

Protection without Fear: Advocating Accessible Healthcare Services for Irregular Migrants during the COVID-19 Pandemic

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The international community recognizes the Philippines as a model for migrant protection. The country's migrant policies ensure that Overseas Filipino Workers (OFWs) can access healthcare services. Republic Act (RA) No. 10022, which amended RA 8042 Migrant Workers and Overseas Filipino Act of 1995, calls for compulsory insurance for agency-hired migrant workers at no cost to the worker. However, these same benefits and safety nets provided by the law are not accessible to irregular migrants.¹

In defining irregular migration, the International Organization for Migration (IOM) clarifies that it is not the migrant who is irregular but their *migration journey* and that States should provide them protection.

From the onset of the COVID-19 Pandemic, IOM Director General Antonio Vitorino urged States to enact migrant-inclusive COVID-19 responses to "address the particular needs and vulnerabilities of migrants, regardless of their legal status, in the spirit of Universal Health Coverage."²

One of the vulnerabilities of irregular migrants, especially during a pandemic, lies in their residency status and the legal complications that this may bring about. Fearful of laws against them, irregular migrants are incentivized to distance themselves from authorities even in the medical sector, endangering their safety to keep their jobs and avoid possible detention and deportation.

Cases involving irregular Filipino migrant workers in the UK underscore the migrant labor sector's vulnerabilities during the pandemic. "Elvis" was a middle-aged man who worked as a cleaner with his wife.³ Elvis contracted Covid-19 but did not seek medical help, fearful of hospital costs and deportation. He later died in his bedroom.⁴ In a BBC interview, a Filipino nanny who works in London confessed that she would be afraid of calling the helpline if she got sick.⁵ These cases make it difficult to effectively implement mechanisms to contain the virus, such as contact tracing.

Some countries implement policies that encourage labor migrants to cooperate in fighting COVID-19. South Korea⁶ and the United Kingdom⁷ have allowed testing and treatment of migrants regardless of migration status. They assured that public health officials would not report their status when getting tested for the virus.



In March 2020, Malaysia's Defense Minister announced that the government would neither question foreigners' status nor penalize anyone found illegally staying during the screening for COVID-19 cases.⁸ However, Circular 10/2001, which directs healthcare providers to report irregular migrants, was not revoked, causing confusion and hesitation among migrants.

As the pandemic discriminates against no one, neither should policies that tackle this challenge. How can states come together to ensure their citizens' safety and everyone's during a global pandemic and set the foundations for an inclusive response for future global health crises?

Let the Invisible Become Visible

Global health is a critical security agenda that must include the labor migrant sector. The Philippines, together with other migrant-sending countries, should continue to dialogue with the migrant-receiving States through bilateral and multilateral channels. Constant communication ensures that responses to current and future international health crises include migrants' needs, particularly access to healthcare services.

The Global Compact for Safe and Orderly Migration (GCM) is a guiding force in creating migrant protection mechanisms. An inter-governmentally negotiated agreement covering "all dimensions of international migration in a holistic and comprehensive manner"—from access to essential services to the right to repatriation and reintegration—the GCM provides States with principles and guidelines on the treatment of migrants in vulnerable situations. The GCM should be used as a jumping point in discussing inclusive responses to crises. Objective 15 of the GCM calls for States to ensure that "all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services" and "incorporate the health needs of migrants in national and local health care policies and plans."

Nondiscriminatory access to basic services, such as testing and treatment, should be prioritized and ensured for all. States should remove policies that negatively affect a labor migrant's capability to access basic services during public health crises regardless of the migrant's status. Policies that instill fear of reprisal, fines, or untimely repatriation prevent migrants from seeking healthcare services and cooperating in contact tracing; these policies will be detrimental to the individual and society.

The *International Migration and Review Forum* serves as the primary intergovernmental global platform for the GCM Member States to discuss and share progress on implementing all aspects of the GCM.

The strength of the GCM lies in its non-binding and flexible nature, allowing countries to adopt it based on their capacities and interests. However, this could also be a weakness that complicates creating an international response as countries are not obliged to adhere to the GCM.

At the regional level, ASEAN Member States have been meeting throughout the pandemic to discuss how to combat COVID-19. It would benefit both the sending country and the receiving state to implement policies that protect migrants, as they contribute to national and regional development through their skills and the remittances they send.

Before the COVID-19 pandemic began, ASEAN Member States affirmed their commitment to migrant protection in the 2017 ASEAN *Consensus on the Protection and Promotion of the Rights of Migrant Workers*. The Consensus was seen as the foundation for creating national policies on labor migrant protection in the ASEAN region. Unfortunately, gaps in the agreement could hinder an effective regional response to the present global health crisis. Chapter 6, Section 41 of the Consensus specifies a receiving state's obligation to provide migrant workers with adequate medical and health care. However, Chapter 1, Section 2 emphasizes that the Consensus only covers "migrant workers who are documented and those who become undocumented⁹ through no fault of their own." Also, Chapter 2, Section 3 mentions that the "applicability of the Consensus to different categories of migrant workers shall be subject to the laws, regulations, and policies of respective ASEAN Member States." These conditions do not promote the protection of all labor migrants. In the wake of a global pandemic that does not discriminate, the policies set to address this crisis should not either but rather consider evolving realities. In this pandemic, public health is of utmost priority.



At the national level, Philippine foreign service posts (FSPs) and the Philippine Overseas Labor Office (POLOs) could intensify information campaigns on the rights of migrants, as guaranteed by RA No. 8042 and 10022, with particular emphasis on irregular migrants. OFWs should be more aware of recruitment agencies' duties relevant during the pandemic, such as health insurance and primary responsibility for repatriation. While these legal provisions are discussed during pre-employment seminars, a constant reminder can only empower Filipinos to claim their rights.

Furthermore, while some host countries have extended access to health services to irregular migrants, there were still instances of hesitation to avail these services for fear of deportation or other punishment due to the migrants' irregular status. The Department of Foreign Affairs (DFA) has posted easy-to-understand infographics through its social media sites on the process Filipinos or foreigners need to go through upon arrival in the Philippines. FSPs could further innovate their social media campaigns and widen their reach to educate about host countries' laws and regulations, and quell migrants' fears about foreign authorities.

Challenges to an Inclusive Philippine Response

Philippine response at the start of the pandemic seems to discourage irregular migrants in the country from seeking proper treatment. In May 2020, a raid was conducted at an illegal facility in Clark, Pampanga, treating Chinese nationals with COVID-19.¹⁰ According to Police Brig. Gen Rhoderick Armamento, illegal Chinese aliens who enter the Philippines on a tourist visa and overstay to work for online gambling operations do not seek assistance in Philippine hospitals for fear of being arrested.

For the Philippines to negotiate access to health services regardless of one's migration status, it should also provide the same treatment to foreign nationals living in its territory; irregular migrants should have access to healthcare services to treat COVID-19 without fear of reprisal. Health policies that encourage migrants to cooperate would help contain the coronavirus spread, facilitate better contact tracing, and prevent the establishment of illegal testing and treatment facilities with questionable hygienic standards.

Vaccines: Global Public Good

As a migrant-sending country committed to promoting Filipinos' welfare overseas, the Philippines should be at the forefront of ensuring its migrant communities' continuous and adequate protection. The Philippines should continue to open discussions on developing and implementing a pandemic response, not only for COVID-19 but future global health crises, *inclusive of all types of migrants*, prioritizing both the individual and society's well-being.

While the Philippines' commitment to protecting all migrants is already noticeable in the *Joint Statement on the Impact of COVID-19 on Migrants*, the needs of irregular migrants who are most vulnerable due to their status must be explicitly specified in any agreement rather than implied.

Universal access to essential services such as health care is a primary step in addressing the current pandemic. With the development of vaccines, irregular migrants are left in limbo regarding access to these life-saving medical preparations, which could affect herd immunity. As states roll out vaccine campaigns, migrants, including irregular migrants, should be considered by host governments to ensure success in battling the pandemic. Various countries have already pledged that migrants, regardless of status, would be able to access vaccines. For example, Malaysia has stated its intention to provide free vaccination for all, including irregular migrants. FSPs could help quell irregular Filipino migrants' fears of approaching vaccine authorities by utilizing its social media presence more effectively. The commitment of some states to the principle that *vaccines are a global public good* is a step closer to ensuring an inclusive pandemic response.

Policies that prevent anyone from seeking proper health support could put the general public at risk and hinder national governments' as well as the international community's efforts in overcoming the COVID-19 pandemic.

Endnotes

1. According to the Commission of Filipinos Overseas 2013 Stock Estimate of Overseas Filipinos, there was a total of 1,161,830 irregular Filipino migrants spread throughout the globe.
2. "IOM Joins Global Response to Prevent the Spread, Mitigate the Impact of COVID-19 on Crisis-Affected Communities," *IOM*, March 25, 2020 <https://www.ion.int/news/ion-joins-global-response-prevents-prevent-spread-mitigate-impact-covid-19-crisis-affected-communities>
3. Jane Bracher, "Undocumented in a pandemic: Thousands of Filipinos in UK suffer in silence over Covid-19," *Rappler*, April 24, 2020, <https://rappler.com/newsbreak/in-depth/undocumented-filipinos-united-kingdom-suffer-in-silence-coronavirus>
4. It must be noted that the UK would eventually publicize through the NHS website that undocumented migrants may seek medical assistance without fear of repercussion. Nevertheless, the migrant sector was still fearful.
5. Danny Vincent, "Coronavirus: Undocumented workers an 'invisible public health risk'," *BBC News*, June 24, 2020, <https://www.bbc.com/news/uk-england-london-52919418>
6. Min Joo Kim and Simon Denyer, "South Korea is doing 10,000 coronavirus tests a day. The U.S. is struggling for even a small fraction of that," *Washington Post*, March 14, 2020, https://www.washingtonpost.com/world/asia_pacific/coronavirus-test-kits-south-korea-us/2020/03/13/007f14fc-64a1-11ea-8a8e-5c5336b32760_story.html
7. "NHS Entitlements: Migrant Health Guide" *National Health Service*, March 23, 2020, <https://www.gov.uk/guidance/nhs-entitlements-migrant-health-guide>
8. Loh Foon Fong, "Covid-19: Undocumented still fearful to be screened, says Doctors without Borders" *The Star*, March 24, 2020 <https://www.thestar.com.my/news/nation/2020/03/24/covid-19-illegals-still-fearful-to-be-screened-says-doctors-without-borders>
9. The Consensus defines *undocumented migrant workers* as those who failed to comply with the conditions provided for them to legally enter and stay in the receiving state.
10. Tonette Orejas, "Illegal hospital treating COVID-19 patients shut," *Inquirer.net*, May 21, 2020, <https://newsinfo.inquirer.net/1278454/illegal-hospital-treating-covid-19-patients-shut>

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