

Social protection for INTRA-ASEAN migrant workers: developments, challenges and prospects

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Introduction

- ▶ An initial and interim report, providing an overview of the topic
- ▶ Scope of report
- ▶ No in-depth reflection on the position in any particular ASEAN member state
 - Although the Thai context is given more attention, based on the preliminary findings of a related study on social protection for migrant workers to and from Thailand (ILO)

Introduction

- ▶ Social protection defined:
 - Non-contributory social assistance
 - Contributory-based social insurance
 - Access to health care
- ▶ Scope: Regular migrant workers, with some reference to irregular workers, including migrant workers involved in some kind of regularisation process, as well as migrant workers in informal contexts.
- ▶ “Migrant worker”: “a person *who is to be engaged, is engaged or has been engaged in a remunerative activity in a state of which he or she is not a national.*” (UN International Convention on the Protection of the Rights of All Migrant Workers and Their Families, art 2(1)).

ASEAN Community perspectives: Establishment of the ASEAN Community

- ▶ To create a single market and production base ... in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital (ASEAN Charter)
- ▶ Restrictive scope of beneficiaries of the free/facilitated movement framework: ASEAN AEC Blueprint foresees free movement of professionals and skilled labour, and emphasises certain priority sectors
- ▶ Enhanced social protection as a means to protect ASEAN peoples against negative effects of regional integration

Enhancement of social protection

- ▶ ASEAN Socio-Cultural Community (ASCC) Blueprint (2009): social welfare and protection a key characteristic
- ▶ Other developments – strengthening social protection in ASEAN: international cooperation, undertaking relevant studies; ASEAN operational activities and plans of action
- ▶ 2013 ASEAN Declaration on Strengthening Social Protection: Equitable access, gradual extension, progressive realisation

Enhancement of social protection

- ▶ 2013 ASEAN Declaration on Strengthening Social Protection: Strategies and mechanisms
 - Everyone [...] at risk, [including] migrant workers, and other vulnerable groups, are entitled to have equitable access to social protection that is a basic human right
 - Adoption of national policies, strategies and mechanisms to strengthen implementation of social protection;
 - Extension of coverage, including the expansion of social insurance to the informal sector;
 - The need for results- and evidence-based assessments;
 - Capacity strengthening and the development of appropriate data tools;
 - Progress towards Universal Health Coverage; and
 - Multi- and intersectoral collaboration

Protection of migrant workers: social protection and related perspectives

- ▶ ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers (AIMW) mandated – slow progress
- ▶ Bilateral agreements and national legislation makes insufficient/no provision
- ▶ Up to 60% of workers in ASEAN fall within the informal sector with little or no social protection

Steps towards the development of an ASEAN instrument

- ▶ **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Cebu Declaration; DPPMW)**
 - Important contribution by MW to countries of origin and destination
 - Legitimate concerns of countries of origin and countries of destination and that co-operation
 - Fundamental rights of migrant workers and their families already residing
 - Not implying the regularization of the situation of migrant workers who are undocumented

ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Cebu Declaration; DPPMW): Salient features

- ▶ Emphasis on protection and promotion of rights
- ▶ Recognition of the obligations on sending states, receiving states and ASEAN Member States generally;
 - Receiving states: Ensure access to resources and services for migrant workers and promote employment protection;
 - Sending states: Enhance measures related to the promotion and protection of the rights of migrant workers, ensure access to employment and livelihood opportunities as sustainable alternatives to migration of workers, and facilitate migration from their countries through policies and procedures covering recruitment, protection while abroad and return; and
 - ASEAN Member States: Develop human resource and reintegration programmes for returning migrant workers, prevent and curb human trafficking and smuggling; and facilitate data-sharing

ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Cebu Declaration; DPPMW)

- ▶ The call for the intensification of efforts to protect the fundamental human rights, promote the welfare and uphold the human dignity of migrant workers
- ▶ The role of ASEAN countries in promoting decent, humane, productive, dignified and remunerative employment for migrant workers

Subsequent institutional framework and operational activities

- ▶ ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), which reports to the Senior Labour Officials Meeting (SLOM)
- ▶ ASEAN Forum on Migrant Labour (AFML) – Recommendations:
 - Speedy development of AIMW, to be compliant with the international human rights and labour standards and be legally binding
 - Bilateral and multilateral agreements providing for portability of social security benefits and better implementation of existing schemes
 - Cooperation between the countries of origin and destination in providing assistance to migrant workers with health concerns

Further conclusions

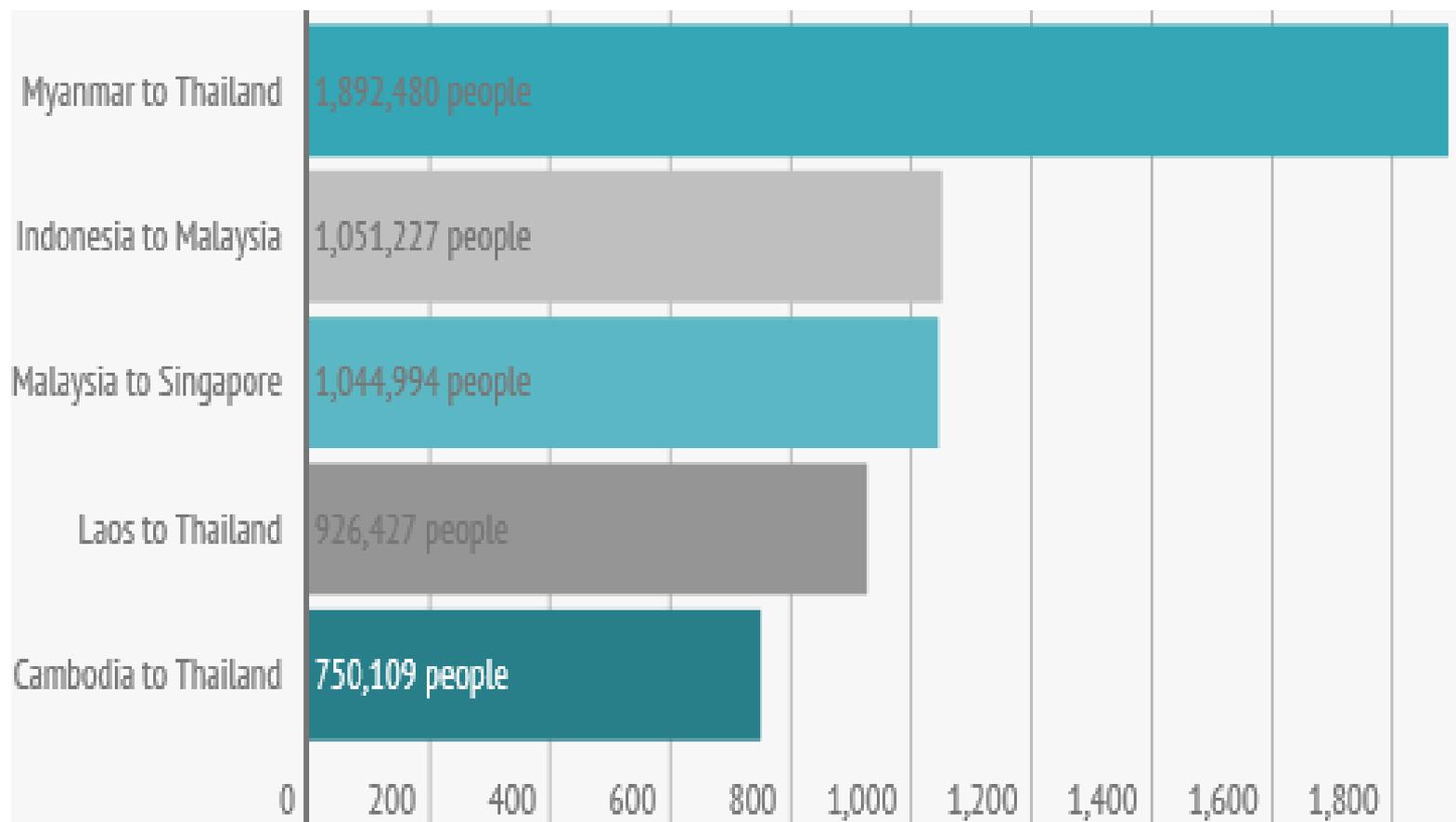
- ▶ Priority given to the Cebu Declaration and the AIMW
- ▶ Priority given to the implementation of the Regional Framework and Plan of Action on Social Protection
- ▶ Both social protection itself and the social protection of intra-ASEAN migrant workers are essentially a human rights issue
- ▶ The need to develop a regional standard-setting instrument
- ▶ Correlation between free movement and social protection of migrant workers
- ▶ Social protection for migrant workers not subject to a free movement regime – distinguish between regular and undocumented MWs



INTRA-ASEAN LABOUR MIGRATION: CHARACTERISTICS AND TRENDS

- Between 1990 and 2013, intra-ASEAN migration increased from 1.5 million to 6.5 million. About 87 per cent of migrant workers in ASEAN are either unskilled or low-skilled. (Migration Policy Institute, 2013)
- Malaysia, Thailand and Singapore are the destinations of 91 per cent of intra-ASEAN migrant workers – Malaysia and Thailand get 35 per cent each and Singapore 21 per cent. (Migration Policy Institute, 2013)
- Indonesia: 500,000 migrant workers deployed each year; 6.5 million TKIs officially working overseas in 142 countries
- Primarily of an inter-regional nature
- Extensive impact of remittances

Source: A 'Freer' Flow of Skilled Labour within ASEAN: Aspirations, Opportunities, and Challenges in 2015 and Beyond, by Guntur Sugiyarto and Dovelyn Rannveig Mendoza, December 2014, International Organisation for Migration and Migration Policy Institute



Some challenges / shortcomings

- ▶ "In the majority of the world's countries, including many ASEAN members, the legislative barriers limiting migrant workers' access to social security benefits are compounded by the fact that social security systems cover only part of the labour force. Moreover, in some countries, migrant workers are often employed in sectors of the labour market that either are not covered by social security or in which compliance with social security laws is poorly enforced. Even when migrant workers are employed in covered sectors and social security laws are enforced, irregular migrant workers are usually disqualified from social security benefits due to the fact that they are undocumented." (Tamagno)

Some challenges/shortcomings

- ▶ “Barriers to access to such protection vary from legal exemptions for migrants to bureaucratic or political obstacles. Whatever the barriers, all have the same effect: denying migrants access to social protection.” (Hall, 2011)

Some challenges / shortcomings

- ▶ "While the number of migrant workers with social security coverage is increasing (451,537 as of October 2014 according to the Social Security Office (SSO) of Thailand), the majority are still without sufficient access. All migrant workers with regular status are in theory eligible for many of the same benefits as Thai nationals – although some sectoral exclusions apply, for example, in domestic work, agriculture and fishing (Harkins, 2014b). The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made several observations related to the treatment of migrant workers in Thailand The CEACR requested that the Royal Thai Government “take positive and urgent measures to review the policy and legal framework concerning social security coverage and protection of migrant workers in case of occupational accidents and to instruct the SSO to lift restrictive conditions and facilitate access of migrant workers to the WCF [Workers Compensation Fund] irrespective of their nationality” (ILO, 2011). (ILO, 2015)

Some challenges/shortcomings

- ▶ Maltreatment in host country: non-recognition of or lack of enforcement of labour rights
- ▶ Until recently, little focus on social security for migrants in ASEAN
- ▶ **Not covered by social security system of host or home country:**
 - Lack of extra-territorial application of domestic laws
 - Nationality and/or residence requirements
 - Contribution period required for long-term (e.g., retirement) benefits
 - Work in the informal economy
 - Documentation and other administrative barriers

Some challenges/shortcomings

- ▶ Discrimination in laws and practice: both countries of origin and destination countries
- ▶ Social security portability arrangements seem to be either completely lacking or inadequately developed
- ▶ Despite important exceptions, the extension of social security protection by countries of origin to their own migrant workers may yet have to develop

Some challenges/shortcomings

- ▶ National labour, migration and related policies, as well as associated legal frameworks, do not capture the social protection plight of migrant workers and their families sufficiently
- ▶ Inadequate regulation of:
 - Exit arrangements (including regulation of private recruitment agencies)
 - Protection while abroad
 - Arrangements for returning migrants
- ▶ Bilateral labour agreements and memoranda of understanding make limited provision for employment protection while largely ignoring social security protection of migrant workers

Some challenges/shortcomings

- ▶ One or more multilateral arrangements at the regional level are, despite the world-wide eminence of such arrangements, sorely lacking in Asia, despite the emphasis in core regional instruments on regional integration and promoting the welfare of peoples of the Region
- ▶ International labour and human rights instruments have rarely been ratified, while norms and standards embedded in these instruments are poorly implemented

Some challenges/shortcomings

- ▶ Institutional arrangements and supporting mechanisms to assist Southeast Asian migrant workers when leaving, during sojourn in the destination countries and upon return, have been established in many ASEAN countries of origin
 - However, with some exception they may be regarded as fragmented and inordinately composed, while the efficacy of their operations and impact still has to be evaluated

Multilateral arrangements and agreements

- ▶ Important international and regional standards and guidelines
 - ILO Conventions and Recommendations & UN Conventions
 - ILO Multilateral Framework on Labour Migration
 - UN ECOSOC General Comment No 19 on the right to social security (2008)
 - ILO Recommendation 202: social protection floor to be extended to “all residents” (“soft law”)

The international law framework: broad scope

- ▶ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (UN Migrant Workers Convention)
- ▶ ILO Migration for Employment Convention (Revised), 1949 (No. 97) (see also accompanying Recommendation 86 of 1949)
 - See also accompanying Recommendation 86 of 1949
- ▶ ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
 - See also accompanying Recommendation 151 of 1975

Bilateral treaties and MOUs

- ▶ Principled aims: to regulate labour migration flows, extend employment rights, remove or minimise restrictions on access to social security (personal entitlement which follows the worker, irrespective of geographical location)
- ▶ Labour agreements and MOUs:
 - Increasingly extensive use (e.g. Philippines: 49)
 - Shortcomings
 - Focus mainly on regulating flow of migrant labour
 - Welfare/social (security) protection absent or merely a by-product

Bilateral treaties and MOUs

- ▶ Social security agreements (SSAs)
 - Together with multilateral agreements, this is world-wide the core intervention for extending social security protection to migrant workers
 - First such agreement in 2004; today 2000+ in total
 - Southeast Asia: limited use made of such agreements
 - Mostly restricted to agreements with countries outside Asia (e.g. agreements concluded by Philippines; India)
 - To date, no bilateral social security agreements with countries within ASEAN

Bilateral treaties and MOUs

- ▶ Particular challenges within the Asian context (Tamagno)
 - Asymmetrical nature of, for example, provident funds and social insurance schemes (retirement)
 - Administrative and technical capacity may be lacking in less developed countries
- ▶ General challenges
 - Principle of reciprocity – i.e. home and host countries should extend same protection on basis of reciprocity and equality
 - Multitude of bilateral agreements create different entitlements for different categories of migrant workers

Bilateral social security agreements

- **Core elements of bilateral SSAs and value of important internationally recognised cross-border coordination principles**
 - Equality of treatment
 - Determination of applicable legislation
 - Maintenance of acquired rights
 - Totalisation/aggregations of insurance periods
 - Portability of benefits
 - Pro-rata sharing of benefit liability
 - Administrative cooperation

Unilateral (social security) arrangements: country of origin

- ▶ Unilateral arrangements have developed largely in response to absence of bilateral agreements
- ▶ Various measures:
 - Constitutional guarantees and statutory frameworks facilitating the protection of migrant workers abroad – such as the 1987 Constitution of the Philippines and the Migrant Workers and Overseas Filipinos Act of 1995
 - Provisions in bilateral treaties providing for continued coverage of certain categories of migrant workers in the social security system of the labour-exporting country – e.g., the India–Belgium agreement of 2006

Unilateral (social security) arrangements: country of origin

► Various measures (cont)

- Establishment of Special Overseas Workers Welfare Funds by national and even (in the case of India) state governments, extending protection to workers and at times also their families – e.g., India, Philippines and Sri Lanka
- In principle compulsory affiliation (e.g. Philippines; Sri Lanka); or voluntary affiliation in national social insurance schemes
- Measures/schemes supporting the flow of remittances and social insurance contributions to the sending country
- Exportability of social security benefits and provision of related services (e.g., medical care) abroad

Unilateral (social security) arrangements: country of origin

- ▶ These extension mechanisms are often supported by a range of complementary measures (Van Ginneken; Vonk & Van Walsum)
 - Dedicated emigrant Ministry and/or specialized statutory bodies to protect the interests of their citizens/residents in the diaspora (e.g., India, Philippines, Bangladesh, Sri Lanka, Nepal)
 - Information on recruitment contracts and consular support
 - Support services to migrant workers at three stages: pre-departure, at destination (i.e., in the host country) and upon return (e.g., via return settlement programmes)
 - Lobbying for the protection of migrant workers

Range of arrangements: Philippines

- ▶ Regulates overseas recruitment
- ▶ Information sharing
- ▶ Provides some protection and representation (through a migrant welfare fund)
- ▶ Seeks to understand migrants' needs
- ▶ Charges fees to migrants, their employers and recruitment agencies as fund raising, and developing partnerships with the private sector and NGOs
- ▶ September 2014: bilateral agreement with Germany – to benefit 50 000 workers
 - Totalisation of benefits etc.

Unilateral (social security) arrangements: country of origin

- ▶ Limitations of unilateral measures – these remain measures of last resort
- ▶ See various examples of unilateral arrangements, but also their shortcomings

Multilateral arrangements and agreements

- ▶ Central aim: standards and principles at regional level informing bilateral and unilateral arrangements (Baruah & Cholewinski)
- ▶ Also: these agreements serve/are expression of regional integration and a recognition of intra-regional migration
- ▶ These agreements reflect internationally recognised social security cross-border **coordination principles**

Multilateral arrangements and agreements

- ▶ World-wide examples:
 - European Union (since 1958): Regulation 883/2004
 - Caribbean countries: Caricom Agreement on Social Security
 - Mercosur
 - Ibero-American Agreement on Social Security (20 South American and 3 European countries)
 - West, Central and East Africa

Multilateral arrangements and agreements

- ▶ Other examples
 - Gulf Cooperation Council (GCC): Unified Law of Insurance Protection Extension for GCC state citizens working in other GCC countries (2006): has resulted in better pension protection and greater labour mobility

- ▶ Asian examples?
 - See ASEAN above; 2005 Baku Declaration

Multilateral arrangements and agreements

- ▶ Challenges
 - Time-consuming to develop
 - Political determination
 - Freedom of movement principle
 - Prohibition of nationality discrimination principle
 - Institutional capacity

- ▶ Phased/incremental approach possible
 - Types of schemes covered
 - Types of benefits provided
 - Categories of persons covered
 - Countries included

Multilateral arrangements and agreements

- ▶ "The development of a comprehensive network of ASEAN social security agreements – ideally in the form of a multilateral agreement – may take time. For most ASEAN countries, even the conclusion of the first social security agreement may take time. However, unless the process is begun, it will never be completed, and most ASEAN migrant workers will remain without social security protection...the greater integration of the ASEAN region...will be severely impeded." (Tamagno, 2008)

Conclusions: the need for synergy

- ▶ Recognising but regulating the superimposition of immigration law on labour law and social security entitlements of migrant workers
 - Operation of important guiding principles, including lawful residence, means of subsistence text; lawful employment; recognition of overarching human rights framework
- ▶ Complementarity of unilateral, bilateral and multilateral arrangements
 - Incorporation of unilateral arrangements in bilateral agreements
 - Adopting multilateral agreements to set regional standards for bilateral treaties

Conclusions: the need for synergy

- ▶ The need for an integrated labour law/social security approach
 - At the national level: see, for example, the 2011 EU Single Permit Directive
 - At the regional level: deal with silo approach of labour agreements, either by expanding same to fully incorporate social security protection, or by developing streamlined and aligned social security agreements

Conclusions: the need for synergy

- ▶ Adopting overarching regulatory mechanisms
 - Adoption and implementation of international and regional instruments and standards
 - Appropriate legal framework which mandates and regulates unilateral measures, and the adoption and domestic application of bilateral and multilateral arrangements
- ▶ Suitable institutional mechanisms to facilitate implementation, monitoring and evaluation

Conclusion: the need for a varied approach

- ▶ Focus on the following (Van Ginneken):
 - Providing access to social security coverage for migrants in the country where they work, following review of existing national legislation;
 - Provision of social protection for family members who remain in the country of origin, and to protect the existing (social security) rights of migrant workers in that country
 - Improving the portability of workers' occupational social security and retirement benefits
 - Developing different forms of social protection for migrant workers who are uncovered by formal social security schemes in host countries