extent,

the migrants are also the same; the main difference between legal migrants and those in an irregular situation is their access to legal or irregular channels. It is also important to underscore that legal and irregular status can be fluid – i.e., migrants can go from legal to irregular status (e.g., when a migrant worker runs away from his or her employer), and those in an irregular situation can become legal when a regularisation programme is offered.

Against this backdrop, this chapter intends to examine the approach of a country of origin like the Philippines toward stemming irregular migration to the Gulf Cooperation Council (GCC) countries, motivated by the view that irregularity often originates in the home country. The chapter concludes that, although inspired by the objective to protect migrants, policies aimed at curbing irregular migration are to some extent ineffective because of the lack of compliance of different stakeholders, the lack of or inadequate incentives (or the many requirements) to comply with legal migration, and the need for cooperation between origin and destination countries.

Data for the chapter were mostly drawn from existing academic literature and reports and data generated by relevant government agencies in the Philippines.¹ An interview was conducted with a consul who was previously assigned to Saudi Arabia, and a focus group discussion was held with eight labour attaches and welfare officers who were posted in various GCC countries to gather information on the experiences of Philippine foreign missions in dealing with irregular migration.

Filipino Migrants in the GCC Countries: Flows, Profiles, and Stocks

Flows

From the beginning of the overseas labour programme launched under the Marcos administration in the early 1970s, the GCC countries have been the main destination of labour migration from the Philippines. In 2014, the overall deployment to the GCC countries was 60.7% of the total, but the share of the new hires² was 67% of the total. The higher overall proportion of new hires from the Philippines going to the Gulf countries compared to other regions indicates that the demand for labour in the GCC countries remains strong (Table 16.1).

1. We would like to thank the Philippine Overseas Employment Administration for making available unpublished data on the numbers and profiles of overseas Filipino workers deployed to the GCC region.
2. The statistical reports of the POEA distinguish between “new hires” (workers who go abroad for the first time or with a new contract or to a new country) and “rehires” (workers who are renewing their contract to go abroad).

Table 16.1: Overseas Filipino workers (OFWs) deployed to the GCC countries (new hires and rehires), 2014

| | New Hires | Rehires | Total | % of New Hires |
|--------------------------------|----------------|----------------|------------------|----------------|
| Saudi Arabia | 193,457 | 209,380 | 402,837 | 48.0 |
| United Arab Emirates | 56,589 | 189,642 | 246,231 | 23.0 |
| Qatar | 26,831 | 87,680 | 114,511 | 23.4 |
| Kuwait | 36,731 | 33,367 | 70,098 | 52.4 |
| Bahrain | 8,641 | 10,317 | 18,958 | 45.6 |
| Oman | 5,935 | 9,945 | 15,880 | 37.4 |
| Total GCC | 328,184 | 540,331 | 868,515 | 37.8 |
| Percentage of total deployment | 67.4 | 57.3 | 60.7 | |
| Total deployment | 487,176 | 943,666 | 1,430,842 | 34.0 |

Source: POEA 2014 Overseas Employment Statistics.

Profiles

The annual flows of Filipino migrants (new hires) to the GCC countries concentrate mainly in Saudi Arabia and the United Arab Emirates (UAE) (Table 16.2). Variations over the years mostly reflect the deployment of domestic workers. Controversies or tensions between the Philippines and countries of destination (such as those with Saudi Arabia in 2011 and 2012, and the UAE in 2014, as discussed later) affect the overall deployment of overseas Filipino workers (OFWs) to those countries.

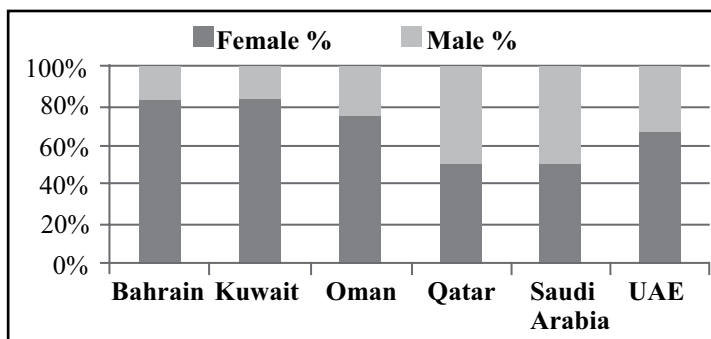
Table 16.2: Deployment of OFWs (new hires) to GCC countries, 2011-2014

| | 2011 | 2012 | 2013 | 2014 |
|----------------------|------------|------------|------------|------------|
| Bahrain | 2.5 | 3.4 | 2.9 | 2.7 |
| Kuwait | 13.3 | 14.5 | 10.7 | 11.1 |
| Oman | 1.8 | 1.7 | 1.7 | 1.8 |
| Qatar | 16 | 15.5 | 8.4 | 7.8 |
| Saudi Arabia | 41.9 | 38.4 | 51.6 | 59.2 |
| United Arab Emirates | 24.4 | 26.4 | 24.6 | 17.4 |
| Total | 100 | 100 | 100 | 100 |

Source: Unpublished POEA data (deployment through the regional offices are not included).

The gender distribution is skewed in favour of females in the UAE, Kuwait, Bahrain, and Oman. On the other hand, males and females are about in equal numbers in Saudi Arabia and in Qatar (Figure 16.1).

Figure 16.1: Deployed OFWs to GCC countries by gender, 2014



Source: Unpublished POEA data (deployment through the regional offices not included).

The occupations of migrants largely determine the gender distribution of the migrant population. Table 16.3 shows that Bahrain, Kuwait, Oman and the UAE absorb mostly service workers, who are predominantly female domestic workers. On the other hand, Saudi Arabia and Qatar hire a large share of workers employed in production, transportation and as equipment operators and labourers, who are mostly male.

Table 16.3: Deployment of OFWs (new hires) to the GCC countries by occupation, 2014

| | Bahrain | Kuwait | Oman | Qatar | Saudi Arabia | UAE | Total |
|-------------------------------|------------|------------|------------|------------|--------------|------------|------------|
| Administrative and managerial | 0.5 | 0.1 | 0.1 | 0.6 | 0.1 | 0.2 | 0.2 |
| Agricultural and related | 0.1 | 0.1 | 0.1 | 0 | 0.4 | 0.2 | 0.3 |
| Clerical and related | 4 | 1.8 | 1.4 | 5.3 | 1.3 | 8.8 | 3.1 |
| Production and labourers | 6.2 | 7.1 | 9.5 | 28.3 | 32.3 | 16.9 | 25.4 |
| Professional and technical | 5.4 | 2.5 | 17.9 | 12.1 | 14.3 | 6.8 | 11.3 |
| Sales | 3.6 | 1.1 | 2.4 | 3.8 | 0.9 | 6.8 | 2.3 |
| Service | 80.2 | 87.3 | 68.6 | 49.9 | 50.7 | 60.3 | 57.4 |
| Total | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Source: Unpublished POEA data (deployments through regional offices are not included).

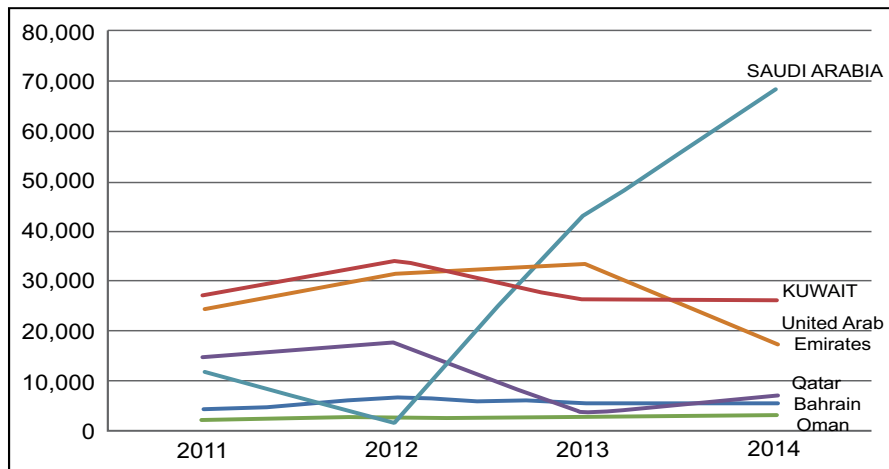
The occupational profile of OFWs for individual GCC countries is somehow similar, in the sense that migrants are employed mostly in services, production, and professional and technical occupations. The differences are in the share of the occupational categories in the different countries (Table 16.3). In the UAE, for example, sales and clerical workers are a significant component. Overall, the top five occupations across the GCC are domestic workers (42%), professional nurses (4%), waiters and bartenders (3.5%), charworkers and cleaners (3.5%), and labourers in general (3.3%). However, some specifics vary in the ranking of the top five occupations – Bahrain lists hairdressers and cooks among the top five; Kuwait has cooks, supervisors, and ship ratings; Qatar includes plumbers and fitters and wiremen (electrical); while the UAE has salesmen and hairdressers.

Overall, 42% of OFWs are married and 57% are single. The share of singles is higher in Kuwait, Saudi Arabia, and the UAE; overall, differences in the marital status of OFWs do not appear to have relevant significance.

As noted earlier, domestic workers constitute the great majority of service workers deployed to the GCC countries. They include people performing domestic work as well as babysitting and driving. They are almost exclusively females (98% in 2014). In the past few years, the flow of domestic workers to the GCC countries has remained rather stable, except to Saudi Arabia and the UAE. When the Philippine government implemented the minimum monthly salary (\$400) for domestic workers (which was part of the 2006 Household Service Workers reform package),³ Saudi Arabia decided to stop the granting of visas to Filipino domestic workers. Negotiations between the two governments led to the adoption of a bilateral agreement on domestic workers in 2013, which explains the sharp increase in deployment to that country (Figure 16.2). On the other hand, the UAE has yet to accept the Philippine required minimum salary for domestic workers, which explains the decline in their numbers in 2014. According to unpublished POEA data, almost all domestic workers are reported to be earning \$400 per month. It is not possible to ascertain whether this is simply a contractual compliance or whether it is the real salary received by domestic workers, since a study assessing the impact of the household service workers reforms suggested that recruitment agencies, employers, and migrants were nominally complying with requirements, but disregarding them in reality. Workers are aware of the scheme and agree to a lower salary so that they can leave and work abroad (Battistella and Asis 2011).

3. For details, see Battistella and Asis (2011).

Figure 16.2: Deployment of Filipino domestic workers to GCC countries, 2011-2014



Source: Unpublished POEA data (deployment through the regional offices are not included).

Professional workers include a variety of occupations. The most numerous is that of nurses (39%) who are deployed overwhelmingly to Saudi Arabia (82%). Engineers in the various diversifications (electronic, electric, mechanical, civil etc.) are the second category of professionals. The median salary for new hire nurses is \$715.

Stocks

Stock estimates give a glimpse of the Filipino community living and working in the GCC countries. Table 16.4 reports data from two different sources. The Commission on Filipinos Overseas (CFO) gathers stock data from the periodical reports that foreign posts provide to Congress as mandated by law. Data are disaggregated by permanent and temporary status and even venture to estimate the irregular population in the destination country. The accuracy of estimates depends on the sources utilised. Sometimes destination countries provide such estimates, sometimes they do not. Obviously, most Filipinos in the GCC countries are in a temporary status, as contract workers with a two- or three-year contract.⁴ According

4. If contracts lasted strictly for two years, the estimate of the number of temporary workers abroad would be: $P = NH_i + NH_{i-1} + RH_i$, where NH are New Hires and RH are Rehires. Also RH_i should equal NH_{i-2} . However, RH_i is always higher than NH_{i-2} (the number of the new hires of two years before), which indicates that contracts can last more than two years and that some workers might return abroad more than once within a year.

to CFO data, the largest community is in Saudi Arabia, followed by the UAE. To help assess the accuracy of CFO estimates, we have also included the UN-DESA estimates of the total number of Filipinos in the Gulf countries. For most countries, the UN-DESA estimate is much lower than the CFO estimate, except for Saudi Arabia, where it is exactly the same.

Table 16.4: Stock estimate of Filipinos in the GCC countries, 2013

| | Permanent | Temporary | Irregular | Total | UN-DESA |
|--------------|-----------|-----------|-----------|-----------|-----------|
| Bahrain | 91 | 69,307 | 2,685 | 72,083 | 43,971 |
| Kuwait | 502 | 191,787 | 6,000 | 198,289 | 122,214 |
| Oman | 140 | 53,360 | 2,090 | 55,590 | 21,669 |
| Qatar | 16 | 189,534 | 15,000 | 204,550 | 96,487 |
| Saudi Arabia | 264 | 948,038 | 80,500 | 1,028,802 | 1,028,802 |
| UAE | 1,711 | 777,894 | 42,805 | 822,410 | 477,139 |
| Total | 2,724 | 2,229,920 | 149,080 | 2,381,724 | 1,790,282 |

Source: Commission on Filipinos Overseas, 2013; UN-DESA 2013.

Irregular Migration from the Philippines to the GCC Countries: Literature, Estimates and Typology

Insights from Research

Although international migration has been well-studied in the Philippines, only a few studies have focused on irregular migration. The information gap has been filled to some extent by media reports which provide some information on numbers, policy developments, and personal accounts of migrants in an irregular situation. One of the few studies that focused on irregular migration was the Southeast Asian study cited earlier, which covered the Philippines, Indonesia, Malaysia, and Thailand. The study found that compared with Indonesia, irregular migration from the Philippines is smaller but more widely distributed; the latter trend further suggests how irregular migration and legal migration are intertwined (Battistella and Asis 2003). Findings from the said study concerning the factors contributing to irregular migration, types of irregular migration, and the fluid legal status of migrants are similar to what has been suggested about irregular migration in the GCC countries (e.g., Shah 2009; Baldwin-Edwards 2011; Suter 2005; Rahman 2011) and in African, Caribbean and Pacific (ACP) countries (ACP Observatory on Migration 2014).⁵ Interestingly,

5. The study of Sarausad and Archavanitkul (2014) on Filipino migrants in Thailand reveals that in addition to legal migrants (those with work permits) and irregular migrants (those without work permit), there is a third category of those in a “semi-regular status” which refers to those

in the survey of irregular migration across selected ACP countries, the following conclusion was reached:

“... despite the existing differences among African, Caribbean and Pacific countries, a series of common trends and challenges related to irregular migration exist, as irregularity and lack of documentation often prevent migrants from benefitting of the advantages of migration, exposing them to a wide range of vulnerability and abusive situations both at the psychological and physical level” (ACP Observatory on Migration 2014: 19).

An element that is distinctive about migration to the GCC countries is the sponsorship or *kafala* system (for details, see Baldwin-Edwards 2011; see also Khan and Haroff-Tavell 2011). Introduced as a regulatory mechanism, in practice and as it evolved, the system generated irregularities which render migrant workers vulnerable to exploitation. It has also become a lucrative business for GCC nationals, which makes it resistant to reform. The highly profitable visa trading is linked to many problems for migrants, including leaving migrant workers stranded (for details, see MFA n.d.). Another reason why it is difficult to dismantle the *kafala* system relates to how it contributes to making labour migration flexible.

An issue that has come to light is the case of children born to women outside of marriage. Under the strictly temporary migration regime in Asia, women migrant workers who become pregnant are repatriated.⁶ In the GCC, the situation of women migrant workers who become pregnant outside of marriage is more complicated. Such situations are called “love cases” by Philippine missions. In the UAE, it may be possible for women to return home and to give birth in their home countries. Those who deliver their babies in the GCC countries face a jail sentence; for those who run away, the mothers become irregular and their children inherit the irregular status of their mothers.

Estimates of Irregular Migration

As mentioned earlier, the CFO stock estimate also includes estimates of the irregular Filipino migrants in the various countries where Filipinos are present (Table 16.4). Estimating the irregular population is notoriously difficult because

who move from legal to irregular or vice-versa. It also includes those who have moved in or out of legal or irregular status due to employment transitions (Sarasad and Archavanikul 2014: 57-58).

6. Nicole Constable (2014) has interrogated this issue in Hong Kong, which is a different context compared to the GCC countries.

by definition irregular migrants escape the administrative procedures from which migration data are culled (Massey and Capoferro 2004). CFO uses the Reports to Congress in which sometimes estimates of irregular migrants are missing. The basis for the estimate, thus, is not clear. In the FGD with labour attaches, it emerged that they first try to contact the competent local ministry to obtain information on the number of Filipinos in that country. When such information is not available or is not released, they rely on information from the field, i.e., from the actual cases of irregular migrants handled at the foreign post and from the contacts they have with the Filipino migrant associations. Estimates also have to consider that numbers can vary through the years or according to the time of the year. For instance, the number of runaways in the UAE is currently lower than before – this reflects the lower deployment of domestic workers due to UAE's refusal of the Philippine Embassy request regarding contract verification. In Saudi Arabia, the number of irregular migrants may increase after the Haj to Makkah, when some pilgrims tend to overstay to look for an employment opportunity. A comparison of entry and exit data would provide reliable information on irregular migration. However, it is not known whether and/or how efficiently this procedure is conducted. Considering the methodological weaknesses behind the estimations, data on irregular migrants must be taken as an approximation.

A different glimpse of the irregular migration of Filipinos in the GCC countries comes from data on Filipinos in distress sheltered at the Filipino Workers Resource Centers or similar institutions. They comprise Filipinos who escape from their employers and those who have been in an irregular status for some time and have approached the Philippine authorities to be repatriated.

Table 16.5: Filipinos in distress sheltered at FWRC or similar institutions or repatriated, January to June 2013

| | Sheltered | | Repatriated | |
|---------------|-----------|--------|-------------|--------|
| | Male | Female | Male | Female |
| Bahrain | 2 | 280 | 15 | 157 |
| Kuwait (2012) | 1 | 2,258 | 36 | 1,112 |
| Oman | | 203 | 8 | 120 |
| Qatar | | 1,188 | 116 | 833 |
| Saudi Arabia | 489 | 344 | 1,957 | 1,175 |
| UAE | 1 | 1,259 | 209 | 1,258 |

Source: Department of Foreign Affairs, Office of the Undersecretary of Migrant Workers' Affairs, Report to Congress, January to June 2013.

Two aspects stand out: the overwhelming number of female migrants in distress including those who have been repatriated; and the distinctive situation in Saudi Arabia, where many male workers are also hosted in rented places or tents prior to repatriation. In regard to the requirement of the no-objection certificate from the employer/*kafeel* for repatriation cases, the labour attaches have reported that the procedures have been streamlined and if the migrant reports immediately to the embassy or consulate, he or she is then presented to immigration authorities within 48 hours.

Typology of Irregular Migration to the GCC Countries

Irregular migration from the Philippines to the GCC countries occurs in a variety of forms.⁷ From the Philippines' point of view, a distinction is made between being irregular according to the legislation of the country of destination and being irregular according to the rules and regulations of the Philippines. We will draw a typology on the second aspect, keeping in mind that complying with Philippine rules means that legally deployed OFWs are covered by the welfare and protection programmes extended by the Philippine government. Such benefits derive from membership in the Overseas Workers Welfare Administration, in the Social Security System, and in PhilHealth (health insurance).⁸

Many irregularities can be committed against the regulation of overseas labour in the Philippines. The following are specifically those which render a migrant in an irregular situation.

Avoiding Philippines procedures. According to Philippine laws and regulations, every migrant must register with the Philippine Overseas Employment Administration. Migrants who avoid this procedure and all its requirements are considered irregular migrants. This is done particularly when workers cannot comply with the rules, such as the minimum age (23) for domestic workers. Even if they bypass Philippine procedures, it is still possible for migrants to be admitted and obtain employment in the GCC countries, thanks to the connivance of smugglers and officials at the ports of exit and the cooperation of intermediaries in the destination country. Often the migrant is required first to go to a transit country before arriving at destination,

7. This typology is reconstructed from the information gathered at the FGD with labour attaches, conducted at the Overseas Workers Welfare Administration on April 23, 2015.

8. However, by law, Philippine foreign missions cannot withhold assistance to migrants in an irregular situation. In crisis situations, for example, repatriation assistance extends to all Filipino nationals regardless of legal status.

as it is easier to enter as a tourist in a neighbouring Association of Southeast Asian Nations (ASEAN) country, for which a visa is not required.

Overstaying the Haj. Some Muslim Filipinos utilise the traditional pilgrimage to Makkah as a way of being admitted to Saudi Arabia and thereafter remain to find work. Many pilgrims from other countries also use the Haj to look for employment in Saudi Arabia.

Migrating through illegal recruitment. RA10022 and the POEA Rules and Regulations for landbased workers provide a long list of possible cases of illegal recruitment. The most common violations which render the migrant irregular are:

- *Contract substitution.* The migrant signs a contract to comply with the Philippine regulation and another contract, sometimes in Arabic only, which is enforced and which usually has less favourable conditions for the migrant. In this case, the migrant is legally employed in the GCC country, but cannot seek redress in the Philippines if something goes wrong as he or she is working under the wrong contract;
- *Re-processing of visas.* The agent sells unused visas for which he has the power of attorney to another agent, who uses them to deploy workers who will engage in an occupation different from the one stated in the visa.

Freelancing. Migrants with experience of working in a GCC country and with the right connections find an employer or sponsor who has a job opportunity but does not have the visa. The migrant then buys the visa directly from another sponsor, uses an agency in the Philippines to process the papers, and is able to find employment for himself/herself or for another migrant (often a relative).

Transferring to another country. A less known form of irregularity takes place through transfers within the GCC countries or to other countries in the Middle East. In the first case, the migrant is admitted to a country and hired by the employer, but then either moves to another country with the employer (which is typical of domestic workers) or is handed to another employer in a different country. In the second case, the migrant is admitted to a GCC country, but is then transferred by the agent to another country in the region, where the migrant could not have been deployed because that country is under a ban from the Philippine government. This was how the ban to Lebanon, Jordan, or Syria was circumvented. It is also possible that migrants are temporarily sent to another Middle East country while arranging a visa to return to a GCC country. Such transfers are handled legally by the agents or employers, but do not correspond to the initial authorisation received to go abroad. Similar procedures might involve cooperation among agents in the Philippines and in the GCC countries as well as the consensus of the migrants involved.

The typology illustrates that irregular migration is often undertaken with the migrant's knowledge and consent. At the same time, it shows that migrants rarely engage in irregular migration without the participation of someone else: in most cases, this involves recruitment agencies and government officials; in other cases, the social networks of relatives and friends are the facilitators.

Philippine Policies against Irregular Migration

Philippine policies address irregular migration in direct and indirect ways. Direct policies consist in preparing migrants, making it difficult to forge documents, requiring compliance with the standard employment contracts, and combating illegal recruitment. Indirect policies consist in the overall regulations and institutions to govern migration created to ensure that migrants are protected (IOM and SMC 2013).

Preparing Migrants

To prevent irregular migration, the government has instituted an orientation system that takes place in stages. At the beginning of the process, the migrant is invited to attend the pre-employment orientation seminar (PEOS), which is provided at the local level and which aims at equipping aspiring migrant workers with adequate information and warns them against illegal recruitment and trafficking. Since 1983, the government has instituted a mandatory one-day pre-departure orientation seminar (PDOS) focused on working and living overseas. Besides, some Philippine foreign missions have taken the initiative to provide post-arrival orientation seminars (PAOS) as a follow-up education programme.

Making it Difficult to Forge Travel Documents

Many stories were reported in the past of migrants forging data (like the date of birth) or even identity to obtain a passport. RA 8329, known as the "Philippine Passport Act of 1996," established the requirements to obtain a passport. The introduction of the electronic passport with the biometric data of the holder in 2010 reinforced the security of the document.

Establishing the Standard Employment Contract

The standard employment contract for OFWs consists of minimum provisions in regard to salary and working conditions that a Filipino going abroad should be granted. A Filipino worker is allowed to go abroad only if his/her contract complies

with the minimum conditions stated in the standard employment contract. Various standard employment contracts have been formalised by occupation. This policy has been useful but not completely successful. Sometimes the migrants themselves agree to have a different contract once they are abroad; sometimes contract substitution happens against their will. To avoid this, the Philippine Overseas Labour Offices (POLOs) are tasked to verify contracts. This is difficult to implement because, among others, the destination country sees this practice as a form of interference by the origin country.

Combating Illegal Recruitment

Labour migration from the Philippines is largely mediated by employment agencies. Presently, there are 1,255 licensed recruitment agencies (850 in the land-based sector; 405 in the sea-based sector).⁹ Although instrumental for placing thousands of migrants abroad, agencies are also involved in illegal practices. Anti-illegal recruitment policies have been the centerpiece of the Philippine government's fight against irregular migration.

Licensing employment agencies. Only agencies properly licensed by the POEA can engage in recruitment. The licensing procedure ensures that agencies operate according to the provisions codified in the 2002 and 2003 rules and regulations issued by POEA for the land-based and sea-based sectors, respectively.¹⁰ Unfortunately, unlicensed operators still prosper, particularly in the provinces, and sometimes operate in connivance with licensed agencies. The effectiveness of the licensing procedure is also undermined by the practice of licensed principals functioning as cover for foreign agencies, which are not allowed to operate in the Philippines. The main tool in the hands of the POEA against illegal recruiters is license revocation. The POEA website lists agencies in good standing and recommends migrants to deal only with licensed recruiters.

The Anti-Illegal Recruitment Branch (AIR). A specific bureau, the Anti-Illegal Recruitment Branch, was created in POEA to crack down on illegal recruitment actors and activities. The Presidential Task Force on Anti-Illegal Recruitment (PTFAIR) was reactivated in 2011 "to sustain a more focused, coordinated and

9. Status of recruitment agencies as of June 29, 2015—<http://www.poea.gov.ph/cgi-bin/agList.asp?mode=actSB>.

10. To balance the proscriptive approach, in 1984 the POEA introduced an incentive system to acknowledge performing agencies. Award recipients enjoy benefits, largely in the form of facilitation of transactions undertaken with POEA (for details, see Asis and Go 2014).

effective programme of action to curb illegal recruitment.” It carries out both preventive (e.g., runs information campaigns about illegal recruitment and human trafficking, produces information materials, etc.) and remedial (e.g., surveillance, closure of establishments, assistance to victims, etc.) activities.¹¹

Prosecuting illegal recruiters. Illegal recruitment is a crime which carries stiff penalties, according to the law. Victims can lodge a case with PTFAIR at POEA for prosecution. Fifty six cases were lodged in 2013 and 40 in 2014. Of the cases in 2013, ten were dropped, fourteen were terminated, five were endorsed for prosecution, thirteen were submitted for resolution with the Department of Justice, and eight warrants of arrest were issued. Thirty were cases of simple illegal recruitment, nine of large-scale illegal recruitment, five of syndicated illegal recruitment, while 38 were cases of *estafa*.

Anti-trafficking Initiatives

The Philippines ratified the Palermo Protocol in 2003, passed the Anti-Trafficking Act in 2003 (RA 9208), and amended it into the Expanded Anti-Trafficking Act in 2012 (RA 10064). As part of preventive measures, in 2011, the Bureau of Immigration (Memorandum Order No. 2011-011) took on the task of offloading passengers who were found with “fraudulent travel documents” or those who had “doubtful purpose of travel.”¹² Persons who had been identified as victims of trafficking can access specific support and assistance to ease their post-trafficking reintegration process. Those who had been trafficked overseas and were accurately determined as victims of trafficking can access support provided by the Migrant Workers and Overseas Filipinos Act.

Assessing Philippine Anti-Irregular Migration Policies

There are no studies which make a formal evaluation of the effectiveness of Philippine anti-irregular migration policies. To some extent, all migration policies are partially ineffective and for various reasons (Teitelbaum 2002; Castles 2004; Thielemann 2004). Migration policies of countries of origin have even lower efficacy in determining migration than policies of countries of destination, which control admission, stay, and repatriation. Nevertheless, some observations can be advanced in comparing the results of these policies.

11. For more details, see <http://www.poea.gov.ph/ptfair/about.htm>.

12. This action raised concerns about the constitutional right to travel.

Orienting migrants through seminars conducted at various stages is certainly helpful to the majority of migrants, but it does not eliminate some migrants' recourse to irregular migration channels because migrants differ in terms of needs and possibilities to plan and fulfill the migration project. Financial pressure, family demands, and the opportunity to reach results by cutting corners can lead to the choice of irregularity. Document verification has improved in regard to passport, but it remains inadequate in other areas. The efficacy of the standard employment contract rests on the possibility of contract verification in the country of destination, which also requires international cooperation. Documents submitted for non-working visas must also be authentic. For instance, in an attempt to reduce the abuse of the social visit pass, those going to Dubai, UAE are required to provide affidavits that they have sufficient financial resources and that they will return to the Philippines. However, many such affidavits have been found to be fake. Determining the integrity of documents could be made more effective with tighter coordination among government agencies.

Anti-illegal recruitment initiatives are not fully effective because of many reasons. The lucrative industry of job recruitment has enticed many players, who are now in stiff competition against each other. Competition should serve the interest of migrants, instead it reduces the costs for employers. Also, those who cannot compete might decide to earn through irregular practices. The distinction between recruiters and *kafeels* is often blurred and Philippine agents might sometimes be stand-ins or dummies, when in fact, the agency is owned or controlled by the *kafeel*. The recruitment industry is often depicted as lacking solid ethics in its procedures. This cannot be generalised and efforts have been made to establish codes of conduct and reform the sector, also in cooperation with other countries of origin.¹³ To date, the results of such efforts are far from satisfactory.

In addition to inherent deficiencies, the inefficacy of anti-irregular migration policies at the origin also depends on three general factors. The first is that policies, although well formulated, are poorly implemented. Proper implementation requires a prepared, adequately paid and efficient bureaucracy. The number of personnel in the migration agencies has remained about the same although the number of Filipino migrants has doubled or tripled. Labour attaches in foreign posts have lamented that they are too few for the number of migrants abroad. A more adequate and prepared personnel would ensure better monitoring of law enforcement.

13. The Alliance of Asian Associations of Overseas Employment Service Providers (AAA-OESP) is engaged in furthering ethical recruitment.

The second is that migrants are sometimes victims and sometimes partners in irregular migration. To ensure compliance, there should be a premium to legality. Such premium could consist of welfare benefits that regular migrants are entitled to while the costs of irregular migration should be steep. However, welfare benefits for regular migrants are not sufficient to discourage some migrants from resorting to illegal channels. And the costs of irregular migration do not dissuade migrants because ultimately the government comes to the rescue. The public outcry against the execution of Flor Contemplacion, a domestic worker in Singapore in 1995, contributed to strengthening the protection base of the Philippines' labour migration policy, which may have had the unintended consequence of encouraging risk-taking in migration decisions.

Finally, stemming irregular migration at the source cannot be achieved solely by the origin country as migration is a transnational phenomenon. The intractability of irregular migration is in part the result of insufficient coordination and cooperation among countries. Employment agencies, intermediaries, and migrants can find ways to exploit conflicting interests of national policies. Irregular migration has an inherently international dimension; reducing it requires international cooperation.

Conclusion

This chapter has illustrated the importance of the GCC countries as destination of migration from the Philippines, the profile of Filipinos working in those countries, the typology of irregular migration based on Philippines laws and regulations, and the policies against irregular migration adopted by the Philippines and provided an assessment of such policies. The impressive menu of initiatives would suggest that the Philippines is in control of migration and irregularities are minimal. In fact, many stories of Filipino migrants in distress are reported by the media, and often such stories concern migrants who left as regular migrants and became irregular migrants. We have indicated several reasons why irregular migration persists: 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.

Ultimately, there are some questions that persist in efforts addressing irregular migration.

Migration is an attempt to overcome the unequal distribution of opportunities, but migrants do not get a fair share of the wealth created by migration. Irregular migration can be considered as an attempt by migrants to get a larger share of the

pie. Is it possible that a better distribution of migration benefits (beginning with reducing migration costs) might be more effective in reducing irregular migration than increasing regulation and penalties?

Irregular migration disproportionately affects women, in particular domestic workers, both in the disregard of policies in the country of origin as well as in the disregard of their rights in the countries of destination. The international community has provided a legal framework for the protection of the rights of domestic workers (ILO Convention No. 189). However, ratification of international instruments is not very popular in the region. Can complementary solutions, such as professionalising the sector and providing orientation to employers, contribute to reducing irregularities by and against domestic workers?

Migration policies in the country of origin are designed for the protection of the most vulnerable migrants, those with a deficit in negotiating power. What are the costs of protection and who pays for them? Can the costs of protection be distributed to ensure that protection does not encourage risk-taking?

Irregular migration will not go away soon. While it is possible that countries can accept or tolerate some level of irregular migration, tolerance should not be allowed for irregularities against migrants. No safe and sound migration can take place without respect for the human rights of migrants – and yes, irregular migrants have rights too.

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SKILFUL SURVIVALS: IRREGULAR MIGRATION TO THE GULF

The Gulf States are among the most sought-after destinations by global migrants. Part of this migration is irregular, due to five main causes: entering without a proper visa; overstaying after a visa or residence permit has expired; being employed by someone who is not the sponsor; absconding from a sponsor; and being born in the Gulf to parents with an irregular status. The treatment reserved for migrants in an irregular situation marks out the Gulf States. Arrest and detention are widespread practices in spite of constitutional guarantees against arbitrary imprisonment. Staying without a proper visa or absconding from a sponsor is regarded as a criminal act, and foreign nationals who commit such acts are detained in the same prisons as common law criminals with no clear right of recourse. Domestic workers, most of whom are women employed by private households and, therefore, not protected by labour laws which in the Gulf apply only to businesses, are particularly subject to arbitrary sanctions and jail.

Lived experiences suggest that migrants may not see their irregular status as being disastrous. Many, in fact, are willing to perpetuate this situation, despite their awareness about possible arrest, jail term, and deportation. A theme that emerges repeatedly in interviews indicates the lack of options open to migrants elsewhere, including their country of origin. Migrants in an irregular situation learn to negotiate the formal and informal spaces and systems they encounter. Most irregular migrants seem to share one characteristic: resilience. As their stay in the Gulf lengthens, they gather enough capacity to exercise their agency to achieve a skilful survival in the face of adversity. A wide-ranging system of mutual benefits constituting win-win situations for varied actors enables and perpetuates irregular migration.

